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New Jersey
Court of Errors and Appeals

NOTICE OF APPEAL.

(Filed Nov. 22nd, 1930.)

IN CHANCERY OF NEW JERSEY

Between EDWARD J. STEPPANSKI and JOHN E. JONES, Complainants, and JESSE L. SCULTHORP, Defendant.	64–309 On Bill for Rescission.

The defendant, Jesse L. Sculthorp, hereby appeals from the final decree made in the above entitled cause on October 20, 1930, by the Chancellor upon the advice of Vice Chancellor John O. Bigelow to the Court of Errors and Appeals in the last resort in all causes.

Dated, November 21, 1930.

QUINN, PARSONS & DOREMUS,
Solicitors of Defendant.

JOHN J. QUINN,
Of Counsel.

Petition of Appeal

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

QUINN, PARSONS & DOREMUS,
Solicitors of Defendant.
JOHN J. QUINN,
Of Counsel.

Service of a copy of the within Notice of Appeal is hereby acknowledged this 21st day of November, 1930.

11/22/30.

EICHMANN & SEIDEN,
Solrs. of Complainants.

PETITION OF APPEAL.

NEW JERSEY COURT OF ERRORS AND APPEALS

EDWARD J. STEPPANSKI and JOHN E. JONES, Complainants-Respondents, vs. JESSE L. SCULTHORP, Defendant-Appellant.	On Appeal from the Court of Chancery.

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

The petition of Jesse L. Sculthorp, the appellant in the above entitled cause, respectfully shows that

Petition of Appeal

1. Petitioner finds himself aggrieved by a final decree made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date October 20, 1930, in a certain cause in said Court of Chancery wherein the said Edward J. Steppanski and John E. Jones were complainants and the said Jesse L. Sculthorp was defendant, in this respect, to wit, the said decree adjudges that defendant-appellant was guilty of fraud and should return the moneys to complainants-respondents, as alleged in the bill of complaint.

2. And petitioner appeals from the decree of the Chancellor, which decrees as aforesaid, upon the ground that the same is erroneous in that it decrees that the agreement between complainants and defendant be rescinded and cancelled and that certificates of stock in the Sculthorp Realty Co., Inc., be delivered up for cancellation; and that the defendant pay to complainant, Edward J. Steppanski, $11,465.23 with interest on $5,000.00 from August 21, 1925, on $5,000.00 from October 21, 1925, and on $1,465.23 from October 4, 1926; and to John E. Jones the sum of $10,000.00 with interest on $5,000.00 from August 25, 1925, on $2,000.00 from October 26, 1925, and on $3,000.00 from April 4, 1926.

3. And petitioner appeals from the decree of the Chancellor aforesaid because said bill of complaint should have been dismissed on the further ground that defendant-appellant was not guilty of fraud; and upon the further ground that both complainants and defendant went into a

joint venture with full knowledge of all of the facts and upon which no fraud could be based; and upon the further ground that irrelevant, incompetent, immaterial and prejudicial testimony was permitted on behalf of complainants-respondents against defendant-appellant.

4. Petitioner further appeals on the ground that said decree was erroneous in granting the relief prayed for in the bill of complaint, with interest.

Petitioner therefore prays that said decree of the 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.

QUINN, PARSONS & DOREMUS,
Solicitors of Appellant.

JOHN J. QUINN,
Of Counsel.

Due and legal service of the within petition of appeal is hereby acknowledged this 9th day of December, 1930.

EICHMANN & SEIDEN,
Solicitors of Complainants-Respondents.

BILL OF COMPLAINT AND AFFIDAVIT.

IN CHANCERY OF NEW JERSEY

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

Complainants, Edward J. Steppanski, residing in the City of Jersey City, County of Hudson and State of New Jersey, and John E. Jones, residing in the Borough of Keansburg, County of Hudson and State of New Jersey, respectfully shows:

1. On or about May 15, 1925, Jesse L. Sculthorp, the defendant hereinafter named, proposed to these complainants that complainants and said defendant purchased land in the State of Florida for the purpose of resale, the profits to be divided in proportion to their respective investments; that a Florida corporation be organized in which complainants were each to invest $5,000.00 and defendant was to invest whatever balance necessary to purchase the property to be secured. Shares of stock were to be issued at $100.00 per share according to the amount invested by each. Said Sculthorp further stated that inasmuch as he was going to Florida on other business he would personally select parcels to be purchased and would purchase the same in trust at the cheapest price and best terms possible, and that as soon as the corporation was organized he would transfer the title to said property to the new corporation. He further stated that complainants should have their money ready for immediate delivery and if he sent his son, Stanley Sculthorp, up for the money complainants should give the money to his son for the

aforesaid purposes immediately. To this proposition both complainants agreed.

2. At the end of May or the early part of June, 1925, Stanley Sculthorp, pursuant to instructions from his father, Jesse Sculthorp, advised complainants that he was instructed by his father to ascertain from complainants if they could each increase their investment to $10,000.00 as the said Jesse L. Sculthorp had selected some good property in Florida for purchase, that the property required more money than he had originally estimated. Both complainants agreed to increase their investment to $10,000.00 each.

3. At the end of June, 1925, Jesse L. Sculthorp returned from Florida and advised complainants that he had not purchased anything but that he had some very good real estate in view and wanted complainants' approval before he purchased same. He represented to complainants that he had three parcels of real estate in view, owned by three different owners, and the best the owners would take for the three parcels amounted in the aggregate to the sum of $100,000.00; that while the price looked high, it was choice real estate and he advised purchasing the same, submitting to complainants figures and sketches whereby he showed a large subdivision profit. Complainants thereupon instructed Jesse L. Sculthorp to go ahead and purchase said parcels of real estate, that the complainants were satisfied.

4. On or about August 21, 1925, Jesse L. Sculthorp notified complainants that he had purchased

the property for $100,000.00 and needed money. He called for $5,000.00 more from each of the complainants which, he said, was all he needed then. Complainants gave him the money requested.

5. In August, 1925, complainants met Jesse L. Sculthorp and his son, Stanley, in the office of Jesse L. Sculthorp's attorney. A certificate of incorporation of Sculthorp Realty Company, Inc., a corporation of Florida, was presented for signatures, and was signed by complainants and by Jesse L. Sculthorp and his son Stanley. The certificate set forth that the capital stock was $75,000.00, represented by 750 shares of par value of $100.00 each, all paid in. The certificate set forth that complainants were each to get $10,000.00 of the capital stock, Stanley Sculthorp $5,000.00, and Jesse L. Sculthorp $50,000.00 of the capital stock, which represented the cash he was to invest in said corporation. The certificate set forth that the directors of the corporation were Jesse L. Sculthorp, Stanley Sculthorp and complainants. Upon the signing of said certificate of incorporation Jesse L. Sculthorp advised complainants it was impossible for him to take title to the three parcels of land in trust for the corporation as the corporation did not exist at the time title was taken and that he took title personally and as soon as the organization of the corporation was perfected he would turn over the property to the corporation.

6. Thereafter the organization of the corporation was perfected, Jesse L. Sculthorp was elected president, Stanley Sculthorp, secretary, com-

plainant Steppanski, vice-president, and complainant Jones, assistant secretary.

7. On or about October 20, 1925, Jesse L. Sculthorp called upon complainants for additional money, whereupon complainants paid in $5,000.00 each in several payments in addition to the money previously paid. Thereafter said Jesse L. Sculthorp made further requests of complainants for additional money in connection with said corporation and complainant Steppanski made various additional payments amounting to $2,158.23, making complainant Steppanski's total investment $12,158.23 and complainant Jones paid an additional $690.00, making complainant Jones a total investment of $10,690.00, or a total investment of both complainants of $22,848.23.

8. The said Jesse L. Sculthorp as a director and officer of Sculthorp Realty Co., Inc., a corporation of Florida, owed the duty of the utmost good faith to complainants as stockholders and co-directors of said corporation. Prior to the organization of said corporation he also owed to the complainants the duty of the utmost good faith by reason of the fiduciary relationship existing between him and the said complainants. In flagrant violation of the aforesaid duties of good faith which said Jesse L. Sculthorp owed complainants, the said Jesse L. Sculthorp fraudulently concealed from complainants the fact that he had paid not more than $67,500.00 for the purchase of the three parcels of land hereinbefore referred to and falsely represented to complainants that he had paid $100,000.00 for said real estate and that said sum of $100,000.00 was the

best price for which he was able to purchase said property, when, in truth and in fact, he had paid therefor the sum of not more than $67,500.00.

9. The details with respect to the purchase of said three parcels of real estate, as appear in the records of the Clerk of the Circuit Court in and for the County of Palm Beach, in the State of Florida, are as follows:

(a) Warranty deed, Melvin Burd and Elizabeth Burd, his wife, and S. Eugene Burd, single to Jesse L. Sculthorp, dated June 13, 1925, recorded in Book 297 of Deeds for said County of Palm Beach, Florida, at page 41, conveying the following property, to wit:

> All that tract of land situate in the County of Palm Beach, State of Florida, described as follows:
>
> East one-half (E½) of south-east quarter (SE¼) of south-west quarter (SW¼) of north-east quarter (NE¼) known as the east one-half (E½) of Lot One (1), of subdivision of Section 8, Township 46 South, Range 43 East, containing 5 acres more or less, excepting the following parcel: Beginning at a point on the east boundary of said property 16 feet from center of rock road (the center of rock road being the south-east corner of said property); thence north along said east boundary line 75 feet, thence east 135 feet to the point of beginning

Upon the deed conveying the said property, there were affixed revenue stamps to the amount

of $12.00. The deed was taken subject to no mortgages upon the land and Jesse L. Sculthorp and wife executed a mortgage in the amount of $8,000.00 to Melvin S. Burd, Elizabeth Burd and S. Eugene Burd, the vendors, said mortgage being recorded in Book 131 of Mortgage record at page 112. The total amount paid for said property did not exceed $12,000.00 and the amount of cash paid upon the delivery of the deed did not exceed $4,000.00.

(b) Warranty deed A. A. Plotner, unmarried, to Jesse L. Sculthorp, dated June 1st, 1925, recorded in Book 301 of Deeds for said County of Palm Beach, Florida, page 354, conveying the following property, to-wit:

> All that tract of land in the County of Palm Beach, State of Florida, described as follows:
>
> North one-half (N½) of north-east quarter (NE¼) of north-east quarter (NE¼) of southeast quarter (SE¼) and west one-half (W½) of the southeast quarter (SE¼) of southwest quarter (SW¼) of northeast quarter (NE¼) and east one-half (E½) of southwest quarter (SW¼) of southwest quarter (SW¼) of northeast quarter (NE¼) Section 8 Township 46 South, Range 43 East, containing 15 acres, more or less.

Upon the deed conveying said property there were affixed revenue stamps to the amount of $45.00. The deed was taken subject to no mortgages upon the land and Jesse L. Sculthorp and

wife executed a mortgage in the amount of $22,-500.00 to the vendor, A. A. Plotner, said mortgage being recorded in Book 133 of Mortgage record at page 16. The total amount paid for said property did not exceed $45,000.00 and the amount of cash paid upon delivery of the deed did not exceed $22,500.00.

(c) Warranty deed, Gordon Davis and Rose M. Davis, his wife, to Jesse L. Sculthorp, dated September 8th, 1925, recorded Book 303 of Deeds for said County of Palm Beach, Florida, conveying the following property, to-wit:

> All that tract of land in the County of Palm Beach, State of Florida, described as follows:
>
> Northwest quarter (NW¼) of Lot 3, being the north one-half (N½) of southwest quarter (SW¼) of northwest quarter (NW¼) of southeast quarter (SE¼) of Section 8 Township 46 South, Range 43 East, containing 5 acres, more or less.

Upon the deed conveying said property there were affixed revenue stamps to the amount of $10.00. The deed was taken subject to a mortgage held by Adolf Hofman, upon which there was due a balance of $500.00. Jesse L. Sculthorp and wife executed a mortgage in the sum of $5,-500.00 to the vendors, Gordon Davis and Rose M. Davis, his wife, said mortgage being recorded in Book 142 of Mortgage Records at page 311. The total amount paid for said property did not exceed $10,500.00 and the amount in cash paid upon delivery of the deed did not exceed $4,500.00.

The total amount paid for all three parcels, a, b, and c, aforesaid, did not exceed $67,500.00, being the three parcels which Jesse L. Sculthorp falsely represented to the complainants he had purchased for $100,000.00. The total amount of cash paid upon the delivery of the three deeds did not exceed $31,000.00.

10. At the end of June, 1925, when Jesse L. Sculthorp advised the complainants as set forth in paragraph 3 herein, that he had not purchased anything as yet, but had three parcels of real estate in view and the best the owners would take for the same was a total of $100,000.00, the said Jesse L. Sculthorp falsely concealed from complainants that he had already acquired title in his own name to two of the three parcels, to-wit: Parcels a and b, set forth in paragraph 9 herein.

11. On or about November 5, 1925, Jesse L. Sculthorp executed a deed conveying the aforesaid three parcels of real estate to the Sculthorp Realty Co., a corporation of Florida, the deed being recorded in Book 338 of Deeds for Palm Beach County, Florida, page 132.

12. Thereafter, to wit, October 18, 1926, without the knowledge, consent or authority of complainants, Jesse L. Sculthorp procured the Sculthorp Realty Company, a corporation of Florida, to execute a deed of said real estate to Jesse L. Sculthorp, which deed was executed on behalf of the company by Jesse L. Sculthorp, as president, and Stanley Sculthorp, as secretary. No meeting of the board of directors of said company was held for the purpose of authorizing the exe-

cution of said deed, nor were complainants notified of any meeting for that purpose, nor were complainants informed of the execution of said deed.

13. Thereafter, while title to said property was in the name of Jesse L. Sculthorp, and while complainants were led to believe that the title still remained in the Sculthorp Realty Co., Jesse L. Sculthorp made requests of complainants for further contributions for payments of mortgages on said lands.

14. Jesse L. Sculthorp was in actual charge of the affairs of the Sculthorp Realty Co., a corporation of Florida, by reason of the fact that he was spending considerable time in Florida and complainants remained in the State of New Jersey leaving the management to him. Complainants repeatedly requested of Jesse L. Sculthorp a financial statement of the company's affairs, which he failed to furnish.

15. On or about December 30, 1926, Jesse L. Sculthorp called a meeting of the corporation for January 8, 1927, at Delray, Florida, for the purpose of determining whether or not to hold on to the aforesaid real estate or let it go because of mortgages coming due, although at that time title was in his name and complainants were unaware of the fact that the corporation had deeded the property to him. The meeting was postponed on January 22, 1927, and Jesse L. Sculthorp agreed that he would have a financial statement of the company ready for the meeting. Complainants came to the meeting, traveling from New Jersey

to Florida for that purpose, and no financial statement was forthcoming. Complainants thereupon insisted that no meeting would be held unless a statement were forthcoming and complainant Jones offered to pay for the expense of an accountant to make up a financial statement. Jesse L. Sculthorp thereupon stated that he would make up a statement himself and the meeting was adjourned to January 25, 1927, at which meeting Jesse L. Sculthorp submitted a financial statement prepared by himself in which the cost of the aforesaid properties is given, totalling $100,000.00, made up as follows:

"Property known as Plotner Property 15 acres	$67,500.00
Property known as the Burd Property, 5 acres, less Plot 75 ft. x 134 ft.	17,500.00
Property known as Davis Property, 5 acres	15,000.00
	$100,000.00"

Complainants requested Jesse L. Sculthorp to sign the financial statement, which he refused to do unless complainants would likewise sign the same and approve the figures which complainants refused to do, whereupon the said Jesse L. Sculthorp refused to sign the statement prepared by himself. Complainants thereupon asked for permission to examine all deeds, contracts and papers of the company but were told by Jesse L. Sculthorp that these papers were in a safe in the State of New Jersey.

16. Complainants thereupon engaged a Florida attorney to examine the records with respect to the aforesaid real estate and as a result of said examination of the records, complainants ascertained that the cost of said properties did not exceed $67,500.00 and that the alleged cost of $100,000.00 set forth in the financial statement rendered by Jesse L. Sculthorp and the representations previously made to them by the said Jesse L. Sculthorp that said properties cost $100,000.00 were false and they also ascertained from the said examination of the records that the corporation no longer had the record title to said properties; that the title to same was in the name of Jesse L. Sculthorp.

17. Shortly thereafter and in the latter part of January, 1927, complainants, with their Florida attorney, called upon Jesse L. Sculthorp and complainants' attorney advised said Sculthorp he need not answer any questions if he did not want to. The lawyer asked him to explain the discrepancy between the $67,000.00 purchase price and the $100,000.00 alleged purchase price, and Jesse L. Sculthorp refused to answer or to show any records in relation to same. The lawyer asked him to explain the transfer of the properties to himself and the said Sculthorp stated that he made the transfer for the good of the company, but gave no reason. Complainants' attorney then requested a conference with Jesse L. Sculthorp and his attorney, which was held the following day at which conference complainants charged the said Jesse L. Sculthorp with fraud, rescinded on account of said fraud their agree-

ment with him under which they invested their money in said corporation, and demanded the return of all moneys invested, with which request Jesse L. Sculthorp refused to comply. Complainants thereupon threatened to bring action and sometime thereafter instituted a suit against Jesse L. Sculthorp in the State of Florida to recover the aforesaid moneys on account of fraud, to which suit a demurrer was filed by Sculthorp and the action is still pending.

18. On February 2, 1927, prior to the institution of said suit but after complainants had rescinded said contract and threatened to bring an action against the said Jesse L. Sculthorp, the said Jesse L. Sculthorp, in order to prevent complainants from enforcing against him his assets any decree which they may obtain against him, proceeded to dispose of his assets by execution of three deeds all dated February 2, 1927, all acknowledged February 2, 1927, in the County of Palm Beach, Florida, before Howard W. Roberts, a Master in Chancery of New Jersey, conveying his New Jersey real estate holdings as follows:

(a) Deed by Jesse L. Sculthorp to Lottie Sculthorp, his wife, transferring to his said wife his home at 48 7th Avenue, Atlantic Highlands, New Jersey, recorded in Book 1389 of Deeds for Monmouth County, page 32, worth $15,000.00, and which home he had purchased in 1915 for $11,000.00.

(b) Deed, Jesse L. Sculthorp to Sculthorp Realty Co., a corporation of New Jersey (said corporation having no connection with the Flor-

ida corporation of this name, and the stock in the New Jersey corporation, complainants are informed, has been transferred by Jesse L. Sculthorp to his son, Stanley Sculthorp, about twenty-seven years of age, and who now is in charge of said New Jersey corporation), conveying the Victoria Hotel property in the Borough of Highlands, New Jersey, which was acquired by Jesse L. Sculthorp had an equity of $20,000.00 said deed being recorded in Book 1389 of Deeds for Monmouth County, at page 35.

(c) Deed, Jesse L. Sculthorp to his daughter, Kittie Kruse, transferring to her the home where she now lives at Atlantic Highlands, known as lots 106-107, Block 15, on the Map of the Borough of Atlantic Highlands, which deed is recorded in Book 1389 of Deeds for Monmouth County, page 37.

All of said deeds were dated and acknowledged February 2nd, 1927, and were recorded simultaneously on February 26, 1927.

19. In furtherance of his purpose to get his assets in New Jersey out of complainants' reach, said Jesse L. Sculthorp assigned a $5,000.00 mortgage to Atlantic Highlands National Bank by assignment dated February 15, 1927, and recorded February 16, in Book 94 of Assignments of Mortgages for Monmouth County, page 180, said mortgage being a purchase money mortgage dated October 6, 1926, recorded in Book 794 of Mortgages for Monmouth County, page 238, made by Burtis V. H. Lohman and wife to Jesse L. Sculthorp, said mortgage being given as part consideration

for the sale by Jesse L. Sculthorp to said Lohman of another home owned by Jesse L. Sculthorp at Keansburg, New Jersey, and known as Lot 586, 587, 589 and 610 in Block 28 on Map of Building Lots, New Point Comfort Beach Company at Keansburg, said Jesse L. Sculthorp conveying said lots by deed dated October 6th, 1926, recorded in Book 1371 of Deeds for Monmouth County, page 317.

20. The said Jesse L. Sculthorp has informed complainants that he intends to leave the State of New Jersey and go to live in the State of Florida. He has stated that he intends to make Florida his permanent home. He has built and completely furnished a home in Florida. He has two homes in New Jersey, one in Atlantic Highlands and one in Keansburg as aforestated, both of which he has transferred out of his name. He is now living at the home of his daughter, Kittie Kruse. As previously stated, he has put his property out of his name so that a decree of this court will not be enforceable against his assets. Complainants say that if Jesse L. Sculthorp should be allowed to depart from this state their respective claims will be entirely lost to them or the recovery thereof greatly endangered and that it will be difficult, if not impossible, to recover the same. From the facts aforesaid and for the reasons hereinbefore stated, complainants say that said defendant, Jesse L. Sculthorp, unless he be forthwith apprehended, will depart out of the jurisdiction of this court and that the claims due complainants, as aforesaid, from the said Jesse L. Sculthorp will be in danger of being lost to

complainants by the said Jesse L. Sculthorp leaving the jurisdiction of this court.

Complainants are without adequate remedy in the courts of law and therefore pray:

1. That Jesse L. Sculthorp, who is the defendant in this suit, answer this bill of complaint and each and every statement therein made.

2. That it be decreed that the agreement under which complainants were induced to turn over money to Jesse L. Sculthorp for investment in Florida real estate to be purchased in the name of Jesse L. Sculthorp and thereafter to be conveyed to Florida corporation to be formed, was procured through the false representation of Jesse L. Sculthorp and that the said agreement be cancelled and rescinded for fraud and the certificates of stock in Sculthorp Realty Co., Inc., a corporation of Florida, be delivered up for cancellation.

3. That Jesse L. Sculthorp be decreed to return to complainants the amount of cash paid by them to Jesse L. Sculthorp under said agreement, with interest, to-wit: to complainant Edward H. Steppanski, $12,158.23 and interest, and to complainant John E. Jones, $10,690.00 and interest, to total $22,848.23 and interest to both complainants.

4. That a writ of *ne exeat* issued against said defendant, Jesse L. Sculthorp.

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.

Complainants pray for any other relief to which they may be equitably entitled and which this court may deem equitable and just.

(Signed) EICHMANN & SEIDEN,
Solicitors for and of
Counsel with Complainants.

State of New Jersey,
County of Hudson. ss:

Edward J. Steppanski, of full age, being duly sworn, upon his oath deposes and says:

1. I am one of the complainants named in the annexed bill of complaint.

2. On or about May 15, 1925, Jesse L. Sculthorp, the defendant, proposed to John E. Jones and myself, the complainants, that we, complainants, and he purchase land in the State of Florida for the purpose of resale, the profits to be divided in proportion to our respective investments; that a Florida corporation be organized in which we, complainants, were each to invest $5,000.00 and he was to invest whatever balance necessary to purchase the property to be acquired. Shares of stock were to be issued at $100.00 per share according to the amount invested by each. Said Sculthorp further said that inasmuch as he was going to Florida on other business that he would personally select parcels to be purchased and would purchase the same in trust at the cheapest price and best terms possible, and that as soon

as the corporation was organized he would transfer the title to the said property to the new corporation. He further stated that we, complainants, should have our money ready for immediate delivery and if he sent his son, Stanley Sculthorp, up for the money we should give the money to his son for the aforesaid purposes immediately. To this proposition both John E. Jones and I agreed.

3. At the end of May or the early part of June, 1925, Stanley Sculthorp, pursuant to instructions from his father, Jesse L. Sculthorp, advised us, complainants, that he was instructed by his father to ascertain from us if we could each increase our investment to $10,000.00 as the said Jesse L. Sculthorp had selected some good property in Florida for purchase, that the property required more money than he had originally estimated. Both John E. Jones and I agreed to increase our investment to $10,000.00 each.

4. At the end of June, 1925, Jesse L. Sculthorp returned from Florida and advised us that he had not purchased anything but had some very good real estate in view and wanted our approval before he purchased same. He represented to us that he had three parcels of land in view, owned by three different owners and the best the owners would take for the three parcels amounted to the aggregate sum of $100,000.00; that while the price looked high it was choice real estate and he advised purchasing the same, submitting to us figures and sketches whereby he showed a large subdivision profit. John E. Jones and I

thereupon instructed Jesse L. Sculthorp to go ahead and purchase said parcels of land, that we were satisfied.

5. On or about August 21, 1925, Jesse L. Sculthorp notified us that he had purchased the property for $100,000.00 and needed money. He called for $5,000.00 from each of us, which, he said, was all he needed then. John E. Jones and I gave him the money requested.

6. In August, 1925, John E. Jones and I met Jesse L. Sculthorp and his son, Stanley, in the office of Jesse L. Sculthorp's attorney. A certificate of incorporation of Sculthorp Realty Co., Inc., a corporation of Florida, was presented for signature and was signed by John E. Jones and myself and by Jesse L. Sculthorp and his son, Stanley. The certificate set forth that the capital stock was $75,0000.00, represented by 750 shares of a par value of $100.00 each, all paid in. The certificate set forth that John E. Jones and I were each to get $10,000.00 of the capital stock, Stanley Sculthorp $5,000.00 and Jesse L. Sculthorp $50,000.00 of the capital stock, which represented the cash he was to invest in said corporation. The certificate set forth that the directors of the corporation were Jesse L. Sculthorp, Stanley Sculthorp, John E. Jones and myself. Upon the signing of said certificate of incorporation Jesse L. Sculthorp advised us, complainants, that it was impossible for him to take title to the three parcels of real estate in trust for the corporation as the corporation did not exist at the time title was taken and that he took title personally and as soon as the organization

of the corporation was perfected he would turn over the property to the corporation.

7. Thereafter the organization of the corporation was perfected, Jesse L. Sculthorp was elected President; Stanley Sculthorp, Secretary; Complainant John E. Jones, Asst. Secretary, and I, Vice President.

8. On or about October 20, 1925, Jesse L. Sculthorp called upon us, complainants, for additional money whereupon we paid in $5,000.00 each, Jones in several payments, in addition to the money previously paid. Thereafter, said Jesse L. Sculthorp made further requests of us for additional money in connection with said corporation and I made various additional payments to him amounting to $2,158.23, making my total investment $12,158.23 and complainant Jones paid in additional $690.00, making Jones' total investment $10,690.00 or a total investment by both of us of $22,848.23.

9. The said Jesse L. Sculthorp, as a director and officer of Sculthorp Realty Co., Inc., a corporation of Florida, owed the duty of the utmost good faith to us, complainants, as stockholders and co-directors of said corporation. Prior to the organization of said corporation he also owed to us the duty of the utmost good faith by reason of the fiduciary relationship existing between him and us. In flagrant violation of the aforesaid duties of good faith which said Jesse L. Sculthorp owed us, the said Jesse L. Sculthorp fraudulently concealed from us the fact that he had paid not more than $67,500.00 for the pur-

chase of the three parcels of real estate hereinbefore referred to and falsely represented to us that he had paid $100,000.00 for said real estate and that said sum of $100,000.00 was the best price for which he was able to purchase said property, when in truth and in fact he had paid therefor not more than the sum of $67,500.00.

10. The details with respect to the purchase of said three parcels of real estate, as appear in the records of the Clerk of the Circuit Court in and for the County of Palm Beach, in the State of Florida, are as follows:

(a) Warranty deed, Melvin Burd and Elizabeth Burd, his wife and S. Eugene Burd, single, to Jesse L. Sculthorp, dated June 13, 1925, Recorded in Book 297 of Deeds for said County of Palm Beach, Florida, page 41, conveying the following property, to wit:

> All that tract of land situate in the County of Palm Beach, State of Florida, described as follows:
>
> East one-half (E½) of southeast quarter (SE¼) of southwest quarter (SW¼) of northeast quarter (NE¼) known as the east one-half (E½) of Lot one (1), of subdivision of Section 8, Township 46 South, Range 43 east, containing 5 acres more or less, excepting the following parcel: Beginning at a point on the east boundary of said property 16 feet from center of road (rock) (The center of rock road being the southeast corner of said property) thence north along said east boundary line 75

feet, thence west 135 feet, thence south 75 feet, thence east 135 feet to the point of beginning.

Upon the deed conveying the said property, there were affixed revenue stamps to the amount of $12.00. The deed was taken subject to no mortgages upon the land and Jesse L. Sculthorp and wife executed a mortgage in the amount of $8,000.00 to Melvin Burd, Elizabeth Burd, his wife and S. Eugene Burd, the vendors, said mortgage being recorded in Book 131 of mortgages at page 112. The total amount paid for said property did not exceed $12,000.00 and the amount of cash paid upon the delivery of the deed did not exceed $4,000.00.

(b) Warranty Deed, A. A. Plotner, unmarried, to Jesse L. Sculthorp, dated June 1st, 1925, recorded Book 301 of Deeds for said County of Palm Beach, Florida, page 354, conveying the following property, to wit:

All that tract of land in the County of Palm Beach, State of Florida, described as follows:

North one-half (N½) of northeast quarter (NE¼) of northwest quarter (NW¼) of southeast quarter (SE¼) and west one-half (W½) of southeast quarter (SE¼) of southwest quarter (SW¼) of northeast quarter (NE¼) and east one-half (E½) of southwest quarter (SW¼) of southwest quarter (SW¼) of northeast quarter (NE¼) Section 8, Township 46, south, Range 43 East, containing 15 acres, more or less.

Upon the deed conveying said property there was affixed revenue stamps to the amount of $45.00. The deed was taken subject to no mortgage upon the land and Jesse L. Sculthorp and wife executed a mortgage in the amount of $22,500.00 to the vendor, A. A. Plotner, said mortgage being recorded in Book 133 of Mortgages at page 16. The total amount paid for said property did not exceed $45,0000.00 and the amount of cash paid upon delivery of the deed did not exceed $22,500.00.

(c) Warranty deed, Gordon Davis and Rose M. Davis, his wife, to Jesse L. Sculthorp, dated September 8, 1925, recorded Book 303 of Deeds for said County of Palm Beach, Florida, conveying the following property, to wit:

> All that tract of land in the County of Palm Beach, State of Florida, described as follows:
>
> Northwest quarter (NW¼) of Lot 3, being the north one-half (N½) of southwest quarter (SW¼) of northwest quarter (NW¼) of southeast quarter (SE¼) of Section 8, Township 46 South, Range 43 East, containing 5 acres, more or less.

Upon the deed conveying the said property there was affixed revenue stamps to the amount of $10.00. The deed was taken subject to a mortgage held by Adolph Hofman, upon which was due a balance of $500.00. Jesse L. Sculthorp and wife executed a mortgage in the sum of $5,500.00 to the vendors, Gordon Davis and Rose M. Davis, his wife, said mortgage being recorded in Book

142 of Mortgage Record at page 311. The total amount paid for said property did not exceed $10,500.00 and the amount of cash paid upon delivery of said deed did not exceed $4,500.00.

The total amount paid for all three parcels, a, b, and c, aforesaid, did not exceed $67,500.00, being the three parcels which Jesse L. Sculthorp falsely represented to us, complainants, he had purchased for $100,000.00. The total amount of cash paid upon the delivery of the three deeds did not exceed $31,000.00.

11. At the end of June, 1925, when Jesse L. Sculthorp advised us, complainants, as set forth in paragraph 4 herein, that he had not purchased anything as yet but had three parcels of real estate in view and the best the owner would take for the same was a total of $100,000.00, the said Jesse L. Sculthorp falsely concealed from us the fact that he had already acquired title in his own name to two of the three parcels, to wit, parcels a and b set forth in paragraph 10 herein.

12. On or about November 5, 1925, Jesse L. Sculthorp executed a deed conveying the aforesaid three parcels of real estate to the Sculthorp Realty Company, a corporation of Florida, the deed being recorded in Book 338 of Deeds for Palm Beach County, Florida, page 132.

13. Thereafter, to wit, October 18, 1926, without knowledge, consent or authority of us, complainants, Jesse L. Sculthorp procured the Sculthorp Realty Co., a corporation of Florida, to execute a deed of said real estate to Jesse L. Sculthorp, which deed was executed on behalf of the

company by Jesse L. Sculthorp as President, and Stanley Sculthorp as Secretary, no meeting of the Board of Directors of said company was held, for the purpose of authorizing the execution of said deed, nor were we, complainants, notified of any meeting for that purpose, nor were we informed of the execution of said deed.

14. Therefore, while title to said property was in the name of Jesse L. Sculthorp, and while we, complainants, were let to believe that the title still remained in the Sculthorp Realty Co., Jesse L. Sculthorp made requests of us for further contributions for payment of mortgages on said lands.

15. Jesse L. Sculthorp was in actual charge of the affairs of the Sculthorp Realty Co., a corporation of Florida, by reason of the fact that he was spending considerable time in Florida and we, complainants, remained in the State of New Jersey leaving the management to him. We repeatedly requested of Jesse L. Sculthorp a financial statement of the company's affairs, which he failed to furnish.

16. On or about December 30, 1926, Jesse L. Sculthorp called a meeting of the corporation for January 8, 1927, at Delray, Florida, for the purpose of determining whether or not to hold on to the aforesaid real estate or let it go because of mortgages coming due, although at that time title was in his name, and we, complainants, were unaware of the fact that the corporation had deeded the property to him. The meeting was postponed to January 22, 1927, and Jesse

L. Sculthorp agreed that he would have a financial statement of the company ready for the meeting. We came to the meeting, traveling from New Jersey to Florida for that purpose, and no financial statement was forthcoming. We thereupon insisted that no meeting would be held unless a statement were forthcoming and complainant, Jones, offered to pay for the expenses of an accountant to make up a financial statement. Jesse L. Sculthorp thereupon stated that he would make up a financial statement himself and the meeting was adjourned to January 25, 1927, at which meeting Jesse L. Sculthorp submitted a financial statement prepared by himself in which the cost of the aforesaid properties is given, totalling $100,000.00, made up as follows:

Property known as Plotner Property, 15 acres	$ 67,500.00
Property known as the Burd Property, 5 acres, less plot 75″ x 134″	17,500.00
Property known as Davis property, 5 acres	15,000.00
	$100,000.00

We, complainants, requested Jesse L. Sculthorp to sign the financial statement which he refused to do unless we would likewise sign the same and approve the figures which we refused to do, whereupon the said Jesse L. Sculthorp refused to sign the statement prepared by himself. We thereupon asked for permission to examine all deeds, contracts and papers of the company, and

we were told by Jesse L. Sculthorp that these papers were in a safe in the State of New Jersey.

17. We, complainants, thereupon engaged a Florida attorney to examine the records with respect to the aforesaid real estate and as a result of said examination of the records, we ascertained that the cost of said properties did not exceed $67,500.00 and that the alleged cost of $100,000.00 set forth in the financial statement rendered by Jesse L. Sculthorp and the representations previously made by Jesse L. Sculthorp that said properties cost $100,000.00 were false and we also ascertained from the said examination of the records that the corporation no longer had the record title to said properties, and that the title to same was in the name of Jesse L. Sculthorp.

18. Shortly thereafter and in the latter part of January, 1927, John E. Jones and I, with our Florida attorney, called upon Jesse L. Sculthorp and our attorney advised said Sculthorp he need not answer any questions if he did not want to. The lawyer asked him to explain the discrepancy between the $67,500 purchase price and the $100,000.00 alleged purchase price and Jesse L. Sculthorp refused to answer or show any records in relation to same. The lawyer asked him to explain the transfer of the properties to himself and the said Sculthorp stated that he made the transfer for the good of the company, but gave no reason. Our attorney then requested a conference with Jesse L. Sculthorp and his attorney

which was held the following day, at which conference we, complainants, charged said Jesse L. Sculthorp with fraud, rescinded on account of said fraud our agreement with him under which we invested our money in said corporation, and demanded the return of all moneys invested, with which request Jesse L. Sculthorp refused to comply. We thereupon threatened to bring action and some time thereafter instituted a suit against Jesse L. Sculthorp in the State of Florida to recover the aforesaid moneys on account of fraud, to which suit a demurrer was filed by Sculthorp and the action is still pending.

19. On February 2, 1927, prior to the institution of said suit but after John E. Jones and I had rescinded said contract and threatened to bring an action against the said Jesse L. Sculthorp, the same Jesse L. Sculthorp, in order to prevent us, complainants, from enforcing against his assets any decree which we may obtain against him, proceeded to dispose of his assets by executing three deeds, all dated February 2, 1927, and all acknowledged February 2, 1927, in the County of Palm Beach, Florida, before Howard W. Roberts, a Master in Chancery of New Jersey, conveying his New Jersey real estate holdings as follows:

(a) Deed by Jesse L. Sculthorp to Lottie Sculthorp, his wife, transferring to his said wife, his home at 48-7th Ave., Atlantic Highlands, New Jersey, recorded in Book 1389 of Deeds for Monmouth County, page 32, worth $15,000.00 and which home he had purchased in 1915 for $11,000.00

(b) Deed, Jesse L. Sculthorp to Sculthorp Realty Co., a corporation of New Jersey (said corporation having no stock in the New Jersey Corporation, I am informed, has been transferred by Jesse L. Sculthorp to his son Stanley Sculthorp, about twenty-seven years of age, and who is now in charge of said New Jersey corporation) conveying the Victoria Hotel property in the Borough of Highlands, New Jersey, which was acquired by Jesse L. Sculthorp in 1907 and in which Jesse L. Sculthorp had an equity of $20,000.00, said deed being recorded in Book 1389 of Deeds for Monmouth County, page 35.

(c) Deed, Jesse L. Sculthorp to his daughter, Kittie Kruse, transferring to her the home where she now lives at Atlantic Highlands known as Lots 106-107, Block 15 on the Map of the Borough of Atlantic Highlands, which deed is recorded in Book 1389 of Deeds for Monmouth County, page 37.

All of said deeds were dated and acknowledged February 2, 1927, and were recorded simultaneously on February 26, 1927.

20. In furtherance of his purpose to get his assets in New Jersey out of the reach of John E. Jones and myself, Jesse L. Sculthorp assigned a $5,000.00 mortgage to Atlantic Highlands National Bank by assignment, dated February 15, 1927, and recorded February 16, 1927, in Book 94 of Assignments of Mortgages for Monmouth County, at page 180, said mortgage being a purchase-money mortgage, dated October 6, 1926, recorded in Book 794 of Mortgages for Mon-

mouth County, page 328, made by Burtis V. H. Lohman and wife to Jesse L. Sculthorp, said mortgage being given as part consideration for the sale by Jesse L. Sculthorp to said Lohman of another home owned by Jesse L. Sculthorp at Keansburg, New Jersey, and known as Lots 586, 587, 589, and 610 in Block 28 on Map of Building Lots, New Point Comfort Beach Company of Keansburg, said Jesse L. Sculthorp conveying said lots by deed dated October 2, 1926, recorded in Book 1371 of Deeds for Monmouth County, page 317.

21. The said Jesse L. Sculthorp has informed John E. Jones and myself that he intends to leave the State of New Jersey and go to live in the State of Florida. He has stated that he intends to make Florida his permanent home. He has built and completely furnished a home in Florida. He has two homes in New Jersey, one in Atlantic Highlands and one in Keansburg as aforestated, both of which he has transferred out of his name. He is now living at the home of his daughter, Kitty Kruse. As previously stated, he has put his property out of his name so that a decree of this Court will not be enforceable against his assets. I further say that if Jesse L. Sculthorp should be allowed to depart from this state the respective claims of John E. Jones and myself will be entirely lost to us or the recovery thereof greatly endangered and that it will be difficult, if not impossible, to recover the same. From the aforesaid and for the reason hereinabove stated, I say that said defendant, Jesse L. Sculthorp, unless he be forthwith ap-

prehended, will depart out of the jurisdiction of this Court and that the claim due John E. Jones and myself, as aforesaid, from the said Jesse L. Sculthorp will be in danger of being lost to us by the said Jesse L. Sculthorp leaving the jurisdiction of this Court.

(Signed) EDWARD J. STEPPANSKI.

Sworn and subscribed to before me
this 26th day of May, A. D., 1927.
(Signed) Josephine De Lorenzo,
Notary Public of New Jersey.

ANSWER.

IN CHANCERY OF NEW JERSEY

Between EDWARD J. STEPPANSKI and JOHN E. JONES, Complainants, and JESSE L. SCULTHORP, Defendant.	On Bill, etc.

Defendant, by way of answer to the Bill of Complaint filed herein, says that:

1. Defendant denies paragraph one of said complaint, but on the contrary says that complainants requested the defendant to participate

in the development of land in Florida which he had already purchased.

2. Defendant denies paragraph two of said complaint.

3. Defendant denies paragraph three of said complaint, but on the contrary says that prior to the time that complainants placed their money in the Florida project, that he had purchased the premises in question in his own name; that on several occasions complainants requested defendant to permit them to participate in the Florida project, inasmuch as at this time land manipulation in Florida was at its height. After repeated overtures, defendant complied with the request of complainants, and permitted them to make such investment. In accordance with this arrangement the defendant and complainants went to Florida in or about the month of October, and the complainants personally went upon the land in question at Delray, Florida, and inspected the same and spent two weeks in going over the proposition, and acquired personal knowledge of the value of the land and the details of the development proposition, before their money was invested. Defendant, in the presence of numerous witnesses stated to the complainants that the purchase of land in Florida was a gamble, and complainants stated that they desired to make their investment in view of the large profits that seemingly were made in land deals in Florida. At the time complainants were looking over and inspecting the property at Delray, within a short time after they had invested their money, defendant again told complainants in the presence of

numerous witnesses that land investment in Florida was a gamble, and that having made an inspection of the property and acquiring knowledge and details of land investment in Florida, if they did not desire to take this gamble their money would be returned. Complainants stated that they were satisfied with the proposition, and desired to continue their investment. Before reaching Delray, Florida, complainants and defendant stopped off at Gainesville, Florida, and there contracted to purchase other land. They also stopped at Boynton, Florida, and there contracted to purchase lots belonging to a friend and acquaintance of one of the complainants. While at Delray an organization meeting of the corporation was held, and the land which defendant had previously purchased was placed in the corporation at the sum of $100,000. Knowledge of this was given to the complainants at the organization meeting, and stock was distributed in such relative proportions. In the month of January, 1926, defendant returned to Florida and there spent approximately four months in the development of the project. Within a short time after this the boom of the Florida land deals exploded, and various and numerous persons were caught in the deluge, including complainants and defendant. As a result of this depreciation, defendant requested complainants to come to Delray, which they did, and a discussion was entered into as to whether or not under the adverse conditions existing as to real estate values, they should carry on their project or abandon it. Defendant was ready and willing to place more money in the enterprise in an effort to save his

own investment, as well as that of complainants. This the complainants refused to do, and as a result interest and other fixed charges have been and are now unpaid on the premises in question.

4. Defendant denies paragraph four and repeats the statements contained in the preceding paragraph herein.

5. Defendant admits so much of paragraph five with reference to the meeting of the Sculthorp Realty Company, Inc., of Florida, and in particular with reference to the issuance of shares of stock, but denies that any representation was made as to cash which he had invested, but on the contrary, states that complainants had full knowledge of the fact that the land which he had previously purchased in his own name, was to be placed in said corporation for the sum of $100,000. Defendant denies that he stated to complainants that it was impossible for him to take title to the three parcels of real estate in trust for the corporation, as alleged in said paragraph, and denies all and every allegation.

6. Defendant denies paragraph six of said complaint.

7. Defendant denies that in October, 1925, he called upon complainants for additional money as alleged in said paragraph, but on the contrary repeats statements in paragraph three of this Answer, that all of said payments made by complainants were made at their own solicitations for the purpose of participating in what they and defendant thought was a profitable undertaking; parts of the amount as alleged in said para-

graph, represent part payment on lands at Boynton, purchased from one of the friends of the complainants.

8. Defendant denies the allegations of paragraph eight, and repeats paragraph three of this Answer, and further says that complainants at their own solicitation and request invested their money in the transaction in question, with full knowledge of every detail connected therewith, and with the same thought in mind as that had by the defendant that huge profits were to be made in Florida investments. Defendant denies that he in any way was guilty of bad faith with complainants, or with any other person, and denies that in flagrant violation of any duties to complainants, he fraudulently concealed from the complainants the fact of the amount of the purchase price of said property, or that he falsely represented to the complainants that he had paid $100,000 for the property, which was the best price for which it could be purchased, but on the contrary states as will be shown by the minutes of the organiation meeting and other meeting at which complainants were present, that they had full knowledge of every detail and fact concerning this project.

9. Defendant has no knowledge or information at this time upon which to form a belief with reference to paragraph nine, but leaves complainants to their proof. Defendant further states that the amount paid by him for said property was not a subject of controversy, and that he turned over the land personally owned by him to the corporation for the sum of $100,000 which

was agreed upon by the complainants, in consideration that they be permitted to participate in such profits as might be made.

10. Defendant denies that he falsely concealed from the complainants the fact that he had already acquired title in his own name to the premises in question, and repeats paragraph three of this Answer, and further states that complainants had full knowledge of every detail and fact relative to the purchase and development of the lands in question.

11. Defendant at this time has no information upon which to form a belief as to dates of record of documents as alleged in paragraph eleven, and leaves complainants to their proof.

12. Defendant denies paragraph twelve of said complaint, but on the contrary states that complainants had full knowledge of any transfers that may have been made with respect to said property, and different transfers were made upon the advice of counsel on a purely business standpoint, in view of the fact that at this time the boom in Florida had depreciated, and for the protection of the interests of complainants as well as himself, certain legal requirements of which he was advised, were complied with.

13. Defendant denies paragraph thirteen of said complaint, but states that a meeting was held where he agreed to place more money in the project, provided complainants would proportionately do likewise for the purpose of protecting the interest of all concerned.

14. Defendant denies that he was in actual charge of all the affairs of the Sculthorp Realty Company, and states that all details with respect to said development were approved of by the complainants, but defendant does state that he spent considerable time in Florida with reference to this development, making disbursements of his own money in an effort to protect the property in question, and making profits for the corporation, including the complainants, who were members thereof, which said money has never been reimbursed by the corporation or the complainants. Defendant denies that repeated requests were repeatedly made for financial statement of the company which he failed to furnish, but on the contrary states that a statement was prepared showing the details of all transactions, but at this time Florida land had depreciated, complainants had refused to aid in any way to protect their own interests or defendant's, and at this time when a loss was very apparent they refused to properly and legally conduct the affairs of the corporation. They desired defendant to sign statements which he agreed to do if they would do likewise. They refused to sign and in accordance therewith, defendant did likewise.

15. Defendant admits that a meeting was called to determine whether or not they should continue in the development of the premises in question, in view of the wholesale depreciation of land in the entire State of Florida. He denies that he refused to give a financial statement, or refused to have an accountant make up a

financial statement, but on the contrary says that he submitted a statement showing the financial condition of the company, and because of the attitude of the complainants in neglecting and refusing to co-operate with him, desired that they sign this statement after a careful perusal thereof, which they refused to do. Defendant thereupon refused to sign it. Complainants at all times were permitted to examine any documents or any facts relative to the corporation, or the development, if they desired.

16. Defendant has no information upon which to form a belief of the retaining of counsel by the complainants, and denies that he ever made representation to complainants that the cost of said premises to him was $100,000. He denies that he ever made any other false statement as alleged in said paragraph, and repeats paragraph three of this Answer, and on the contrary states that complainants had full knowledge of the purchase of the real estate in question, and that in consideration of their being permitted to participate in the development of land already and previously purchased by defendant, that said land was to be placed in the corporation at the sum of $100,000.

17. Defendant admits that a conference was had between himself and complainants' lawyer, but denies that there was any discrepancy with reference to the price of said real estate, and repeats paragraph three of this Answer, and further states that complainants had full knowledge of every fact and detail concerning the purchase

of this property, and in consideration of their being permitted to participate in the development of the land previously purchased by defendant, that said land was to be placed in the corporation at the sum of $100,000. And further states that defendant has derived no benefit from the money invested by him in said project, nor from the money invested by the complainants in said project, but on the contrary has lost a greater amount than that originally invested by him. Defendant admits that a suit was instituted in the State of Florida to recover moneys invested by complainants on account of fraud, and that a rescission is asked for in said suit, and that in this suit answer or demurrer was filed, and that the action is still pending in the courts of the State of Florida.

18. Defendant denies that any conveyances were made by him at any time in order to prevent complainants from enforcing against his assets any decree which they might obtain against him, but on the contrary states that he is now the owner in his own name of real estate in the approximate value of $20,000. The conveyance to Kitty Cruse referred to in said complaint, was made by defendant to the said Kitty Cruse because he was holding said premises as collateral security for his endorsement upon notes of Kitty Cruse; the Atlantic Highlands Bank having released him from said endorsements and taken a mortgage direct on the property he thereupon reconveyed it, which he was required to do.

Answer

19. Defendant denies paragraph nineteen of said complaint, but on the contrary states that the assignment of mortgage mentioned therein was made and given as collateral security for notes upon which the defendant is the maker.

20. Defendant denies that he ever informed complainants that he intended to leave the State of New Jersey and go and live in the State of Florida. He has no private interest in the State of Florida, but on the contrary his home and his business is and has been for the past twenty years in the County of Monmouth, New Jersey. His present business is located at Atlantic Highlands; he has executed a lease for three years for his business property, and his home is in Atlantic Highlands where he is now living and intends to live. For the past twenty years he has voted in the State of New Jersey, and intends to continue his residence here. He has assets in his own name sufficient to cover any decree which complainants may procure.

And this defendant humbly prays that said application be denied, and that he be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

QUINN, PARSONS & DOREMUS,
Solicitors of Defendant.

REPLICATION.

IN CHANCERY OF NEW JERSEY

Between EDWARD J. STEPPANSKI and JOHN E. JONES, Complainants, and JESSE L. SCULTHORP, Defendant.	On Bill, &c.

The replication of complainants to the answer of defendant filed herein.

Complainants join issue on the answer of said defendant.

EICHMANN & SEIDEN,
Solicitors of Complainants.

MEMORANDUM.

IN CHANCERY OF NEW JERSEY

Between EDWARD J. STEPPANSKI and another, Complainants, and JESSE L. SCULTHORP, Defendant.	On Bill, &c. 64-309

September 12, 1930.

Messrs. Eichmann & Seiden, for Complainants.

Messrs. Quinn, Parsons & Doremus, for Defendant.

(This memorandum is not to be published in the official or unofficial reports.)

MEMORANDUM.

BIGELOW, V. C.:

This bill seeks to rescind for alleged fraud an agreement between the parties and to recover from the defendant large sums paid him pursuant thereto. The defendant, Jesse L. Sculthorp, prior to 1905 had been engaged in the real estate business in this state for many years. In that year he like many others began to speculate in Florida real estate and thereafter for two or three years spent the greater part of his time in that state. In the latter part of May and in

Memorandum

June, 1925, Sculthorp contracted to purchase three tracts of land at Delray, Florida, for $67,000, of which $30,500 was payable in cash and $36,500 was to be secured by mortgages. Two of these parcels were conveyed to him in June and the third on September 8th, 1925, and the cash consideration was duly paid by him and the purchase money mortgages executed. On August 26, 1925, Sculthorp, his son Stanley F. Sculthorp and the complainants, Edward J. Steppanski and John E. Jones, executed in New Jersey a certificate of incorporation under the laws of Florida for the purpose of incorporating Sculthorp Realty Company, Inc. This certificate was filed in the Secretary of State's office in Florida on September 3rd, 1925. On November 5th, 1925, Sculthorp and his wife conveyed to the corporation the three parcels of real estate subject to the mortgages and by the terms of the deed, the corporation assumed payment of the same as part of the purchase price. No other consideration was paid by the corporation except the issuance of stock mentioned below.

The authorized capital stock of the company was $75,000, divided into 750 shares of the par value of $100 each. By the certificate of incorporation Mr. Sculthorp subscribed to 500 shares, his son 50 shares and Steppanski and Jones 100 shares each. Certificates for all of this stock were issued when the certificate of incorporation was signed on August 26th. No consideration for the stock was paid to the company except the conveyance of the land.

Memorandum

Steppanski in 1925 carried on a plumbing business in Jersey City where his wife ran a steam laundry; they also had a small summer hotel at Keansburg. Jones lived in Keansburg and was a salesman and manager of a coal company with an office in New York. They, like Sculthorp, had become enamored with the thought of easy money to be gained in the Florida boom. They testified to this story:

In the early part of May, 1925, Sculthorp told them he was going back to Florida soon to buy some land and suggested that Steppanski and Jones each entrust him with $5,000 for this purpose and that he would put up the balance which might be required; that they would form a corporation to take title to the land and in which their several investments would be represented by stock. They agreed to the proposition and said they would have the money ready whenever he needed it. With this understanding Sculthorp left for Florida on May 25th. On June 10th Stanley Sculthorp told them that he had received a telegram from his father to the effect that he had selected some choice property which required more money than he anticipated and his father wanted to know whether Steppanski and Jones would each increase his investment to $10,000. Both of them agreed to do so. Sculthorp returned from Florida the end of June. He told them he had an option on three tracts of land for a total purchase price of $100,000, but that he had agents working on the property and hoped to obtain the land at a lower figure. August 21st Sculthorp told Steppanski and Jones that he had bought the property for $100,000 and had to have

their contributions immediately. Steppanski and Jones then each gave him a check for $5,000. In October the three of them went to Florida and inspected the land. Steppanski paid Sculthorp $5,000 more on October 21st and Jones gave him $2,000 on October 26th. They returned to New Jersey early in November.

The company was not successful in selling lots. The boom began to crumble and trouble developed between the parties to this controversy. Jones found difficulty in raising his remaining $3,000. He and Steppanski went to Florida in January, 1927, where they joined Sculthorp. Steppanski and Jones then consulted a Florida attorney who examined the records of the deeds to Sculthorp and noticed that the revenue stamps indicated that the purchase price was but $67,000. This, according to their testimony, was their first intimation that the purchase price was not $100,000.

Sculthorp's version of the affair is entirely different. According to him the subject of a joint enterprise in Florida was never broached until he returned to Keansburg the end of June, 1925, after purchasing the premises in question. He told Steppanski and Jones that he had purchased property in Florida and had been offered a $15,000 profit on it. He did not mention the purchase price and they did not ask it. They did ask, however, to be allowed an interest in the land and eventually and reluctantly he agreed to turn over his land to the corporation to be formed for $100,000, taking his profit in stock and

to allow Steppanski and Jones each to subscribe for $10,000 in stock at par. This plan was carried out and the property transferred accordingly to the corporation.

There are a number of details which lead me to the belief that complainants' version is the true one. The time when Steppanski and Jones first agreed to embark on the speculation with Sculthorp is important. If the agreement was made before Sculthorp purchased the land it would indicate that he was acting as their agent and would contradict his testimony that when the agreement was made he disclosed that he had already purchased the land. All parties agree that Sculthorp left for Florida May 25th, 1925. Steppanski says when he agreed to go into the enterprise to the extent of $5,000, Sculthorp told him that he would wire whenever he needed the money. So Steppanski on May 28th when leaving Jersey City for Keansburg for the week-end took with him a blank check on the bank in Jersey City where he had his account. After he arrived in Keansburg he signed this check in blank and gave it to his wife with instructions to put it in the safe and hold it until she received word from Stanley Sculthorp as to how much his father wanted and then to fill in the amount, but not exceeding $5,000. He further testified that this check remained in the safe until August when he took it out, filled in the amount and Sculthorp's name and handed it to Sculthorp. This testimony is supported by his wife and his mother. In further support of it he produced his

New Jersey State Library

cancelled checks and his check book. The check in question is number 2711. The checks bearing smaller numbers are dated May 26th, 1925, or earlier; check 2712 is marked void; check 2713 and subsequent checks are dated on or after June 6th. The numbers on the checks are printed in regular sequence. Of course, it is possible that checks 2711 and 2712 were taken from the check book at the end of May without reference to any deal with the defendant and that check 2711 being ready at hand in August was filled in and given to Sculthorp, but it would be a rare coincidence that this happening should fit so pat with complainants' case. Jones and his wife also testified that their agreement with Sculthorp was made in May.

Sculthorp testified that a meeting of the stockholders was held in Florida at the office of his attorney there on October 27th, 1925. He produces minutes of this meeting which set forth in full the transaction according to his version. These minutes are signed by himself and by his son Stanley. Stanley testified, however, that he was never in Florida; that the minutes of that particular meeting were retained in Florida by his father until February, 1927, when they were brought to Keansburg and signed by Stanley. Stanley, therefore, cannot corroborate his father as to this meeting. The complainants deny that any such meeting was held and deny that they ever saw the minutes of the purported meeting until after this suit was brought. Mr. Sculthorp testified that the minutes were read and approved at the meeting itself. They contain this

significant statement, that Steppanski and Jones each paid in $5,000 on account of their subscription to the company's stock and made satisfactory arrangements for the payment of the balance. As a matter of fact, Steppanski had paid his second $5,000 on October 21st, and Jones in addition to his first $5,000 had paid $2,000, October 26th. Sculthorp, as I understand his testimony, explains this discrepancy between the minutes and the admitted facts on the ground that several days before the meeting was held he had given his attorney the data from which the minutes were drawn and that when the meeting was held the minutes already typed were read and approved. Gullible and unbusinesslike as these parties have proved themselves to be, I cannot doubt but that complainants would have insisted on a correction of the minutes if they had actually been read. I do not believe this meeting ever took place.

In January, 1927, when complainants' Florida attorney, Mr. Falls, had examined the records of the deeds, he, with Steppanski and Jones, called on Sculthorp. Mr. Falls asked Sculthorp to explain the discrepancy between the purchase price of $67,000 indicated by the revenue stamps, and Sculthorp's statement that he had paid $100,000 for the land. If Sculthorp's conscience was clear he would have readily answered that $67,000 was what the land cost him and $100,000 was the price at which he sold it to the corporation, but his actual answer, according to his own testimony, was this: "Mr. Falls, I don't believe you have any right to question me about this matter unless my attorney is present."

Memorandum

There was another feature of the matter, the exact pertinence of which I do not grasp. On October 18th, 1926, Sculthorp, as president of the company, and his son Stanley, as secretary, executed a conveyance of the lands to Sculthorp. The conveyance purports to be acknowledged in Florida before a notary public four days after the date of the deed. The certificate of acknowledgment by Stanley Sculthorp is false, at least, he testified that he never was in Florida. This conveyance was made without the knowledge of the complainants. As soon as their attorney, on examining the record, found it out, Sculthorp offered to convey the property back. He was asked both then and on cross-examination why he had executed the deed to himself and he answered that it was made for "some legal reason, my attorney advised me; I don't know just why."

Reverting to the spring of 1925, complainants testified that Stanley Sculthorp told them he had received a telegram from his father asking if they would put in $10,000 each instead of $5,000. On cross-examination he was asked: "Did you say, 'I received a wire from Pop; he has a choice piece of real estate in view but it will require more money than he anticipated and Pop wants to know if you can increase your investment from $5,000 to $10,000?'" Answer: "I do not recall." Later he was again asked, "Did you receive such a wire from your father?" Answer: "Not to my knowledge." "You don't recall?" Answer: "No." On re-direct examination he was asked: "You have answered several questions by saying 'I do not recall'; what do you

mean by saying you do not recall?'' The witness did not answer. After several more questions he was then asked whether he had received such a telegram from his father and he replied in the negative. I get the impression from this testimony that Stanley Sculthorp was endeavoring to avoid admitting the receipt of the telegram, but that he was reluctant flatly to deny its receipt.

Defendant could have obtained disinterested testimony which would have been almost conclusive if he had taken the deposition of his Florida attorney, who he says was present at the meeting of October 27th, 1925. His failure to take this testimony tells heavily against him.

Defendant makes the point that the capital of the corporation, $75,000, contradicts the claim of the complainants that they thought the property had been purchased by Sculthorp for $100,000. This is so; but the capitalization also does not fit with defendant's admission that the property was conveyed to the corporation for $100,000. The equity to be represented by stock in either case was $63,500 since the mortgages were assumed by the corporation.

Sculthorp testified that the complainants never inquired of him what he paid for the land or what profit he was making on his sale to the corporation. It is rather difficult to believe that Steppanski and Jones would not have been curious on that point.

Defendant raises only one legal question. He points out that complainants inspected the land in October, 1925, before they made the second

payments and were then offered the opportunity to withdraw from the enterprise and receive back what they had invested; that they both expressed themselves satisfied with the land and thought it was worth $100,000 and refused to withdraw. This is unimportant. The fraud on which this suit is based is not concerned in the quality of the land or its value. The fraud consisted of the misrepresentation by Sculthorp as to the price he had paid for the land while acting as agent for all the parties. There should be a decree pursuant to the prayer of the bill.

FINAL DECREE.

(Filed Oct. 30, 1930.)

IN CHANCERY OF NEW JERSEY

EDWARD J. STEPPANSKI and JOHN E. JONES, Complainants, vs. JESSE L. SCULTHORP, Defendant.	On Bill, &c. 64-309

This cause coming on to be heard in the presence of Eichmann & Seiden, solicitors of complainants, Edward J. Steppanski and John E. Jones, and Quinn, Parsons & Doremus, solicitors of defendant, Jesse L. Sculthorp;

Final Decree

And the Court having read and considered the pleadings and having taken testimony orally in open court, and having heard and considered the arguments of counsel therein; and being satisfied that on May 9, 1925, defendant and complainants agreed that complainants each entrust defendant with $5,000.00 for the purpose of buying lands in Florida, defendant to put up the balance required; that they form a corporation to take title to the lands; that their several investments be represented by stock; that complainants were to have their money ready whenever defendant needed it; and it appearing that on June 9, 1925, it was agreed that complainants each increase his investment to $10,000.00; and it appearing that in the latter part of May and in June, 1925, defendant contracted to purchase three tracts of land at Delray, Florida, described in the bill of complaint, for $67,000.00, of which $30,500.00 was payable in cash and $36,500.00 was to be secured by mortgages; that two of these parcels were conveyed to him in June and the third on September 8, 1925, and the cash consideration was paid by him and the mortgages executed; and it appearing that on August 26, 1925, complainants and defendant and Stanley F. Sculthorp, son of defendant, executed a certificate of incorporation under the laws of Florida for the purpose of incorporating Sculthorp Realty Co., Inc.; and it appearing that on November 5, 1925, defendant and his wife conveyed to said corporation the three parcels of land subject to the mortgages, the corporation assuming payment of same as part of the purchase price, no other considera-

tion being paid by the corporation except the issuance of stock as herein set forth; and it appearing that the capital stock of said corporation was $75,000.00, divided into 750 shares of a par value of $100.00 each; that on August 26, 1925, all of said stock was issued, 500 shares to defendant, 50 shares to defendant's son, Stanley F. Sculthorp, and 100 shares each to complainants; that no consideration was paid to the company for said stock excepting the conveyance of said lands; and it appearing at the end of June, 1925, defendant on his return from Florida, notified complainants he had an option on said three tracts for a total price of $100,000.00, but had agents working to obtain a lower figure; and it further appearing that on August 21, 1925, defendant informed complainants he had bought the property for $100,000.00 and wanted their contributions at once; and it appearing that on August 21, 1925, complainant, Edward J. Steppanski, and on August 25, 1925, complainant, John E. Jones, each gave defendant $5,000.00; that in October, 1925, complainants went to Florida with defendant and inspected the lands; that on October 21, 1925, complainant Steppanski paid defendant $5,000.00 more, and on October 26, 1925, complainant Jones gave defendant $2,000.00; that thereafter complainant Jones paid the defendant the remaining $3,000.00 in several payments, the last of which was made on April 4, 1926; that thereafter complainant Steppanski paid defendant additional sums requested by defendant in said transaction amounting to $1,465.23, the last of said payments being made on October 4, 1926;

and it appearing that the total amount paid by complainant Steppanski to defendant in said transaction was the sum of $11,465.23, and the total amount paid by complainant Jones to defendant was the sum of $10,000.00;

And it further appearing that in the latter part of January, 1927, complainants first learned that the amount defendant paid for said premises was $67,000.00 and not $100,000.00; that thereupon, on January 27, 1927, complainants rescinded their aforesaid agreement with defendant under which they paid the aforesaid moneys to him, and demanded the return of said moneys; and the Court being satisfied that the said defendant misrepresented to complainants the price he had paid for said lands while acting as agent for all of the parties, and that the agreement aforesaid between complainants and defendant should be rescinded;

It is, on this 20th day of October, 1930, on motion of Eichmann & Seiden, solicitors of complainants, by Edwin Robert Walker, Chancellor of the State of New Jersey,

ORDERED, ADJUDGED and DECREED, and the said Chancellor by virtue of the power and authority of this Court, does hereby ORDER, ADJUDGE and DECREE that the said agreement under which complainants were induced to turn over moneys to defendant for investment in Florida real estate to be purchased by defendant and thereafter to be conveyed to a Florida corporation to be formed, be and the same is hereby cancelled and rescinded and that the certificates of stock in

Sculthorp Realty Co., Inc., a corporation of Florida, issued to complainants respectively, be delivered up for cancellation; that defendant pay to complainants the amount of cash respectively paid by them to defendant under said agreement, with interest from the respective dates of payment, to wit: To complainant Edward J. Steppanski the sum of $11,465.23 with interest on $5,000.00 from August 21, 1925; on $5,000.00 from October 21, 1925; and on $1,465.23 from October 4, 1925; and to complainant John E. Jones the sum of $10,000.00 with interest on $5,000.00 from August 25, 1925; on $2,000.00 from October 26, 1925; and on $3,000.00 from April 4, 1926.

It is further ORDERED, ADJUDGED and DECREED that defendant pay to complainants the costs of this suit to be taxed, together with a counsel fee of $1,000.00 to be included in the costs and collected therewith.

E. R. WALKER,
C.

Respectfully advised:
J. O. BIGELOW,
V. C.

A True Copy
Ferd Garretson Clerk

TESTIMONY.

IN CHANCERY OF NEW JERSEY

Between EDWARD J. STEPPANSKI and JOHN E. JONES, Complainants, and JESSE L. SCULTHORP, Defendant.	On Bill etc. 64-309. Transcript.

Transcript of the testimony taken in the above-stated cause, on final hearing, at the Chancery Chambers in Jersey City, on Tuesday, June 5, 1928, at 10 o'clock in the forenoon, before his Honor JOHN BENTLEY, Vice-Chancellor.

Appearances:

Messrs: Eichmann & Seiden, Solicitors, Meyer Eichmann, Esq., of Counsel, for the Complainants.

Messrs. Quinn, Parsons & Doremus, Solicitors, John J. Quinn, Esq., of Counsel, for the Defendant.

EDWARD J. STEPPANSKI, one of the complainants, sworn in his own behalf, testified as follows:

Direct-examination by Mr. Eichmann:

Q. Where do you live? A. 621 Palisade Avenue, Jersey City.

Q. You are the complainant in this case? A. I am.

Q. What is the date of your first conversation with Jesse L. Sculthorp with reference to the matters involved in this case? A. I had my first conversation with Jesse L. Sculthorp in reference to matters in Florida real estate on or about the 9th day of May, 1925.

Q. What was that conversation? A. Mr. Sculthorp said, "Steppansky, have you heard of my good investments in Florida?"

I said, I had heard rumors but nothing definite.

He said, "Well, I was in a syndicate and we made a lot of money; we cleaned up $150,000 on one deal alone in Bocarone."

I said, "That is some syndicate".

He said, "I am going to get away from them; there's too many in it and there's too much jealousy in it." He said, "Steppansky, I have known you for a good many years and you have been a brother Mason and a neighbor to me; I want you to get in an honest boom. I have spoken to Jones and Jones is going in and I am asking you; I am asking you and no one else. If you have any cash to put up you can make a quick turn-over and make some real money."

I said, "Mr. Sculthorp, how much cash do I need?"

He said, "Jones is going to put up $5,000; if you can put up $5,000 I will put in whatever difference is necessary to go through with whatever we buy."

I said, "Well, that is very nice of you to ask me and I think I will go in. It looks to me as a

good thing, but I would like to speak to my wife first and get her consent before I go in a deal of this sort."

He said, "I am going to leave in a few days; can you let me know definitely this afternoon?"

I said, "Yes, I can," and I went in the house.

Q. Where was this conversation held? A. That was in the front of my house in Keansburg, New Jersey, known as the "White House."

Q. Were you running a summer hotel down at Keansburg at that time? A. I was.

Q. During that month of June what time did you go down to Keansburg? A. During the month of May and June every year I spend week ends in Keansburg, but during the entire year I am in the plumbing and heating business.

Q. And you also had some place of business as a laundry in Jersey City? A. I did.

Q. And your wife is running that steam laundry in Jersey City? A. Yes, she is there continuously.

Q. Did you have any conversation with Mr. Sculthorp on the same day, May 9, 1925? A. Yes.

Q. About what time? A. He came back in the afternoon about 5 o'clock.

Q. And where was this conversation held? A. On the porch of my house.

Q. Who were present? A. Mr. Jones and myself and Mr. Sculthorp.

Q. Will you tell us what that conversation was. A. Mr. Sculthorp said, "Steppanski, did you definitely decide what you are going to do?"

I said I was going in for $5,000 the same as Jones is.

He said, "I am going down in a few days on business for my other syndicate, and while down there I will try and buy some property that I have seen." It is on the lake in Delray; I don't know who the owners are or what they want, but it is nicely located and I am going to try to buy it." He said, "We will form a Florida corporation, issue shares of $100 a share and there will only be the three of us in it. We will all be officers and know what is going on."

I said, "Mr. Sculthorp, I haven't got $5,000 in cash now, but I can raise the money in 24 hours. Will it be all right if I give you a check in a day or so?"

He said "There is no hurry. I have some money of my own down South which I can use, but I want you to have your money ready for immediate delivery. Stanley is going to take care of my affairs while I am South and I will be in touch with him and should I require more money than that I will wire him and I want you to give him whatever I need at once."

I said, "That is satisfactory. I will have my money ready any time Stanley calls and should I not be there my wife will give it to Stanley." Jones said, "I have my money ready; all I have to do is to have it transferred from my savings account into my checking account." I said, "Mr. Sculthorp, I don't know anything a corporation; I never belonged to one, and I never was in Florida; I don't know anything about the real estate business; I will have to leave it to you."

He said, "You can leave it to me; I will do the best I can. I will buy at the best price and

upon the best terms possible. I will buy all in trust for the corporation and just as soon as we are organized I will turn it over to the corporation at once."

I said, "That is very fair and anything you do will be satisfactory to me."

Q. Did you at that time know that Mr. Sculthorp was in the real estate business? A. Yes, indeed I did.

Q. How many years? A. I bought property from Mr. Sculthorp, that is, the land where I built the White Honse in 1911.

Q. And he was in the real estate business at that time? A. He was.

Q. Is that your entire conversation that day? A. Yes, I guess that was all that I had.

Q. When was the next time you spoke to Mr. Sculthorp? A. The following week end, about May 16th, I was down again. I saw Mr. Sculthorp, as he lived directly opposite me, and came there to park his car. I said, "When are you going?" A. He said, "Most any day." There was nothing further said at that time.

Q. When was your next conversation? A. About the 23rd of May, 1925.

Q. What was that? A. I asked him again, "Sculthorp, when are you going?" He said, "In a day or so; I am all ready".

Q. And then was that on Saturday? A. On a Saturday or a Sunday. It was a week end.

Q. You left Jersey City when? A. Every Sunday night.

Q. About the same day or the following day? A. No, I think it was on a Saturday, because usually I went on my Saturdays.

Q. What happened while you were in Jersey City after you left Keansburg at that time? A. I had a telephone call from my wife, and I had a conversation with my wife either the 26th or 27th of May.

Q. Was it in that conversation that you learned that Sculthorp had gone to Florida? A. Yes, my wife said Sculthorp had left for Florida.

Mr. Quinn: I object to what she said.

The Court: Yes, that may be stricken out.

Q. You received a telephone call from your wife? A. My wife called back—

Q. Never mind what was said, but what did you do after that? A. I went back to Keansburg on the 28th day of May.

Q. What did you bring along with you? A. Before I left I took down with me a blank check and my Jersey City check-book.

Q. All right; what did you do? A. That evening I signed that blank check with my signature only.

Q. Have you that check now, or have I? A. I hope you have.

Q. Have you the check which you signed in blank? A. He has that check? I explained on the evening of May 29, in Keansburg, N. J.

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

Mr. Quinn: You may offer it now and save time.

Q. When was the rest of the data written on that check? I refer to the name and the amount. A. On either the night of August 20th or 21st.

Mr. Eichmann: I now offer the check in evidence.

(Admitted and marked Exhibit C-1.)

Q. Now, will you produce your check-book stub. A. (Witness produces check-book stub, passes it to Mr. Eichmann and Mr. Eichmann hands it to Mr. Quinn).

Q. Now, will you give me the dates of the checks made in the month of June, 1925, and the numbers of those checks subsequent to the one on check No. 2711. A. You mean after I signed that?

Q. After you signed that. A. Check 2713, June 6th.

Q. 2712 is marked "void"? A. Marked "void". 2713 is June the 6th, 2714 is June 11th.

Mr. Quinn: I might make a suggestion, Mr. Eichmann, that you offer them all.

Mr. Eichmann: I will offer the checks and the stubs, Nos. 2713 to 2732, all made in the month of June, 1925.

Mr. Quinn: Showing an aggregate of what?

Mr. Eichmann: Showing that all those checks which were made in the month of June were made subsequent to the signing of that particular check. I want to indicate how it comes that that check, although dated in August, was made in the

month of May. I also wish to offer the stub of check 2712, which is marked "void."

Mr. Quinn: Give the aggregate of those checks.

Mr. Eichmann: The number of checks?

Mr. Quinn: To whom they were made payable.

Mr. Eichmann: Oh, they are made payable to other people.

Mr. Quinn: Oh, I have no objection. But I wonder if we couldn't shorten it if he would tell the object and the numbers of the checks.

Mr. Eichmann: That is what I am doing. I am offering a few in the month of June and a few in the month of May. I also offer the stubs and checks of Nos. 2708 to 2710, inclusive, all dated May 26, 1925.

The Court: The foregoing offers are of checks in the cancelled checks and stubs that are a part of the book that will now be marked Exhibit C-2.

(Entire book of checks is marked Exhibit C-2.)

Q. How do you fix the date when you signed that check? A. I could tell from the stub when I took it out, and also the fact that it was the night preceding the opening of the house. I had to be down there.

Q. When did the house open? A. The house opened to the public on the 29th of May.

Q. And you were preparing for what holiday? A. For the Decoration Day opening, the opening of the season.

Q. You say you signed that the night preceding the opening of the house? A. Yes.

Q. And the house opened the 29th of May? A. We received guests on the 29th of May.

Q. What date did you sign that check? A. The 28th of May.

Q. And not the 29th, as you previously stated? A. I didn't say the 29th.

The Court: He said the 28th.

Q. What did you do with that check signed in blank? A. I gave that check to my wife. I said to her—

Q. Never mind what you said to her; what was done with the check that you gave to your wife? Where was it placed? A. She placed it in our safe.

Q. What instructions did you give your wife in reference to that check? A. I said to her, "Any time Stanley"—

Mr. Quinn: I object to that.

Mr. Eichmann: There may be an agency here where he gave some instructions as to whom the check was to be turned over.

The Court: She can, of course, tell what was done with the check later on.

Q. All right; you gave your wife certain instructions in regard to it? A. I did.

Mr. Eichmann: I offer now in evidence answer to interrogatory No. 126, which reads:

"Did you go to Florida in the spring of 1925, and if so, when?

"Yes, in the month of May, 1925."

Then I offer answer to supplemental interrogatories 4 and 5:

"4. On what date did you leave the State of New Jersey in order to go to Florida in the month of May, 1925?

"A. About May 25th, 1925.

"5. On what date did you return to New Jersey from the aforesaid trip to Florida?

"A. The latter part of June, 1925."

Q. Now, what is the next thing that you heard? A. On or about the 5th of June, 1925, I received a telephone call from my wife.

Q. In response to that telephone call, what did you do? A. I called Stanley on the wire. I reached him in his office.

The Court: Who is Stanley?

A. Stanley is a son of Mrs. Sculthorp.

Mr. Eichmann: It is in evidence that Mr. Sculthorp said that whenever his son Stanley called for the money to give it to him.

The Court: Yes, I understand; I simply wanted to know who Stanley was.

Mr. Quinn: I object to what he said.

The Court: Mr. Quinn, this appears to be a conversation had with the agent of the defendant.

Mr. Quinn: Well, a self-designated agent, from the tones of this witness. Nevertheless, it will still be hearsay. I make objection, and if your Honor rules

against me I want to save my right to strike it out.

The Court: Your objection stands for what it is worth and if subsequently it appears that there was no agency you may move to strike it out.

A. I said to Stanley, "What is it?"

The Court: Have you fixed the time? Is this June 10th?

A. On or about the 10th of June, 1925. He said, "I just received a wire from Pop. He has selected some very fine property, but it is going to cost considerably more money that he figured it would."

Mr. Quinn: Now, if the Court please, I object to that. This is a general conversation. I cannot see by reason of agency that the statement will be binding. It comes clearly within the hearsay rule.

Mr. Eichmann: Your Honor is familiar with the case of Tobin vs. Piero, which was affirmed by the Court of Errors and Appeals.

The Court: Yes, Mr. Quinn. I don't know, there may not be a word of truth in what Stanley said to the witness, and there may not be a word of truth in what the witness is saying now. There is no jury here, but it does seem to me that a statement made by the defendant authorizes in your behalf his point. I will overrule the objection.

A. —"Pop wants to know if you can't increase your investment from five to ten thousand dollars." He says, "You will have to act quick, as he does not want to lose it."

I said, "Have you seen Jones?"

He said, "I did."

I said, "What is Jones going to do?"

He said, "Jones has advanced his from five to ten thousand."

I says, "You can tell the Pop I will increase my investment from five to ten thousand."

The Court: Of course, your objection goes to all of this conversation.

Mr. Quinn: Yes, so that I won't have to interrupt.

The Court (addressing the witness): Is that the end?

A. That was the end of it.

Mr. Eichmann: I now offer in evidence the answer to interrogatory 49, 52, 55 to 59, 60, 63 to 68, 71 to 73, which I will read.

Mr. Quinn: Are you going to read all of those on the record?

Mr. Eismann: Not all of them.

Mr. Quinn: If the interrogatories are going to be used I ask that all of them be used.

The Court: That is my understanding of the rule.

Mr. Eichmann: My understanding of the rule is that we are permitted to offer the interrogatories which we select which we desire to offer in evidence.

The Court: I think there is a case on that line cited in the Practice Act.

Mr. Quinn: I think, if the Court please, that that might be the rule, but, as I understand it, they must offer the entire interrogatories if insisted upon, except, of course, those that have no bearing upon the issue; but I insist in this case where the sole and only issue is one of fraud, all the interrogatories that are material to the issue ought to be offered and the complainant not be permitted to select those that he desires and eliminate those that he does not desire.

The Court: Wouldn't that situation be met by permitting you to offer such as he fails to offer?

Mr. Quinn: Yes, I had in mind that means of straightening it out.

The Court: Have you any objection to Mr. Quinn offering those that you omit?

Mr. Eichmann: He can offer whatever interrogatories he wants.

Mr. Quinn: If the Court please, I still, however, retain my objection. I think if any of the interrogatories are used the entire interrogatories should be used, for the purpose of showing whether or not there was fraud in this transaction.

Mr. Eichmann: Mr. Quinn, I don't want to offer them all. I don't want to be bound by all of them.

The Court: I think in view of that, I will overrule the objection, but reserve to

you the right to put in any that you think have been improperly omitted.

Mr. Eichmann: I will read interrogatory 49:

"49. Prior to the delivery of the deed by Marvin Burd and others to you, dated June 13th, 1925, recorded in Book 297, page 41, for the County of Palm Beach, Florida, did you contract to purchase the land and premises therein described?

"A. I do not recall whether I had a formal contract or whether I had a binding receipt, so-called, in Florida, which is oftimes used in the transaction of land deals.

"50. If so, from whom did you contract to purchase said lands?

"A. The Burd Brothers, Melvin and Eugene.

"51. If so, when was the said contract made and what was the date for delivery of deed therein specified?

"A. The contract was made June the 2nd, 1925, and the date of delivery of the deed I cannot give inasmuch as that deed has never been found.

"52. If so, what was the price which you agreed to pay for said lands and how was the consideration to be paid?

"A. My best recollection is that the purchase price is around $12,000. I believe that one-third cash was paid and the balance upon mortgage.

"55. What price did you in fact pay for said lands and how much was the consideration in fact paid?

"A. See No. 52.

"56. When was the title to said lands closed?

"A. My impression is sometime in June, 1925, but refer to the record for more particular reference.

"57. Prior to the delivery of deed by A. A. Platner to you, dated June 1st, 1925, recorded in Book 501, page 354 of deeds for the County of Palm Beach, Florida, did you contract to purchase the lands and premises therein described?

"A. I had either a receipt or a contract, which of the two I am not sure, for the purchase of the lands therein described.

"58. If so, from whom did you contract to purchase said lands?

"A. I agreed to purchase from A. A. Platner but the negotiations were carried on by an agent by the name of R. B. Hitt Realty Company.

"59. If so, when was the said contract made and what was the date for delivery of deed therein specified?

"A. (Counsel referring to original deed) The deed was delivered on blank date.

"60. If so, what was the price which you agreed to pay for said lands and how was the consideration to be paid?

"A. $45,000 was the purchase price. Approximately $23,000 was paid in cash to the seller, $11,250 in one installment and $11,250 in another instance.

"63. What price did you in fact pay for said lands and how was the consideration in fact paid?

"A. See No. 60.

"64. When was the title to said lands closed?

"A. I believe title was closed sometime in June, but I refer to the record for more particular reference.

"65. Prior to the delivery of deed by Gordon Davis and wife to you, dated September 8, 1925, recorded in Book 303, page 372 of Deeds for the County of Palm Beach, Florida, did you contract to purchase lands and premises therein described?

"A. Yes, a contract or a receipt was made for the purchase of said lands.

"66. If so, from whom did you contract to purchase said lands?

"A. I purchased the land through an agent from Gordon Davis and wife.

"67. If so, when was the said contract made and what was the date for delivery of deed therein specified?

"A. Contract was made June 13, 1925, the deed was dated September the 8th, 1925, recorded in Book 303, page 372, and filed September the 12th, 1925.

"68. If so, what was the price which you agreed to pay for said lands and how was the consideration to be paid?

"A. $10,000. $500 was paid as a binder, and the balance of one-third was paid later in the summer, subject to a mortgage for the balance.

"71. What price did you in fact pay for said lands and how was the consideration in fact paid?

"A. See No. 68.

"72. When was the title to said lands closed?

"A. Sometime in the summer of 1925, but more particular reference is made to the record.

"73. What was the total consideration which you in fact paid for all three parcels hereinbefore referred to, to wit, the parcels conveyed to you (1) by Melvin Burd and others, (2) by A. A. Platner, and (3) by Gordon Davis and wife?

"A. $67,000."

Mr. Eichmann: I now call for the production of original contract between Melvin Burd and Jesse L. Sculthorp, dated June 2nd, 1925.

Mr. Quinn: You want all three of those?

Mr. Eichmann: Yes.

(Counsel produces three papers and hands them to Mr. Eichmann.)

Exhibits Offered in Evidence

Mr. Eichmann: I offer in evidence the three contracts. First, contract made by Melvin S. Burd, and Eugene Burd, and Jesse L. Sculthorp, dated June 2nd, 1925.

(Admitted and marked Exhibit C-3.)

Mr. Eichmann: Also contract made between A. A. Plotner and Jesse Sculthorp, dated June 1st, 1925.

(Admitted and marked Exhibit C-4.)

Mr. Eichmann: Also contract made by Gordon Davis and Rosa M. Davis, dated June the 12th, 1925.

(Admitted and marked Exhibit C-5.)

Mr. Eichmann: I now call for the production of checks made by Jesse L. Sculthorp in connection with the Burd purchase, being check dated June 2nd, 1925, to the order of Burd for $500 and check dated June 2nd, 1925, to the order of Melvin Burd, No. 11,992, for $3,500. And I also call for the production of checks made by Jesse L. Sculthorp in connection with the Plotner purchase, dated May 28, 1925, No. 11,991.

Mr. Quinn (Producing three checks): Suppose you take one at a time.

Mr. Eichmann: I offer in evidence two checks made by Jesse L. Sculthorp to Melvin S. Burd and S. E. Burd, dated June 2nd, 1925.

(Admitted and marked Exhibit C-6.)

Mr. Eichmann: Now, in response to my request for the checks made by Jesse L. Sculthorp in connection with the Plotner purchase there are produced four checks which I offer in evidence, made by Jesse L. Sculthorp to A. A. Plotner, one dated May 28, 1925, for $3,000; one dated June 2nd, 1925, for $5,000; and one dated June 28, 1925, for $5,000; and one of August 1, 1925, for $9,500.

(Admitted as one exhibit and marked Exhibit C-7.)

Mr. Eichmann: In response to my request for the production of checks made by Jesse L. Sculthorp in connection with the Gordon Davis purchase, there are produced two checks, which I offer in evidence, one to Gordon and Rose M. Davis for $3,500, dated July 1. 1925; and the other to W. B. Williams, dated June 13, 1925, for $500. I offer them in evidence.

(Admitted and marked Exhibit C-8.)

Q. Aside from that conversation with Stanley Sculthorp, did you have any communication with Jesse L. Sculthorp while he was down in Florida, between May 25, 1925, and the end of June? A. No, I had no correspondence with him or conversation.

Q. When was the next time that you spoke to Jesse L. Sculthorp? A. Upon his return from Florida at the end of June, 1925.

Q. And where was that conversation? A. At his house at Keansburg, New Jersey, opposite my house.

Q. Who were present? A. Mr. Jones, Mr. Sculthorp and myself.

Q. What was the conversation? A. Mr. Jones asked him, "Did you buy anything?"

He said, "No."

Jones said, "What is the matter?"

He said, "I have an option, however, on three tracts of land from three separate owners, but they want one hundred thousand dollars for this property."

And Jones said, "Is the property all right?"

He says, "It is good property, but it is a whole lot more than I intended to spend, and I wanted your approval before buying it."

I said, "Do you think we can make any money with it?"

He says, "I think we can—I know we can. It's good property, property that can be turned in six weeks—make a quick turnover."

"Well," I said, "Go ahead and buy it."

He said, "I am trying to get it cheaper. I have an agent working on this; I have made an offer of $4,000 an acre for the lake property. They want $5,000 an acre."

That was all of that conversation.

Mr. Eichmann: I now offer in evidence an exemplified copy of the deed made by Melvin Burd and Elizabeth Burd to J. L. Sculthorp, dated June the 13th, 1925, acknowledged June the 16th, 1925, and filed August the 3rd, 1925, recorded August 25, 1925, in Book 297, page 41 of deeds for the County of Palm Beach, Florida.

Mr. Quinn: No objection.

(Marked Exhibit C-9.)

Mr. Eichmann: I offer an exemplified copy of a deed made by A. A. Plotner to J. L. Sculthorp, dated June the 1st, 1925, acknowledged June the 1st, 1925, filed September 3rd, 1925, and recorded September 30, 1925, in Book 301, page 354 of deeds for the County of Palm Beach, Florida.

(Admitted and marked Exhibit C-10.)

Mr. Eichmann: I offer in evidence an exemplified copy of a deed made by Gordon Davis and Rose M. Davis to Jesse L. Sculthorp, dated September 8, 1925, acknowledged September 8th, 1925, filed September the 12th, 1925, and recorded October the 5th, 1925, in Book 303, page 372 of deeds for Palm Beach County, Florida.

(Admitted and marked Exhibit C-11.)

Q. What was the next conversation with Mr. Sculthorp? A. On or about the 8th of July, 1925.

Q. Where was that? A. At Mr. Sculthorp's house in Keansburg, New Jersey.

Q. Who were present? A. Mr. Jones, Mr. Sculthorp and myself.

Q. What was that conversation? A. Either Jones or myself asked him, "Have you heard anything?" He said he had not.

Q. Was that the entire conversation? A. That was all that was said about Florida.

Q. What was your next conversation? A. About a week after that, about the 15th.

Q. Of what? A. Of July, 1925.

Q. And where was that? A. At Mr. Sculthorp's house.

Q. Who were present? A. Mr. Jones, myself and Mr. Sculthorp.

Q. What was that conversation? A. I or Mr. Jones asked him had he heard anything.

He said, "The agent is working on it; don't worry; we will get that property." At this time he said, "While in Florida in June I ordered those incorporation papers to be drawn; they ought to be up here any time to be signed."

Q. When was the next conversation? A. About a week after that, about the 22nd of July, 1925.

Q. And where was that? A. At Mr. Sculthorp's house.

Q. Who were present? A. Mr. Jones, Mr. Sculthorp and myself.

Q. What was that? A. Either Jones or I asked him had he heard anything and he said no, he hadn't.

Q. When was your next conversation? A. About a week following, on or about the 29th of July, 1925.

Q. Who were present and where was the conversation? A. Mr. Jones and myself and Mr. Sculthorp were present.

Q. What was that conversation? A. We asked him again had he heard anything, and he replied he had not, but the incorporation papers had come up but some mistake had been made and he sent them back for correction.

Q. When was your next conversation? A. About a week following that, about the 5th of August.

Q. Who were present? A. Mr. Jones, Mr. Sculthorp and myself.

Q. What was the conversation? A. Either Jones or I asked him had he heard anything, and he said he had not. Jones said, "What is the matter; are we going to get anything or not?"

He said, "I think we had better pay the full price and close up."

Jones said, "I told you that at the beginning. If it is good, go ahead and get it."

Sculthorp said, "I will get on the job and close the deal."

Q. When was your next conversation? A. About a week following that, about the 13th—12th, 13th or 14th of August, 1925.

Q. Who were present? A. Mr. Jones, Mr. Sculthorp and myself.

Q. What was the conversation? A. Either Jones or myself asked him had he heard anything, and he said he should have heard but he hadn't, but he expected to any day.

Q. When was your next conversation? A. A day or two after, either the 20th or 21st of August, 1925.

Q. Who were present? A. Mr. Jones, myself and Mr. Sculthorp.

Q. What was the conversation? A. He said, "I got that property, but I need money right away." He said, "Can you each let me have a check for $5,000 now?"

Jones said, "I have my money. All I have to do is to have it checked from my savings account to my checking account, and you can have it in a day or so; is that all right?"

Sculthorp says, "Don't make it any longer than a day or so because I need it at once."

I said, "I can let you have mine at once." I went over across the street to my house and got the check out of my safe that I had left there in May; it was left there May 28th—

The Court: Exhibit C-1.

A. —and I filled in the date.

Q. I show you Exhibit C-1; is this the check that you are referring to? A. That is the check.

Q. All right, go ahead. A. Before I went over to the house I asked Mr. Sculthorp to whom to make the check payable, and he said, "to J. L. Sculthorp." I went over to the house and got the check out of the safe. That is the same check that I signed May 28, 1925, and I filled in the date and the amount and the name and took it over to his house and I gave it to him. That was all at that time.

Q. When was the next conversation you had with Sculthorp? A. About the 25th of August I met Sculthorp and he said the papers had come back from Florida corrected and to go with him and Jones the following day and sign the incorporation papers. I said I could go—

Q. Just a minute.

Mr. Eichmann: I offer Interrogatory 131:

"131. In August 1925, did you receive $10,000 from complainants, Steppanski and Jones? If so, what did you do with the money?

"A. Yes. This money was placed in the Atlantic Highlands National Bank and

checked out in payment on account of a note for the purchase of the Platner property and the checks are in my possession.

"78. When did you first receive from Steppanski and Jones their first investment of $5,000 each?

"A. Sometime in August, 1925.

"80. At the time you received from Steppanski and Jones their first investment of $5,000 each, which of the aforesaid three parcels of land had you already contracted to purchase?

"A. At the time Steppanski and Jones made their first installment, I had already contracted to purchase the three parcels above mentioned.

"81. At that time to which of the aforesaid three parcels of land had you taken title?

"A. At that time I already had title to the Platner and Burd tracts."

Mr. Eichmann: I also offer the following supplementary Interrogatory No. 6.

"6. When were the moneys referred to in your answer to 131st Interrogatory checked out of your account in the Atlantic Highlands National Bank?

"A. August 28, 1925, $7500; August 28, 1925, $5,000. The check may have included some of his own money."

Mr. Quinn: I ask that it go on the record.

The Court: I don't see the slightest materiality.

Mr. Eichmann: I don't see it.

The Court: Strike it out.

Mr. Eichmann: The question was when was that checked out and the answer is that $7500 and $5,000 was checked out August 28th.

Mr. Quinn: I have no objection to that.

The Court: Mr. Eichmann's expression of his own opinion or conclusion may be stricken out.

Q. Now, when was your next meeting with Sculthorp? A. The following day, August 26th, 1925, Mr. Sculthorp called for me in his car and he called for Jones, and we went to Atlantic Highlands. On this trip to Atlantic Highlands, while we were in the car, Mr. Jones said: "Sculthorp, were you able to buy that property at a lower price or did you have to pay the full price?"

Mr. Sculthorp said he had to pay the full price, $100,000. "I did the best I could." Mr. Sculthorp said, "I told you boys I was going to buy this property in trust for the corporation, but you can readily see the corporation didn't exist and I had to buy it in in my own name. But that's all right; just as soon as this corporation is formed I will assign it over to the corporation."

I said, "It is perfectly all right," and Jones said everything was satisfactory to him.

Sculthorp said, "I am giving my son 50 shares of my stock."

I said, "That is a nice present, $5,000."

He says, "Stanley has taken care of all my affairs while I am away, and this will urge him on, and if he doesn't make good I will take it away from him." He said, "These incorporation papers that we are going to sign—don't mind the officers; they were just temporary officers to get the company organized and we will elect permanent officers at our annual meeting which must be held in January in Delray, Florida, so that you have got to make up your minds that you have got to be down there in January."

There was nothing further on that visit. We reached Atlantic Highlands and Mr. Sculthorp hunted around and found a stenographer, and the four of us went to the office of an attorney; I think the man's name was Sweeney, but I'm not sure.

Q. In Atlantic Highlands? A. In Atlantic Highlands, and we signed the incorporation papers.

Q. In the office of the attorney? A. In the office of Mr. Sculthorp's attorney.

Mr. Eichmann: I call for the production of a certified copy of the certificate of incorporation.

(Mr. Quinn produces paper.)

Mr. Eichmann: I offer in evidence certified copy of certificate of incorporation. (Addressing Mr. Quinn) Will you agree that the certificate may be introduced when procured?

Mr. Quinn: I know I had a certificate of incorporation; it is evidently not here.

Mr. Eichmann: I will procure another certified copy.

The Court: Is this a New Jersey corporation?

Mr. Eichmann: Florida corporation.

The Court: Do you agree that an exemplified copy may be used?

Mr. Quinn: I agree that either an exemplified or certified copy may be used.

The Court: Suppose you go on, Mr. Eichmann; I will reserve you the right to offer it in evidence later.

Mr. Eichmann: I now offer Interrogatory 104:

"104. When was Certificate No. 2 for 100 shares of stock of Sculthorp Realty Company, a corporation of Florida, issued to Edward J. Steppanski?

"A. August 26, 1925.

"106. When was certificate No. 3 for 100 shares of stock of Sculthorp Realty Company, a corporation of Florida, issued to John E. Jones?

"A. August 26, 1925.

"108. When was certificate No. 1 for 500 shares of stock of Sculthorp Realty Company, a corporation of Florida, issued to Jesse L. Sculthorp?

"A. August 6, 1925.

"110. When was certificate No. 4 for 40 shares of stock of Sculthorp Realty Com-

pany, a corporation of Florida, issued to Stanley F. Sculthorp?

"A. August 26, 1925.

"12. When was Certificate No. 5 for 10 shares of stock of Sculthorp Realty Company, a corporation of Florida, issued to Milton Kruse?

"A. August 6, 1925."

Mr. Eichmann: I now call for the production of the stock-book of the Sculthorp Realty Company.

(Mr. Quinn produces book.)

Mr. Eichmann: I offer the stock-book of the Sculthorp Realty Company, which consists of the stubs of five certificates. The rest of the book is blank, and I do not want to encumber the record with it.

(Admitted and marked Exhibit C-12.)

Q. Now, what was the next thing that happened? A. About the early part of September Mr. Sculthorp said, "How about the three of us taking a trip of Florida and put this development on. You will see Florida and you will do some business, and it will serve as a vacation."

I said I would go, and Jones said he would go, and Mr. Sculthorp made all the arrangements.

Q. Did you go? A. Yes. We left here on or about the 6th of October, 1925, for Florida.

Q. Was Jones with you? A. Mr. Jones, and Mr. Sculthorp and myself. We went by boat from Philadelphia to Jacksonville, and on this trip Mr.

Sculthorp said, if we could pick up another tract we ought to. "We only have Delray. There is only 25 acres there. We can clean out that in about six weeks and we can get something else when we get through with Delray; we can develop another tract, and on our way down we will see what we can find."

From Jacksonville, we motored through Florida, stopped at various towns, looked at parcels, and at Gainesville, Florida, we bought two parcels from an agent named Arthur Stringfellow—

Q. For how much? A. The purchase price was approximately $20,000. Mr. Sculthorp did all the negotiating.

Q. Do you know how much of a deposit was paid? A. I'm not positive; I think something like $2,000 was paid at that time on two parcels, and terms were arranged.

Q. What did you do next? A. We reached Delray in the morning about 2 p. m. or 3 p. m., or something like that, and Sculthorp took us to the home of his brother in Delray where we stayed over night and stayed while we were in Florida.

Q. What did you do when you got down there? A. The next morning Mr. Sculthorp said, "How about going over to look at the property?" and Jones said, "I would like to see it," and, of course, I went to see it, too, and the three of us went over to the property, and Mr. Sculthorp pointed out to us the approximate beginning and ending of this property, both bought in the raw state and some of it under water. He pointed out to us the stakes in the water where it probably ended, and explained how it would have to

be filled in, but what a valuable piece of property it would make after it was filled in. There was nothing that could be done with the property.

Q. How long did you spend on the property? A. About an hour. We tramped all over the property and the adjoining property, getting an idea of where we were and how we were located.

Q. And that was done in an hour and half? A. About an hour or hour and a half.

Q. Did you make any other examination of the property? A. While we were in Delray; we were probably there three or four times in all. The other trips along the shore there took probably a half hour. That was all the time we spent on the property.

Q. What else did you do on the property? A. We spent those two weeks we were there in getting prices for our development on water-pipes, electric poles, electric wires, curbing, grading, sidewalks, and things pertaining to the development of the property.

Q. Did you do anything else while you were down there? A. On the 20th of October Sculthorp said to me: "I need some more money; can you let me have your check for the balance?"

I said, "You must be paying an awful lot of cash payments down not to have any money now." I said, "When are we going to see these contracts?"

He said, "They haven't come through yet, not all of them; you will see everything at our meeting in January."

I gave him my check that I owed for the balance due of $5,000.

Q. Is this the check which you gave him? A. That's the check.

Mr. Eichmann: I offer it in evidence, check made to Jesse L. Sculthorp, for $5,000, dated October 20, 1925.

(Admitted and marked Exhibit C-13.)

Q. Did you do anything else while you were down there? A. Yes, about the same time we went to Boynton—Mr. Sculthorp, Mr. Jones and myself and an agent by the name of Moscovich, and looked at some developed property. We became interested in four lots within 150 feet of the railroad tracks and approximately 250 feet from the Dixie Highway. It was well located, I thought, and Mr. Sculthorp said, "It looks good; I think we can make a turnover and get our expenses out of this."

Mr. Moskovich said, "I own a lot of this property myself; I am a friend of Steppanski's; should you decide to buy anything I will refund to you my commission, as I do not want to make any money, but I think it is good and you can turn it quickly."

Mr. Sculthorp said to Jones and myself, "I think it is good myself, but if we want to buy this the company at this time has no funds to buy further property, and if you want that we should purchase this you will have to put in additional money. We can buy it in the company's name and I don't care to handle too much of it. We will go into it on a 25% basis; each one will be paying 25% of the purchase price—Stanley 25%, Jones 25%, Steppanski 25% and I will take the

other quarter, and we will divide profits according to the 25% basis."

I said, "All right." Jones said it was all right, and the property was purchased on that basis.

Q. Is that all? A. That is all at that time.

Q. That was the property at Boynton you are referring to? A. Yes. And then on or about the 27th of October, Mr. Sculthorp, myself and Jones, on the main street in Delray, Atlantic Avenue, had some conversation. Mr. Sculthorp said, "Will you wait for me; I want to go upstairs and see my lawyer on some business for that other syndicate."

I said, "Yes, we will wait," and we did wait for Mr. Sculthorp. He came down and said, "Boys, while you are here wouldn't you like to meet Mr. Burd?" Mr. Burd is the lawyer who was taking care of the incorporation papers, and I said, "Yes, I would like to meet him", and Jones said he would like to meet him also; and Mr. Sculthorp led the way upstairs to Mr. Burd's office. He entered the outside office, and there was no one in his outer office. Jones sat down; Sculthorp went in the inner office and immediately re-appeared with a gentleman whom he introduced to me as Mr. Burd. Mr. Sculthorp said, "Mr. Burd, this is Mr. Steppanski and Mr. Jones who are associated with me in Lake Ida Gardens."

Mr. Burd said, "Pleased to meet you, gentlemen; I wish the company the best of luck."

There is nothing further I could say at this time except that Mr. Sculthorp had deeded the

property to the corporation. There was nothing further said at this time.

Q. Do you now know whether or not Mr. Sculthorp at that time had deeded the property to the corporation? A. No, I didn't.

Q. Do you now know? A. Oh yes, I know now.

Q. What do you know? A. I know that it wasn't deeded until the following month up here in New Jersey.

Mr. Eichmann: I offer in evidence an exemplified copy of a deed made by J. L. Sculthorp and Lottie Sculthorp, his wife, to the Sculthorp Realty Company, Inc., dated November the 5th, 1925, acknowledged in the State of New Jersey, County of Monmouth, December the 8th, 1925, filed January 21, 1926, recorded January 22, 1926, in Book 338 of Deeds, page 132, for the County of Palm Beach, Florida, showing U. S. revenue stamps of $1 affixed.

(Admitted and marked Exhibit C-14.)

Q. Have you given us the entire conversation? A. I have.

Q. At Burd's office? A. I have.

Q. How long did this conversation last? A. Not more than five minutes.

Q. How long were you, all together, in Mr. Burd's office? A. Not longer than five or ten minutes.

Q. Were you in Mr. Burd's office at any other time? A. Not during my stay in Florida. Dur-

ing that month of October, the two weeks I was there, was the only time I was in his office.

Q. Were you in his office at any time outside of the 27th of October, 1925? A. Yes.

Q. When was that? A. In March, 1928.

Q. After the suit was started? A. After the suit was started.

Q. What time of the day were you in Mr. Burd's office? A. It was about 10 o'clock in the morning.

Q. Were you there at 10 o'clock in the evening of that day? A. I was never in his office at any time other than as I have stated. The only time I was in his office was that five or ten minutes on the morning of October 27th.

Q. Was there any meeting held at Mr. Burd's office October 27, 1925? A. Never, to my knowledge.

Q. Any meeting of the Sculthorp Realty Company, Inc., in Florida? A. Not to my knowledge.

Q. Was there any meeting held in your presence? A. No.

Q. Did you inspect what purported to be the original minutes of the Sculthorp Realty Company on October 27, 1925, produced by the defendant as the result of a demand for inspection? A. I did.

Q. I call to your attention a statement in those minutes, as follows: "It was agreed—"

Mr. Quinn: I object, if the Court please. We have the minutes here and they speak for themselves.

Mr. Eichmann: I want to show the falsity of the minutes, which were not pro-

duced at the time and concealed from this man until after the discovery of the fraud, and the reason for the concealment was, certain things were put in that they didn't want the complainants to see, and I think it imports fraudulent intent.

The Court: What he objects to is reading from the original document which is not in evidence which, if it were in evidence, would be the best proof of the contents.

Mr. Eichmann: I ask that that book be marked for identification.

Mr. Quinn: If there is no objection it may be offered in evidence.

Mr. Eichmann: Not at this time.

The Court: Mr. Eichmann, I am afraid we are not going to close this case in the time allotted if we don't make better headway.

Mr. Eichmann: Well, I am trying to speed it up.

The Court: Recess for three or four minutes.

Q. You inspected the minutes at the time you made a demand for inspection, did you not? A. I did.

Q. You read the entire minutes? A. I did.

Q. That was after the demand for inspection? A. After the demand for inspection.

Q. I call your attention to the following statement in the minutes of October 27, 1925—

Mr. Quinn: If the Court please, I object at this time to a reference to any part of

the minute book unless the minutes are at this time, or are intended to be, offered in evidence.

The Court: Yes, you are getting into the record a portion of the document.

Mr. Eichmann: Then I will offer those minutes in evidence.

(Admitted and marked Exhibit C-15.)

Q. I call to your attention the following statement in the minutes of October 27, 1925: "It was shown that the said J. L. Sculthorp had purchased said property several months previously and had made certain cash payments and had executed certain notes; it was further shown that there were certain existing mortgages against said property which was to be assumed by the corporation as part of the purchase price of said property, said mortgages being described as follows." And then follow the description of the mortgages. "The total amount of such mortgages to be assumed amounting to $36,500, thereby leaving a cash amount of $63,500 to be paid J. L. Sculthorp, representing the different cash payments heretofore made by J. L. Sculthorp and the profit to J. L. Sculthorp in the sale of such property to this corporation." Now, was there any such discussion in the office of Mr. Burd? A. There was not.

Q. Was there any discussion at any time anywheres? A. At no time anywhere.

Q. Did Mr. Sculthorp at that meeting tell you that he was making a profit in transferring this property to the corporation at such a meeting?

Did he tell you that he was making a profit? A. I never understood he was making a profit.

Q. Answer my question. A. He never told me he was making a profit, no.

Mr. Eichmann: I offer in evidence Interrogatory No. 11:

"11. Was Stanley F. Sculthorp present at said meeting?

(Referring to the stockholders' and incorporators' meeting held October 27, 1925.)

"A. Not in Florida.

"12. Was it, in fact, stated at said meetings, in the presence of complainants, Edward J. Steppanski and John E. Jones, that you were making a profit in transferring three parcels of land to the corporation?

"A. No."

Q. Then you have read the minutes of October 27—these last minutes? A. I have.

Q. Did anything transpire at Burd's office which is contained in these minutes? A. Nothing whatsoever.

Q. Did you ever see these minutes before the institution of this suit? A. I did not.

Q. When did you first see the minutes of October 27, 1925? A. When they were produced in the Court of Chancery, in care of the sergeant-at arms, for inspection.

Mr. Eichmann: Does your Honor wish to see these minutes?

(Counsel hands book to the Court.)

Mr. Eichmann: I offer in evidence Interrogatory 15:

"15. Did you at said meeting tell Steppanski and Jones what profits you were making?

"A. No."

Q. Did anything else happen while you were down in Florida? A. Nothing else.

Q. Then what did you do? A. We left Florida for home on October 29, 1925.

Q. And when did Mr. Sculthorp return to New Jersey? A. About a week or two later.

Q. In the month of November? A. In the early part of November, 1925.

Q. Did anything occur in the month of November, 1925? A. We held our first meeting on November 21, 1925, at the home of Jesse L. Sculthorp, at Atlantic Highlands, N. J.

Q. How many meetings did you hold all together of the Sculthorp Realty Company of Florida? A. Two.

Q. When were they? A. On November 21, 1925, and on or about the first of August, 1926.

Q. Were there any other meetings held? A. No meetings held.

Q. What happened on November 21, 1925? A. Nothing of importance, simply confirmation of bids, of what we had gathered while we were all in Florida.

Q. Did you make any payments to Mr. Sculthorp? I show you a check, dated November 2d, 1925, made by yourself to J. L. Sculthorp for $412.50; can you tell what that check is for? A. That was my quarter in that Boynton deal. My share was $412.50, and I promised I would mail him a check for it, which I did upon my return home.

Mr. Eichmann: I offer that check in evidence.

Mr. Quinn: If the Court please, I object to the offer of this check on this ground: That it is not material to the issue. This may have been another deal they went into. I don't want to burden the record unnecessarily.

Mr. Eichmann: It is material in this respect: In my complaint I allege that this payment of $412 was part of the moneys he is seeking to recover, as appearing from the evidence so far, although the Boynton property was put in the names of the corporation it was agreed that each was to have a 25% interest in the property, and each were to share losses and profits although the title to the property was to be taken in the name of the company, and that this payment, which is referred to in the bill of complaint, ought to be really eliminated. I want to bring it out so that your Honor will know just what the items are to be eliminated; in other words, what the payments in reference to the Boynton proposition amounted to In the bill of

complaint we include this item as something we are seeking to recover. It appears now that the moneys paid in connection with the Boynton property should be eliminated from the moneys to be recovered, and I think your Honor ought to know what those amounts are so as to deduct them from the full amount.

The Court: All right; but you and Mr. Quinn seem to disagree as to what the bill said. Do you claim that in the bill?

Mr. Eichmann: Yes. In other words, I find the amount paid to be $12,158.23. This is one of the items in the total and I want to eliminate it.

Mr. Quinn: The only objection I had in mind was that the record ought not to be burdened. Otherwise, I have no objection to it. I make the suggestion that Mr. Eichmann and I get together at recess—

Mr. Eichmann: There are one or two checks.

Mr. Quinn: And then we are going to make a stipulation on the record that those be eliminated?

Mr. Eichmann: Yes.

Q. I show you another check of January 15, 1926, made to the Sculthorp Realty Company of $280.50; was that made also in connection with the Boynton property? A. Yes.

Mr. Eichmann: I offer these in evidence and it is stipulated that those two payments shall be eliminated from the fraud action.

Mr. Quinn: Or such other payments as are found to have been made?

Mr. Eichmann: In connection with the Boynton property.

(Admitted and marked Exhibit C-16.)

Mr. Eichmann: I now offer in evidence a letter written by Jesse L. Sculthorp to John A. Jones, dated March 30, 1926.

Mr. Quinn: No objection.

(Marked Exhibit C-17.)

Mr. Eichmann: Now, I call for the production of letter written by Edward J. Steppanski to Sculthorp, on May 3, 1926.

(Letter is produced by Mr. Quinn.)

Mr. Eichmann: I offer that letter in evidence.

(Admitted and marked Exhibit C-18.)

Mr. Eichmann: I now call for the production of a letter written by Steppanski to Sculthorp, dated May 13, 1926.

Mr. Quinn: I don't seem to have it. If you have a copy you may use it.

Mr. Eichmann: I offer in evidence copy of letter from Steppanski to Sculthorp, dated May 13, 1926.

(Admitted and marked Exhibit C-19.)

Q. Now, do you recall anything that happened in the month of May, 1926? A. Mr. Sculthorp returned from Florida in the early part of May, 1926.

Q. Did anything happen? A. He came to my house and we had a talk in my living room. Mr. Sculthorp came there with his wife, daughter, son-in-law. My wife and mother-in-law were there, also Mr. Jones and myself. Mr. Sculthorp said, "I am very sorry things haven't been very good down south. If you feel at all shaky on the proposition I will agree to release several lots to you and several lots to Jones, to protect you, with the understanding that when things boom up again that you assign these lots back to the company."

I says, "That isn't necessary. I won't agree to that. We went in together and we will stick together." And Jones said the same thing. He said, "There are some payments coming due and we will all have to dig this summer."

Mr. Jones said, "How about a statement, Sculthorp; how about our seeing these papers in connection with the purchase of the property?"

He said, "I am very sorry, but I forgot all these papers; they are down South; I have nothing with me. But I can get you up an approximate statement", which he did and which he gave us about a week following.

Q. Is this the "approximate statement" which he handed to you? A. That is the "approximate statement." He used the word "approximate."

Mr. Eichmann: I offer that in evidence.

(Admitted and marked Exhibit C-20.)

Q. Now, what happened on receipt of that statement? A. Jones and I each, examined the statement. I said, "What does that question mark mean?"

He said, "I don't know whether that office building cost me $1,032.84 or $2,032.84."

Mr. Jones asked, "Why should we pay interest back to June when we didn't buy the property until August?"

Mr. Sculthorp said, "There's some of them down there that make you pay interest from the date you get the option. My agents did the best they could for us".

Q. Is that all? A. That was all.

Q. Then when was the next meeting that you had? A. At his office at Atlantic Highlands, on or about the first of August, 1926.

Q. What happened then? A. Mr. Sculthorp was present, Stanley, Mr. Jones and myself. Mr. Sculthorp said we each had to dig up and get some money.

I said, "Well, what does it amount to?"

So Mr. Sculthorp had his son Stanley draw up a statement of what was coming due—each of our shares, amounting to $1165, or something like that.

Q. Is this the statement that was then prepared by Stanley? A. That is the statement.

Mr. Eichmann: I offer it in evidence.

Mr. Quinn: Was Mr. Sculthorp there at that time?

Mr. Eichmann: Yes.

(Admitted and marked Exhibit C-21.)

Q. I show you a check dated August 2d, 1926, made by yourself to Sculthorp Realty Company for $1165.23; what is that? A. That was my share for the payments that had to be made.

Q. As shown on that statement? A. Yes.

Q. Your share was 13.3% of the total? A. Yes.

Q. It was figured out at that meeting that that was your percent of the stock? A. Yes.

Mr. Eichmann: I offer the check in evidence.

(Admitted and marked C-22.)

Mr. Eichmann: I also offer in evidence an exemplified copy of a deed, made by the Sculthorp Realty Company, Inc., of Florida, to Jesse L. Sculthorp, dated October 18, 1926, acknowledged October 22, 1926, filed and recorded October 29, 1926, in Book 402, page 78 of Deeds of Palm Beach County, Florida.

Mr. Quinn: No objection.

(Marked Exhibit C-23.)

Q. Did you know of the execution of that deed at the time it was made? A. I did not.

Q. When did you first learn of the execution of that deed? A. Upon a search being made by my Florida attorney in the latter part of January, 1927.

Q. Do you recall any conversation with Sculthorp in the fall of 1926? A. I had a conversation with him in about the middle of October, 1926.

Q. What was that? A. That was at my house in Jersey City.

Q. What was the conversation? A. Mr. and Mrs. Sculthorp were there and Mr. Jones. I had

been badly injured and was on my back two or three days previously, and all came to see me; and Mr. Sculthorp said: "I learned that most corporations in Florida have separate corporations for individual parcels; what do you think of the idea of making individual corporations out of our separate parcels?"

Mr. Jones said, "Well, what for?"

Sculthorp said, "In case we fall down on one and they get judgment against us they can't levy on the other."

"Well," Jones said, "I don't think you can do that."

And I said, "I don't think you can do that, either."

And he said, "I'm not sure myself of it; I will see my attorney and find out and let you know."

Q. Was that all? A. That was all.

Mr. Eichmann: I offer in evidence a letter written by Sculthorp to Jones, dated November 3, 1926.

(Admitted and marked Exhibit C-24.)

Mr. Eichmann: Also a letter written by Sculthorp to Steppanski, of the same date.

(Admitted and marked Exhibit C-25.)

Mr. Eichmann: Also letter written by Sculthorp to Jones, dated December 1, 1926.

(Admitted and marked Exhibit C-26.)

Mr. Eichmann: I call for the production of a letter written by Jones to Sculthorp, of December 3, 1926.

(Produced by Mr. Quinn.)

(Admitted and marked Exhibit C-27.)

Q. When did Mr. Sculthorp go down to Florida again? A. Mr. Sculthorp left for Florida about the 6th of December, 1926.

Mr. Eichmann: I offer in evidence a letter written by Sculthorp to Steppanski of December 14, 1926.

Mr. Quinn: No objection.

(Admitted and marked Exhibit C-28.)

Mr. Eichmann: Also letter written by Sculthorp to Jones, dated December 21, 1926, two papers.

Mr. Quinn: No objection.

(Admitted and marked C-29.)

Mr. Eichmann: Also letter, Sculthorp to Jones, December 30, 1926.

(Admitted and marked Exhibit C-30.)

Mr. Eichmann: Also letter written by Sculthorp to Steppanski, on the same date.

(Admitted and marked Exhibit C-31.)

Mr. Eichmann: I call for the production of a letter from Steppanski to Sculthorp, of January 1, 1927.

(Letter is produced by Mr. Quinn.)

Mr. Eichmann: I offer it in evidence.

(Admitted and marked Exhibit C-32.)

Mr. Eichmann: I call for a telegram from Steppanski to Sculthorp, of January 3, 1927.

Mr. Eichmann: Copy is offered in evidence.

(Admitted and marked Exhibit C-33.)

Mr. Eichmann: I call for the production of telegram from Jones to Sculthorp, of January 4th, 1927.

(Produced by Mr. Quinn.)

Mr. Eichmann: I offer in evidence copy.

(Admitted and marked Exhibit C-34.)

Mr. Eichmann: I offer telegram from Sculthorp to Steppanski, January 25, 1927.

(Admitted and marked Exhibit C-35.)

Mr. Eichmann: I offer letter written by Sculthorp to Jones, of January 6, 1927.

(Admitted and marked Exhibit C-36.)

Mr. Eichmann: I offer letter from Sculthorp to Steppanski, January 6. 1927.

(Admitted and marked Exhibit C-37.)

Mr. Eichmann: I offer letter from Sculthorp to Jones, January 7, 1927.

(Admitted and marked C-38.)

Mr. Eichmann: I offer letter from Sculthorp to Steppanski, January 7, 1927.

(Admitted and marked Exhibit C-39.)

Mr. Eichmann: I offer telegram from Jones to Sculthorp, January 27, 1927, it being a copy.

(Admitted and marked Exhibit C-40.)

Mr. Eichmann: I call for the production of letter written by Jones to Sculthorp, dated January 11, 1927. A copy is offered in evidence.

(Admitted and marked Exhibit C-41.)

Mr. Eichmann: I call for letter written by Steppanski to Sculthorp, dated January 17, 1927.

(Produced by Mr. Quinn.)

I offer it in evidence.

(Admitted and marked Exhibit C-42.)

Mr. Eichmann: I offer letter written by Sculthorp to Steppanski, dated January 17, 1927.

(Admitted and marked Exhibit C-43.)

Q. Did you go down to Florida? A. Mr. Sculthorp left the 6th of December and went to Florida.

Q. Did you go down to Florida? A. Oh, I received a letter.

Q. The letters are all in evidence, all that I want of that correspondence. Did you go down to Florida? A. Jones and I went to Florida.

Q. When? A. About the 19th of January, 1927.

Q. And what happened? A. I stopped off at Palm Beach, and on the morning of January 22d, 1927, I saw an attorney.

Q. What was the name of the attorney? A. Otho E. Falls.

Q. What day was that? A. Saturday morning, January 22d; and from there I went to Delray to the meeting.

Q. Where was the meeting held? A. Sculthorp's home at Delray.

Q. Who was present? A. Mr. Sculthorp, Mr. Jones and myself.

Q. On the 22d of January? A. On the 22d of January, 1927.

Q. What time of the day was it? A. About 2 o'clock in the afternoon.

Q. What happened? A. The meeting opened and Mr. Sculthorp gave a statement to me and a statement to Jones.

Q. Is this the statement he gave you? A. That is the statement he gave me on the 22d of January.

Mr. Eichmann: I offer that in evidence.

(Admitted and marked Exhibit C-44.)

Q. Then what happened? A. Mr. Jones said, "Is this what you call a financial statement?"

And Sculthorp said, "Yes."

Jones said, "You expect me to raise money on this statement?"

And Sculthorp said, "Where are you going to get the money from?"

Jones said, "I expect to get the money from the people whom I am with."

Sculthorp said, "You don't need any statement; they know who you are; tell them what you have got down here."

Mr. Jones said, "I'm not a beggar and I know you are not a beggar; if you will call an expert accountant and have a regular statement drawn up I will pay the expenses; the company won't have to pay a cent."

I said, "Mr. Sculthorp, Mr. Jones is entitled to a statement; I'm entitled to a statement. That's no statement."

He says, "What do you want?"

I says, "I want a statement of the company—a full financial report of the company. We never had one."

He says, "What kind of a statement do you want?"

"One with assets and liabilities, what we paid out and what we have got on hand—a full financial statement." I said I wouldn't put another cent in this thing until we had a statement.

Mr. Sculthorp said, "I will get you up that statement and we will adjourn this meeting until Monday the 24th."

And Mr. Jones and myself left the meeting.

Q. Then what happened? A. We came back on the 24th, about 10 o'clock in the morning, and Mr. Sculthorp said, "I haven't completed my statement; make yourself at home, look around, and I will keep plugging away at the statement."

Q. Then what happened? A. On the morning of the 25th, at 10 o'clock in the morning, the adjourned meeting opened, and Mr. Sculthorp handed us each a statement.

Q. Is this the statement he handed to you? A. This is the statement that was handed to me on the 25th of January, 1927.

Mr. Eichmann: I offer it in evidence.

(Admitted and marked Exhibit C-45.)

Q. Then what happened? A. We looked the statement over, and Mr. Jones said, "This statement is not signed."

Mr. Sculthorp said, "We will all sign it."

Mr. Jones said, "Why should I sign this statement?"

He said, "You are an officer of the company."

Mr. Jones said, "Well, I didn't make up the statement."

I says, "Mr. Sculthorp, is there anything wrong with the statement?"

He says, "No."

I says, "Why don't you sign it; you made it up." He says, "I will sign it if you sign it." I says, "Mr. Sculthorp, I have never seen anything in connection with this organization since it was organized; I have never seen a check, contract, deed, or anything in connection with the corporation; I don't know if any one item of that statement is true or untrue. How can I sign that statement. I will sign that statement if you get it drawn up by an expert accountant or you let me see everything in connection with this statement."

He said, "You can see everything you want to see."

I said, "The statement starts off with $100,000 assets for Lake Ida Gardens; where are those deeds and contracts for this property?"

He says, "They're up North."

I says, "Mr. Sculthorp, when I am North they're South and when I'm South they're North; what kind of business do you call this?"

He says, "When I get up North I will show you everything."

I says, "That's what you've been telling me right along."

He said he wouldn't sign the statement unless we signed, and we refused to sign—Mr. Jones refused to sign and I refused to sign, and Mr. Sculthorp wouldn't sign unless we signed it, and it broke up in a row and Mr. Jones and I left for Palm Beach and I saw my attorney Otho Falls.

Mr. Eichmann: Now I introduce in evidence Interrogatories 85, 86, and 87:

"85. Did Steppanski and Jones then request you to sign said statement?

"A. Jones and Steppanski wanted me to sign certain statements but I refused to sign anything unless they did likewise, and as a result none of us signed statements.

"86. Did you refuse to sign the same?

"A. See No. 85.

"87. At said meeting, did Steppanski and Jones, or either of them, ask for permission to examine all deeds, contracts or papers of the company?

"A. Yes."

Q. Go ahead.

The Court: He said it broke up in a row.

Q. Then where did you go? A. I went to the office of my attorney in West Palm Beach, Otho E. Falls.

Q. After you had a talk with Mr. Falls what did you do? A. I came back.

Q. With whom? A. Mr. Jones. Mr. Jones and I were together and we both came back.

Q. What time was that? A. Late in the afternoon, about 5 o'clock.

Q. The same day? A. The same day, on the 25th of January.

Q. What happened? A. I said, "Mr. Sculthorp, will we close this meeting in regular form or will we have it left undone as it is now?"

He said we would close the meeting in regular form and he brought all the papers in and placed them on the table where we were sitting, and gave each of us a statement again.

I says, "Mr. Sculthorp, don't you think you ought to sign this?"

And he said no, he wouldn't sign unless we signed, and I put that statement in my pocket and I said, "Mr. Sculthorp, would you let me have a letter to your son Stanley, who is secretary to this company, giving him instructions to let me see all letters and papers in connection with the company?"

He said yes. He immediately proceeded to write this letter, and while he was writing it I said, "Mr. Sculthorp, I intended to give you a check before I left, but I'm not going to give you any more money until I verify every item on this statement and see that everything is all right."

He flew in a terrible rage and took up that letter that he was writing to his son and he tore it in pieces, and he said, "You can go to H.; you won't see anything now; you can do as you d. please."

Jones then said, "I suppose we will have to walk to the station now;"

And Sculthorp said, "No, I will run you to the station; I wouldn't do it to my worst enemy, not even to a dog."

And so we all piled into the car, Mr. Sculthorp and Mrs. Sculthorp, Mr. Jones and myself, and on driving to the station Mrs. Sculthorp said, "You come down here and call my husband a crook?"

Jones said, "I didn't call him a crook" and I said, "No one said anyone was a crook."

Mrs. Sculthorp said, "But you are alluding to it."

I said, "Jones, are you going home?"

He said, "What, me going home! I'm going to West Palm Beach; I'm going to see this thing through."

He says, "We are going where you are."

We got down to the station and found that the train was a northbound up train and they wouldn't take passengers, and it appeared that we would have to stay there for a while.

Sculthorp said, "You got a lot of time, let's jump in the car and we will motor down to the beach and talk it over." We went down to the beach, and when we got there Mrs. Sculthorp remained in the car, and Mr. Sculthorp and I and Jones went down to the beach; and Mr. Jones

said, "Can I send an expert accountant down here and check up whatever you have got down here?" and he says, "Yes, you can send anybody you like down here except a Jew."

Jones says, "What difference does it make whether he is Jew or Gentile if he is an expert accountant?"

Sculthorp said, "You can send anybody down except a Jew. If you think I have done anything wrong I will deed this property over to you as is."

Mr. Jones said, "Mr. Sculthorp, if everything is all right let's forget it; if there is anything wrong I want it put right." He drove us back to the bus and we took the bus to West Palm Beach.

Q. Then where did you go? A. The next morning Jones and I went to the office of my attorney, Otho E. Falls.

Q. Did you have a discussion with him? A. All the morning we were in his office going over the matter.

Q. After you finished discussing it with Mr. Falls where did you go? A. Mr. Jones, Mr. Falls and myself drove to Delray to see Mr. Sculthorp about it.

Q. What happened? A. We went to his office and he wasn't there, but we went to the house and he wasn't there but Mrs. Sculthorp said he would be back shortly and we were to wait. He did come in a few minutes and I introduced Mr. Falls to Mr. Sculthorp and I said, "Mr. Sculthorp, this is our attorney."

Mr. Falls said to Mr. Sculthorp, "Can I talk to you a few minutes?"

And Mr. Sculthorp said, "Yes, walk right in."

He went in the entry-room into the living room with Mr. Falls and Mr. Jones and myself and Mrs. Sculthorp were in the dining room, and he says, "I have been retained by Mr. Steppanski and Mr. Jones to straighten out some trouble in this company. Before I go any further I want to let you know that I have made a search of the records in connection with Lake Ida Gardens, and that you need not answer any questions that you do not care to, and if there are any answers you don't feel like giving you don't have to, but if you want to you may."

And Sculthorp said, "What is it?"

Falls said, "Two discrepancies seem to appear in this matter—in this statement that you gave Steppanski yesterday: The Lake Ida Gardens is given as a hundred thousand dollars; the revenue stamps show that not more than $67,-500 was paid for this property. Will you explain to me this discrepancy?"

Mr. Sculthorp said, "I refuse to answer."

Mr. Falls said, "Will you show me the papers in connection with this proposition, the purchase of this property?"

Mr. Sculthorp says, "No, they are up North."

Mr. Falls says, "Does the company now own the record title to this property?"

And Mr. Sculthorp replied, "No."

Mr. Falls said, "Why was title conveyed from the Sculthorp Realty Company to yourself in October, 1926?"

Mr. Sculthorp replied, "It was done for the good of the company."

Mr. Falls said, "Well, why was it done?"

Mr. Sculthorp said, "I refuse to answer."

Mr. Falls then said, "Mr. Sculthorp, I would advise that you get in touch with your attorney and make an appointment to meet me at my office, not later than tomorrow afternoon, January 27th. If I don't hear from you on January 27th I will immediately institute action against you."

And we left.

Mr. Eichmann: I offer Interrogatories 89, 94 and 97:

"89. In the latter part of January, 1927 did complainants, together with their Florida attorney, Otho E. Falls, call upon you?

"A. Yes.

"94. Did the said Otho E. Falls then ask you to explain the transfer of the aforesaid properties by the Sculthorp Realty Company to yourself?

"A. I told Falls he could secure all information from my attorney, which was the proper place for him to make inquiry.

"97. Was the said transfer authorized by any resolution of the Board of Directors of Sculthorp Realty Company?

"A. No."

Q. Well, then, what happened the next day?

A. About 2 o'clock in the afternoon of January

27th, a phone rang; there was a phone call from Sculthorp's attorney that we should come over to his office. Mr. Falls, Mr. Jones and myself went to Mr. Kearley's office, and we were immediately ushered into his private office. There was Mr. Kearley and Mr. Sculthorp there, Mr. Falls, Mr. Jones and myself, and Mr. Kearley says, "Falls, what's on your mind; what's the trouble?"

Falls said, "Do you understand this case, Mr. Kearley?"

And Mr. Kearley said, "I think I do."

Mr. Kearley rang for his stenographer and said, "Bring me in Mr. Sculthorp's deed." The girl brought in a legal document. Mr. Kearley said, "Mr. Sculthorp is now going to reconvey the Lake Ida Gardens to the corporation."

Falls said, "We are not interested in that now. You can't do it, anyway, without a meeting of the Board of Directors."

Kearley replied: "He took it without a meeting of the Board of Directors and he can assign it back without a meeting of the Board of Directors or a resolution."

Mr. Falls said, "Two wrongs don't make a right."

Mr. Kearley said, "We are, nevertheless, going to assign it back to the corporation."

Mr. Falls said, "Mr. Sculthorp, what did you pay for that property?"

Mr. Sculthorp said, "You know what it cost."

Mr. Falls said, "I said, what did you pay for it?"

And Sculthorp again said, "You know what it cost."

And Mr. Kearley then said, "What difference does it make what it cost; this was Mr. Sculthorp's property and he had a right to turn it over to the corporation."

I says, "If that's the case he took $70,000 from us in August."

Sculthorp said, "I only got money once. What do you want me to do, put in more money?"

Falls jumped up and said, "Gentlemen, there is fraud here; we want our money back."

Sculthorp said, "I am broke; I haven't got it."

I says, "Mr. Falls, I want you to prosecute Mr. Sculthorp immediately, both civilly and criminally," and that was all. That was on the 27th of January.

Q. That was on the 27th of January? A. On the 28th of January—

Mr. Eichmann: I offer in evidence exemplified copy of deed made by Jesse L. Sculthorp and Lottie Sculthorp, his wife, to the Sculthorp Realty Company, Inc., dated January 27, 1927, acknowledged January 27, 1927, filed January 28, 1927, and recorded February 1st, 1927, in Book 410, page 181, of the County of Palm Beach, Florida.

Mr. Quinn: No objection.

(The same is marked Exhibit C-46.)

Q. What happened next? A. I spent August 28th making the necessary affidavits to prosecute Mr. Sculthorp, and that evening, on the 28th,

Jones and I left for New York. We reached New York early on Sunday morning on the 30th of January, and on Monday morning, the 31st of January, Jones and I went and saw a New Jersey attorney to find out our rights with reference to seeing the papers in connection with this corporation. I immediately left for Atlantic Highlands by automobile to Stanley Sculthorp's office, and he was out. And I went to his home and found him at his home washing his automobile. Mr. Jones was with me. Mr. Jones says—

The Court: It is now 1 o'clock and we will take our usual recess.

(2 o'clock, p. m.)

Q. Proceed with what you were saying about meeting Stanley. A. Mr. Jones and I approached Stanley. I said, "Stanley"—

Mr. Quinn: If the Court please, I make the same objection; it is hearsay evidence between him and Stanley.

The Court: I make the same ruling.

A. I said, "Stanley, can Mr. Jones and myself see the minute-book of the Sculthorp Realty Company of Florida?"

He said, "Certainly. If you will wait a few minutes. I will go with you at the office."

And Stanley went with us to the office, and on the way up some other gentleman, I don't know who he was, joined us. So in this office there was Stanley and this gentleman, the stenographer, Mr. Jones and myself. Stanley brought out the

books from the safe, and he said, "This is the minute book of the Sculthorp Realty Company, Inc."

I looked at it and I said, "Stanley, can you let me have some paper and a pencil; I am going to make a copy of everything in this book."

He said yes, and he produced paper and pencil and I made a copy of everything in that book.

Q. Is this the copy that you made? A. This is the copy that I made on January 31, in the office of Stanley Sculthorp.

The Court: That was in 1927?

A. In 1927.

Q. And have you indicated on each page the matter contained on each page in the minute book? A. I have.

Q. In other words, the first page here contains what? A. The first page of the minute book as it was in that book at that time.

Q. And the second page of your memorandum shows? A. Such matter as there was in the minute book at that time.

Q. And on the second page? A. The same as to that.

Q. And have you indicated the correct order of paging here? A. Exactly as it was in the book at that time.

Q. Outside of this memorandum have you made a copy of the minutes? A. At the office at Atlantic Highlands, N. J. That is an exact copy of the minutes produced.

Q. When was that written? A. At the same time I made that copy.

Mr. Quinn: Do I understand the witness to say that that contains all the minutes he saw in the book?

A. All the minutes that were in the book.

Mr. Eichmann: I offer this in evidence.

(Admitted and marked Exhibit C-47.)

Q. Then what followed? A. I noticed on the minutes of the meeting of November 21st, it said, "A joint meeting from Florida" or something to that effect.

Mr. Quinn: I object to that statement, "Or something to that effect."

The Court: Yes, that may be stricken out.

A. And I said, "Stanley, these minutes are of a meeting held in Florida, October 27, 1925, at Delray, Florida, continued at 47 Seventh Avenue, Atlantic Highlands, N. J. on the above date." I said, "Where are those minutes?"

He said, "I don't know; I never saw them."

I said, "Well, there are evidently some minutes somewhere; it distinctly says that."

He said, "Those are the only minutes I have ever seen; if there are any other minutes my father has them down South."

I said, "They are not down South, because I only got back from the South yesterday."

He said he had them.

I said, "Stanley, have you any other papers in connection with the Sculthorp Realty Company in your possession? A. He says, I have nothing

else and have seen nothing else; that is the only thing that I have or ever did have.

Q. Is that all? A. I made a copy of whatever there was on the leaf.

Q. Did you examine the original minutes produced in court today? A. I have.

The Court: That is C-15.

Q. Will you tell me in what respect the copy which you made differs from the original produced today.

Mr. Quinn: I object to that, if the Court please.

The Court: A comparison of the two documents isn't the best proof of that.

Q. Were there any seals affixed to the minutes when you copied them? A. There were no seals affixed of any kind when I examined these on January 31, 1927.

Q. Were there any signatures affixed to the minutes when you examined them on January 31, 1927? A. There were no signatures attached to any of these papers when I examined them on January 31, 1927.

Q. Was the amount of matter on each page the same as in the original minutes now produced? A. It was not.

Q. Was the order of paging the same? A. It was not.

Q. In what respect was the paging different? A. Well, when I examined those minutes January 31, 1927, the first pages contained mortgages of Lake Ida Gardens. Now they are in the book

and there is now twice as much written matter on a page as before. Before, there was double-spacing, and in these there is single spacing. Further, in these minutes now, there appears a paragraph that did not appear in the minutes when I examined them on January 31st.

Q. I call your attention to the annual statement contained in the original minutes of October 27, 1925, produced: "The said Edward J. Steppanski paid in cash the amount of $5,000 on his stock; the said John E. Jones paid in cash the amount of $5,000 on his stock"; each of these incorporators made satisfactory arrangement as to the payment of the balance due on the 100 shares of stock subscribed by each, and it was ordered, on motion duly seconded and carried, that 100 shares of stock be issued to each of the above-named." Were any arrangements made on October 27, 1925 for the payment of the balance due by you? A. No arrangement was made, for the simple reason that I had paid my balance the week previous.

Q. And that was— A. October 20, 1925.

Q. And that payment which you refer to is Exhibit C-13? A. It is.

Q. And that payment represented a balance of $10,000? A. It did.

Q. I call your attention to the following statement in the minutes of October 27, 1925: "It was shown that the said Jesse L. Sculthorp had subscribed for 500 shares, and Stanley have 50 shares which shares were to be paid for by the said Jesse L. Sculthorp. It was thereupon voted that 500 shares of stock be issued by the corporation to

Jesse L. Sculthorp and 50 to Stanley, in full payment for the cash paid on the purchase price of said property. This left a balance of $1500 due by the said Jesse L. Sculthorp for said stock, and the said Jesse L. Sculthorp having made satisfactory arrangements for the payment of such sum of $1500 it was ordered, on motion duly made and carried, that all of said stock be issued at the request of the said Jesse L. Sculthorp and Stanley F. Sculthorp, 40 shares of said stock be issued to Stanley and 10 to Milton Kruse, and the president and secretary were ordered to issue such stock.'' Was there any such discussion on October 27th in reference to stock? A. No.

Q. I call your attention to a portion of the statement which I have just read, that at the request of Jesse L. Sculthorp and Stanley F. Sculthorp 40 shares of stock be issued to Stanley F. Sculthorp; was Stanley F. Sculthorp present in Burd's office on October 27, 1925? A. No. To my knowledge he has never been in Florida.

Q. When did you first examine the stock book of the Sculthorp Realty Company? A. On the 25th of January, 1927.

Q. Where was that? A. In the home of Jesse L. Sculthorp at Delray, Fla.

Q. Just what took place in reference to that? A. I had asked to see all the books and the only books that he had there to show me was the stock-book which he showed me and I examined it.

Q. I show you another check made by yourself to the Sculthorp Realty Company, dated October 4, 1926, for $300; is that another payment that you made to Sculthorp? A. Yes.

Q. How did you happen to make that payment? A. He came to my house and called Jones over, and he had a memorandum of the payments due. He said my share was something like $200. He gave me no statement; he only had a memorandum.

Jones said he was financially embarrassed; he couldn't meet his. I gave him a check for $300 and Sculthorp said, "This is more than your payment." I said, "I know it is; let the balance apply to Jones."

Mr. Eichmann: I offer that in evidence.

(Admitted and marked Exhibit C-48.)

Q. Is this a complete statement of the checks and moneys that you paid over to Sculthorp? A. It is.

Mr. Sculthorp: I offer a statement showing checks made by Steppanski to Sculthorp, totalling $12,958.23. That includes the two checks in reference to the Boynton property, one for $412.50 and one for $280.50, which I think should be eliminated.

(Admitted and marked Exhibit C-49.)

Mr. Eichmann: There are certain other interrogatories that I want to put in. I will read, first, Interrogatory No. 17:

"17. Where was the minute-book of the Sculthorp Realty Company, a corporation of Florida, on January 31, 1927?

"A. My best recollection is that it was in my safe at Atlantic Highlands, N. J.

"18. On February 1st, 1927, did Otho Edwin Falls, Florida attorney for complainants Edward J. Steppanski and John E. Jones, speak to you with reference to the minute-book of Sculthorp Realty Company, a corporation of Florida?

"A. Mr. Otho Falls spoke to me with reference to the minute-book, but I do not recall whether it was on February 1st, 1927 or even around that time.

"18. Did he ask you where the minute-book was?

"A. I do not recall whether he asked me or not.

"20. Did you tell him the minute-book was in your private safe in New Jersey?

"A. I do not recall telling him.

"21. Where was the minute-book on that day?

"A. My best recollection is that it was in my safe at Atlantic Highlands, N. J.

"22. Where were the minutes of the stockholders' and directors' meetings of October 27, 1925 on that day?

"A. My best recollection is that it was in my safe at Atlantic Highlands, N. J.

"23. Where were they on January 31st, 1927?

"A. My best recollection is that it was in my safe at Atlantic Highlands, N. J.

"24. Did Otho Edwin Falls on February 1st, 1927, tell you he wanted to see the minute book?

"A. I do not recall.

"25. Did you tell him that you would write to your son Stanley that day, giving him the combination of the safe and instructions to let Steppinski and Jones make copies of the minutes?

"A. I did tell Falls that I would write to my son Stanley to let Steppinski and Jones make copies of the minutes, but I have no recollection on what date that conversation took place, and I do not know whether or not it took place on the date requested.

"26. Did you, in fact, wire such instructions to your son?

"A. I did not wire that to my son.

"27. Isn't it a fact that instead of sending the aforesaid instructions to your son you instructed him to send the minute book to you at Delray, Florida?

"A. I did not tell my son to send the minutes to me at Delray."

Mr. Eichmann: I call for the production of a letter written by Sculthorp to his son.

Mr. Quinn: On what date?

Mr. Eichmann: Written or or about February 1st.

Mr. Quinn: The letter is not in the possession of the defendant Sculthorp Realty Company, and I suppose he placed it with other papers involved.

"28. Did you not send a registered letter to your son with the aforesaid instructions?

"A. I do not recall whether the letter was registered or unregistered.

"30. Did you receive the minute book sent to you by your son?

"A. I did receive the minute book.

"31. If so, when did you receive it?

"A. Sometime in February.

"32. If you received the minute book, did it contain the minutes of the meetings of the stockholders and incorporators and directors of October 27th, 1925?

"A. My best recollection is that the minutes of the meetings of stockholders and meetings of the directors of September 27, 1925, were in the minute book.

"34. When you received these minutes, was the signature of your son Stanley, as secretary, affixed to the minutes of the stockholders' and incorporators' and directors' meetings of October 27th, 1925?

"A. I don't recall that the signature of my son Stanley as secretary was affixed on October 27, 1925.

"35. Was his signature then affixed to the minutes of the meeting of November 21st, 1925?

"A. I do not recall that now.

"36. Was his signature then affixed to the minutes of the meeting of January 22nd, 1927?

"A. I cannot recall.

"37. Was his signature then affixed to any of the minutes?

"A. I cannot recall.

"38. If not, when were his signatures so affixed?

"A. I do not recall as to when his signature was affixed.

"39. Was the seal of the corporation then affixed to any of the minutes?

"A. I do not know; I cannot say when the seal was affixed because I was not there.

"45. Were you advised by your son of an inspection of the minutes made by Steppanski and Jones on January 31st, 1927?

"A. Yes.

"46. If so, when were you so advised?

"A. Sometime in February.

"47. Did you ever show the minutes of October 27th, 1925, to Steppanski and Jones, or their attorney, Falls?

"A. Personally, I did not."

Q. Now, was there anything else that happened after you made that copy of the minutes? A. I immediately wired my attorney, Otho E. Falls in Florida—

Q. Never mind what was in the wire. What did you do in New Jersey? A. On the 2nd of February I called Stanley on the 'phone. I said, "Have you received word from Florida? Your father is sending you instructions to open the

safe and let me see all the corporation papers and make copies thereof."

And he said, "All right."

I called up every day thereafter for three or four days, and he said each time he had heard nothing, until about three or four days following he said, "I have a letter from my father; it contains no instructions to me to let you see anything. In this letter he instructed me to send the minute book to him at Delray."

Q. Was there any other conversation that you had in New Jersey? A. No, that was all.

Mr. Eichmann: Now, I offer Interrogatory 130:

"130. Were you in the State of New Jersey on or about February 5th, 1927?

"A. I was in the State of New Jersey sometime during the month of February, 1927."

Q. You didn't see Mr. Sculthorp come back to New Jersey then, did you? A. No.

Q. Did you have any conversation with Stanley in reference to it? A. No.

CROSS-EXAMINATION by Mr. Quinn:

Q. How long have you been in business, Mr. Steppanski? A. About 18 years.

Q. In the plumbing and contracting business? A. Yes, sir; and also in the summer hotel business.

Q. How long in the hotel business? A. Since 1912.

Q. How long in the contracting business? A. About 18 years.

Q. You pass upon estimates and do business in contract plumbing work? A. Yes.

Q. And your business training extends over 18 years? A. Yes.

Q. How old are you now? A. Thirty-eight.

Q. When did Mr. Sculthorp first tell you that he had paid $100,000 for this property? A. On August 26, 1925; I think it was the 26th.

Q. How do you know it was that date? A. That was the date of signing the corporation papers.

Q. Where was that, in Atlantic Highlands? A. He told me that in an automobile between my home and Atlantic Highlands.

Q. Prior to that date you didn't know he had purchased it prior? A. A few days prior, August, 20th.

Q. Did he tell you how long prior to that date he had bought it? A. No; he said he just bought it.

Q. How long before? A. He didn't say how long. From our conversations I assumed he had just received word, because two days previous he hadn't heard anything.

Q. You are now referring to August 20th? A. Yes.

Q. Did you ask him at that time how much he had paid for it? A. No.

Q. Were you to be interested in that particular piece of property? A. I was.

Q. Why didn't you ask him how much he had paid for it? A. I knew he had an option for $100,000 and he was trying to get it lower, and he expected to pay the full price, and as he ex-

pected to pay the full price I assumed that it was around that figure.

Q. And prior to August 20 you knew he had options to buy that property at $100,000? A. I did.

Q. How long prior to that? A. At the end of June, 1925.

Q. So, in June, 1925, you knew that he was trying to buy property for $100,000? A. I did.

Q. And at that time you were interested in that property? A. I was.

Q. Did you know prior to June, 1925, that he was trying to buy property for $100,000? A. That he was trying to buy property for $100,000?

Q. Yes. A. No.

Q. Did you know prior to June 25th he was trying to buy any property in Florida? A. Well, I did know June 10th that he could buy it, but he needed more money.

Q. And that was the same property you would be interested in? A. That was the same property.

Q. Did you know prior to June 10th that he was trying to buy property in which you and he were to be interested in? A. I knew he was going to try to buy property in which I was going to be interested on May 9th.

The Court: You mean any specific property?

Mr. Quinn: The three properties in question.

A. He spoke to me on June 9th of property in that location.

Q. Did you know prior to June 9th? A. No; I meant May 9th; excuse me.

Q. Then on May 9th you knew he was to buy property in Florida for the sum of $100,000 in which you were to be interested? A. No, not for the sum of $100,000.

Q. Well then, when was the first time that you knew that he was to buy property in Florida for the sum of $100,000 in which you were to be interested? A. At the end of June, 1925.

Q. Did you not state a few minutes ago around June 10th? A. I didn't know it was going to be $100,000, no.

Q. Then the end of June was the first time $100,000 was mentioned? A. That's correct.

Q. How long after he came back from Florida? A. Immediately upon his return.

Q. The day after, wasn't it? A. A day or so, yes.

Q. Was one of the inducements which caused you to go into this land deal in Florida the fact that this land had cost $100,000? A. No.

Q. That was no inducement at all that caused you to go into the deal? A. No.

Q. Now, do you understand that question? A. I think I do.

Q. That was not one of the inducements that caused you to go into it? A. No.

Q. What was the inducement that caused you to go into it? A. I wanted to make some money and friendship.

Q. Something else? A. Nothing else.

Q. No other statement that Mr. Sculthorp made to you that induced you to go into it except-

ing for friendship and the fact that you wanted to make money? A. That's it.

Q. No statement that he made and you relied upon caused you to go into it except that of friendship and that you wanted to make money? A. That's all. This was a business proposition. I wanted to make some money and I trusted this man.

Q. You didn't rely on the fact that the property was to cost $100,000? A. If he had said $200,000 I wouldn't know whether it was worth it or not.

Q. If he had said it cost $50,000 the result would have been the same? A. Absolutely the same.

Q. You wouldn't have been deceived of that fact whether it was a hundred or two hundred? A. I was deceived by the fact that he said he paid that for it.

Q. That didn't induce you to go into the proposition after you found that out? A. I don't understand the question.

Q. You have already explained it was not because Sculthorp said the land was to cost $100,000 that caused you to go into this land deal? A. No, it didn't.

Q. That is correct? No doubt of that? It was merely because of that friendship with him and the fact that you wanted to make some money? A. Yes.

Q. And you were willing to go into a joint venture and gamble your money, were you not? A. I was.

Q. Were there any statements made by Mr. Sculthorp to you that were untrue and at the

same time that you relied upon that induced you to go into this deal? A. Yes, he said he would buy at the lowest price and on the best terms possible, and we would share according to the amount of money invested by each.

Q. Well, what else did he say? A. I think that is plenty.

Mr. Quinn: I move to strike it out, if the Court please.

The Court: Strike it out.

Q. This was just a gamble, both of you going into it, wasn't it, Mr. Steppanski? A. Absolutely.

Q. You both expected to make a lot of money out of it? A. Yes.

Q. As a matter of fact, it was a topic of conversation around Atlantic Highlands and in that section, the booms in Florida, and a great many people in that vicinity had made money selling on contracts and that he hardly ever saw a deed of a person going down there to invest their money; didn't he tell you that? A. Not the way you tell it to me.

Q. Didn't he tell you it was a gamble? A. Yes.

Q. Did he tell you you were taking a chance? A. (Witness pauses).

Q. He did tell you that, didn't he? A. Well, he didn't bunch it together the way you do.

Q. But he told you that you were taking a chance? A. Yes.

Q. And he told you not much money was being used in Florida, but that business was being done on paper, didn't he? A. No, he didn't tell me that.

Q. What did he tell you besides being a gamble and taking a chance? A. He said it was a gamble and I knew it was a gamble.

Q. You went into it with your eyes wide open? A. I don't know whether they were wide open—

Q. But you knew it was a gamble? A. Yes.

Q. Then you did go into it with your eyes wide open? A. No, they were somewhat shut.

Q. But you just stated you knew it was a gamble. A. Yes.

Q. What particular fact were your eyes shut to? A. I didn't watch Mr. Sculthorp more closely.

Q. What particular fact were your eyes shut to? A. I didn't see any papers in connection with the case as it went along or anything else.

Q. What else? A. I trusted him.

Q. Anything else? A. No.

Q. So the only thing that you were not familiar with was the fact that you hadn't seen the papers? A. I hadn't seen anything.

Q. What else besides the papers? A. I hadn't seen anything with regard to the purchase. The purchase price was concealed from me.

Q. You just said that that had no effect whatever in inducing you to invest your money in Florida? A. No, because I understood that was the purchase price. I didn't know there was a false statement as to the purchase price.

Q. You have just said, Mr. Steppanski, and I repeat, that the fact that this land was to cost $100,000 had no bearing whatever as an inducement to get you to go into this land deal in Florida, and that is correct, is it not? A. Had the

$100,000 representation been true purchase price, but I understood it was true, and that had no bearing.

Q. What difference would the purchase price make with reference to your investment? None, would it? A. Why certainly; the property was inflated when I came into the company.

Q. No, with respect to the investment; the fact whether the purchase price was $1,000, or $10,000, or a $100,000 had no bearing on your going into the company? A. I don't understand.

Q. If the property had cost $75,000 your money would have been lost just the same, because it exploded? A. No, I disagree with you.

Q. You say the boom had not? A. Each member had put in his share of what the corporations papers called for. If Mr. Sculthorp had put in the amount of money that he agreed to put in the company there would have been enough to have paid everything.

Q. How much did Sculthorp agree to put in? A. $55,000.

Q. When did he make that agreement? A. He made that agreement in May.

Q. Go ahead and answer. A. May 9, 1925.

Q. Was the sums discussed? A. No.

Q. Then he didn't make any agreement to put in $55,000? A. He said he would put in whatever balance was necessary to put in.

Q. You mean, to pay cash? A. He didn't use the word "cash".

Q. Answer my question: Was he to pay cash? Was he to pay in $55,000 in cash? A. He put in cash.

Q. Answer my question: Was he to put in $55,000 in cash? A. (Witness pauses).

Q. Answer me "yes" or "no". A. (Witness does not answer).

Q. I want an answer. A. He did not say "cash".

Q. How was he to put in $55,000, in notes, paper or what? A. He said—

Q. No, answer my question, please. A. He was to pay the balance.

Q. In cash? A. I understood cash.

Q. Did he say in cash? A. He didn't say "cash".

Q. Then how did you understand it to be cash? A. Because Jones had put up cash and I assumed that he would do the same.

Q. You knew that there were mortgages on the property, didn't you? A. Why, we hadn't bought it at that time.

Q. Answer my question: You knew that there were mortgages to be left on the property, didn't you? A. Yes.

Q. How do you know that Sculthorp was to put up cash and mortgages were to be left on? A. Mortgages were on the property. You need money to develop it.

Q. I am now speaking of the purchase price. We haven't got to the development of it. A. Well, Sculthorp was handling all the bills.

Q. How did you understand that Sculthorp was to put in $55,000 cash and at the same time mortgages in the sum of $37,000 were left on the property?

Mr. Eichmann: I object to the question, because the $55,000 wasn't used at the time.

The Court: It was only referred to that he was to put in whatever was necessary, as I remember it.

Q. When did you first think that Mr. Sculthorp offered to put in $55,000 cash? When did he first tell you that? A. The first time I knew it was going to be $55,000 was when we signed the corporation papers.

Q. That was what date? A. August 26, 1925.

Q. And at that time he told you that he was going to put in $55,000 cash? A. No, he didn't tell me that; I read that in the application, that he was subscribing to that many shares.

Q. Do you mean to say that because he got 5500 shares of stock you thought he had to put in $55,000 cash? A. That he should put in $55,000 cash.

Q. Was that the way you understood it? A. It was.

Q. And you and Jones were to put in 20? A. Ten thousand each.

Q. That is 75; what about the other 25; where was that to go? You don't know, do you? A. Mortgages. I don't know just what you refer to.

Q. Oh, there was to be $25,000 in mortgages? A. I didn't draw those corporation papers.

Q. I know you didn't, but I wish you would answer my question: Was there to be $25,000 left in mortgages? A. I didn't know. That application was gotten up without ever consulting me or getting any figures from me.

Q. Now, you knew that the capital stock was $75,000, didn't you? A. When I read the application to be signed in August I knew it was to be capitalized at $75,000.

Q. And that was satisfactory to you? A. Yes.

Q. How do you account for the fact then if you thought at that time that Sculthorp was paying $100,000 for the property you were only incorporating for 75? A. As I said before, I wasn't a bit suspicious at the time.

Q. I didn't ask you that, sir. If this property was to have cost $100,000 and you knew it why did you think you were only incorporating for $75,000? A. I didn't know it.

Q. Is it not a fact that you did know that whatever stock Mr. Sculthorp got out of there was profit, in the main, over and above? A. I never knew that.

Q. How was the stock to be divided, when Sculthorp offered to take 5500 shares and Mr. Jones and you between you only a hundred shares? How was that determined? A. I don't know; I had nothing to do with determining that.

Q. You have been a business man for 18 years; didn't you inquire? A. Implicit trust, that's all.

Q. Didn't you make inquiry as to why that was done that way? A. No, I didn't.

Q. Is it not a fact that the reason you did not make the inquiry was that you knew whatever stock Mr. Sculthorp got was his profit in turning this property which he owned over to the corporation? A. I knew nothing of the kind.

Q. Do you know that Mr. Sculthorp did put over $40,000 into this corporation? A. No, I don't.

Q. You don't know that yet? A. I do not.

Q. What other statements did he make to you that were false and which you believed and relied upon and that induced you to go into this land deal? A. Which other statements do you refer to, the one that I testified to on my direct-examination?

Q. Any other false statements that he made which induced you to go into this deal; tell us what they were. A. I don't believe there were any other false statements, Mr. Quinn.

Mr. Eichmann: Just a minute; let me ask counsel what he means by statements testified to on direct-examination. The question is, what other statements that were false, other than what he testified to.

Mr. Quinn: The only one that I have interrogated on was in respect to the cost of $100,000. I now ask if there were any other statements which were made by Sculthorp which he claims were fraudulent which he relied upon and which induced him to go into this land deal.

Q. I have only asked you about the $100,000 alleged cost of this property; were there any other statements which you now claim were made by Mr. Sculthorp that were fraudulent and which you relied upon and which induced you to go into this land deal and invest your money? A. He said he would turn property over to the corporation at cost.

Q. Yes. Did you inquire what the cost was? at that time? A. Yes.

Q. What else? A. (Witness pauses).

Q. Anything else? Any other statements made to you that you say were untrue? A. Well, that was the fraud of it.

Q. Is that all? A. All I can remember at this time.

Q. When was the conversation that you say you had with Mr. Sculthorp's son Stanley in which you said that Stanley told you that the property would cost more and that you should put in more money? A. On or about the 10th of June, 1925.

Q. Then you knew what the cost was at that time, didn't you? A. No, I did not.

Q. You said he told you that the property would cost more; more than what? A. More than Mr. Sculthorp expected to pay.

Q. How much did he tell you prior to June 10th he was going to pay? A. Why, he didn't know what he was going to get; he was down there trying to get it. When he left here he didn't have anything in particular.

Q. When he left he said it would cost more and you, as a business man, didn't ask what the previous amount was? A. I didn't know what the previous amount was.

Q. And you didn't ask? A. He went down—

Q. You did not ask what the cost of the property was at that time; answer me "yes" or "no". A. I couldn't be expected to ask—

Q. Answer me "yes" or "no." A. I did not ask, no.

Q. Is it not a fact the reason you did not ask Mr. Sculthorp the price of this property at which

it was to be turned over to the corporation and you knew he was to take his profit in stock, and that is the reason he got 550 shares? A. That is not true.

Q. Then why didn't you ask him? A. Because I didn't know at that time. Mr. Sculthorp represented me and I trusted him.

Q. Why didn't you ask him about the cost of that land in which you were to put $10,000? A. He didn't know when he left what it would cost, but approximately the price of it.

Q. When Stanley came to you and said it was more and that you should put in $5,000 more, why didn't you then ask what the value of the property was to be? A. I couldn't judge whether it was worth more or not, anyway.

Q. Why didn't you ask what the cost of the property was that you were about to put $10,000 in? Do you know why you didn't? A. There was no reason for my asking.

Q. Certainly there was; and isn't this the reason why, that whatever it cost he was only getting his profit in the stock of that corporation, and if he won he would make a little money and if he lost he got nothing? A. There was no agreement about his making a certain profit.

Q. Wasn't that the reason, the question of cost? A. He was buying it at cost and turning it over to us at cost. He was representing us.

Q. And you knew what it was going to cost in June? A. I never knew what it was going to cost until the end of June.

Q. And you never thought it worth while to inquire? A. He said he had an option for $100,-

000. If he had said 50 or 50,000 it made no difference.

Q. And you went down in October? A. I did.

Q. And Jones with you? A. He did.

Q. And you inspected the land? A. Yes.

Q. You were satisfied with it? A. Yes.

Q. You had in mind that he told you it cost $100,000? A. I did.

Q. And you were satisfied with that? A. Yes.

Q. After having gone over the land and inspected it? A. Yes.

Q. At that time on your visit to Florida didn't Mr. Sculthorp say to you and to Jones, in the presence of Mr. Van Marder of the Atlantic Highlands bank—do you know him? A. I don't recall the name. If I could see him I might identify him.

Q. Well, Mr. Sculthorp's brother—didn't he say to you at that time, "Gentlemen, after you have inspected this land if you are not satisfied with it and do not care to go on with this deal you can have your money back at this time"? A. Something like that was said, yes.

Q. Now, after he told you that and you weren't satisfied to go on with this deal, that you could have your money back at this time, you still insisted in going on with the land deal, didn't you? A. I did.

Q. And it was the purpose you thought you were going to make a great deal of money? A. Absolutely.

Q. You thought the value was there? A. Yes.

Q. Did you make any inspection at that time to ascertain whether or not Mr. Sculthorp had paid $100,000 for this land? A. No, I hadn't.

Q. Why not? A. I trusted him and wasn't a bit suspicious of the man.

Q. You could have made an investigation at that time without much difficulty, couldn't you? A. Had I been suspicious I wouldn't have been in with him. It wasn't necessary to make an inspection when I was a partner.

Q. You were there for two weeks? A. We were busy getting estimates. I wasn't running around getting values in Mr. Sculthorp's statements.

Q. Before you put in your second $5,000 Mr. Sculthorp made an offer to return your money and let you out? A. But he didn't tell us—

Q. No, no—

The Court: You must answer the questions, Mr. Steppanski. Your own lawyer on re-direct examination will clear up anything that you may think leaves you in a false light. Now, the question is, before you put in the second $5,000 did Mr. Sculthorp offer to return your money to you and let you out?

A. I am unable to give the exact date of that conversation. I gave that money to him two or three days after I got there and I was there 14 days, and I am unable to definitely state whether it was before he made that statement or after.

Q. After you had put in $10,000 he told you if you weren't satisfied he would give you your money back and you were to get out?

The Court: He says he can't remember whether it was before or after he made the offer, but he did make the offer.

A. Yes.

Q. And after you had made an inspection, of the land why didn't you get out? A. Because I believed we had paid $100,000 and I believed that we would make some money, and we went in together and I was going to stick together.

Q. Is it not a fact that you went in together but didn't stick together, and not because you believed you had paid $100,000? A. We went in to stick together, and you won't find anything else in our correspondence with him.

Q. And you thought you would make a lot of money? A. I did expect to make money.

Q. And you told Mr. Sculthorp's brother that you were entirely satisfied with the proposition, didn't you? A. I probably said something to that effect.

Q. And while you were down there you bought other property in Florida, didn't you? Went into syndicates? A. Yes.

Q. How much did the land cost in these other syndicates you went into? A. One was approximately $11,000 and the other approximately $20,000.

Q. Just approximately. A. What syndicates do you mean?

Q. Any syndicates you went in besides Sculthorp. A. Yes, I was in several other syndicates.

Q. Do you know what the syndicates were? A. No, I don't recall, but I went into other syndicates.

Q. You don't know what the cost of the land was in which you invested that money? A. Yes.

Q. And those other syndicates that you went in down there, don't you know what that land cost? A. I didn't inquire.

Q. And you don't know? A. Yes I do.

Q. You just said you didn't. How much did that cost? A. I can't recall at this time; I haven't got those figures with me. I have title to some of the property now.

Q. You can't tell us any one syndicate or tract that you are able to state the value of the land down there? A. I cannot tell you the exact price. I was in other syndicates but I can't tell you the exact price of the land held by these other syndicates.

Q. Now, on your way down you stopped at Gainesville? A. Yes.

Q. You and Mr. Sculthorp and Mr. Jones bought some land there? A. Yes.

Q. And you made some representations as to the value of the land? A. That land was bought by the company.

Q. And yet in this suit you are asking for the return of the money you put into the Gainesville property? A. I am asking to have my contract with Sculthorp rescinded.

Q. Are you not asking to have the money returned that you put into the Gainesville property? A. Put into the corporation.

Q. And you all agreed to abide by certain figures? A. Which he represented to be at cost.

Q. I am now speaking of the Gainesville property; you did agree to abide by certain figures? A. To what are you referring?

Q. Gainesville. A. Yes.

Q. You all agreed on that figure? A. Yes.

Q. You paid $6,000 in cash, didn't you? A. I can't tell what we did pay in cash.

Q. Whatever you paid, whether it was $6,000 or not, didn't that come out of the investments made by all three of you in the corporation? A. Yes.

Q. What did Sculthorp say to you, or what statement did he make, with respect to the Gainesville property that now impels you to ask for your money? A. I'm not referring to the Gainesville property; I am referring to our agreement and the misrepresentation on the part of Sculthorp.

Q. When you were down there and investigated or inspected this property, on your making the second investment of $5,000, you discussed this Florida land with other people living there? A. It was discussed generally with the people there; you mean this land?

Q. Yes, the three tracts. A. No, I didn't speak to the natives about that Lake Ida Gardens.

Q. You talked to the agents about this property? A. Yes.

Q. And discussed the value of it? A. What do you mean; what property?

Q. The value of these three tracts. A. We were talking about selling it through them.

Q. And therefore you discussed the values? A Sure.

Q. How much were you trying to sell the property for? A. There was a sliding-scale of prices, according to the location of the lots.

Q. You almost sold the large tract for a large sum of money? A. Never to my knowledge.

Q. Were you discussing with one agent this one piece for a large sum per acre? A. I was not.

Q. You do recall, however, that you were trying to buy other land adjoining these three tracts? A. I did not.

Q. Weren't you present while it was being discussed? A. I was not.

Q. Didn't you try to buy other land adjoining these three tracts of land? A. We didn't buy; we had nothing to buy with. How could we discuss the buying of lands.

Q. You don't mean that, because you had other syndicates while you were down there; you had money. A. I am glad you think so.

Q. You did, didn't you; you went into other syndicates? A. Not while I was down there.

Q. Before you went down there. A. Yes, before I was down there I was in other syndicates.

Q. How long before? A. Well, shortly.

Q. Week, two weeks, or a month? A. Well, a month or so.

Q. And where? Near this land? A. No, one was probably,—oh, 150 miles away.

Q. But in Florida? A. In Florida.

Q. So that you were familiar with the land scheme and the sale of land down there before you put in your second $5,000? A. I wasn't familiar.

Q. You had some experience in other syndicates? A. I only had to pay a part deposit in any syndicates.

Q. You paid part down and the balance was to be paid later? A. I was to pay my share. Each shared and shared alike, which we all did.

Q. Is it not a fact, Mr. Steppanski, that on

June 28, or 29 after Mr. Sculthorp came home, that you were over to his house and, in the presence of his daughter and of his son and of his son-in-law, asked him to let you in on the Florida property? Yes or no. A. No.

Q. That is not a fact that a few days after that you went back again to his home and in the presence of his daughter and son-in-law again asked that you and Mr. Jones be let in on the Florida deal? A. No.

Q. And is it not a fact that in the middle of June, that both of you made a similar request, and that Mr. Sculthorp finally let you go in on these three tracts of land mentioned in your complaint, and did he not say at that time that he had been offered a profit on the land and that he would turn his profit into the stock in a corporation? A. Every word of that is untrue.

Q. And is it not a fact that never until the month of June, after Mr. Sculthorp came from Florida, that you mentioned to him about going into a land deal with him in Florida? Is that so? A. We had an agreement in May before he left.

Q. Will you answer that just "yes" or "no". A. I don't understand the question; you will have to repeat it.

The Court: Isn't it true that in the middle of June you asked Sculthorp to let you have an interest in some deal that he was in in Florida?

A. No, that is not true.

Q. And is it not a fact that the only discussion that you ever had with Mr. Sculthorp about Florida land deals was with respect to the profit that many people in that locality had made, and not with respect to any land that he owned in Florida? A. The agreement was that he was to purchase for the corporation.

Q. Now, in the attorney's office, when this first meeting was had,—attorney Byrd was the name, was it not? A. Meetings were had.

Q. You were there several times? A. Five minutes.

Q. You all went there together? A. Yes, to be introduced.

Q. Did not Mr. Byrd say to you and Mr. Jones and Mr. Sculthorp, "If you will let me know the amount that this property is going into the corporation I will fix up the minutes of the corporation;" and did not you and Mr. Jones and Mr. Sculthorp have a slip in your hands showing the values of those various lands; and did not Mr. Sculthorp hand that to the attorney and then the thing written up by the attorney as you have it? A. Every word of that is untrue.

Q. No mention of the property being turned into the corporation? A. Yes.

Q. And was it agreed that Mr. Sculthorp was to turn this property into the corporation without any profit to himself? A. That was agreed.

Q. That he would take no profit at all? A. Why, he bought it for us.

Q. Bought it for you? Why, you even didn't know how much it cost. A. Neither did he until he bought it.

Q. After he bought it you didn't know. A. No, because he lied to me.

Q. You let it go along for a long time before you made inquiry regarding it; you don't mean that he was buying the property for you? A. He said he was trying to buy it cheaper.

Q. How much cheaper? A. He said he was trying to get it for $1,000 an acre cheaper.

Q. How much an acre? A. $5,000 an acre.

Q. You know there were 15 acres? A. No. I had nothing to do with the amount fixed and I know nothing about it. I never saw this until now.

Q. You did offer to pay $5,000 an acre? A. I know they wanted 5, but how many acres there were in that particular tract I never knew until a good deal later.

Q. You mean to say that he was buying property for you at $5,000 an acre and you wouldn't inquire how many acres he was buying? A. That's the truth.

Q. Is that what you mean to say? A. That is what I am saying.

Q. Why, wasn't there some discussion about it at that time? A. He said he had three tracts, and there were 25 acres in the three tracts, but he didn't mention how much each parcel contained nor how much there was in each parcel.

Q. You started suit in Florida against Sculthorp, did you not? A. I did.

Q. Who were your attorneys? A. Otho E. Falls.

Q. You told there the same story with respect to this transaction that you are telling now? A. Yes.

Q. You fixed the approximate times and dates that these representations were made by Mr. Sculthorp to your attorney? A. Yes.

Q. It was fresher in your mind then than now? A. I had no papers at that time to refresh my memory; I don't think it was any fresher.

Q. But at the time certain representations were made to you by Mr. Sculthorp it was fresher in your mind then? A. Yes.

Mr. Quinn: I offer in evidence exemplified copy of proceedings held in the law court case and ask to have it marked in evidence.

(Admitted and marked Exhibit D-1.)

Q. I ask you to read beginning with "During the month of October". A. "During the month of October, 1925, the defendant stated to these complainants that he could purchase for the said corporation the aforesaid property from third parties for the sum of $100,000. The defendant at this time was the owner of the aforesaid property himself".

Q. Now, you must have told your attorney that that conversation took place in October, 1925 and not in May or June, as you have testified here? A. That is the first time I have ever seen that. That is an error.

Q. You gave your story to the attorneys? A. I did.

Q. And you testified that the property called for $100,000— A. That "October" don't belong there; that's an error.

Q. Doesn't it appear in your pleadings "During May or June" that he told you that it would cost $100,000? A. I made one affidavit in Florida and that was for the prosecuting attorney to prosecute him criminally. I made no further affidavit.

Q. Is it not a fact that the reason you did not tell your Florida attorneys that in May or June Mr. Sculthorp told you that he paid $100,000 for this property was that you never had informed him at until June 29th, 1925, after he came back from Florida? A. I had a conversation with him in May and there's the check to prove it.

Q. You didn't tell that to your Florida attorneys? A. I did.

Q. I thought you said you signed certain papers before you left. A. A criminal affidavit.

Q. You didn't sign anything excepting an affidavit in June or May, 1925, did you? A. When?

Q. In May or June, 1925. A. Why, if you will let me see a copy of that then I can tell you. I can't tell you at this time.

Q. I will let you read a copy of letter. Now, you say in the attorney's office there was some discussion about profit and the difference between the mortgages and the price sold to the corporation. Where was this discussion? A. (Witness pauses).

Q. In your direct-examination you said there was some discussion about that. A. Where?

Q. In the attorney's office in Florida. A. Whose attorney's office?

Q. I don't know. You testified to it this morning; you haven't forgotten it, have you? Do you

recall testifying this morning about some discussion in some attorney's office in Florida when you were down there about the property Mr. Sculthorp could get, referring to different mortgages? A. I never testified to anything concerning that.

Q. Did somebody mention that?

The Court: Yes, in the office of Mr. Kearley.

A. Oh, in Mr. Kearley's office.

Mr. Eichmann: Which he said was untrue.

Q. Wasn't some statement made right there, or argument about it, in the attorney's office? A. At the meeting where we presented our contracts Mr. Kearley stated it didn't make any difference what the property cost, Mr. Sculthorp had a right to turn it over to the company at a profit.

Q. Whose lawyer was he? A. Mr. Sculthorp's lawyer.

Q. Did you know that Mr. Sculthorp was making loans to this corporation to pay for the development and to pay the interest on mortgages? A. Yes.

Q. You knew that? A. Yes.

Q. How many loans did he make the corporation to pay interest on mortgages and also for development? A. I don't know how many he made.

Q. Did you make inquiry? A. No.

Q. You don't think Mr. Sculthorp got any of this money, do you? A. What's that?

Q. Do you think Mr. Sculthorp got any of this money? He spent it in development, did he not?

A. He was trying to make a profit on the purchase of that property.

Q. I say, the money that you put in you don't charge that he misappropriated any of that? He spent it on the property, didn't he? A. Well, let him answer what he did with it.

Q. You know that is so, don't you? A. He had full charge of spending the money.

Q. You said that you knew he was loaning money to the corporation. A. Yes, he told me he was doing that.

Q. You said you knew that he was loaning the corporation money; that is correct, isn't it? A. Yes.

Q. You knew he was loaning money to the corporation; you must have been satisfied with the money he put into the corporation before he made the loan. What had the money which he was going to put into the corporation to do with the cost of the property; can you explain that? A. Yes, I can explain that.

Q. Don't you know how many loans he made to the company? A. No, he was in charge of that.

Q. He was repeatedly sending letters to you to send money; don't you know he did pay the interest? A. Yes, and all I knew was what he told me. If he said he was making loans I believed him.

Q. Have you seen the books since he made loans to the company? A. The only time I saw them was when I forced him to show them, but whether they were true or not I don't know.

Q. Do you know how many there were? A. No.

Q. Do you know that he put almost $40,000 in? A. I do not, no.

Q. And do you know that subsequent to that, to protect himself, only a short time ago, he had to put in $17,000 more so that you and he wouldn't be sued? A. I know nothing about that.

Q. Now, when this property was taken over you and Jones both knew that Mr. Sculthorp was on mortgage notes in the sale of this property. A. I never saw a note and never knew definitely whether he was or not.

Q. Do you know when you buy property in the South you always sign notes? A. I didn't know at the time that was the procedure.

Q. Did you find that out subsequently? A. Yes.

Q. So that you knew Mr. Sculthorp was personally responsible for a mortgage on these lands and that you and Jones were not? A. I know it now but I didn't know it.

Q. And do you know because of that fact that he had to put more money in to keep from being sued? A. I don't know what his object was in doing that. We would never have had any mortgages if each one had put in his share. The property could have been paid for.

Q. You mean the $55,000 and $20,000? A. No.

Q. Give me the figures upon which you base that statement. A. Well, I just had reference to Lake Ida Gardens. The company was capitalized at $75,000 and Lake Ida Gardens cost about $67,000.

Q. What about the other land? A. The Boynton was bought outside of that.

Q. Now, you said that you made a demand for a statement? A. I did.

Q. And wanted an accountant to go down there? A. I did.

Q. And Mr. Sculthorp said you could have an accountant but not to send a Jew? A. He did.

Q. You are Jewish, are you not? A. I am.

Q. And you mean to say that he said he wouldn't have a Jew go over the books? A. He did.

Q. Did he tell you in the attorney's office that you could go to hell? A. He told me that in his home.

Q. On what date? A. On the 25th of January, 1927.

Q. Who was present? A. Mr. Jones, myself, Mr. Sculthorp—

Q. Who else? A. Mrs. Sculthorp.

Q. And who else? A. No one.

Q. The first conversations in May or June took place in the home of Mr. Sculthorp? A. No, the first conversation of May 9 took place at my house.

Q. Where? A. On the front porch.

Q. It is a fact that he has never been inside of your house or even on your porch at any time, is it not? A. That is a lie.

Q. And isn't it a fact that every conversation in regard to these Florida properties took place right in his home when you and Jones came over? A. That conversation was on my porch and it was before Sculthorp was in Keansburg.

Q. Where? A. In Atlantic Highlands.

Q. When did they move to Keansburg? A. It was a week or so later.

Q. What date? A. I couldn't tell you the date; I wasn't there only week ends.

Q. What time of the night did it take place? A. This conversation?

Q. Yes. A. The first conversation of May 9th took place in the morning between 9 and 10, and the second one in the afternoon between 5 and 6.

Q. What day of the week? A. On a Saturday.

Q. When was the next conversation with Sculthorp? A. At his house.

Q. And the next one? A. At his house.

Q. They were all at the house except this one? A. They were.

Q. Why were you running over to his house? A. Because my house was a public house and there was nothing private about my porch.

Q. Private enough to discuss the first conversation? A. Mr. Sculthorp asked me to keep this corporation quiet, due to the fact that he was trying to sell out to his partner, and he didn't want his partner to know that he was trying to form another company.

Q. Is that the reason why you had all these meetings at his house? A. No. There was more privacy in his house than in my house.

Q. Why? A. Mine was a summer boarding-house and we had guests; his was a private house and there was no one there.

Q. Did you have any guests there May 9th when you had this conversation? A. We weren't open May 9th. There were no guests there.

Q. Why did you go over to his house all the time; did he ask you to do so? A. On several occasions he did.

Q. And on other occasions he didn't? A. Yes.

Q. Why did you go? A. Because he was handling this affair.

Q. You hadn't made any agreement yet? A. I certainly had.

Q. You hadn't put any money up yet? A. My money was ready.

Q. You and Jones were running over to his house about every night? A. Not every night; only once a week.

Q. You only lived across the street from him and Jones? A. Yes.

Q. About how many times would you say you were in his house discussing Florida property? A. About 8 times.

Q. You say that you knew he was loaning money to the company? A. He said he was.

Q. And you have since found out that he actually did? A. Yes.

Q. Now, if he were loaning money to the company you must have been satisfied with the amount of money he put in originally? A. Yes. Oh, I thought he put in 75; that's why I was satisfied.

Q. Exactly, $75,000 is the correct amount. A. Excuse me, $55,000.

Q. Isn't that what you thought was the cost of the property, $75,000? A. No.

Q. And then when you talleyed it up you found it was $67,500. Isn't it a fact that you knew that this property increased to $100,000, that it did

aggregate around 75, and that it cost 67 thousand 500? A. The first time that I knew that that property cost anything different than $100,000 was from my attorney who searched the records at Palm Beach, Florida, at the end of January, 1927, at which time I discovered from the revenue stamps that the property cost no more than $67,-500.

Q. Well, you would have gone into the proposition anyway? A. If I thought I was being double-crossed I would not.

Q. You said several times that you would. A. If the purchase price had been true.

Q. But you have told us that the purchase price didn't induce you to go into it. A. It made no difference what the property cost if it had been the true cost.

Q. You knew that Stanley was to get 50 shares of stock in the corporation? A. The first that I knew that was when I was informed by his father, when we were going to sign the corporation papers.

Q. You were satisfied that he was to get 50 shares of it? A. Yes.

RE-DIRECT EXAMINATION by Mr. Eichmann:

Q. You stated on cross-examination that you relied on the statement of Sculthorp that he would buy the property at the best price possible; is that correct? A. That's the truth.

Q. Was there any such statement made on May 9th, 1925? A. That statement was made by Mr. Sculthorp on May the 9th on my front porch.

Q. In just what words was that statement made? A. I said, "I don't know anything about Florida Real estate or corporations; I never belonged to a corporation and I never was in Florida, and I never was in the real estate business. I will have to leave it entirely to you."

Mr. Quinn: That is a repetition.

The Court: Yes, he has been all through that in his direct-examination.

Mr. Eichmann: I just wanted to bring it out a little more clearly.

Q. Do you recall the conversation in the automobile on or about the 26th of August, 1925? A. I do.

Q. Was there such a statement made at that time? A. Mr. Sculthorp said he paid $100,000 for that property; he did the best he could and bought it at the best price he could buy it for.

Mr. Quinn: I don't want to go into cross-examination of that again. I think that is a repetition of the direct.

Q. Did you rely on his statement that he had bought the property for the best price he could buy it?

Mr. Quinn: I object.

The Court: He has been all through that on direct-examination.

(MRS.) JENEVIEVE STEPPANSKI, sworn on behalf of the complainants, testified as follows:

Direct-examination by Mr. Eichmann:

Q. You are the wife of Edward J. Steppanski? A. I am.

Q. And you conduct a summer hotel at Keansburg? A. I do.

Q. Do you recall the conversation that you had with your husband regarding a proposition of Mr. Sculthorp to invest money in Florida? A. Yes.

Q. What was the date of that conversation? A. May 9, 1925.

Q. How do you fix that date? A. Well, we were down at Keansburg just a week and it was a week end and about 2 weeks before Mr. Sculthorp went to Florida.

Q. Do you recall when he went to Florida? A. About the 25th of May, 1925.

Q. After Mr. Sculthorp left for Florida what happened? A. My husband was in the habit of calling me up during the week, and he called up on the 26th or 27th of May and asked me—

Q. Never mind what he asked you; he called you up on the 26th of May? A. Yes.

Q. And after that telephone conversation did he come down to Keansburg? A. Yes, he came down.

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

Q. And what happened? A. After discussing the plans for the coming holidays he drew a blank check from his pocket and signed it in my presence—

Mr. Quinn: Just a minute.

Q. I show you Exhibit C-1 and ask you whether that is the check he signed? A. Yes, that is the check he signed.

Q. Was there anything written on that check other than his signature? A. Nothing.

Q. Did he give you certain instructions with reference to that check? A. Yes.

Q. After you received those instructions what was done with that check? A. He put the check in the safe.

Q. Was the signature affixed in your presence? A. Yes.

Q. Where? A. In the living-room of our hotel, the White House, at the desk.

Q. Did you have more than one bottle of ink in the hotel? A. No, only one.

Q. And was that written with the ink on your hotel desk? A. Yes.

Q. In your presence? A. In my presence.

Q. Did you keep a diary? A. I did.

Q. Have you got that diary? A. (Mr. E. J. Steppanski produces book).

Q. Is this the diary which you kept? A. Yes.

Mr. Eichmann: I ask to have it marked for identification.

The Court: Why for identification?

Mr. Quinn: I object to it.

(Marked C-50 for identification.)

Mr. Eichmann: I will offer it later on after laying the foundation for it.

Q. I show you entries in that diary under date of May 26, 1925, May 30, June 2nd—

Mr. Quinn: I object, if the court please.

Mr. Eichmann: Wait; I haven't finished my question.

Q. —were those entries made in your handwriting? A. Yes.

Mr. Quinn: I object, if the Court please, to any reference to this book. As I understand, it is done for the purpose of refreshing her memory.

Mr. Eichmann: I am not offering the book as yet.

Mr. Quinn: I object to any part of it becoming a part of the record by referring to it.

The Court: No part of the book is in evidence.

Mr. Eichmann: I don't think counsel even knows the object of this line of testimony.

Mr. Quinn: Then I think counsel should state the object.

Mr. Eichmann: The object is to show that these entries were made around the same time, with the same ink, and to show by this diary when that particular ink ran out, to indicate that that signature was made at the time he testified it was made.

Mr. Quinn: I object to that, if the Court please, as very indefinite and improper way of proving such facts. It couldn't be determined in that way whether the ink was taken out of a certain bottle at a certain time.

The Court: You mean to say that was followed by ink of a different shade or color?

Mr. Eichmann: Yes; I mean to say that subsequent additions to that check were made with a different ink.

The Court: Well, there are circumstances tending to corroborate the date when the complainant says he made the signature to the check. There is no jury here and I am going to let it in and then deal with it when I come to decide the case.

Q. Now, the entry here made May the 26th and May 30, 1925, were those entries made by you with the same ink which Mr. Steppanski used in signing the check Exhibit C-1? A. Yes, it is.

Q. And until what date in your diary did you use that same ink? A. Until July the 2nd, 1925.

Q. Do you recall purchasing another bottle of ink? A. Yes, I do.

Q. When was that? A. July the 1st.

Q. What year? A. 1925.

Q. And are your entries in this diary from July the 2nd on through the month of August, made with the same ink as appears on Exhibit C-1 to fill in the date "August 21, 1925, J. Sculthorp, $5,000"? A. Yes, it is.

Mr. Eichmann: I offer the diary in evidence, from May, 1926, through the month of August, for the purpose of showing the color of the ink, and showing by other circumstances that this check was signed around the time that it is testified it was.

(Admitted and marked "Exhibit C-50.)

Q. Are there any other circumstances which you recall which fixed in your mind the date when that check, Exhibit C-1, was signed? A. Yes.

Q. What are they? A. That May 28th was the last day that we would have the private use of our hotel, as on the following day, May 29th it would be open to the public. That is one reason; and also, that was the day that my husband brought down our cook who was to do the cooking for the season and would always come down a day before we expected guests.

Q. And when did your house really open? A. May 29, 1925.

Q. Preparing for what day? A. Decoration Day holiday.

Q. Do you recall anything happening in the month of June, 1925? A. Yes.

Q. What? A. About June 10th I received a 'phone call from somebody asking if Mr. Steppanski was there. I said he wasn't there, and he said he thought he would like to get in touch with him. He said "I received a telegram regarding property" and he said he had some very good property but it would cost more money and he wanted to know if Mr. Steppanski could increase it to $5,000. I said I didn't know, but I would try and locate him. He wanted to know where he could get in touch with Stanley, and he was 'phoned to, and Stanley answered: "I will be in my office in Atlantic Highlands until five o'clock". I said "I will try and locate him." That was all of that conversation.

Q. Did you get in touch with your husband? A. I immediately tried to get my husband and he was in his office.

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Q. After you got in touch with your husband did anything happen? Did you have any conversation with your husband? A. I delivered that message of Stanley's to my husband, and he said he would get in touch with Stanley.

Q. Did you go with your husband to see Stanley? A. No.

CROSS-EXAMINATION by Mr. Quinn:

Q. That was the only bottle of ink you had in this hotel? A. Yes.

Q. How many rooms are there in your hotel? A. 40.

Q. And was that the only bottle of ink you had in the hotel? A. That was my own.

RE-DIRECT EXAMINATION by Mr. Eichmann:

Q. Did you have more than one desk? A. No.

Q. Where was this desk? A. In the living-room in the corner, which was used as an office for the guests.

Q. That was the only bottle of ink that you had? A. The only bottle of ink that we had.

(MRS.) CARRIE A. JONES sworn on behalf of the complainants, testified as follows:

Direct-examination by Mr. Eichmann.

Q. You are the wife of John Jones, one of the complainants in this suit? A. Yes.

Q. Do you recall anything happening with reference to this case in 1925? A. Yes, Stanley Sculthorp came to my house.

Q. When was that? A. That was the early part of June; and Stanley came to my house and said that he received word from his father that he wanted to see Mr. Jones and would he come down and see him, as he had something very good, and he wanted to see him as soon as he could. So that same evening we drove down to Atlantic Highlands, and Stanley was sitting on the stoop there.

Q. Who drove down? A. I, with my husband and Mr. Jones. I drove down and Stanley was sitting on the stoop, and he came on down off of the stoop and sat on the running-board and said that he had received a telegram from his father, and that his father said he had something very good for him and that he would have to act very quick, but he would have to have more money.

Mr. Eichmann: I call for the production of that telegram sent by Sculthorp to his son, on or about June 9th or 10th, or a few days prior.

Mr. Quinn: The same one you called for this morning?

Mr. Eichmann: No, I don't think that is the same one.

Mr. Quinn: We have a mass of papers here.

Q. Proceed with your testimony. A. He said his father would have to have more money and he would have to act quite quick, and Mr. Steppanski said he would go in it, and Mr. Jones said he would do the same thing and he would go in for $5,000 more.

Q. Was that all? A. That was all.

CROSS-EXAMINATION by Mr. Quinn:

Q. That was in the early part of June, Mrs. Jones? A. Yes.

Q. And Stanley called for more money and he said he would go in for $5,000 more? A. No.

Q. Don't you know that your husband hadn't paid a penny on this project at that time? A. I don't know that.

Q. Then you are wrong as to your date? A. I don't know anything about the business proposition. All I know is that they went into it for $10,000.

Q. How do you recall that that took place in June? A. The reason I recall that is that he and I had that talk regarding it.

Q. Did you talk with your husband about this matter in June? I mean yourself. A. Yes. I was satisfied if he went into it for $5,000.

Q. If it is true that your husband hadn't put in money in June, 1925, do you still say you had that talk with Stanley in June? A. I know I went there and Stanley said his father wanted more money.

Q. From your husband? A. Yes.

Q. Had your husband told you that he had put money in it at that time? A. Yes, $5,000.

Q. That he had put in $5,000? A. Yes.

(MRS.) ANNIE L. GROSEL sworn on behalf of the complainants, testified as follows:

Direct-examination by Mr. Eichmann:

Q. You are the mother of Edward J. Steppanski? A. Yes.

Q. Where were you during the month of May and June, 1925? A. At the White House, in Keansburg.

Q. Was that the hotel conducted by your daughter down at Keansburg? A. Yes.

Q. I show you Exhibit C-1; do you recall the signature on that check? A. Yes.

Q. Was that check signed in your presence? A. Yes.

Q. When was that signed? A. On Thursday, May 28th, 1925, at Keansburg.

Q. How do you recall that it was signed on Thursday, May 28, 1925? A. Well, in May I always do the cooking for the family until the regular cook comes, and my son-in-law brought the cook down that day, and that is how I remember.

Q. You did the cooking until the regular cook came down? A. Yes.

Q. When did the hotel open? A. On Friday the 29th.

Q. What took place then with reference to that check? A. Well, they were talking about business, and after they were there a while—

Q. Don't give me any conversation; what did Mr. Steppanski do? A. How do you mean?

Q. What did he do with the check? A. He gave it to his wife and she put it in the safe.

CROSS-EXAMINATION by Mr. Quinn:

Q. Who else was present, Mrs. Grosel? A. Nobody.

Q. Where did this take place, in the living-room? A. Yes.

Q. Where is the safe? A. The safe is in the bedroom between the two rooms.

Q. Did you go in the bedroom to see it put in the safe? A. No.

Q. Then how do you know it was put in the safe? A. She crossed the hall into the room.

Q. Crossing the hall didn't indicate anything? A. Naturally, I didn't suppose she would do anything else when she had it in her hand. I didn't see her do it.

Q. So that you don't know what she did with it? A. No.

Q. Someone told you that she put it in the safe? A. I suppose she did, sir, as her husband had told her.

Q. Did someone tell you this? A. No one.

Q. How do you know, then, she put it in the safe? A. I took it for granted that she would do that, just as you would.

Q. Is some of the other testimony that you gave, particularly as to the date, taken for

granted, or are you sure of it? Are you taking some of the other testimony for granted? A. No, sir.

Q. You are sure it was on this particular date that it was signed? A. Why, of course.

Q. And you saw it signed? A. I did.

Q. Where was it signed? A. At the house.

Q. In the dining-room? A. No, the living-room.

Q. And nobody else was in the hotel? A. No

Q. Was there conversation about the check before it was signed? A. No, he signed it and then he said, "This is for Stanley Sculthorp when he calls for it; you got to fill it in", and it was for $5,000.

Q. What time was that? A. 8:30.

Q. How do you know that is the check? You don't know it, do you? A. No.

Q. You have seen him sign many checks? A. Yes.

Q. So you don't know, as a matter of fact, that that is the check he signed, do you? A. I will tell you—

Q. Most of your testimony here is taken for granted? A. All I know is that I saw her taking the check to the safe.

Q. You are taking it for granted that that is the check? A. I can't tell that.

RE-DIRECT EXAMINATION by Mr. Eichmann:

Q. Did you see where the check was signed? A. Well, I saw him sign it at the bottom.

Q. Where was it signed, I mean; in what room in the hotel? A. In the living-room.

Q. And on what piece of furniture? A. On the desk.

Q. Was there any ink on the desk? A. One bottle.

Q. Was there any other ink in the house? A. None at all.

Mr. Eichmann: I would like to call Mr. Falls at this time.

The Court: You may, so that he can get back.

Hearing of Wednesday, June 6, 1928, 2 P. M.

All counsel present as before.

OTHO EDWIN FALLS, sworn on behalf of the complainants, testified as follows:

Direct-examination by Mr. Eichmann:

Q. Where do you live? A. West Palm Beach, Florida.

Q. What is your profession? A. Attorney at law.

Q. What state? A. Florida.

Q. Where have you your office? A. I have my office in West Palm Beach, Florida, in the Harvey Building.

Q. Did you have your office there in the month of January, 1927? A. No, sir, I had my office in the Major Building at that time, and I had my office there until May, 1927, when I moved to the Harvey Building.

Q. In what city? A. West Palm Beach, Florida.

Q. When is the first time you ever met Mr. Steppanski and Mr. Jones, the complainants in this suit? A. On January 22, 1927.

Q. Where did you meet them? A. I met them in my office in the Major Building. They were brought to my office by a client of mine named Mr. Michael Moscovich and introduced by Mr. Moscovich to me.

Q. And you had a conference with them? A. I did.

Q. What did you do after you had that conference? A. I made a search of certain records of Palm Beach, Florida, for Mr. Steppanski and Mr. Jones.

Q. Did you have any further conference with Steppanski and Jones? A. I did.

Q. When was that? A. Several days later when they were in my office, when I reported to them the result of the search of the records in the county court-house.

Q. Had you completed your search? A. No, sir; I had not.

Q. And when was your next conference with Steppanski and Jones? A. My next conference with them was on January 26, 1927.

Q. What happened then? A. At that time Mr. Steppanski and Jones showed me a statement which was given to them by one Jesse L. Sculthorp.

Q. I show you Exhibit C-45 and ask you whether that is the statement which they showed you? A. That is the same statement.

Q. Had you then completed your search? A. I had.

Q. I show you Exhibits C-14, C-9, C-10 and C-11, and ask you whether or not in your examination of the records you found the record of those deeds? A. These are exemplified copies of the deeds which I saw on record.

Q. Then what did you do? A. I told Messrs. Steppanski and Jones—

Q. Never mind what you told them; what did you do after you spoke to them? A. I went to Delray, Florida, with Steppanski and Jones to see Mr. J. L. Sculthorp.

Q. What happened then? A. We first went to the office of Mr. Sculthorp on Atlantic, at Delray, Florida, and Mr. Sculthorp was not in his office. Then we went out to his house at Lake Ida Gardens, stopped on the way and looked in the field, and he was not there; and we then drove on up to his house. We saw Mrs. Sculthorp, J. L. Sculthorp's wife, and she told us that he would be back in a short time. We then waited for Mr. Sculthorp a few minutes, not over 10 minutes, and Mr. Sculthorp came driving up in his automobile. At that time we were outside, and he got out at the garage and Mr. Steppanski introduced me to Mr. Sculthorp.

Mr. Sculthorp then invited us all into his house, so we went in the living-room. Mrs. Sculthorp went on to another part of the house. I told Mr. Sculthorp that I had been retained by Messrs. Steppanski and Jones; that if he did not wish to answer any of my questions now he could get himself an attorney and we could go over the facts with his attorney.

He said, "I will be glad to answer any question."

I said, "Well, I have made a search of the records at the Palm Beach court-house, and I find there the revenue stamps attached to three deeds by which you acquired title to three tracts of land included in Lake Ida Gardens, and that the revenue stamps amount to $67.50 that were attached or affixed to those deeds." I said, "By this statement which is shown to me by Messrs. Steppanski and Jones this morning and obtained from you, you state that the sum of $100,000 was paid for these three tracts of land. I would like you, Mr. Sculthorp, to tell me the reason for this discrepancy in the price."

Mr. Sculthorp refused to answer the question.

Q. What did he say? A. He just said, "I will refuse to answer the question."

Q. Then what happened? A. I then asked Mr. Sculthorp why did he later reconvey the three tracts of land from the corporation to himself? And he replied that he did that act for the good of the company.

I then told Mr. Sculthorp that I wanted a conference between himself and his attorney and I wanted it to be held in my office not later than 3 o'clock the following day.

The next day, about 2 o'clock in the afternoon, I received in my office a telephone call from the office of Messrs. Kearley & Fisher, attorneys of West Palm Beach, Florida, and they stated to me that Mr. Kearley at that time represented Mr. Sculthorp and would I not bring my man over to his office for that conference, to which request I agreed.

We went over to Mr. Kearley's office and at that time, in the waiting-room, was Mr. Sculthorp. I had with me Mr. Steppanski and Mr. Jones. When Mr. Kearley got through with what he was occupied he called us in his private office, the door was closed, and he says: "Falls, what's the trouble here?"

I says, "Mr. Kearley, do you understand the facts in this case?"

He replied that he did.

And I then asked Mr. Sculthorp to explain to me the discrepancy, and asked him how much he paid for that property, and Mr. Kearley said it didn't matter what he paid for that property.

Then Mr. Kearley called in his stenographer, or one of his stenographers, and said, "Bring in that deed from J. L. Sculthorp and wife to the Sculthorp Realty Company", and when she brought it in I asked Mr. Kearley to let me look over that deed to see what it was, and I looked at it and it was a deed dated at the time of reconveying the property from J. L. Sculthorp and wife to the Sculthorp Realty Company.

Q. I show you Exhibit C-46, and ask you whether that is an exemplified copy of the deed he showed you? A. It is. That conference was held on January 27, 1927, and that deed was dated the same day.

I says, "Mr. Kearley, we can't accept that deed by which J. L. Sculthorp and wife are trying to reconvey this property back to the corporation without a meeting of the board of directors."

And Kearley spoke up and said, "He conveyed it from the corporation to himself without a meet-

ing of the board of directors and I guess he can now; it will be all right for him to convey it back to the corporation without a meeting of the board of directors."

Then Mr. Steppanski said, "Why is it, Mr. Sculthorp, that we sent you some money in August and then you took title to the property—all the property—in September, 1925?"

And Mr. Sculthorp said, "Well, I admit that I did wrong in that particular case"; that was in regard to the property, the third tract, bought from Gordon Davis and Rose M. Davis, his wife. And then I told Mr. Kearley that we wanted our money back.

Mr. Sculthorp said that he was broke, and did we want to put more money in the property or not.

Then I got up and said, "Gentlemen, these clients of mine have been defrauded and we demand our money back." Mr. Steppanski then instructed me to proceed, both civilly and criminally against Mr. Sculthorp, and we walked out of the office.

Q. What was the next thing that you did? A. The next thing that I did after that conference was to endeavor to get all the facts in the case from Mr. Steppanski and Jones, and I went over to the court-house to see if there were any records I had missed. I took down some of the facts, all that I could get at the time of facts in the case and interviewed my clients, and I recommended to them to bring suit, civilly, against Mr. Sculthorp, but I told him to hold off for the time being on any criminal prosecution.

Q. Did you have any conference with Sculthorp after that? A. The only conference I had with them before they went North lasted two hours after that.

Q. The question is whether you had any conference with Sculthorp. A. Oh no, not until after Steppanski went away, and I had several conferences after that.

Q. When was the first conference you had after the complainants left Florida? A. Possibly February 1st, 1927.

Q. What happened then? A. First, I called up Mr. Kearley and asked him would it be all right for me to go down and interview Sculthorp, I had some questions I wanted to ask him. What I was after was to obtain the originals of the records of the corporation, the Sculthorp Realty Company of Florida.

Mr. Kearley said, "Yes, it would be all right." I guess it was over the telephone. I then called up a Mr. C. Y. Burd, attorney at Delray who had incorporated the corporation and done some work for Mr. Sculthorp, and asked him if it would be all right for me to come down, and he said it was all right for me to do so; and after I obtained the consent of those attorneys I went down to Delray, Florida, West Palm Beach, and I saw Mr. Sculthorp, and I told him that I wanted for my clients, Steppanski and Jones, the records of the corporation.

Mr. Sculthorp said they weren't there, they were up North, but he would be glad to get them down there in Florida for my inspection. And I asked him where they were, and he said in his safe up at Atlantic Highlands, New Jersey.

I asked him if anyone up there had the combination of the safe, and he said, "No." Then I asked him did he know of any code by which I could send that by wire.

He said, "No." But he said, "I will write my son Stanley Sculthorp and have him send the books down to me," which he did right away, according to what he said to me. That is what he told me.

Q. He told you, but he didn't write the letter in your presence? A. No, sir, he didn't write the letter in my presence. Then I went back to West Palm Beach, and the records were not forthcoming. I had several telegrams from Mr. Steppanski, and I sent back several telegrams, in regard to whether I had obtained the records or not.

Finally on February 7, after I had endeavored to obtain them, I got in touch with Mr. Kearley, and he told me he had instructed Mr. Sculthorp to turn those records over to me. I then went down to Delray, Florida, I think it was February the 8th, 1927, and Mr. Sculthorp said the records were on the way from the North and I could get them the following Monday.

Q. Who told you that? A. Mr. Sculthorp. Well, the following Monday rolled away and the records were not forthcoming; so then, following the instructions of my clients, I instituted proceedings.

Q. When did you institute suit? A. Immediately in the Circuit Court.

Q. Were Steppanski and Jones in Florida at the time you prepared the complaint? A. No,

sir; they weren't; they had left January 8th, 1927.

Q. Did you read the complaint to Steppanski and Jones before filing it? A. I did not; they were in New Jersey at the time.

Q. Did you send them a copy at the time you filed the complaint? A. I did not.

Q. Or previous to the filing of the complaint? A. No, sir.

Q. When did you first send Steppanski or Jones, or either of them, a copy of the complaint? A. In reply to a letter of Mr. Steppanski on May 21, 1927.

Q. Have you the letter which you received from Mr. Steppanski requesting a copy of the complaint? A. It is among the records there.

Q. I show you a letter written by yourself to Steppanski, dated May 26, 1927; is that the letter? A. That is the letter. I thought it was in with these papers here.

Q. In that letter did you enclose a copy of the complaint? A. I did. That is the time I sent it to them.

Mr. Eichmann: I offer that.

Mr. Quinn: I object, and I assume that is trying to prove on a certain date the papers were sent. I think that is sufficient without putting in a letter to establish the fact.

Mr. Steppanski: It is corroborative of the fact that the complaint was sent to the complainants not earlier than May 26, three months after the complaint was filed.

Mr. Quinn: I don't think I even dispute that fact.

Mr. Eichmann: Oh, well, if you don't dispute it.

Mr. Quinn: I assume that counsel sent copies.

Mr. Eichmann: I withdraw the offer.

CROSS-EXAMINATION by Mr. Quinn:

Q. Mr. Falls, is it not true that Mr. Sculthorp refused to talk with you until he had seen his attorney? A. No, sir; he did not.

Q. However, the next day a conference was arranged with his attorney? A. That is correct.

Q. He was perfectly willing to discuss this question with you, providing his attorney was present? A. I can't say that; that is a conclusion. Are you asking me whether he said it or whether it was my conclusion?

Q. As a result of your conversation with him on that day. A. No, I was the one.

Q. As a result of your conversation with him that day he agreed to meet you with his attorney on the following day? A. I requested him to meet me the following day. I told him I wanted him to meet me about three o'clock that day.

Q. Now, you say the statement was shown to you in which it was stated that the land cost $100,000; where is that statement? A. I think the statement has been put in evidence.

Q. Wherein in that statement does it show that the land cost $100,000? A. I don't see that it does come right out and say $100,000.

Q. What you did, you assumed from what your clients had told you? A. That that statement is correct.

Q. But you didn't know whether that property had been turned over to the corporation for $100,000 or not? A. I couldn't definitely say. I wasn't present at any closing and I don't know whether it was or not, no.

Q. Now, Mr. Sculthorp, you said something about being wrong with respect to one piece of property which was purchased in September? A. Yes, sir.

Q. Mr. Falls, particularly at this time, is it not a fact that all purchases, or most purchases, in the South were made upon contracts, and they simply transferred their contracts? A. There was much of that done.

Q. Well, the greater proportion of the sales was done in that way? A. I don't know that the greatest proportion was, but I know that a great many of them were.

Q. Wasn't it done for the reason that it would be months before you could get the deed back? A. I wouldn't say it would be months.

Q. And they just transferred their contracts from time to time? A. Yes, sir; and it is true that the County Clerk's office was behind some six or eight weeks before you got your original deed back.

Q. You knew that Mr. Sculthorp had purchased these three pieces of land by contract back in June, 1925? A. No, I didn't know it at that time.

Q. Do you know it now, Mr. Falls? A. All I know and what I went by were the deeds that I saw on record. The deeds did not make any reference to contracts of purchases, or whatever they were.

Q. So that you didn't know that the purchase of all three tracts of land was made by Mr. Sculthorp in June, 1925? A. All I know is when the record title passed—when the warranty deed passed.

Q. You made no investigation as to the time of the contracts? A. I did not; I knew of agreements to that effect.

Q. Are they the exact words of Mr. Sculthorp? A. Either that or substantially that; that is the meaning that was conveyed to my mind.

Q. And didn't that have reference to the fact that the deed was late in coming back? A. Not to my own mind; it did not mean that.

Q. So that the information you are giving to the court is what you assumed from a general conversation? A. No, what we charged him with and his reply.

Q. Mr. Falls, if it was the practice on a number of sales made in that way in Florida why didn't you investigate as to when the contracts were made? A. Because, in the majority of cases the contracts were not placed on record.

Q. Why didn't you investigate? You had a conference with Mr. Sculthorp's attorney asking for certain information? A. I did.

Q. You didn't ask him for information as to when these properties were bought on contract. A. Mr. Sculthorp's attorneys were not supposed to give any information.

Q. I understood you to say at one time he said to you to go and talk with him. A. Yes, but as to obtaining any facts from his attorney I never did obtain them.

Q. And you started this suit in February, 1927? A. Yes, sir.

Q. Approximately three months after that you sent a copy of the complaint to Mr. Jones and Mr. Steppanski? A. That's right.

Q. And prior to the time of your preparation of the complaint you had gotten certain figures and dates from your clients? A. Yes, after I had gone over the complaint.

Q. And if you sent the copy of the complaint some three months afterwards, the date of the complaint remained the same? A. I didn't alter the date of the complaints.

Q. You gave no instructions for that? A. I gave no instructions, no.

Q. A couple of months ago you were at the office of Burd & Porter, were you not? A. Yes, sir.

Q. Mr. Sculthorp's attorneys? A. Yes, that is correct.

RE-DIRECT-EXAMINATION by Mr. Eichmann:

Q. I show you this statement, Exhibit C-45; can you tell me which of these properties refer to the three tracts in Lake Ida Gardens? A. The first tract is popularly known as the Plotner property, listed at $67,500. The second tract is that listed as the Byrd Brothers property, $17,500. The property known as the Davis property, the third one, is listed at $15,000.

Q. What is the total of those three tracts?

The Court: $100,000.

Q. $100,000 does not appear in the statement? A. The figure $100,000 does not appear, but the total price of the property added up does. There is where I got that information.

Q. Now, when you sent the copy of the complaint to Steppanski was that around the time that the Florida suit was discontinued? A. It was.

Mr. Quinn: That is not re-direct.

Mr. Eichmann: Certain facts were brought out on cross-examination as to whether he attempted to correct the declaration, and I want to bring out that there was no necessity.

The Court: I understand the objection to be that the question assumes a fact of which there is no proof, namely, that there was never any discontinuance of the Florida action.

Mr. Eichmann: That is in evidence, because transcript has been introduced.

The Court: I thought Mr. Eichmann's question was that the suit was discontinued.

Mr. Quinn: The demurrer is filed with the record and the demurrer sustained.

JOHN E. JONES sworn on behalf of the complainants, testified as follows:

Direct-examination by Mr. Eichmann:

Q. Where do you live? A. 14 Sea View Ave., Keansburg, N. J.

Q. What business are you in? A. Salesman for coal.

Q. Are you one of the complainants in this suit? A. I am.

Q. When did you have your first conversation with Jesse L. Sculthorp, with reference to the matters involved in this case? A. About the latter part of April or the first part of May; about the first of May, I will say.

Q. What year? A. 1925.

Q. Where was the conversation? A. Keansburg, N. J., on the board walk.

Q. Who were present? A. Mr. Sculthorp and myself.

Q. What was the conversation? A. Mr. Sculthorp said, "Have you heard that I made some money in Florida?"

I said, "No, I have not."

He said, "Well, you know Webb, a clerk in our office?"

I said, "Yes."

He said, "Webb cleaned up $80,000 there last year."

I said, "Gee, that's great; I'd like to clean up $80,000."

And he says, "Since I have been back there are a number of relatives and friends all over Keansburg and Atlantic Highlands who came

for me to invest their money", and he said, "I don't want to bother with them, but if you had a little money you wanted to invest I would advise you to get in down there."

I says, "I don't know, but still if there is a lot of money to be made I would like to get in down there."

And he says, "It is good and I will let you in on it." And he says, "I don't need you but I will let you in."

And I says, "I will take a chance on $5,000."

Q. Is that the entire conversation? A. That was that entire conversation.

Q. When was your next conversation with Sculthorp? A. The next conversation was about —I think about May the 9th.

Q. Where was that? A. In front of my house at Keansburg.

Q. Who were present? A. Sculthorp and I.

Q. What was that conversation? A. Sculthorp came to me and said that Steppanski was going in also. He says, "That doesn't make any difference to you?"

And I says, "Not at all."

He says, "I am to come back this afternoon and talk it over with him," and I said, "All right."

Q. What was the time of that conversation? A. I guess about half-past 9 or 10 o'clock; I'm not sure.

Q. Morning or evening? A. In the morning.

Q. Where was your next conference with Sculthorp? A. That night.

Q. What time? A. Around 5 or half-past 5.

Q. Who were present? A. Steppanski, Sculthorp and myself.

Q. Where was that? A. In front of Steppanski's house, known as "The White House" in Keansburg.

Q. What was that conversation? A. Sculthorp said, "Ed, have you decided what you want to do?"

And he says, "Oh yes, I have decided to go into it", and he says, "Let's walk upon the porch and talk it over"; and so we went up on his porch to the White House, and Sculthorp then said: "We will form a little corporation and there'll only be the three of us in it, and we will all be officers and we will know everything that is going on."

And I says, "That's all right", and I think Steppanski said it was all right also.

And then he said, "If I got anything down there I would buy in trust for the company that is to be formed, and as soon as the company is formed I will turn the property over to the company at the best price I can buy it at."

Q. Anything else? A. Yes, he then said that he expected to go down in a day or two on business for the other company—with his company; I don't know what other company, his company; and the only thing is that if he went down the only thing he said was, in case they require more money than he expected he would notify Stanley and Stanley could get in touch with us and we could give him whatever Stanley called for that we needed.

Q. Was that the end of the conference or was there anything else? A. I think that was about the end.

Q. When was the next conference with Sculthorp? A. Why, about—why, I didn't have any other conference with Sculthorp. Oh yes, I had seen him a number of times there, pretty much every day, and I would ask, "When are you going down?" and he said, "I am delayed here for some time, but I expect to get off any minute—any time."

Q. Do you know about when he went down? A. I think about May 25th. It was the latter part of May, anyhow.

Q. And do you know when he returned? A. He returned the latter part of June.

Q. Did you have any communication with Sculthorp while he was down in Florida between the end of May and the end of June? A. No, but Stanley Sculthorp—

Q. Did you have a conference with Stanley? A. I did.

Q. When? A. About June the 10th, I think.

Q. 1925? A. 1925.

Q. What happened? A. He came to my house from business in New York, and Mrs. Jones said—

Q. Never mind what she said; what did you do? A. I went to Atlantic Highlands myself with my wife, and Stanley came out in front of the door and put his foot on my running-board and the door was open, and he said, "I have got a telegram from Pop and he has got something good down there."

Mr. Eichmann: I call for the production of the telegram sent.

Mr. Quinn: We have always denied any such telegram was in existence and, therefore, we haven't got it.

Q. You may proceed. A. That would cost considerable more money than he expected to buy it for, and he wanted to know if I would increase my investment $5,000.

And I said, "Stanley, I did not intend to go into this thing for over $5,000; but what does Steppanski say about going in?"

And he says, "Steppanski has agreed to go in."

And I said, "I will go in also."

Q. Is that all? A. I think that was all at that time.

Q. Then how soon after Sculthorp's return from Florida did you see Sculthorp? A. Why, I think it may have been a day or two.

Q. And that was the end of June? A. The latter part of June.

Q. And who were present at the conference? A. Why, Steppanski, Sculthorp and myself.

Q. What was the conversation? A. Why, I said, "Sculthorp, did you get anything?" and he said, "No, I did not get anything, but I for an option on three tracts of land down there, and the best price they will take for it is $100,000.

And I think I said, "How big is it?"

And he said, "About 25 acres; but I am trying to buy a lake acreage for $4,000 an acre; I don't know whether I will succeed or not."

Q. Is that all? A. I think I said, "What do you think of it; is it all right?"

And he says, "Yes, it is all right at $5,000 an acre."

And I said, "I will leave that all to you."

Q. When was your next conference with Sculthorp? A. I think between that time and August the 21st, I was over there pretty near every week.

Q. Let us have the next conference you had with him. When was that? A. I think about the 8th of July.

Q. Who were present? A. Mr. Sculthorp, Steppanski and myself.

Q. What was said? A. I said, "Have you heard anything in regard to the property?" and he said, "No, we have not got it yet."

Q. When was the next conference? A. I think it was on the 15th or 16th; I am not quite sure.

Q. What month? A. Of July, 1925.

Q. Who were present? A. Sculthorp, Steppanski and myself.

Q. What was the conference? A. Either Steppanski or I asked Sculthorp if he had anything yet, and he said, "No, he had not."

Q. When was the next conference? A. About a week after that.

Q. What was that? A. Why, we asked him again if he had anything, and he replied that up to that time he found out everything was coming out all right.

Q. What date was that? A. That, I think, was about August 5th.

Q. When was your next conference? A. Well, about a week again, I might say.

Q. About what date? A. The 13th, I guess, or the 12th.

Q. What was the conference? A. We asked him if he had anything and it was the same as the others; no, he had not heard anything but we ought to hear most any day.

Q. When was your next conference? A. The next one would be about a week later, I would say.

Q. On what date? A. That would be about the 19th.

Q. What was that conference? A. We asked him if he had heard anything and he said no, not yet, but he expected to hear any minute.

Q. When was your next conference? A. I think the next conference was the 21st of August, a couple of days afterwards, 1925.

Q. Who were present? A. Mr. Steppanski, Mr. Sculthorp and myself.

Q. What was the conversation? A. Sculthorp said, "Boys, I have got the property all straightened out."

I said, "Did you get it?"

And he said, "Yes; but I have got to have some money at once."

Either Steppanski or I said, "I don't know; how much money do you need?"

And he said, "Well, I will need about $5,000 now from each one of you; can you spare five thousand?"

And I said, "Mr. Sculthorp, I have got the money, but the only question is, it is in a savings bank account and I will have to have a day or so in order to transfer the savings from my savings account to my check account."

And he said that would be all right but not to make it later than that; that he needed the money

right away. And Steppanski said, "I can let you have my money right away" and he left and went across to the White House and paid Sculthorp $5,000; and on the 25th I paid my $5,000 to Mr. Sculthorp.

Q. What was the next conference you had with Sculthorp after the 21st of August? A. I don't know of any conference.

Q. Did you meet him after the 21st of August? A. Why, several times during September.

Q. In the month of August, I mean. I show you a check dated August 25, 1925, made by yourself, for $5,000 to Sculthorp; did you give that check to Mr. Sculthorp? A. I did.

Mr. Eichmann: I offer that in evidence.

(Admitted and marked C-51.)

Q. What happened next? A. On August 26th Mr. Sculthorp, and Mr. Steppanski called at my house in an automobile, and we drove from there to Atlantic Highlands.

Q. What happened? A. Why, on the way over in the car I asked Sculthorp—I said, "Did you get the property for any less?" and he said no, he had to pay the full price but he had done the best he could.

I said, "That's all right", and then he said that he was going to take his son Stanley in for $5,000 worth of stock in the company. Stanley was attending to his business and he wanted to encourage Stanley along and if he didn't make good he says, "I will take it away from him again."

Q. Was there anything else said on that trip? A. Not that I can remember just now.

Q. Where did you go? A. We went to Atlantic Highlands and met Stanley Sculthorp, and we went to an office on the main street at Atlantic Highlands.

Q. What did you do there? A. Why, we signed the corporation papers. But on the way over Mr. Sculthorp had said, "You don't need to pay any attention to the officers in this certificate of incorporation, as our first meeting will be in January and we will elect permanent officers at that time. I am only doing this to get out incorporation papers."

Q. Was there any other conference that you can recall on your way to that office? A. Mr. Sculthorp said that he had told us that before he went away he was going to buy the property in trust for the corporation, as the corporation was not in existence and, therefore, could not take title in the corporation's name, but he had, therefore, bought it in his own name but would turn it over to the corporation as soon as the corporation was formed.

And I says, when he asked us "is that all right", "that is satisfactory to me."

Q. You went down to Florida in the fall of 1925? A. Yes, sir.

Q. Prior to going down did you have any talk with Mr. Sculthorp?

(The witness pauses.)

Q. How did you happen to go down? A. Why during that month I met Mr. Sculthorp mostly every day; I walked on the board walk with him—

Q. What month was that? A. The latter part of August to the first of September—around there.

Q. 1925? A. 1925.

Q. Yes, proceed. A. And Mr. Sculthorp suggested that we all get together and go down to Florida and look the property over and to see our development and get everything in shape to go ahead and do business.

Q. When did you go down? A. I think about October the 6th.

Q. What did you do while you were down there? A. Why, we went to Jacksonville by boat from Philadelphia and Mr. Sculthorp took with him an automobile, and we drove from Jacksonville to different towns. I had never been in Florida in my life, and we drove through different towns and while on our way—well, Mr. Sculthorp says we only had about 25 acres in Delray and we might sell that off in a very short time and when we did that we would have nothing else to continue on with, and if we could pick up something cheap on the way down he thought we ought to do it.

And I said that was agreeable to me, and I believe Steppanski agreed also. And we drove from one town to another until we struck a town called Kingsborough. It was quite a prosperous town and it was in the center of the state about 75 miles south of Jacksonville, and the boom hadn't really hit the place yet, but it had hit it later on; and we got in touch with a man named Strongfellow who took us out and showed us two

tracts of land, and we took photographs ourselves of the land, and Mr. Sculthorp says, "I think we ought to pick this up."

I says, "All right, it is agreeable to me." Steppanski, I believe, agreed just the same as I did.

Q. Then what did you do? A. Then we drove to Delray.

Q. What did you do at Delray? A. At Delray—we arrived in there early in the morning, I will say about two or three o'clock, and we put up at Mr. Harry Sculthorp's bungalow on the beach in Delray. In the morning Mr. Sculthorp says, "Boys, do you want to go over and look at the property?"

And I said, "Yes." I don't know what Steppanski said, but he was in it, and we started to go and look at the property. A part of it was under water, and Mr. Sculthorp says, "Only a little fill is needed; we are going to get about $7,000 for those lots anyway. We will go around and get our contracts and so forth and see what we can do"; and we went to the municipal building and found out about checking bills and about concrete roads, and the few days while we were down there I think I was on that property about three times.

Q. How long did you spend on each occasion? A. Half an hour or an hour. There was nothing there; there was nothing to do; we couldn't do anything.

Q. Then what did you do? Did you go to any of the other towns? A. Why, a few days after—while we were there, I don't just exactly remember the date, but while we were there Mr. Step-

panski went over to spend the night in Palm Beach with some friends of his, and he came back and said this friend of his had some good property in the town of Boynton, which was about six miles north of Delray, and he thought we might be interested; and so Mr. Sculthorp and Mr. Steppanski drove to Boynton and we looked over this property, and the property was nice; it was a corner lot. Mr. Sculthorp thought a store could be built there, or it could be divided up into three lots and three inside lots on the main street. And he said, "What do you think of it?" Mr. Sculthorp said, "I think it is fine property; we can pick this up and turn it over and pay our expenses."

So Steppanski was engaged to get that land and I agreed. And so Mr. Moskovich said that the purchase price on the three lots would be about $11,000. And Mr. Sculthorp said that the company had no more money at that time to invest, but finally we took those four lots outside of the corporation, and we were willing to do that by each one putting in 25%. And I said, "Mr. Sculthorp, I haven't got any money with me."

And Mr. Sculthorp replied, "That's all right, you can fix it up with me later, can't you?"

And I said, "Yes, I will."

Q. Just a minute: I show you a check made in January, 1926, by yourself to Sculthorp Realty Company for $600 and ask you if that it your check that you gave? A. That is the check that I gave to Sculthorp. I didn't put any money up at that time as Mr. Sculthorp was willing to take

the money when I got back January 20th. I then signed a check for $690 in payment of that property.

Mr. Eichmann: I offer the check in evidence.

(Admitted and marked Exhibit P-52.)

The Court: That is one of the claims that is eliminated?

Mr. Eichmann: That is one that is eliminated from the claims.

Q. While you were down there in Delray did you make any statement to Sculthorp in connection with the corporation? A. I did.

Q. On what day? A. Well, Mr. Sculthorp asked Mr. Steppanski and me for money down there, and I think Mr. Steppanski gave him $5,000 sometime before I did, because I told Sculthorp that I had no money and that I had some money in my savings account in the bank and I would have to transfer it to my checking account, and the best I could give him was $2,000; and I made my wife deposit $2,000 in the bank in my checking account, which she did, and I gave Sculthorp a check in October, 1926.

Mr. Eichmann: I offer this check of October 6, 1925, for $2,000.

(Admitted and marked Exhibit P-53.)

Q. Did anything else happen while you were down there in Delray, Florida? A. Yes, about the 27th of October, 1925, Mr. Steppanski and I went in an automobile on Atlantic Avenue, and

Mr. Sculthorp said, "Boys, I will have to leave you a few minutes; I will have to go up and see my lawyer on some other business.

The Court: When was this?

A. October 27, 1925. "I have to go up and talk to my lawyer on some other business", and he did. We waited downstairs—

Q. What time of day was that? A. Oh, half-past 9 or 10 o'clock, maybe a little later.

Q. Morning or evening? A. Morning. And Mr. Sculthorp came down after being up there quite some time, and he said, "Would you like to meet Mr. Burd while you are down here, or do you want to wait until we come in January?"

And I said I would like to meet him.

And Mr. Sculthorp took us upstairs and introduced us to a man by the name of Burd. That is, I think it was Burd; I'm not sure but I think it was Burd. But he said, "Mr. Burd, I want you to meet Mr. Jones and Mr. Steppanski; these are the two men who are interested in Lake Ida Garden"; and Mr. Burd said, "I am very glad to meet you, gentlemen, and I wish you all the success in the world and hope you will make a lot of money. All I can tell you at this time is that Mr. Sculthorp has deeded the property over to the company."

Q. Was there anything else said? Was there any meeting of the Sculthorp Realty Company? A. Absolutely not. I was only there about five or ten minutes.

Q. Was there any discussion at that time, at that place, about Sculthorp turning over the

property to the company at a profit to himself? A. Positively no.

Q. Were you ever in Burd's office before that time? A. Never in my life.

Q. Were you ever in Burd's office after that time? A. Never in my life.

Q. Were you in Burd's office on October 27, 1925, at 10 p. m.? A. No, I never was there at any time only that one morning around 10 or 11 o'clock.

Q. When did you return from Florida? A. I think we left Florida around the 28th or 29th, I'm not sure.

Q. What month? A. I wanted to get home in time for my daughter's birthday November 1st.

Q. When did Sculthorp return to New Jersey? A. I think about two weeks or a little more after that.

Q. Had you held any meeting of the company? A. Yes, on November 21st, we held a meeting in Sculthorp's house in Atlantic Highlands.

Q. Had there been any meeting of the company before that date? A. Never to my knowledge. We never knew of any meeting.

Q. What happened on that day? A. Why, Mr. Sculthorp went over some matters, but nothing of importance. We found out what it was going to cost for poles and pipe and sidewalks, and so forth.

Q. Did Mr. Sculthorp go down to Florida after that? A. Yes, I think he went down again around —well, about the middle of January.

Q. And when did he return? A. About May.

Q. What year? A. 1926.

Q. And upon his return from Florida did you have any conference with him? A. Yes.

Q. What month? A. In the month of May. Mr. Sculthorp, Mrs. Sculthorp, and Kitty Sculthorp, and her husband Milton Kruse, came to Mr. Steppanski's White House in Keansburg. Mr. Steppanski, I think, called me over, or I went over, I don't know which. I lived only a few doors from him. And Mr. Sculthorp said that he was sorry that things didn't turn out as good as he thought but it would require a little patience, and the one thing he stressed was he needed money and he had to have some money to meet some incoming payments.

I said, "Mr. Sculthorp, how much money do you need? Where is the statement; what is due? I have never seen anything up to this time."

He said, "Well, that's right, but it is down in Florida and I am busy, I forgot to get it." He said, "I can give you an approximate statement; I don't mean a statement that is to a cent but within a few hundred dollars. Is that all right?"

I said, "Certainly, give us that approximate statement."

So about a week after he drove up to my house in Keansburg and blew his horn and I came downstairs, and he handed me the statement.

Q. Is this the statement he handed you (counsel showing witness Exhibit C-20)? A. That's the statement.

Q. What happened then after he gave you that statement? A. I asked him—I said, "Mr. Sculthorp, how is it that we bought this property in August and we have to pay interest from June and July?"

And he said, "Didn't I tell you I bought it on an option, and the custom is down there that we have to pay interest from the date of the option."

I says, "All right."

This statement had a question mark on it, "M and S Burd Office Bld. $1032.84." Mr. Steppanski says, "What is the question mark for, Mr. Sculthorp?"

"I don't know whether that cost $2,032 or a thousand and thirty-two, and I put the question mark there to remind me of it."

Q. Was there any discussion at that time regarding the statement on that approximate statement, "Total cost of acreage Sculthorp Building $100,000" or was there not? A. Not to my recollection.

Q. When was the next meeting of the Sculthorp Realty Company? A. August the 2d, on a Sunday.

Q. What year? A. 1926.

Q. What happened then? A. It was held in Sculthorp's office at Atlantic Highlands. Mr. Sculthorp said, "We have a number of payments coming due and we have got to have money."

And Mr. Steppanski says, "Well, how much money have you got to have? It is kind o' hitting me hard now."

And he says, "Stanley, will you draw up an itemized list of what Steppanski's share amounts to"; and Stanley drew up a list, and it was around 1165 or '66 some odd dollars.

Q. Did you have any conversation with Sculthorp in the month of October, 1926? A. I had no conversation at that time.

Q. I show you a deed, Exhibit C-23, dated October 18, 1926, made by the Sculthorp Realty Company to Jesse L. Sculthorp; did you know in the month of October, 1926, that such a deed was made? A. No.

Q. Did you know that such a deed was contemplated? A. Only—(witness pauses.)

Q. Suppose you tell us whatever conversation you had. A. I never saw this deed before, and the only thing I know is, that Mr. Burd told us that Mr. Sculthorp had deeded the property to the company. That was—

The Court: October 27, 1925.

Q. Mr. Burd had stated that Mr. Sculthorp had deeded the property to the company, but this was a deed, not by Sculthorp to the Sculthorp Realty Company but a deed from the Sculthorp Realty Company back to Sculthorp. A. Oh, I never heard of it.

Q. When did you first learn of the execution of this deed? A. Why, on January 22, 1927.

Q. Where? A. In the office of Mr. Falls.

Q. I show you four checks made by yourself to the Sculthorp Realty Company, one dated January 27, 1926, for $1,000; one dated January 30, 1926, for $1500; one dated March 4, 1926, for $250 and one dated April 4, 1926, for $250. Were those checks given to Mr. Sculthorp in payment on this corporation? A. They were for what was due.

Mr. Eichmann: I offer the four checks.

(Admitted and marked P-54.)

Q. I show you a statement showing the dates and amounts of payments which you made to Jesse L. Sculthorp in connection with this matter. A. Yes.

Q. And that includes the $690 paid in connection with the Boynton property? A. It does.

Mr. Eichmann: I offer this, too.

(Admitted and marked Exhibit P-55.)

Q. Now, what happened in the winter of 1926 and '7—at the end of 1926 and the beginning of 1927? A. Why, about the early part of January I received a registered letter from Mr. Sculthorp—

Q. Never mind about the letters; after various correspondence between yourself and Mr. Sculthorp what did you do? A. I went to Florida.

Q. With whom? A. Mr. Steppanski and myself.

Q. When did you go? A. About the 20th of January, I think.

Q. What year? A. 1927.

Q. All right; now what did you do when you got down there? A. Why, we arrived in Palm Beach about the 21st, and on the 22d of January —first, we went to Mr. Falls' office and asked him to look up some records pertaining to the property for us. We then went to Mr. Sculthorp's office on Atlantic Avenue, Delray. I met Mr. Sculthorp at the door, and Mr. Sculthorp said, "Boys, we can't hold this meeting here because there are other people in this store; we have only desk room. We had better go over to the house." We all drove over to the house. The meeting

opened, and I said, "Mr. Sculthorp, have you got that statement that I asked for?"

And he said, "Yes."

I said, "Will you let me have it?"

And he said, "Yes." So he gave it to me.

Q. I show you Exhibit C-44 and ask you whether that is the statement he gave you at that time. A. Yes.

Q. Proceed. A. Well, I used some pretty harsh words there. I don't know whether I ought to use them in court. I asked him if he called that a statement.

And he said, "Yes; what's the matter with it?"

I says, "That's no statement. You bring me down to Florida; you want money. I wrote and told you I am going to try to raise money if I get a statement signed by you."

And he says, "That's a statement."

"Why don't you give me a statement in regular form?" I said. "That's no statement."

Q. What happened? A. Well, he says, "If that statement didn't do we will have to adjourn the meeting until I have time to get up one." He asked us what kind of a statement we wanted and we told him. I says, "Mr. Sculthorp, you have been in the real estate business for years and been transacting business; you surely know how to get up a statement."

He says, "I don't know what you want."

I says, "A statement with assets and liabilities and everything, and just how the business stands, and then sign it, and then I will raise the money."

And he says, "All right, we will adjourn this meeting and I will give you the statement."

Q. When did you next see him? A. Why, the next day we went to Sculthorp's, on the 24th I think, which was Sunday, and Mr. Sculthorp was busy at the typewriter preparing the statement, and he says, "Boys, I have not got the statement ready yet; it is a lot of work, and if you will go outside and look the property over and see the sights and by that time we will have it ready."

We came back in the afternoon and the statement wasn't ready, and I think we went to the movies. I think we had supper and went to the movies, and went back.

Q. When did you go back? A. I think we stayed there that night. I'm not sure; and on the next day we went back.

Q. What day was that? A. That would be the 25th, and we saw Mr. Sculthorp, and the meeting opened and Mr. Sculthorp presented the statement.

Q. I show you Exhibit C-45 and ask you if that is the statement he showed you at that time? A. That is the statement.

Q. Tell us what took place. A. I took the statement and I immediately started to look for his signature, and on the back I noticed that the following appeared: "As officers of the Sculthorp Realty Company, Inc., of Florida, do hereby accept the said statement as herein specified, to the best of my knowledge and belief."

I says, "This isn't signed."

He says, "I have made spaces there for each one of you to sign it."

I says, "Why should I sign it; I don't know anything that has gone into it; I haven't seen anything of this company's accounts."

And he says, "Sign it, and we all will sign it and we will be satisfied", which I refused to do.

We then left and went—(witness pauses) It is pretty hard to give these things after three years. I think we then left and went back to Mr. Falls'.

Q. After you saw Mr. Falls what did you do? A. Why, Mr. Falls and Mr. Steppanski and I went back to Mr. Sculthorp's, and Mr. Sculthorp was not at the house at the time. We first looked for him at the office and he wasn't there, and Mrs. Sculthorp said Mr. Sculthorp would be along in a minute, and he did come along shortly after. And Mr. Steppanski introduced Mr. Falls to Mr. Sculthorp, and Mr. Falls told him that he had been retained by us to straighten out some matters; there seemed to be some discrepancy there and he says, "Can I talk to you for a few minutes?"

And Mr. Sculthorp says, "Yes, come right in."

And we went in the living-room and sat down, and Mr. Falls says, "There must be some discrepancy between the $100,000 price on the statement and the revenue stamps." At that time Mr. Falls told him he did not need to answer any questions unless he felt like it."

And he said, "All right."

And Mr. Falls said, "Can you explain that to me?"

And he says, "I refuse to answer that."

And then Mr. Falls said, "I have searched all the records and everything pertaining to this company, and there is another question I would

like to ask you: "Is the title of this land in the name of the corporation?"

And he said, "No."

And he says, "Why?"

And he said, "I done it for the good of the company."

Q. Do you recall a conversation that you had with Sculthorp on the beach? A. On the beach?

Q. Yes. A. Yes, I recall the conversation that I had on the beach, but I had told Sculthorp—I am a little mixed on dates. I know that Sculthorp and I and Mr. Steppanski were on the beach, and I told Sculthorp—I said, "Now, if you had let me put an accountant in here as I agreed to we would be all straightened out now."

"Well," he said, "You can put an accountant in if you want to."

And I says, "All right; maybe we can do it yet."

And he says, "You can put anybody in here but a Jew."

I says, "What difference does that make to you? If I got a court order the court wouldn't question it as long as he was an accountant."

But he said, "Anybody but a Jew can get up a statement."

Q. Did you have any further meeting with Sculthorp? A. Yes.

Q. Where? A. At the office of Kearley & Fisher.

Q. Who were present? A. Mr. Steppanski and Mr. Sculthorp, Mr. Kearley and myself.

Q. What happened? A. Mr. Kearley said, "Falls, what is the trouble; what's on your mind?"

And he said, "Mr. Kearley, do you understand this case?"

And he said, "I believe I do, Falls."

And Mr. Kearley then pressed the button and the young lady came in, and he said, "Bring in Mr. Sculthorp's deed", and she brought in Mr. Sculthorp's deed, and Mr. Kearley said, "Mr. Sculthorp is going to deed the property back to the company."

And Mr. Falls said, "Well, we are not interested in that; he can do that without a meeting of the board of directors."

And Mr. Kearley said, "Well, he didn't consult the board of directors when he deeded it to himself and there is nothing to prevent him from deeding it back without consulting the board of directors."

And Mr. Falls says, "Sculthorp, what did you pay for the property?"

Mr. Sculthorp says, "They know what it cost."

And Mr. Kearley said, "That is neither here nor there what it cost," or something of that sort. "If Mr. Sculthorp owned that property he could sell it at any price he wished."

Then Mr. Falls said, "What did you do with the $10,000 you got in August?"

And Mr. Sculthorp replied, "They got one piece and the other two pieces were mine."

And Mr. Falls said, "My clients have been defrauded. They want to rescind their contract and they want their money back."

Q. Is that all? A. That is about all.

Q. When did you return to New Jersey? A. I think we left there about the 28th of January and we arrived home on Sunday.

Q. When did you see Stanley? A. January the 31st.

Q. January 27th? A. Yes, the 27th.

Q. What happened? A. Steppanski and I drove down to Atlantic Highlands and drove up to Stanley's house, and he wasn't there; he was cleaning the automobile. We found him and we said, "Can we see the minutes of the Sculthorp Realty Company?" and he said, "Certainly"; and after he got cleaned up we took him down to the office, and after we got there Mr. Steppanski immediately started to copy.

Q. Did he do that in your presence? A. Yes, sir.

Q. I show you Exhibit C-47 and ask you whether that was made from the minutes when you were present? A. It was.

CROSS-EXAMINATION by Mr. Quinn:

Q. Mr. Jones, you say on May 1st, on the board walk in Keansburg, you had your first conversation with Mr. Sculthorp about Florida property, and you said you were discussing the profits made by various persons? A. No, sir; I didn't know anything about profits.

Q. Didn't you talk about other people making money? A. No, sir.

Q. Weren't you talking about the Gully house syndicate? A. No, sir.

Q. You don't know about that? A. No, sir; never heard of it.

Q. You never heard any of the syndicates discussed? A. No, sir.

Q. He talked to you about other people making money, then? A. He told me—

Q. Who did he tell you? A. Why, just about a clerk he had in his office by the name of Webb that had made $80,000.

Q. And he told you about many people who wanted to invest money with him? A. Yes.

Q. But he didn't want to bother with them? A. Yes.

Q. What reason did he give? Did he say it was a gamble down there? A. I don't know whether he did or not at that time.

Q. Did he say that later? A. Yes, he said it was a gamble. I knew it was a gamble.

Q. And then he finally said to you he would let you in on it? A. Yes.

Q. Did he tell you at the time he didn't need you? A. He had a plenty of money.

Q. How do you fix that date? A. It was about two weeks after the first.

Q. That would make it around May 14th? A. I can't tell the exact date.

Q. Why did you fix May the 9th? A. I guess it was on a Saturday.

Q. There are other Saturdays, too. A. It was on a Saturday around that day.

Q. Why did you fix it the 9th? A. It might have been May 16th; I can't say that.

Q. Did you hear Mr. Steppanski say on May 9th he had the conversation on the porch? A. I did.

Q. Is that the reason you fix it May 9th? A. No.

Q. You don't know whether it was May 9th or not that the conversation took place? A. I cannot remember the exact day.

Q. Now, you say on the porch, or at the time of that conversation on the porch, Mr. Sculthorp said he would buy at the best price he could? A. Yes.

Q. And at that time it was agreed to invest $5,000? A. Five thousand was not mentioned at that time.

Q. It was in reference to what? A. This transaction. He said he would buy the property at the best price he could and put it in at what it cost him.

Q. You knew at that time that investment in Florida was a gamble? A. Yes. When you make eighty thousand with five, I knew that was a gamble.

Q. You knew it because of other experiences down there? A. No, I didn't know anything about other experiences down there.

Q. You had heard about it? A. No.

Q. What made you think it was a gamble? A. Sculthorp told me that someone had invested five thousand and made eighty thousand dollars, and I thought if a man made that much money with so little money it certainly must be a gamble.

Q. Now, on June 10th you said you spoke to Stanley? A. About June 10th.

Q. Well, you said it was on June 10th; how do you fix that date? A. It was nine or ten days after Decoration Day.

Q. What day of the week was it? A. I don't remember.

Q. What was the year? A. To the best of my recollection it was three years ago.

Q. Did you hear Steppanski testify of a conversation around June 10th; is that the reason you fix the same date? A. No.

Q. You stated in your direct-examination that on May 9, June 10, July 8, 15, 22nd and 29th, August 5th, 12th and 19th and the 21st you and Mr. Steppanski went over to the home of Mr. Sculthorp; is that correct?

Mr. Eichmann: I object, because it is a mistake. The conversation of May 9th was not at the house.

Q. Well, on each of those occasions you have testified that Mr. Steppanski and you went over to see Mr. Sculthorp? A. Yes.

Q. And on each occasion he described what was being down down there? A. Yes.

Q. You expected to make money down there? A. Absolutely; I wanted to make some money.

Q. And that was the reason for your going over to Mr. Sculthorp's and asking him if he could get you in on it? A. Yes, but he had spoken to us already.

Q. But you were anxious to become interested with him? A. We had an agreement with him.

Q. He wasn't asking you to go in with him, was he? A. We had an agreement with him then.

Q. Answer my question: He wasn't asking you to go into it? A. He was going to let us in on it.

Q. After that date, the first of May you had a conversation with him? A. Yes, sir; we had an agreement.

Q. Did he, between May the 1st and August 21st did he ever send word to you or to Steppanski, or did he ask Steppanski in your presence to come in on the Florida deals? A. I got

in touch with Steppanski and he told me that Sculthorp wanted to see us.

Q. I am now talking about August. You testified on August 19th you went around there and inquired? A. Certainly.

Q. Sculthorp hadn't sent for you up to that time, neither had Mr. Sculthorp asked you or Mr. Steppanski to go in on the deal? A. We were already in on it.

Q. I am now referring to May; I am excluding May the 1st. After that date until August 14th, didn't you go over to his house so that he could discuss the Florida deals with you? A. We were already in it at that time.

Q. Did he ask you for any money the first of August? A. No, he asked for money August 21st.

Q. You know that the three properties mentioned in the bill of complaint were purchased on contract in the month of June, do you not? A. I don't get you.

Q. I will reframe the question: You recall the testimony in this case, that the three properties were purchased on contract sometime in the month of June? A. No.

Q. You don't know that? A. No.

Q. You didn't hear the testimony but you do know that it was purchased? A. I know we had an option.

Q. But you hadn't paid any money? A. I did August 21st, but he had an option long before that.

Q. You don't know that? A. We found that out later.

Q. Don't you know that the three properties in question which you mention in your bill of complaint were purchased under contract by Mr. Sculthorp sometime in the month of June, 1925? A. I didn't know whether they were purchased on contract, but he told me he had an option on it.

Q. You now know that these three properties were purchased under contract by Mr. Sculthorp before you put any money into the proposition? A. Yes.

Q. So that no part of your original investment went into the purchase of the lands under contract? A. No.

Q. Wasn't the reason that no money was given by you to purchase those lands under contract because it had never been discussed with Mr. Sculthorp? A. Absolutely no.

Q. Then do you know why Mr. Sculthorp never asked you for any money to purchase these lands under contract? A. No.

Q. Do you know of any reason today why he didn't do it? A. No.

Q. Do you know, or did you know at that time, Mr. Jones, that all of his money had purchased those three tracts in question? A. No.

Q. Did you ever ask Mr. Sculthorp why he didn't call on you for some money to purchase those lands under contract? A. Yes, sir.

Q. What did he say? A. He told me time and again that he had money down there at all times.

Q. So that he was using his money to buy property for your account? A. He was associated with me; I had an agreement with him.

Q. But you had no money invested in there then? A. No, he said he didn't need any money.

Q. Did he then tell you that he was using his money to buy property in trust for you? A. No. How can I tell whether he paid any money on the option or not?

Q. Now, after he came home on June 27th, Mr. Steppanski went to his house on the following day? A. I don't know; the latter part of June.

Q. He didn't send for you, did he; you went there of your own volition? A. We went all the time to meet him.

Q. Will you please confine your answers to my one question: He did not send for you or urge you to come and see him the day he came from Florida; you and Steppanski went there of your own volition, and you went there to find out about the Florida deals? A. I had an agreement with him.

Q. You still wanted to go into the land deals? A. I had an agreement.

Q. Now, on August 21st you gave him your first five thousand? A. Yes, sir.

Q. And when was your conversation with Stanley? A. On or about June the 10th.

Q. And he then asked you for another five thousand? A. Stanley said he heard from his father and wanted to know if we wouldn't be willing to increase the amount $5,000 because he had more property.

Q. As a matter of fact, you didn't even make your initial payment until August 21? A. He had an agreement with me when he went away and he was to call on me for some money, and he didn't

until August 21st, and I gave it to him when he asked for it.

Q. So that before you made the first payment he was asking you for your second payment? A. I can't get that.

Q. You say on June the 10th he asked you to increase the amount of your investment $5,000? A. I had an agreement as to putting the $5,000 in and he went down there and wanted to know if I would put in ten instead of five.

Q. When did you make your next payment after August 21st? A. I think October the 26th.

Q. You had some difficulty in raising the money, didn't you? A. Surely.

Q. Mr. Steppanski spoke to you on several occasions to make a payment? A. Surely.

Q. That was in payment for your interest? A. I never paid anything because I had never seen anything.

Q. Did you ever get any letters from Mr. Sculthorp telling you what the money was needed for? A. I got a lot of letters from Mr. Sculthorp but I don't recall what they were for.

Q. You don't recall what the money was needed for? A. Yes, I believe there were letters to that effect.

Q. You got many of them—great numbers of them? A. Yes, I got quite a few letters from them.

Q. Stating the reason for the request? A. No, I don't think I got many of them for that purpose.

Q. Did you know that Mr. Sculthorp was loaning money to the corporation? A. Only from what he said.

Q. Then you did know that he was loaning money to the corporation? A. Only from what he told me that he was borrowing money down at the bank.

Q. Don't you know that he was borrowing it himself and putting it in the company? A. No. I take that back. I know that he borrowed money, because they would not lend him money on the property. They would not take the property as security and they loaned the money personally to him to put in that property.

Q. So you knew that he was borrowing money personally and giving his own notes for it and putting that money in the corporation? A. I knew nothing concerning the company in any shape or form, and I had never seen anything.

Q. Why, didn't you write to him and tell him you knew he was borrowing money? A. I may have.

Q. Do you know how much he advanced? A. No, sir; because one time he would tell you that he advanced 25 or 50 thousand and the next time it was $12,000. I never heard anything definite regarding it.

Q. Did you look the books over when they were in the possession of the sergeant-at-arms? A. That was the first time I ever saw them.

Q. Did you see how much money? A. Yes. But I didn't believe he lost any money.

Q. How much he loaned, I say. A. I didn't believe he loaned any money.

Q. Where did you get that belief that he didn't loan any money to the company? A. When I looked at the books.

Q. Do you know whether you wrote him a letter stating that you knew he had loaned money? A. Yes.

Q. Do you know what bank he borrowed money from? A. Only one item that he told me about and I had never seen that. He told me he borrowed $4500 from the Delray bank.

Q. What is your business? A. Coal salesman.

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

Q. You travel around different sections of the country? A. No, right in New York, Jersey City and Greenville.

Q. And your business has been in the salesman line? A. Yes, sir.

Q. You said that Mr. Sculthorp requested that you and Mr. Steppanski come to Florida and look over the property so that you could get the development started? A. Yes, sir.

Q. How many times did he ask you to do that? A. Seven or eight times before we went. I don't know about Steppanski; he asked me seven or eight times before I went.

Q. And on your way down you bought other property did you not? A. Yes.

Q. Out of your corporate funds? A. Yes.

Q. You looked all the properties over? A. With Mr. Sculthorp.

Q. And he did agree that it was a good buy? A. Mr. Sculthorp agreed that it was a good buy, and I agreed with him, because I was never in the real estate business in my life.

Q. Now you are asking for the return of those moneys that were used in the purchase of the

Gainesville property? A. Because he has defrauded us from the beginning.

Q. What did he say about the Gainesville property that defrauded you? A. He didn't say anything, because that was a part of the corporation. The only thing that we bought outside of the corporation that he made any statement about was the Boynton property.

Q. Now, after you went to Florida you went out to look the land over? A. Certainly.

Q. And you examined it and you went around the section with reference to getting bids on different things pertaining to the development? A. Yes.

Q. You stayed at his brother's home? A. Yes, sir.

Q. Mr. Van Marder of the Atlantic Highlands Bank was there, was he not? A. I don't know whether he was at that time.

Q. And you were told to inspect the property and if you didn't like the investment or didn't like the property he would give you all your money back? A. Mr. Sculthorp told me at any time I was dissatisfied with my investment I could have my money back at any time.

Q. On this occasion, at the time you were in the South and after you investigated the property, and before you had put any money in, Mr. Sculthorp told you if you weren't satisfied with the properties he would return all of your money; is that not so? A. That I don't remember. I know that there was a conversation the night before. Harry Sculthorp, Mr. Sculthorp's brother, had a friend down there, and Harry Sculthorp said, "I

am going to pack up and sell everything out; the bottom has fallen out of it"; and Sculthorp said, "Don't pay any attention to him; he is kidding you."

Q. You mean to say that you don't recall Mr. Sculthorp, at the time you were down South, offering to return all of your money? A. Not at that particular time. He told me dozens of times.

Q. When was the last time? A. I don't know; I think when at Florida.

Q. On the way down to Florida? A. I think so.

Q. After you inspected the property you were perfectly satisfied with it? A. Perfectly satisfied. I made an agreement with Mr. Sculthorp and I wouldn't go back on it.

Q. You were perfectly satisfied with the deal? A. After Mr. Sculthorp said it was all right I was perfectly satisfied. He said the property was good and we were going to make a lot of money, which, of course, I didn't believe.

Q. You didn't believe that? A. I didn't believe we were going to make any $75,000.

Q. You say on these various occasions when you discussed it, Mr. Sculthorp told you if you were not satisfied you could get your money back, you stayed in because you thought you were going to make a great deal of money? A. Well, I won't say that; I don't think so.

Q. Then what was your reason for staying in? A. I went in with Mr. Sculthorp. I had known Mr. Sculthorp fourteen years, was in the office associated with him and he was like a brother; he was a pal.

Q. That was your only reason? A. That was the only reason, and I thought being a good pal he would let me in on something and wouldn't double-cross me.

Mr. Quinn: I move to strike that out.

The Court: The question calls for a yes-or-no-answer, and I think he has answered the question in the affirmative.

Q. When did the boom begin to break in Florida, to your knowledge? A. I don't know. I don't know about the boom.

Q. You mean to say under oath you knew nothing about the boom? A. Absolutely nothing except what Mr. Sculthorp told me.

Q. Do you read the newspapers, sir? A. I do, but I'm not reading about Florida or going about looking for real estate. I never would have gone in it only for Mr. Sculthorp.

Q. Outside of the information you received from Mr. Sculthorp you didn't know there was money to be made there? A. I know there was a lot of talk, but it was all polished brass; I didn't believe it.

Q. You knew that when you invested your money in it? A. Sure.

Q. Is it not true that Mr. Sculthorp at one time, and even after the boom had started to break, told you that he was sorry that you were losing money and offered to give you one of his houses at Atlantic Highlands? A. He never said he was sorry about losing money, and Mr. Sculthorp had a house in Keansburg which he was going to sell, and I told him I would give him my stock if he would sell it to me at the same price he would

sell it to anybody else, and he says, "Yes, I will do that."

I says, "How much do you want?"

He says, "You give me your stock toward the Boynton property and $7,500 and I will give you the house."

I says, "Sculthorp, you offered that property to somebody for $10,000."

And he says, "I never did," and I showed him the party that wrote the letter to, and proved it. He says, "Well, I did that in order to get some money. But I will tell you what I will do: I will give you one of my four-family houses in Atlantic Highlands for your stock," and I told my wife, and my wife says, "I don't want any woodshed nobody has lived in for the last five years."

Q. And then you thought your stock was worth more than that piece of property? A. I would rather take nothing than to take what he wanted to give me.

Q. That is your best answer? A. Yes, sir; it was a chicken coop.

Q. Did you see the place? A. No, but my wife did.

Q. You didn't even go over to inspect it? A. I knew that Mr. Sculthorp has hundreds of woodsheds in Keansburg.

Mr. Quinn: I move to strike that out.

The Court: It may be stricken out.

Q. You mean the one to Moskovich? A. Yes.

Q. He was a friend of Mr. Steppanski's, was he not? A. I believe he was.

Q. He was the man that sold you the Keansburg property? A. No, sir.

Q. Wasn't he the agent? A. Oh, no.

Q. Did you meet him when you were down South? A. I met him when he was over to Mr. Sculthorp's looking at the Boynton property.

Q. And he looked at the Boynton property with you? A. Yes.

Q. Did he look at the Gainesville property? A. No, that was about 150 miles back further.

Q. Did you ever meet Mr. Moskovich in Keansburg before you went into this deal? A. No, sir.

Q. You never heard it discussed about the money that Moskovich had made down there? A. Before I went in? No, sir.

Q. That was about the time you were going into it? A. No, sir.

Q. You didn't hear Steppanski tell you how much money his friend Moskovich had made in Florida? A. He didn't tell me anything I didn't know. He was going in it.

Mr. Quinn: If the Court please, I call for the original letter, dated May 13, 1926, from Sculthorp to John E. Jones.

(Paper in produced and handed to counsel.)

Mr. Quinn: I offer it in evidence.

(Admitted and marked Exhibit D-2.)

Mr. Quinn: I offer letter, dated February 24, 1926, from Jones to the defendant Sculthorp.

(Admitted and marked Exhibit D-3.)

Exhibits Offered in Evidence

Mr. Quinn: I also offer letter, dated January 28, 1927, from Sculthorp to Jones.

(Admitted and marked Exhibit D-4.)

Mr. Quinn: I offer letter, dated April 12, 1926, from Jones to Sculthorp.

(Admitted and marked Exhibit D-5.)

Mr. Quinn: Also letter, dated April 23, 1926, from Sculthorp to Jones.

(Admitted and marked Exhibit D-6.)

Mr. Quinn: Also letter of January 30, 1926, Jones to Sculthorp.

(Admitted and marked Exhibit D-7.)

Mr. Quinn: Also original letter of January 26, 1926, from Jones to Sculthorp.

(Admitted and marked Exhibit D-8.)

Mr. Quinn: Letter of November 8, 1926, from Sculthorp to Jones.

(Admitted and marked Exhibit D-9.)

Mr. Quinn: Also letter of February 9, 1926, from Sculthorp to Jones.

(Admitted and marked Exhibit D-10.)

Mr. Quinn: Also original letter, dated January 11, 1927, from Jones to Sculthorp.

(Admitted and marked Exhibit D-11.)

Mr. Quinn: I think that is all. I would like to recall Mrs. Steppanski for further cross-examination. I omitted to ask her one question.

MRS. GENEVIEVE STEPPANSKI, recalled for further cross-examination, testified as follows:

CROSS-EXAMINATION by Mr. Quinn (continued):

Q. Is it not so, Mrs. Steppanski, that you told Mrs. Jesse Sculthorp that your husband always left a blank check with you, so that you could use the same in an emergency, because he seldom left you much cash? A. It is not.

(The further hearing is laid over to Wednesday, October 17, 1928, at 10 o'clock in the forenoon, at the Chancery Chambers in Jersey City.)

Hearing of October 17, 1928, 10 A. M. Chancery Chambers in Jersey City.

THE DEFENSE.

JESSE L. SCULTHORP, the defendant, sworn in his own behalf, testified as follows:

Direct-examination by Mr. Quinn:

Q. Mr. Sculthorp, it was testified by Mr. Steppanski that in the early part of May, 1925, you had a conversation with the two complainants relative to their going into this venture with you; is that so? A. No.

Q. When was the first conversation you had with them in respect to the Florida deal? A. I went to Florida May 15, 1925. I went down there for another company to take care of some business.

Q. Representing another company in Florida? A. Yes.

Q. And when did you return? A. I returned June 27th or 28th.

Q. And when was the first conversation you had with the two complainants relative to the land that you were interested in in Florida? A. The second night after I returned from Florida.

Q. That would be June 28th or 29th? A. 29th or 30th.

Q. State what that conversation was and how it arose. A. I arrived home and Jones called me up at my house and asked me about things in Florida, and I said, "People are going crazy; they are gambling in real estate something like Wall Street."

Q. Was there any discussion that night about their being interested? A. No, a general talk about Florida, and they asked me about the weather in Florida. I told them it was very nice, and I told them it was very hot up North.

Q. When did you see Jones and Steppanski after that day? A. He was there nearly every night.

Q. Steppanski was not living there at that time? A. He was down week-ends.

Q. State the object of his visits at your home on these visits after you got back. A. The discussion was about the Florida boom and he had heard that we made a lot of money in real es-

tate. And I said, "Well, we made some on paper, but it is a gamble; it is not sure until you get it."

Q. Did they say anything about the proposition? A. Not at that time. Jones said he had a friend, some relation, that was speculating in Florida, making a lot of money.

Q. When was the first time that they suggested going into any Florida proposition? A. It was about the fore part of July.

Q. State the gist of the conversation. A. They said that they had heard of people making a lot of money speculating, and they would like to take a chance to make easy money.

I said, "Boys, it's a gamble; you take chances of losing money."

"Well," they said they were willing to take a chance in order to make some easy money.

Q. Were they both present at this conversation? A. Yes.

Q. Well, state when and where the conversation was. A. At my house in Keansburg, New Jersey.

Q. In the middle of the week, or when? A. No, it was about the latter part of the week.

Q. And when you told them that the Florida investment was a gamble, what did they say? A. That they were going to take a chance and make some easy money.

Q. Who was present in your home when you had that conversation? A. My son, Stanley, and my son-in-law, Milton Kruse, and my daughter, Mrs. Kruse.

Q. Where is Milton Kruse now? A. In a sanitarium, suffering from tuberculosis.

Q. Go ahead with the conversation. A. They said they wanted to get in on a land deal—wanted to know if I would let them in. I said it was a gamble.

Q. Did you tell them about other prospects who wanted to go in with you if you wanted partners? A. I had another friend down South that was going to put money in it, and I told them I had a small parcel of land that I intended to develop myself.

Q. Was there any arrangement about their going in? A. No, there was not.

Q. When was the next conversation when you were both together? A. About the middle of July.

Q. About the middle of July? A. Yes, sir.

Q. 1926? A. Yes.

Q. Were they both of them present? A. They were.

Q. State what the conversation was. A. They wanted to know if I wouldn't let them in in a part of the land deal with me, and I says, "Why don't you see your friend and go in with him?" Jones said that his friend was in Scotland and wouldn't take in anybody else with him; and Steppanski said that he expected to invest money with a man named Moscovich, his friend, and he wanted to put some more in also; and I told him I didn't care to let him in. But they kept at me and finally I says, "I will tell you what I will do. I have been offered a profit of $15,000 for this property and I had turned it down; but I would form a syndicate and put this land in the company for $100,000 and take stock as my

profit." And Jones and Steppanski said it was satisfactory to them.

Q. Did you tell them how much stock you would take for your profit in turning your land over to the corporation? A. No, I didn't tell them how much.

Q. Was it determined at that time how much stock was to be distributed? A. Jones and I figured it out that if we incorporated for $75,000 that they would take thirteen and one-third per cent of the issue and I would take the balance, and that would make even amounts.

Q. What was done with the prospective formation of that corporation? A. I notified my attorney in Florida to incorporate the Sculthorp Realty Company.

Q. And you were incorporated for how much? A. $75,000.

Q. Did Jones and Steppanski receive one-third of that stock? A. They did.

Q. And who received the balance? A. I did.

The Court: I am not quite clear on that. Did you take 66 2/3 per cent?

A. I did. I gave my son, Stanley, 40 shares and Milton Kruse 10 shares, and 5 for the incorporator.

Q. When you told them that you had received offers of profit on the land that you owned and you would throw your land in at the price of $100,000, what did they say? A. They said they were perfectly satisfied.

Q. And when the deed was prepared for that land, did you send a check to your attorney for the revenue stamps? A. I did.

Q. I show you a check, dated November 25th, in the sum of $100 and ask you if that is the check? A. That is the check I sent.

Mr. Quinn: I offer that in evidence, to Byrd & Porter, in the sum of $100.

(Admitted and marked Exhibit D-12.)

By the Court:

Q. How much did you say you had offered? A. I was offered $15,000 profit while I was in Florida.

Q. What did you tell the complainants about that? A. I told them that I had received several offers and had received a profit of $15,000 for the land.

By Mr. Quinn:

Q. Were there three tracts of land comprising the tract in which you and the complainant were interested in this corporation deal? A. There were.

Q. And they were purchased by you when? A. I purchased 15 acres from Plotner. The contract was made May 9, 1925, and the deed was June the 1st, 1925.

Q. How much actual cash was put into the proposition by each of the complainants with reference to the three tracts that you have just mentioned? A. You mean for the Plotner?

Q. No, the three tracts you have just mentioned. A. I will have to look at my records (witness examines records). Steppanski had put in $10,381.90.

Q. And Jones? A. Jones had $9,013.67.

Q. Now, did you and the complainant subsequently go to Florida? A. We did.

Q. And when? A. October; in the fall of 1925.

Q. And state what you did on the way down to Florida. A. We went—do you want me to tell about starting, going from Philadelphia?

Q. No, where you went. A. We went to Florida—

Mr. Eichmann: He says, "we went"; who?

A. Jones and Steppanski and myself went to Florida and stayed all night and looked at some real estate there, and it didn't suit us, and we went from there to Gainesville, Florida, and we went in a real estate office there, and a man in the party said they would like to have us go out and look at some land, and I believe the stenographer called up some official in Gainesville.

Q. Leave out the details and tell us what you did. A. Well, we went around and looked at several hundred acres of land and didn't like it, and so we went back to the office. And then we went to a party named Strongfellow.

Q. Did you purchase land there? A. I did.

Q. You and Steppanski and Jones? A. Yes.

Q. Were any sums paid on the purchase of the land? A. There were.

Q. And the bill of complaint says there was some return to the complainant; do you know that? A. Yes.

Q. How many places did you buy? A. Two different parcels of land.

Q. And the purchase was made by all three of you? A. Yes.

Q. Now, after you purchased that, did you go anywhere else and make a purchase? A. We went from there to Daytona and from Daytona to Delray.

Q. State what happened there. A. We went to my brother's house and got there between 10 and 11 at night. He was just retiring for bed when we came in. We stayed there all night because the hotels were all full.

Q. While you were at your brother's house, was there any inspection of the land made? A. The next morning we had our breakfast and I said, "Boys, let's go out and inspect the property, Lake Ida Garden, where you got your money invested." We went out there and I showed them the location of the land, and I says, "Boys, if you are not satisfied, now is the time to say so."

Q. Where was that conversation? A. On the property at Delray.

Q. What did you say? A. I says, "If you are are not satisfied I will give you your money back."

Q. Up to that time how much money had they put into the deal? A. $5,000 each.

Q. What did they say? A. No, they were perfectly satisfied; that I should go ahead and develop the property and sell off the land.

So we left there and went back to the house, and he said we had better see about getting prices on grading the street, and so forth, and so went around and saw a man named Baker and he was a very busy man.

Q. And you did other things with respect to the development of the property? A. Yes.

Q. How long did the three of you remain on this place before the other money was talked about? A. Why, Mr. Jones said he wanted to go and get some clothes, knickers, shoes and stockings, and so he went to Palm Beach; and Steppanski says, "I have a friend in business in real estate; I want to go around and see him". And Jones went and got the things and I and Steppanski went around to see the friend, and he took us to West Palm Beach and showed us around, and he says "I can show you around" and I made an appointment with Moscovich to meet him the next day. We went to Boynton to look at the property, and he says "Boys, if you want to make some quick money I can show you a few lots and I will guarantee you a profit before you make the second payment."

Steppanski says, "We can make our expenses down here if we buy that" and went and bought four for $11,000, and Jones and Steppanski agreed to take half and I told him I would take the other half for my son and myself; and Moscovich said he would have the contract drawn and would bring it down to Delray.

Q. When you showed them the property and they made an inspection did they make any statement as to what they thought could be done with the property? A. I spoke about the development, staking out and the rock road, putting in water line and so forth.

Q. Now, around that time do you know whether Jones and Steppanski had talked with other real estate agents and other people in that vicinity

with respect to the condition of the land and the market at that time? A. Why, we were down on the street in Delray and that is all you could hear was real esate, buying and selling and speculating. It put you in mind of Wall Street speculating.

Q. At the home of your brother was there any conversation there as to what was to be done with the property, particularly with reference to the future payments to be made by Jones and Steppansky? A. Well, Steppansky said, when he was in Gainesville, "You gave them your check as a deposit on the land and when I get to Delray I will give you my check for $5,000 and you can pay it back to yourself."

Q. Did you say anything to them about agreeing to put in the balance? A. I told them if they weren't satisfied I would give their money back.

Q. You mean on the original investment? A. Yes.

Q. What did they say to that? A. No, they were perfectly satisfied; "go right ahead and develop the land" they said.

Q. How many times did you offer to give their money back after they had made an inspection of the land? A. We were at the house and there was my brother there and James Van Marder and another fellow there, I don't recall his name. He was a bond salesman and he was discussing the property at the house, and I told him before these people if they weren't satisfied I would return the money", and he said they were perfectly satisfied and I should go right along and

develop it and try to buy the other land adjoining.

Q. They wanted more land adjoining these particular tracts? A. Yes. There was 10 acres in a westerly direction from our tract and there was another five acres adjoining our land on the south. So they told me to try to pick up those two pieces of land to square up our property.

Q. And what price was discussed for those pieces of land adjoining the premises in question? A. The price on the 10 acres was $5,000 per acre.

Q. Was that more or less than the purchase price of the land in question that you were figuring on? A. It was more than what I placed my land at as a whole. I placed my land at a lower figure.

Q. How much money did you actually put into this proposition? I am confining it to the three tracts of land in question. A. Why, between 40 and 41 thousand.

Q. And did you put additional sums in the Gainesville property on the way down? A. I did.

Q. Will you state, Mr. Sculthorp, just what the method of purchasing land was in Florida at the time of this agreement between you and the complainant? How was land bought and purchased, on contract, deed or what? A. Well, they were purchasing on contracts and receipts given, and then deed delivered later on.

Q. How long after would the deed be delivered? I want to get the system of purchase. A. Anywheres from one month to six months after a sale.

Q. How would you do that? A. You would sell subject to that, and then you would notify the prior owners to make the deed and all payments direct to another party.

Q. When you bought on a contract what did you do with that contract when you sold or resold? A. Assign it over.

Q. Would they use the same piece of paper? A. Yes.

Q. That was what was represented as "paper profit" referred to? A. Yes.

Q. In October you were down there with Steppanski and Jones; when did you actually begin the development of this property? A. Why, we were about two weeks with Jones and Steppanski. They came back North after staying down there to make arrangements to get the land developed.

Q. What did you do? A. Well, I stayed until nearly Thanksgiving getting figures and getting maps drawn, getting the lots staked out and so forth, and then I came home.

Q. Did you go back again? A. I went back in January, 1926.

Q. What did you do from that time on with respect to development? A. I got a team and started in to grade the property, and I got a gang and started to excavate the streets and lay out the sidewalks.

Q. And what service did you render yourself? A. I was out in the field every day, and I even used a shovel myself to help rush the thing along, because he wanted—

Q. I don't care about the because of what you did; how long did you stay there actually in the

fields yourself helping with the construction? A. I was there from January until the latter part of May, 1926, when I came North.

Q. When did the bubble burst down there? A. Well, the bubble didn't burst until 1927.

CROSS-EXAMINATION by Mr. Eichmann:

Q. Now, Mr. Sculthorp, you deny that there was any agreement made between you and Steppanski and Jones on May the 9th, 1925, to form a Florida corporation to purchase land? A. There was no deal made, no.

Q. You deny that there was any such conversation? A. I do deny it.

Q. And you say that you went to Florida May the 25th, 1925, and didn't come back until June 27th or 28th, 1925? A. Yes.

Q. And a day or two after that it was you had your first conversation with Jones and Steppanski relative to this matter? A. They came into my home.

Q. Well, is that so? A. No, not for this property; no.

Q. That you had your first conversation relative to Florida land in general. A. Well, they asked me about the Florida land—about the boom.

Q. And you say the first conversation you had with them relative to the Florida land and the boom was about June 28th or 29th, 1925?

Mr. Quinn: I object to that. He says they had several conversations; they were over to the house every night.

Q. You had no conversation with Steppanski and Jones relative to the Florida lands before going to Florida, had you? A. Before when?

Q. When was your first conversation with them after you got back? A. They talked to me; come over to see how things were.

Q. When? A. About the 27th or 28th—no, the second night after I got back from Florida.

Q. And when was the agreement made with them to pool this syndicate to develop the land that you had purchased? A. About the middle of July.

Q. And while down there you purchased three tracts of land? A. I did.

Q. Bought from Plotner, Byrd and Davis? A. Yes.

Q. And you paid $67,500 for that land? A. Around that figure.

Q. You didn't tell them that you paid $67,500, did you? A. Not necessarily.

Q. Did you or didn't you? A. No, I did not.

Q. You never told what the property actually cost you, did you? A. No, I did not.

Q. Do you recall, in response to an application for inspection of documents, you presented these signed minutes for inspection, the minutes of the Sculthorp Realty Co.? A. What do you mean?

Q. These minutes of the Sculthorp Realty Company that you presented upon my demand for inspection? A. Yes.

The Court: Have they been marked?

Mr. Eichmann: They have been marked C-15.

Q. I show you the minutes of October 27, 1925; you signed those minutes as President? A. I did.

Q. And your son attested to them as Secretary? A. Yes.

Q. Those minutes refer to the profits of J. L. Sculthorp in the sale of such property to the corporation, do they not? A. About the profits?

Q. Yes. A. I don't know.

Q. Isn't it a fact that you answered, in answer to Interrogatory 12, that it was not stated at that meeting of October 27, 1925, that you were making a profit? A. I don't just recall.

Q. I will read you the interrogatory and your answer:

> "12. Was it in fact stated at said meetings in the presence of complainants, Edward J. Steppanski and John E. Jones, that you were making a profit in transferring three parcels of land to the corporation?"

And your answer was "no". Did you so answer? A. I may have, yes.

Q. Now, which is true, the minutes or your answer to interrogatory 12? A. I presume the minutes are correct.

Q. And your answer to the interrogatory is false? A. Well, my best recollection at that time. No, I didn't make any money profit on the land.

Q. Then you now say that the answer to interrogatory 12 is untrue? A. In that respect, yes.

Q. These minutes of October 7, 1927, say that Steppanski paid in the cash amount of $5,000 on the stock, do they not? A. They paid in?

Q. Do those minutes say that? A. I don't know, I'm sure.

Q. The minutes say, "The said Edward J. Steppanski paid in the cash amount of $5,000 on his stock". A. That's right.

Q. Well, isn't it a fact that on that date Edward J. Steppanski was fully paid up and had paid in his $10,000? A. I don't recall the exact date it was paid; I imagine the books will show.

Q. I show you his checks, Exhibit C-1 and Exhibit C-13, C-1 being dated August 21, 1925 for $5,000, and C-13 October 20, 1925 for $5,000? A. Yes.

Q. And didn't you, in answer to the interrogatories give those dates as the dates you received payment from Steppanski? A. I think I gave August.

Q. August 21 and October 20? A. I don't remember the exact dates.

Q. Which is true, then, the minutes of October 27th or the statement which you now make? A. The minutes are true; but he may have paid that in before I was in Delray.

Q. Was it true that on October 27th he had only paid in $5,000 but hadn't paid in $10,000? A. Well, the checks show.

Q. Answer the question: Had he paid in five or ten thousand? A. He had paid in five in August, 1925, and he had paid the other check in in the fall of 1925.

Q. On what date? A. I don't know.

Q. I show you the check. A. October 20, 1925 he paid in the second check.

Q. Well, was that statement in the minutes true? A. Well, of course, if that was paid in on that date he must have been paid ten in place of five.

Q. Now, the minutes say each of the incorporators made satisfactory arrangements as to the payment of the balance, do they not? A. Yes.

Q. Then the fact is that Steppanski was fully paid up at that time, isn't it? A. According to his check, yes.

Q. Isn't that so? A. Yes.

Q. So that statement in the minutes is untrue? A. Well, there must have been some error in that.

Q. Is it true or untrue? A. Well, the minutes at that time—

Q. I am asking you a question, whether the minutes were true or untrue. A. Well, the minutes speak for themselves.

Mr. Eichmann: I ask the court to direct the witness to answer.

The Court: (Addressing the witness) Yes, you must answer.

Q. Are those minutes true or untrue? A. According to the check there must be a difference there.

Mr. Quinn: I don't like to object, but I think it is not a proper question to ask the witness to characterize his testimony and answer whether it is true or untrue.

Mr. Eichmann: I am attacking the credibility of the witness, and I want to show the inconsistencies between his sworn statement in the minutes and the statements that he now makes.

The Court: I don't see that there is any objection to your attempting to contradict that, but I assume the objection is to the form of the question, which calls for the conclusion of the witness. It is a lot different, Mr. Eichmann, in confronting the witness with two conflicting statements and asking which one of them is true and ask him to characterize them.

A. Your Honor, I had written to the attorneys in Florida and stated what they had paid in at that time, and I imagine that I stated that Jones and Steppanski had paid in $5,000 each at that time, and I presume that is what they made the minutes from.

Q. Now, Mr. Sculthorp, the minutes say that each incorporator had made a personal inspection of the property and consented that it be purchased for the amount of $100,000. Do you recall that? A. I don't recall it, but that was the understanding, that I would turn it over for a hundred thousand dollars.

Q. It is shown that each of the said incorporators had made a personal inspection of the property and consented that it be purchased for the sum total of $100,000. The inspection that you referred to was shortly before that meeting in October, 1925, was it not? A. It was in October, yes.

Q. Now, isn't it a fact that you used $10,000 of Steppanski and Jones' money in August, 1925, two months previously to purchase this property? A. I used $10,000 to pay off some notes I had

at the bank that I had used to raise money to purchase this property.

Q. They had paid you $10,000 in August? A. Yes.

Q. And you had used that money in connection with the Plotner purchase? A. Yes, I did.

Q. Now, the minutes are that $10,000 was, in turn, paid over to J. L. Sculthorp; do you recall that (showing minutes to witness)? It says here, "The said amount of $10,000 was, in turn, paid over to J. L. Sculthorp to apply on the purchase price of the property." A. Yes.

Q. Now, how could the $10,000 be turned over to you on October 27, 1925 when you used that money to purchase the property in August, 1925, and you answered to interrogatory 131 is, "The $10,000 was paid in in August and I used that to pay the two notes that I had borrowed money on to purchase the land in Florida; but that statement is not correct in the minutes that on that day the $10,000 was turned over to you to apply on the purchase price, is it? A. Well, I had paid the purchase price on it and I had used that money to pay those two notes.

Q. The $10,000 was not paid to you on October 27? A. No, it was in August.

Q. So the statement in the minutes is not correct? A. No, it wasn't paid October 27th; it was paid prior to that time.

Q. Then the statement in the minutes that it was paid October 27th is not correct? A. Well, there is some error there if you have got it October 27th. I think where the error is, I sent a letter down to the attorneys stating that he had

paid this money but he didn't pay it until later on.

Q. The minutes say that Jones paid in $5,000 on this stock on October 27th. A. I believe it was.

Q. Isn't it a fact that Jones had paid $7,000 at the date of this meeting? A. I don't recall it.

Q. Well, I will show you the checks: Here is $5,000 paid August the 25th, and $2,000 paid on October 26th; so that statement in the minutes is incorrect, isn't it? A. As I stated before, I had written to my attorneys about what he had paid in and I presume they took the figures when I sent that letter down to them and put them in the minutes.

Q. The minutes say that 40 shares of stock be issued to Stanley Sculthorp, and that 10 shares of stock be issued to Milton Kruse, do they not? A. Yes.

Q. Isn't it a fact that answers to interrogatories 110 and 112 state that stock was issued in those amounts on August 26, 1925? A. I think that stock was issued and dated back, or something like that.

Q. I will show you the answer to interrogatory 110:

> "110. When was certificate No. 4 for 40 shares of stock of Sculthorp Realty Company, a corporation of Florida, issued to Stanley F. Sculthorp?
>
> "A. August 26, 1925.
>
> "112. When was certificate No. 5 for 10 shares of stock of Sculthorp Realty Com-

pany, a corporation of Florida, issued to Milton Kruse?

"A. August 26, 1925."

Did you so answer? A. I did; yes, sir.

Q. Are those answers to the interrogatories true? A. That was the date of the certificate issued, but they weren't given out at that time.

Q. Well, is that true? A. Yes, it is true.

Q. Which is correct, then, the statement in the minutes that they were issued on October 27th, or the statement in your answer that they were issued August 26, 1925? A. They were all dated back to August.

Q. Isn't it a fact that the stock-book shows cancelled stamps cancelled August 26, 1925? A. I believe it does.

Q. The minutes also say that stock was ordered issued to Jesse L. Sculthorp, do they not? A. Yes.

Q. That is, the minutes of October 27, 1925? A. Yes.

Q. Now, isn't it a fact that in answer to interrogatories 104, 106 and 108 you swore that that stock was issued October 26, 1925? A. Well, that is as I remembered it at that time.

Q. Isn't it a fact that the stock-book shows cancelled stubs showing cancelled checks August 26, 1925? A. Yes, they say that.

Q. And the minutes say, "On motion duly made and carried the foregoing minutes were read and approved" do they not? A. I don't recall that.

Q. Well, here are the minutes and it says, "On motion duly made and carried the foregoing minutes were read and approved." A. That's right.

Q. When and where were these minutes read to Steppanski and Jones, and approved by them? A. We had a meeting in Delray, in Byrd & Porter's office.

Q. Who were present? A. Jones, Steppanski and myself and the attorney.

Q. And who read them? A. The attorney.

Q. And did Jones and Steppanski look them over? A. No, I don't think they did.

Q. They were just read in their presence and in your presence? A. At the first meeting they read the by-laws, I think, and then we had a general meeting.

Q. You are sure of that? A. I am pretty sure. Of course, it has been a long time.

Q. Now, in answer to interrogatory 47 you said you never showed these minutes to Steppanski and Jones? A. Not until after. I had never shown them to them personally.

Q. I read you interrogatory 47:

> "47. Did you ever show the minutes of October 27th, 1925, to Steppanski and Jones or their attorney, Falls?
>
> "A. Personally, I did not."

A. When Falls was at my place he asked about the minute-book. I told Falls that they were up North, and he wanted me to get the minute-book so that he could see it, and say Jones and Steppanski saw it, and I told him I would send North and have the minutes sent down to Florida so that he could see them.

Q. That was around February 1st, 1927? A. Well, I'm not sure of the date; around January or February.

Q. Either the end of January or the first of February, 1927, you told Falls the minutes were up North and you would get them? A. Yes.

Q. Isn't it a fact that instead of telling Falls that the minutes were up North you sent him over to Byrd & Porter's office to see them? A. No, sir.

Q. You never testified they were in Byrd & Porter's office? A. No, sir; I did not.

Q. I show you a paper; is that your signature? A. Looks like it.

Q. Dated February 1, 1927, addressed to Byrd & Porter, saying "If the minutes of the Sculthorp Realty Company are at your office kindly let A. O. Falls see same, Sculthorp Realty Company, J. L. Sculthorp, President;" did you sign that? A. Looks like my signature.

Q. Then your statement previously made was incorrect? A. I don't recall that at all.

Q. That is your signature? A. Yes, I think that is my signature.

Mr. Eichmann: I offer that in evidence.

(Admitted and marked Exhibit C-56.)

A. I might state—

Q. Wait a minute; I want to ask you a question. A. May I answer that same question?

The Court: Well, have you any objection to his explaining?

Q. Go ahead. A. I remember their attorney said, "If there are any minutes at Byrd & Porter's may I see them", and I says "yes".

Q. Didn't you testify before that the minutes were up North in the safe? A. They were up North in the safe.

Q. And so you sent Falls on a fool's errand, when you knew they were up North? A. He insisted in having a note to that effect.

Q. You sent them to Byrd & Porter's office when you knew that the minutes were up North? A. I did, because he insisted on going.

Q. The minutes say that notice of the meeting was duly waived, do they not? A. I believe they do.

Q. Have you the waiver signed by Steppanski and Jones? A. No, I have not.

Q. You have no special waiver, have you? A. I haven't, no.

Q. Who was present at that meeting? A. What do you mean, at Delray?

Q. On October 27, 1925. A. Jones, Steppanski, and myself, and the attorney.

Q. Mr. Byrd? A. Mr. Byrd turned it over to his partner Porter. He said he would take care of it.

Q. Who was present, Mr. Porter? A. Well, I think Byrd was there first off, and then Mr. Porter took charge of it and finished it up.

Q. How long did the meeting last? A. Why, I don't recall the exact time; anywhere from a half hour to an hour and half.

Q. Is Mr. Byrd or Mr. Porter here to testify? A. No.

Q. Why not? A. I don't think it necessary to have them up here.

Q. The minutes say that you were elected President at the first meeting and Stanley L.

Sculthorp, Secretary, do they not? A. Yes, sir.

Q. Was Stanley Sculthorp present at the meeting? A. He was not.

Q. He was not in Florida at the time? A. No, he was not.

Q. Will you explain how Stanley L. Sculthorp could be elected Secretary of the first meeting when he wasn't present? A. It was understood by Jones and Steppanski and myself when we went to Florida that we had the slate all made up, and it was the understanding that we would elect those officials.

Q. In paragraph 3 of your answer you say:

> "In accordance with this arrangement the defendant and the complainants went to Florida in or about the month of October, and the complainants personally went upon the land in question at Delray, Florida, and inspected the same and spent two weeks in going over the proposition, and acquired personal knowledge of the value of the land and the details of the development proposition, before their money was invested."

Do you recall that statement in your answer? A. I don't just recall that.

Q. Right here (counsel shows witness the pleading). That is correct, isn't it? That statement appears in your answer, doesn't it? A. It appears there, yes.

Q. Is that statement correct? A. No, they had put $5,000 in that property before they went to Florida.

Q. And $10,000 was put in by them before they had seen the land, before they went to Florida?

Mr. Quinn: I object to that, because they admit that they put in the $5,000 each and made the statement that they were satisfied.

Q. They paid in $10,000 in the month of October? A. They invested their second five after they had seen the property and I told them I would give the money back.

Q. In answer to Interrogatory 6 you stated that this money was checked out on August 28, 1925? A. That's right.

Q. That's correct, isn't it? A. That's correct.

Q. So that the answer to the interrogatory in that respect is correct and the statement in your answer is incorrect? A. Well, there must be an error in that answer there.

Q. Now, isn't it a fact that in May, 1925, Steppanski and Jones both agreed to invest in it $10,000, $5,000 each? A. No, sir; they did not, not with me.

Q. Isn't it a fact that they made an agreement with you at some time or other to put $5,000 and not $10,000 in? A. No.

Q. Isn't it a fact that you sent a wire to your son on or about the 10th of June, 1925, instructing him to see Steppanski and Jones to increase their investment from $5,000 each to $10,000, and that wire was sent while you were down in Florida? A. That is not so.

Q. Isn't it a fact that at the same time you sent the wire to your son you sent a wire to

Steppanski and Jones increasing the amount to $10,000 each? A. I did not.

Q. I show you a letter which has been admitted in evidence and marked Exhibit C-41, under date of January 11, 1927 by Jones to you, do you recall receiving that letter? A. I do not recall that letter no I do not.

Q. You wouldn't say that you didn't receive that letter, would you? A. I don't recall anything about that.

Q. Do you recall this statement in the letter:

> "I think you will remember that I only intended to put $5,000 into this proposition in the first place, but you wired Stanley asking if I could make it $10,000 in order to enable you to get the property you wanted, and I agreed to it."

Do you remember that? A. No, I do not.

Q. You may have received that letter? A. It is doubtful.

Q. Did you ever answer that letter? A. Not that I recollect.

Q. You never contradicted the statements in that letter, did you? A. Not that I recall.

Q. Where is the certificate of incorporation? A. You have it right there in the papers.

Q. You didn't have it the last time? A. Yes we did. It was in one of the books, I believe, after the hearing was over.

> Mr. Eichmann: This was not offered in evidence at the last hearing I offer it in evidence now.
>
> (Admitted and marked Exhibit C-57.)

Q. When did you first order the incorporation papers to be drawn? A. In the middle of July after Jones and Steppanski had agreed to go into the Florida land deal, I had notified the attorney in Florida to incorporate the Sculthorp Realty Company in Florida.

Q. How did you get in touch with them? A. I presume I wrote to them.

Q. Have you a copy of the letter or letters that you wrote to them? A. No, I have not.

Q. Where are they? A. I don't know. Since that time I have changed my business and it must have been mislaid.

Q. Did you make any effort to locate them? A. Well, I have been trying my best to locate some other letters that I didn't seem to locate—

Q. Did you communicate with your attorney to see if he had the original letter so that you could use them? A. No.

Q. To verify in this case the fact that you ordered the corporation papers to be drawn? A. I didn't think it was necessary. They speak for themselves.

Q. Isn't it a fact that you ordered those corporation papers to be drawn while you were down in Florida in the month of June, 1925? A. No, sir; I did not; I had no intention—knew nothing about incorporating the company at that time.

Q. I show you Exhibit C-45, a statement of the Sculthorp Realty Company of Florida, dated January 1st, 1927; is that a true statement? A. Subject to corrections.

Q. True statement subject to connections? Didn't Steppanski and Jones request a full finan-

cial report signed by you at the meeting in January, 1927? A. Yes, they asked me.

Q. And didn't they state as their reason that they wanted to raise money on the statement of the company? A. Why, I believe Jones said he wanted to raise some money.

Q. And didn't you promise to get up for Steppanski and Jones each a report? A. I told them I would try to make one up for them.

Q. And isn't it a fact that you yourself furnished every item in that report? A. Jones and Steppanski were at my house when I made up a part of this report.

Q. And isn't it a fact that you had sole control of all of the books of the Sculthorp Realty Company? A. Yes.

Q. And that you yourself made up the report? A. Yes.

Q. Why didn't you sign the financial report made by yourself from records solely in your possession? A. I told Mr. Jones if they would sign I would sign.

Q. And when they refused to sign you refused to sign? A. Absolutely.

Q. That was the reason that you gave them that you wouldn't sign the report because you wanted them to sign also, although you knew that you had prepared the report from records in your possession? A. Yes.

Q. Isn't the real reason why you didn't sign that report that you knew the statement was untrue, because you yourself had title to the assets shown on the statement for $100,000? A. I had what?

Q. You had title to the assets, in your own name, shown on that statement for $100,000? A. Yes, that is true.

Q. Isn't that the reason you didn't want to sign the statement? A. No, sir; I never gave it a thought.

Q. The three parcels of land which were listed on that statement at $100,000 as assets of the Sculthorp Realty Company, were really in your name? A. They were.

Q. And yet you were willing to let Steppanski and Jones go out and raise money on this statement that you yourself prepared so that you could get more money? A. We owed money and we owed interest on the mortgage and various things; and Jones said he would try to raise some money on his stock.

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

Q. How long have you been in the real estate business? A. Well, probably 20 years, more or less.

Q. What experience have you had in corporations? A. Well some; not so awful much.

Q. You were connected with some cigarette corporation? A. Yes, I was treasurer.

Q. How many years? A. Around, I might say, 12 or 15 years.

Q. And did you have considerable experience as treasurer of that corporation? A. Yes.

Q. How long had you known Steppanski and Jones? A. I might say, offhand, around 15 years, off and on.

Q. You have been neighbors of Steppanski since 1912 and of Jones since 1914? A. Yes.

Q. And you belong to some fraternal organization with Steppanski? A. I do, but not in the same lodge.

Q. And has Steppanski sat in the same lodge with you at your request? A. I believe he has, yes.

Mr. Quinn: I object to burdening the record with this. It is going to be a very large record anyway.

Mr. Eichmann: These things are material.

Mr. Quinn: I haven't objected to some reference here to the corporation. This is not a bill for an accounting in respect to the assets of the corporation. I think the sole question is, whether or not there was a false representation made before these three men went into the deal; and I think it is burdening the record unnecessarily to go into this.

The Court: I assume he is leading up to the argument that will be made subsequently, that because of the close relationship between these people and the liklihood of their having relied upon those representation, these complainants were not on their guard.

Mr. Eichmann: This is what I want to show, your Honor: I want to show, in view of the close relationship between the parties they relied upon Sculthorp's honesty and were willing to go in with him on his say-so without seeing the land—to go in with him on an equal proposition; but if

he hadn't deceived them as to the large profit he was making on the deal the results might be different. It doesn't seem plausible that they would go into a proposition, giving a man an unknown profit on property they had never seen.

Mr. Quinn: If there is an attempt to show fiduciary relation I withdraw my objection; but I do not believe that to be the fact, in view of what the record shows by the admission of the two complainants that the second five thousand was put into the property after they had gone in and inspected it. But if they want to prove fiduciary relationship, I withdraw it.

Q. Didn't you visit the Steppanski's at their home in Jersey City? A. I did.

Q. Didn't you also visit the Jones at their home in Brooklyn? A. Yes, I did.

Q. Didn't Mr. Steppanski visit your home at Atlantic Highlands? A. Yes.

Q. Didn't Steppanski spend week ends at Atlantic Highlands? A. I don't recall about week ends.

Q. Isn't it a fact that you traveled with Jones each day from the time Jones came down until he left Keansburg? A. Yes.

Q. And didn't you have breakfast at the White House in Keansburg? A. Yes, and we paid for it, too.

Q. Now, you admit that you never told Steppanski and Jones what that property cost? A. I did not; it wasn't necessary.

Q. Now, I show you interrogatory No. 74, and I read it:

"74. Did you ever tell Steppanski and Jones, or either of them, what you paid for said three parcels?

"A. No."

Did you so answer? A. I did not tell them.

Q. That story was true, was it? A. Yes.

Q. And you admit that at the end of July, or the early part of July, Steppanski and Jones had never seen the property and never had been in Florida? A. In 1925?

Q. Yes. A. Yes, they hadn't seen it.

Q. And all they knew about the property was what you told them? A. They bothered the life out of me to invest money in Florida.

Mr. Eichmann: I object as not responsive.

The Court: It isn't responsive. (Addressing the witness) You must answer "yes" or "no" or if it is so framed that you can't so answer it but it requires any explanation, that will be taken care of by Mr. Quinn on his re-direct examination.

Q. (Question read by the stenographer)

The Court: What time?

Mr. Eichmann: In the last part of June or the early part of July.

A. In the middle part of July, or thereabouts.

Q. What is your answer? A. Yes.

The Court: The question is, did they have any knowledge of the property except what you told them?

A. No.

Q. And you claim that they agreed in July 1925 that this property would go into a syndicate at $100,000, the syndicate giving you a profit on a piece of property that they had never seen? A. Yes.

Q. Does that sound reasonable to you? A. Yes, it does.

Q. Did you ever give anybody an unknown profit on a piece of property that they had never seen?

Mr. Quinn: I object also to this question. It has nothing to do with the transaction.

Mr. Eichmann: I will withdraw it.

A. I can say this, if you want me to answer it?

Q. On January 22, 1927, Steppanski and Jones attended a meeting of the Sculthorp Realty Company at Delray, Florida, didn't they? A. Yes.

Q. And they asked you for the statement you didn't have ready and the meeting was adjourned until the 24th? A. Yes.

Q. And you had no statement on the 24th and the meeting was again adjourned to the 25th? A. I had part of the statement gotten up but not all.

Q. And then the meeting was adjourned until the 25th? A. I don't recall the date.

Q. You produced the statement which I have shown you before and they asked you to sign it and you refused to sign unless they signed? A. Yes.

Q. They refused to sign and then you refused? A. Yes.

Q. They asked you for the contracts and other records and you said they were in New Jersey? A. I said some papers were up North in my safe.

Q. On the next morning you gave them the unsigned statement, didn't you? A. I don't recall whether it was that same day or the next morning.

Q. Well, they asked you for the contracts and you proceeded to write a letter to your son, with instructions to let them see it? A. That was about the minute-book.

Q. And Mr. Steppanski said he would go to the bottom of this and thereupon you tore the letter up to your son? A. I don't agree with that.

Q. You then took them in your car and you offered to turn the property over to them if they would release you? A. I did not.

Q. Do you recall January 26, 1927, when Steppanski and Jones called upon you? A. They called. I don't know what date.

Q. Well, it was shortly after the meeting? A. Yes.

Q. And Falls told you that you need not answer any questions if you didn't want to? A. May I explain that?

Q. No; that calls for a yes-or-no answer.

The Court: If you can't fairly answer it yes or no, say so.

A. No, I could explain that whole thing if you would let me do so.

The Court: You mean you can't answer it yes or no?

A. I might say "no" or "yes", because Mr. Falls asked me what the discrepancy was between the price I paid and the price I sold to the company. I told Mr. Falls there wasn't any; that I had turned over to the company two pieces of land that I had in my own name for $100,000 and took stock as my profit. I said, "Mr. Falls, you and no one else would turn over his holdings to another company for nothing".

Mr. Falls said, "No, I don't believe I would or anyone else".

Q. Did Mr. Falls tell you that he had searched the records and ascertained that the property had been put in at $67,000? A. He said he had searched the records.

Q. Did he ask you to explain the discrepancy between sixty-seven and a hundred thousand price in the statement? A. That is my answer.

Q. Will you answer that? A. I recall he asked me something about it.

Q. Did you refuse to answer? A. No. I said, "Mr. Falls—"

Q. Just a minute: Do you recall Mr. Falls testifying that you did refuse to answer? A. I do remember hearing him say so, but I said, "Mr. Falls"—

Q. Which statement is true, Mr. Falls' or yours? A. May I finish my statement? I said, "Mr. Falls, I don't believe you have any right to question me about this matter unless my attorney is present'. And Mr. Falls said, "You don't have to answer unless you want to."

Q. Did he ask for the production of the contracts and other records? A. I don't recall whether he did or not.

Q. Did he ask you why the property had been transferred to yourself? A. Yes, I think he did ask something about the transfer.

Q. Did you tell him that you did it for the good of the company? A. I told him that it had been transferred—

Q. Did Mr. Falls threaten some trouble unless a proper explanation was made in the presence of your attorney? A. Not that I recall.

Q. Do you recall meeting Mr. Falls, Mr. Steppanski and Mr. Jones at your attorney's office the next day, January 27th? A. I do recall meeting them there, yes.

Q. Do you recall offering a deed from yourself to the company? A. I do.

Q. Do you recall Falls refusing to accept the deed because there was no resolution of the company? A. I do.

Q. Do you recall stating that it was deeded without any resolution and it would be deeded back without any resolution? A. I do, yes.

Q. Do you recall Falls saying that you had a right to charge the company whatever price you wanted to for the land? A. Mr. Kearley said I had bought the lot prior to the time these gentlemen came in and I had a perfect right to charge the company whatever I wanted to.

Q. Did Steppanski ask you how it was that they invested the money in August, 1925 and you didn't take title to one tract until September, 1925? A. Yes, there was a question about that, and that was in regard to the five acres I pur-

chased from Davis there was something about the abstract that held the deed up.

Q. Did you say to him that as to that one parcel you were in the wrong? A. I said probably I was in the wrong in not having it recorded before that.

Q. Did you ask Steppanski and Jones what proposition they wanted to give you? A. No, I did not.

Q. Did Mr. Falls then arise and charge you with fraud and ask that the contract be rescinded for fraud? A. Not that I remember.

Q. Didn't Mr. Falls then say that he rescinded the contract for fraud? A. Not that I recall.

Q. What did he say? A. He didn't say anything that I remember about that.

Q. Didn't Mr. Steppanski instruct Falls to sue you criminally and civilly? A. I don't recall that.

Q. And isn't it a fact that a few days later, on February 2nd, 1927, you deeded your home in Atlantic Highlands to your wife? A. What date was that?

Q. February 2nd, 1927. A. I don't recall what time I turned it over to her, but I did give her the home.

Q. And that was a few days after the meeting in Kearley's office? A. I think it was prior to that date; I'm not sure.

Mr. Eichmann: I might state that that statement in the bill of complaint is not denied.

Mr. Quinn: I was wondering what the object of this was.

Mr. Eichmann: I simply want to show a guilty conscience. Here he is threatened with a suit, civilly and criminally, and he proceeds to transfer all his assets.

Mr. Quinn: If that is the object I withdraw the objection.

Q. Didn't you on February 2nd, 1927, transfer the Victoria Hotel property to the Sculthorp Realty Company in which your son had all the capital stock? A. I did turn the hotel property over to the Sculthorp Realty Company, yes.

Q. And didn't you deed your Florida home to your daughter at Lake Ida Gardens? A. I did. My son-in-law was afflicted with tuberculosis and he wanted to go to Florida to live and get his health back, and I told him if he wanted to go down there I would give them the home.

Q. Why did you transfer your home in Atlantic Highlands on February 2nd? A. I had three homes and I always agreed to give my wife a home.

Q. Wasn't it because you were going to be sued and you were trying to get your assets in some other name so that Steppanski and Jones couldn't sue you and attach it? A. No, sir; I have real estate yet.

RE-DIRECT EXAMINATION by Mr. Quinn:

Q. In your own name? A. In my own name.

Q. When the Florida property was transferred did you execute a deed of trust? A. I did.

Q. For the benefit of the two complainants? A. I did.

Q. Why was that transfer made in your own name? A. Why, some legal reason my attorney advised me. I don't know just why.

Q. You just said you still own real estate in your own name? A. I do.

Q. What is the approximate value of that in your own name? A. About eighteen or twenty thousand dollars.

Q. For the benefit of the record, do I understand that the first $5,000 was invested by the complainants prior to the time of these contracts in Florida?

The Court: $5,000 each.

A. Yes.

Q. And the second was after they had gone to Florida and inspected the land? A. Yes.

Q. And you have already stated that the value of the three tracts already mentioned was $40,000. For the period of time between January and June did you receive any pay for it? A. I did not.

Q. Have you ever received any profit from this investment except a paper profit in stocks of this corporation? A. I have not.

Q. Have you ever received any part of the $40,000 invested by you, as against the $20,000 invested by the complainants? A. I have not.

RE-CROSS EXAMINATION by Mr. Eichmann:

Q. You say when you deeded the property from yourself to the Sculthorp Realty Company you executed a deed of trust? A. I did.

Q. Then you recorded the deed, did you not? A. I did.

Q. Did you record the declaration of trust? A. I did not.

Q. Why didn't you record the declaration of trust? A. I met Mr. Steppanski in Keansburg and told him I had the property turned over to them, or would turn it over to them.

Q. What was your object in executing the declaration of trust? A. For the benefit of Jones and Steppanski.

Q. What was the reason for deeding it? A. For some reason my attorney said; I don't know.

Q. Did you call a meeting of the company for the purpose of authorizing the deed? A. No regular meeting.

Q. Did you pass a resolution authorizing the transfer? A. No, we did not.

Q. Did you state any reason in the declaration of trust why it was executed? A. No, I don't think so. It is there and speaks for itself.

Q. Did you give Steppanski and Jones a copy of the declaration of trust at the time it was executed? A. There were three copies and I think one was sent here with the books to me and I saw it there myself. I don't know where they went to.

Q. Isn't it a fact that the first time you showed them a copy, or their attorney, was when you showed the declaration of trust to Otho E. Falls in February, 1927? A. Yes.

The Court: Before you call your next witness I want to take a recess for about five minutes, and then I am going to hear a motion set down for 9:30 this morning.

Afternoon Session, 1:45 p. m.

The Court: Let me ask Mr. Sculthorp a question about that check of $100, D-12. I notice that it has not been cashed.

Mr. Quinn: Mr. Sculthorp is not here at present. I will put him back on the stand and have him explain it.

(MRS.) KITTIE KRUSE sworn on behalf of the defendant, testified as follows:

Direct-examination by Mr. Quinn:

Q. You are a daughter of Jesse L. Sculthorp, the defendant in this suit, Mrs. Kruse? A. Yes.

Q. Do you recall when your father came back from the South in 1928? A. He came back the 28th or 29th of January.

Q. Do you know Mr. Steppanski and Mr. Jones? A. Yes.

Q. Where did Mr. Jones live with respect to your father's home? A. Across the street.

Q. Where did Mr. Steppanski live? A. Directly opposite.

Q. Do you recall either Jones or Steppanski, or both, being over to your father's home after he came back from the South? A. I do.

Q. How long after he came back did both come to his house? A. The next night after he returned there from Florida.

Q. Can you tell us the general conversation that took place between them and your father? A. They asked my father how things were in Florida, and he said people are going crazy down

there in buying Florida real estate; and they said, "Did you buy any?" and he said "Yes, I did; I bought three tracts, and before I left Florida I was offered $15,000 profit."

Q. How long would you say they were there that night, Mrs. Kruse, approximately? A. Well, all the evening.

Q. And what was the general conversation about? A. About Florida.

Q. Now, did you see Jones at the house after that time? A. He came over almost every evening.

Q. Do you know what the general conversation was between Jones and your father on the evenings he was there? A. He said he had a relative, his son's father-in-law or some relative, that had made money down in Florida investing and he would like to get in on it, on some of it, too; and my father said to Mr. Jones, "It is a gamble down there".

The Court: I assume what counsel wants to know is, what the general subject of the conversation was on all of these nights.

Mr. Quinn: I am going to cover them step by step.

Q. He said it was a gamble; what else? A. And the business was being done mostly on paper, and some were losing and some were winning.

Q. Now, when did you see Jones and Steppanski together with your father after your father came back? A. Week ends Mr. Steppanski came down.

Q. Will you tell us the conversation at that time. A. Again they talked about Florida, and Mr. Jones and Mr. Steppanski talked over the matter and they said they wanted to come in, that they had heard big money was being made down there; and my father said again, "It is a gamble and some are winning and some are losing".

Q. Did you see Jones again after that? A. Yes, he came over frequently.

Q. When would he come there? A. Generally evenings.

Q. Did you see Jones and Steppanski there after that? A. Yes, about the middle of July, about the middle of the week.

Q. Mr. Steppanski wouldn't be there in the middle of the week? A. No, he came week ends.

Q. Tell us the conversation. A. They still said they wanted to go in on some real estate in Florida and make some easy money. And again my father told him it was a gamble. Mr. Steppanski and Mr. Jones said, "Well, you put your money down there and you are taking a chance and we are willing to take a chance".

And so my father said, "If you still insist, I have three tracts of land that I purchased which I will put into a corporation for $100,000 and take my profit in stock".

Q. What did Jones and Steppanski say to that? A. They said they were perfectly satisfied.

Q. Now, about how many times between the 28th of June and the week ends in July after the corporation was mentioned, would you see Jones over to your father's house in the evening talk-

ing about Florida real estate. A. Almost every night.

Q. And Steppanski was there, you say, week ends? A. Just week ends.

CROSS-EXAMINATION by Mr. Eichmann:

Q. You weren't present on or about the 9th of May, 1925 at a conversation between Steppanski and Jones and your father, at Steppanski's house, were you? A. No.

Q. And you don't know anything about any agreement which may have been made at that time? A. No, I do not.

Q. Now, you say that in the middle of July Steppanski came down to tell your father that he wanted to get in and your father said it was a gamble; and Steppanski said he would take a chance, and they agreed to go into the proposition, and your father said he would take his profit in stock? A. Yes.

Q. What did he say his profit amounted to? A. He didn't say.

Q. What did he say he paid for the property? A. He did not say what he paid for it.

Q. Was there any discussion as to the amount of profit which your father was going to make? A. No, there was not.

Q. And didn't Steppanski and Jones ask your father how much of a profit he was making? A. No, he did not.

Q. Did they ask how much he paid for the property? A. No.

Q. Did your father tell them how much the property was going to cost? A. He told them he would put it in for $100,000.

Q. And you say, without any questions from Steppansky and Jones as to how much the property cost him or how much he was making, they were willing to go into that proposition and pay $100,000 for the property, without ever seeing it? A. I do.

Q. That is all.

RE-DIRECT EXAMINATION by Mr. Quinn:

Q. Did you ever join in the conversations on these repeated times when Jones and Steppanski were over? A. Not while they were there, but I often told my father—

Q. Well, you can't testify to what you told him; you told it afterwards? A. Yes.

Q. After they had left? A. Yes.

Q. That's all.

STANLEY F. SCULTHORP sworn on behalf of the defendant, testified as follows:

Direct-examination by Mr. Quinn:

Q. You were the Secretary of this company, were you? A. I was.

Q. Will you state how the books were kept, particularly the minutes that were written up. A. When the minutes of the meeting held in Newark, New Jersey, I kept the minutes and wrote them up.

Q. Who wrote the first minutes up of the original corporation. A. Those were written up by me.

Q. State how that was done and what your system of writing the minutes up was. A. I would take notes at the meeting, and after the meeting I would write them up on the typewriter and put them in the minute-book.

Q. Did you have more than one? A. I had one minute-book in Newark and one down South.

Q. I understand you had two minute-books? A. Yes.

Q. Were you present at all the meetings? A. All the meetings up North.

Q. The stock was signed by you? A. Yes.

Q. Do you recall the date your father got home from the South in 1925? A. I think it was the 27th or the 28th of June, 1925.

Q. Do you recall Mr. Steppanski and Jones, or both of them, being at your father's house? A. They were the following night.

Q. What was the general conversation? A. They came in and asked how things were in Florida; and my father told them the conditions.

They said, "Did you buy anything?"

He said, "Yes, I did, 25 acres in Delray." He says, "I was offered $15,000 profit on it before I left Florida." And then there was a general conversation on conditions.

Q. Florida conditions? A. Florida conditions.

Q. Discuss any other syndicates around in that locality? A. They were talking about people making money—everybody was making a barrel of money; everybody was getting rich.

Q. When did they come again? A. About a week later, week ends.

Q. At the following week end did you see Jones over there? A. I saw him over there several times.

Q. How frequently? A. Three or four times a week.

Q. On week-ends when your father came home and Steppanski came around what was the general conversation then? A. Jones said they would like to get in in Florida and make some easy money; other people were making; and my father says, "Of course, real estate in Florida is a gamble"; that they were taking a wild chance because prices were so high.

They replied, "Well, everybody else is making money; I can't see why we can't get in and make a little."

Q. Did you see them again? A. The next week-end. That would be around the middle of July.

Q. What took place then? A. Mr. Jones and Steppanski were still talking about investing in Florida and making some easy money; and father told them again it was a gamble, liable to lose.

And they said, "You are investing money there?"

And he said, "Yes, I am taking a chance."

And they said, "I am not afraid to take a chance where you are taking it."

And my father said, "I will tell you what I will do: If you want to get in on something I will take this 25 acres in Delray and turn it over to a company for $100,000, and I will take my profit in stock. If that is agreeable I will go ahead and form the company at once."

Steppanski said, "Is that agreeable to you, Jones?" and Jones was satisfied, and he said, "Yes", and he said, "Go ahead and develop the land."

Q. Do you know whether or not during the winter of 1925 your father until the beginning of January, 1926, was up here? A. (Witness pauses.)

Q. Who was taking care of the property down South? A. My father.

Q. Was he there during the winter of 1927? A. He was.

CROSS-EXAMINATION by Mr. Eichmann:

Q. You are the secretary of the Sculthorp Realty Company of Florida? A. I am.

Q. And you also own all of the stock of the Sculthorp Realty Company in New Jersey? A. I do not.

Q. You own most of the stock? A. I do not.

Q. Never did? A. No, sir.

Q. Who owns it?

Mr. Quinn: I object to this. May I ask the purpose of this inquiry, who owns the stock in this private corporation.

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

Q. How long have you been in the real estate business? A. Since 1921.

Q. You are associated with your father in the real estate business, are you not? A. I am.

Q. And you are the holder of 40 shares of the capital stock of the Sculthorp Realty Company in Florida? A. I am.

Q. Did you pay for the stock? A. I did not.

Q. Did your father pay for it? A. I imagine so.

Q. Have you ever been in Florida? A. I have not.

Q. Have you ever seen the property in question? A. I have not.

Q. Did you sign the minutes of October 26, 1925? A. I did.

Q. When did you sign it? A. I think it was February, 1927, when my father came up North to get the minutes.

Q. It is stated in those minutes that you signed and attested those minutes after they were presented to the President and the stockholders had discussed such minutes; is that true? A. That is.

Q. When were the minutes discussed by the stockholders? A. I imagine during the winter of 1927.

Q. What month? A. I cannot give the month.

Q. In the months of January, February or March? A. I have no idea.

Q. Where were they discussed? A. I heard from my father that a suit was pending in Florida during the winter of 1927 and I imagine they were discussed at that time.

Q. After the suit was started? A. I imagine so.

Q. And these minutes were discussed by your father and Steppanski and Jones and yourself after the suit was started in Florida against your father? A. Yes.

Q. And the minutes were assented to? A. They were.

Q. And they were all satisfied with the minutes? A. That I can't say.

Q. You were present, weren't you? What was the discussion? You say those minutes were discussed and you attested them? A. I was not present at the meeting when the minutes were discussed.

Q. Didn't you say a minute ago that the minutes were approved by and discussed in your presence? A. I did not.

Q. Did you affix the seal to the minutes? A. No, that was affixed in Florida.

Q. Did you sign the minutes on November 21st, 1925? A. If they are signed in the book I signed them.

Q. November 21, 1925 shows the minutes signed. A. Then I did sign them.

Q. Did you sign the minutes of January 22, 1927? A. I did.

Q. When did you sign them? A. I cannot give the date. It was during the winter of 1927 after the suit had been started in Florida. My father came North to get the minutes out of the safe. He gave me the combination of the safe to get them and to show them to Mr. Jones and Mr. Steppanski.

Q. Did you show them to Jones and Steppanski? A. I signed them since. I took them out of the safe and I said, "I suppose I should sign these minutes" and he said, "I imagine so."

Q. And after you signed them you showed them to Mr. Steppanski and Jones? A. I did not. I took that book out of the safe.

Q. Did Steppanski and Jones call on you? A. They did.

Q. Didn't Steppanski, in the presence of you and Mr. Jones, make a complete copy of everything? A. He did of that one book.

Q. I show you Exhibit C-47 in evidence in this case; isn't this the copy that Mr. Steppanski made in your presence? A. I have no idea whether it is or not.

Q. Well, look at it. A. I could not swear that that is a copy.

Q. Isn't that the paper which you gave him? A. It may have been.

Q. Can't you recognize the paper? A. I can't.

Q. Didn't Steppanski and Jones ask you whether there were any other minutes than those in the book? A. He did.

Q. Didn't you say, "These are all the minutes I have seen; if there is, Pop has them down South"? A. I told him there were other minutes at the forming of the corporation that I did not have.

Q. Didn't Jones ask you if you had any other papers, contracts. A. Yes.

Q. Didn't Jones ask you if you had any other papers or contracts and that they would like to make a copy of them? A. They did.

Q. Didn't you say, "I have never seen anything else pertaining to this company"? A. I did.

Q. Isn't it a fact at the time you showed them the minutes there were no signatures or corporate seals attached to the minutes? A. My signature was affixed to the minutes when they made a copy of them.

Q. Now, I show you this copy in evidence, C-47, which shows no signature affixed to any of the minutes; you say that this copy is correct or incorrect? A. It must be incorrect if it has not my signature on it.

Q. You are positive about that? A. I am.

Q. About the 10th of June, 1925, didn't you call Mr. Steppanski on the 'phone at the White House at Keansburg? A. I do not recall it.

Q. And didn't Mrs. Steppanski answer the 'phone, and did you say to her, "Can you get in touch with Mr. Steppanski; Pop has a choice piece of real estate but it will require more money than anticipated and he wants to know if Mr. Steppanski can increase his investment from $5,000 to $10,000, and it is important to have a quick response or we may lose it"? A. I can't recall it.

Q. Did Steppanski get in touch with you in Atlantic Highlands and say whether they will agree to this proposition? A. I cannot recall it.

Q. Didn't you personally go to Keansburg and see Mrs. Jones on or about the 10th of June and tell her, "I have heard from Pop and I would like to see Mr. Jones"? A. I did not.

Q. Did Mrs. Jones say, "We will be over to see you this evening when Mr. Jones returns from New York"? A. I do not recall it.

Q. Did Mr. and Mrs. Jones drive over to your home at Atlantic Highlands that same night? A. I don't recall it.

Q. Did you stand on the running-board with one foot on the car and talk to Mr. and Mrs. Jones? A. I don't recall it.

Q. Did you tell them that your wife Margaret was out? A. I do not recall it.

Q. Did you say, "I received a wire from Pop; he has a choice piece of real estate in view, but it will require more money than he anticipated, and Pop wants to know if you can increase your investment from $5,000 to $10,000"? A. I do not recall it.

Q. Did Jones say, "What is Steppanski going to do"? A. I do not recall it.

Q. Did you say, "Steppanski said he would increase his investment from $5,000 to $10,000 if you would"? A. I do not recall it.

Q. Did Jones say, "I don't know where I am going to get the extra $5,000, but if Steppanski has increased his, I will go in, too; tell your father it is Okay"? A. I do not recall.

Q. Isn't it a fact that you personally arranged for the sale of Jones' building and loan stock to raise the extra $5,000? A. Not that I can remember.

Q. Did you ever write any letters to Jones regarding the raising of money on building and loan stock? A. I do not recall writing any.

Q. Did Jones tell you in your office at Atlantic Highlands everything would be okay as he was borrowing $1407 from the Metropolitan Life Insurance Company on his policy in order to satisfy your father? A. I do not recall anything like that.

Q. I show you a letter, Exhibit P-41, written by Jones to your father, in which it is stated:

> "I think you will remember that I only intended to put $5,000 into this proposition

in the first place, but you wired Stanley asking if I would make it $10,000 in order to enable you to get the property you wanted, and I agreed to it."

Is that correct? A. I have no knowledge whether it is or not.

Q. Did you receive such a wire from your father? A. Not to my knowledge.

Q. You don't recall? A. No.

Q. You weren't present on or about the 9th of May, 1925, at a conversation between your father and Steppanski and Jones at Steppanski's house, were you? A. I was not.

Q. So you don't know as to anything that took place then? A. No.

Q. You say that in the middle of July, 1925, an agreement was made between your father and Steppanski and Jones relative to turning this property over to a syndicate, and that your father would take his profit in stock; what was the amount of the profit which your father was taking in stock? A. There was no mention of it.

Q. You mean to say that they agreed that he should take his profit in stock and that he didn't state how much the profit would be? A. He did not.

Q. What was the discussion as to the cost of property? A. No discussion at all, only $100,000.

Q. You mean to say that Steppanski and Jones agreed to give your father a certain profit on the stock and there was no discussion at all as to how much that stock was to be? A. There was not.

Q. Now, you say that you are positive that you never wrote a letter to Mr. Jones relative to helping raise some money through the building and loan? A. I do not recall it.

Q. But you don't say you never wrote such a letter? A. I do not.

Q. All right; that's all.

RE-DIRECT-EXAMINATION by Mr. Quinn:

Q. You were asked by counsel whether or not you ever saw the letter, in which it was said—presumably said by Jones—"I only intended to put $5,000 into this proposition in the first place, but you wired Stanley asking if he could make it ten thousand to enable you to get the property you wanted, and I agreed to it." That letter was dated January 11, 1927. You did know that the property was bought in June, 1925? A. I do.

Q. Referring to the minutes of the corporation that were signed by you—how soon were they signed after the meeting at which you attended? A. The meetings which I attended?

Q. Yes. A. They were signed immediately after they were written, not later than a day after.

Q. You have answered several questions by saying, "I do not recall"; what do you mean by saying you do not recall? A. (Witness pauses.)

Q. Did you have a conversation with Mrs. Steppanski? A. I did not.

Q. You never talked to her about this? A. I did not.

Q. Is that what you mean? I want to clear the record up. A. That is what I mean.

Q. Did you ever at any time talk with Mrs. Steppanski about the investment of her husband? A. No.

Q. Did you, at the time it was suggested that you had your foot on the running-board of the car, have a conversation with her about it? A. I did not.

Q. Did you know that Mr. Steppanski had not put all his money into it at one time? A. (Witness pauses).

Q. If you don't, say so; I am trying to find out the fact. A. I don't think I did.

Q. Did you ever at any time receive a telegram from your father to go around to Mr. Steppanski and ask him to invest more money? A. No.

Q. Do you know of your own knowledge when the thing was first talked about how much money Mr. Steppanski was to put in the property? A. I think at the time my father agreed to turn the property over to the corporation Mr. Steppanski agreed to put in $10,000, and Jones said he would try to raise ten.

JAMES B. VAN MATER, sworn on behalf of the defendant, testified as follows:

Direct-examination by Mr. Quinn:

Q. You are the assistant cashier of the Atlantic Highlands National Bank? A. I am.

Q. Do you know Jesse L. Sculthorp? A. I do.

Q. Have you known him for a number of years? A. Yes, sir.

Q. Intimately? A. Yes.

Q. Have you any knowledge of his affairs by reason of his connection with the bank? A. Yes.

Q. Did you know that he was investing in Florida real estate in 1925? A. I did.

Q. Did you likewise go down there and invest money there? A. I did.

Q. And in October, 1925, did you go to Florida? A. I did.

Q. Who went with you? A. A friend of mine by the name of Berscheimer.

Q. Did you see Mrs. Steppanski and Mrs. Jones in Florida? A. I met them at Mr. Harry Sculthorp's house.

Q. How did it happen that you all went to the house of the brother of Mr. Sculthorp? A. The afternoon that we drove down we had trouble because of the overcrowded condition and we were not able to get a place, and Mr. Sculthorp said he would very gladly let us use his house if we could get a couple of cots, and we stayed there a week or 10 days.

Q. Do you know whether Mr. Steppanski and Mr. Jones inspected property? A. Yes, they made a statement about it.

Q. Where was that statement made? A. At Harry Sculthorp's house.

Q. Will you give the statement, generally. A. At different times we would talk about Florida and about the profits we were going to make and Mr. Sculthorp, among the others, asked them if they would like to have their money back at different times—

Q. Asked who? A. Mr. Steppanski and Mr. Jones, and they said no, they would take a chance with the rest of them. If there was any money to be made they would like to make some.

Q. They were perfectly satisfied? A. Yes.

Q. It was a general conversation that everybody was making money? A. Yes, and they expected to make some. I know I did.

Q. And you didn't? A. Most everybody did at that time.

CROSS-EXAMINATION by Mr. Eichmann:

Q. You have known Sculthorp many years? A. I should say about 15 or 18 years.

Q. You were intimate with him for 18 years? A. I wouldn't say "intimate"; I have known him by having business dealings with him and have known all the family.

Q. You are also associated with him in some real estate deals in Florida? A. No.

Q. Or your father was? A. No, sir.

Q. You weren't present on May 9, 1925, at Steppanski's house when a conversation was had? A. Not that I recall, no, sir.

(MRS.) LOTTIE SCULTHORP, sworn on behalf of the defendant, testified as follows:

Direct-examination by Mr. Quinn:

The Court: Is this the defendant's wife?
Mr. Quinn: Yes.

Q. You are the wife of Jesse Sculthorp? A. Yes.

Q. It was testified to by Mrs. Steppanski that in the early part of the year, May 1925, a check was left by her husband with her and placed in the safe, which remained there until sometime in August of 1925. What did Mrs. Steppanski tell you about checks being left by her husband with her? A. She told me at any time that Mr. Steppanski didn't give her sufficient funds for her own special needs he would leave signed checks for her.

Q. That he would leave signed checks for what purpose? A. Well, for business purposes.

Q. Were they running a boarding-house or something? A. Yes.

CROSS-EXAMINATION by Mr. Eichmann:

Q. You say that Mrs. Steppanski told you that many times her husband didn't give her enough money and left signed checks with her; is that correct? A. Yes.

Q. Did she tell you that many times? A. Many times in our acquaintance.

Q. When was the first that she told you that? A. Well, the first time—we had many talks together.

Q. When was the first time that she ever told you that? A. Well, I should judge 1924 and 1925; during those years.

Q. 1924? A. And 1925.

Q. 1925 was the first time? A. No, not the first time; that was her ordinary, common way of talking.

Q. Well, what year was the first time? A. I couldn't tell you exactly.

Q. Where was the conversation? A. In my home.

Q. And just what did she tell you? A. Well, she said Mr. Steppanski gave her very little money to support herself on, for buying—for herself buying clothes and so forth, and that he would leave signed checks for her to use in case of an emergency.

Q. And who was present at that conversation? A. Mrs. Steppanski and I.

Q. Nobody else? A. No.

Q. What was the date of that conversation? A. I couldn't tell you.

Q. What year? A. Well, that I couldn't tell you, because we had talks many times.

Q. When was the next conversation you had with her? A. Well, we had them quite often—conversations every day or so.

Q. About how often did she tell you that? A. Well, I don't say she would tell me every day, but we would get into a conversation that led up to it.

Q. About how many different times did she tell you that? A. I don't say she told me—well, I couldn't tell you, of course, how many times.

Q. About how many times? A. Oh, I couldn't say.

Q. You can't say? A. No.

Q. Was it twice or was it 100 times? A. I couldn't answer that. We had talked together many times.

Q. You can't say whether she told you that twice or a hundred times? A. Many times together, I say.

Q. About how many times? A. I couldn't say.

Q. Did she ever tell you in the year 1925? A. Yes, she did.

Q. In the year 1926? A. Well, I couldn't say in 1926.

Q. You couldn't say as to 1926; how many times did she tell it to you in the year 1925? A. I couldn't say how many times. We talked together so many times.

Q. Can you recall any particular conversation in the year 1925? A. No.

Q. Or where it was held? A. In my home.

Q. Were all the conversations held in your home? A. Yes.

Q. Can you recall any conversation in the year 1926? A. No.

Q. Or in the year 1927? A. No.

RE-DIRECT-EXAMINATION by Mr. Quinn:

Q. Were you and Mrs. Steppanski close friends? A. One of my dearest friends.

Q. Did you see each other every day across the street? A. One of my closest friends.

By the Court:

Q. Do you remember how she came to discuss financial matters between herself and her husband? A. Well, we usually talked every time we met on the subject of money—seemed to be interested in our husbands.

The Court: Go ahead.

Mr. Eichmann: Well, that is all.

Q. You don't remember anything that led up to it? A. No, I don't.

JESSE L. SCULTHORP, recalled in his own behalf, testified as follows:

Direct-examination by Mr. Quinn:

Q. Mr. Sculthorp, here is a check dated December 8, 1925, that was not cashed; will you explain about that? A. This check was sent to Burd & Porter to pay the revenue stamp on the deed, which I turned over to the Sculthorp Realty Company, Inc., of Florida. When they sent the deed to be recorded this was mislaid in their office. Then a while afterwards they had come across this check and wrote me a letter stating that it was mislaid and that they had put a dollar stamp on the deed, and thinking that was not correct that I would have the additional stamps put on later on. I went back to Florida and put the additional stamps on the deed as well as the mortgage.

Q. Did you have that letter that you received from your attorney in that respect? A. Yes, I did.

Q. Do you know where Mr. Jones got the first money to make the payment of $5,000? A. No, I don't know where he got it.

Q. Did he tell you where he got it? A. No, Jones told me that was on his second payment; that he had to withdraw his building and loan stock to meet the original payment on his check.

Mr. Quinn: We rest.

COMPLAINANTS' REBUTTAL.

E. J. STEPPANSKI, recalled on behalf of the complainants, testified as follows:

Direct-examination by Mr. Eichmann:

Q. Mr. Steppanski, I show you a check, Exhibit C-1, made by yourself to Sculthorp, for $5,000; when and where did you sign that check? A. I signed this check at the White House at Keansburg, N. J., on the evening of May 28, 1925.

Q. How often did you leave a signed blank check with your wife, with instructions to fill it out? A. This is the only signed check I ever left with my wife with instructions to fill it out.

Q. Why did you leave this signed blank check with your wife on May 28, 1925? A. It was the only way in which I could keep my agreement.

Mr. Quinn: I object, if the Court please, as calling for a reason why. It would be something in his own mind that we couldn't contradict.

The Court: Frequently it is advisable to cross-examine a witness as to his state of mind.

Mr. Quinn: I will withdraw the objection.

A. It was the only way I could keep my agreement with Sculthorp.

Q. Why didn't you fill in the amount? A. It was agreed upon that he would ask for whatever amount he would be short, and I didn't know the amount he would ask for, and for that reason I couldn't fill in the amount.

Q. Why didn't you fill in the date? A. I didn't know on what date he was going to call for it.

Q. Why didn't you fill in the name? A. It was agreed upon that a corporation would be formed and I didn't know what the name of the corporation would be.

Q. How many checking accounts did you have at this time? A. I had two checking accounts.

Q. In what bank did you have checking accounts? A. One with the Trust Company of New Jersey in Jersey City and one with the Keansburg National Bank at Keansburg, New Jersey.

Q. Have you the check-book showing your account with the Trust Company of New Jersey? A. I have.

(Witness produces book.)

Q. What period does this cover? A. This check-book covers from March, 1924, to March, 1927.

Q. Does this book contain every cancelled check which the stubs show were issued during this

period? A. This check-book contains every cancelled check that was issued in this period, with the exception of six checks which were taken out for exhibits in this case.

Q. They are in evidence in this case? A. They are in evidence, so that every check is here.

Q. Are any of these checks made payable to your wife? A. Not one.

Q. Are any of these checks endorsed by her? A. Not one.

Q. Are any of these checks made payable to cash? A. Yes.

Q. Who cashed the checks made payable to cash? A. I cashed every check made payable to cash and my endorsement is on the back of every one of those.

Q. Have you with you your check-book showing your account with the Keansburg National Bank? A. I have.

Q. Will you produce it? A. (Witness produces it).

Q. Is there included in that book all cancelled checks made by yourself on the Keansburg National Bank during the year 1925, '6 and '7? A. Every check issued by me during 1925, '6 and '7 are in this book.

Q. Any of those checks made payable to your wife? A. No.

Q. Any of those checks endorsed by her? A. No.

Q. Did you ever leave a signed blank check with your wife at any time, with the exception of the one you left with her on May 25th, 1925. A. The only one I ever left with my wife was the one of May, marked Exhibit C-1.

Mr. Eichmann: I would like to offer in evidence the check-book showing cancelled checks and stubs, showing the account of E. J. Steppanski with the Trust Company of New Jersey.

Mr. Quinn: I have no objection, but I do think we ought to confine our record to things that are material.

Mr. Eichmann: In view of the testimony of Mrs. Sculthorp that she had conversations over and over again with Mrs. Steppanski about leaving checks signed in blank, I think this would demonstrate that no such conversations were ever held.

The Court: I think it might be proof to that effect if one further answer is given: Are any of the checks in any of these books to which you have just referred made out in the handwriting of Mrs. Steppanski?

A. There are none.

The Court: Now, I don't suppose, Mr. Eichmann, that you want to offer these books with the idea that they are to be a part of the record?

Mr. Eichmann: No.

The Court: But isn't your offer now made for the purpose of putting them at the disposal of the court?

Mr. Eichmann: I will offer them for identification merely and then they won't be a part of the record.

The Court: Of course, they won't be available to the defendant if you do that.

Isn't it your purpose to offer them to the defendant for inspection?

Mr. Eichmann: Yes.

The Court: So that the defendant may have the benefit of examination and examining the complainant?

Mr. Eichmann: Exactly.

Q. Just one other question: When did Sculthorp first inform you that he had ordered the corporation papers to be drawn? A. When Mr. Sculthorp returned from Florida in the latter part of June he told me, while he was down there he ordered the papers to be drawn.

CROSS-EXAMINATION by Mr. Quinn:

Q. I believe you said you were to put in $5,000? A. Originally that was my agreement.

Q. You just said a moment ago that the reason you did not fill in the amount of this check which you supposedly left with your wife was that Mr. Sculthorp was to let you know how much he was short; why didn't you make it for $5,000? A. Before he left I offered him money and he said he had some and he thought that would be sufficient, but should he be short he would wire his son and I was to give his son Stanley Sculthorp whatever amount he would be short.

Q. Short of what? A. Short of the required funds to go through any deal.

Q. What were the down funds? A. Down payments.

Q. What would be the amount? A. Nobody would know that until the deal was made.

Q. You didn't know how much he needed to go through with the various deals? A. I did not.

Q. And isn't it the reason you didn't ask how much it was because whatever profit he took he was to take in stock to the extent of $100,000, and that is the real reason you didn't offer it? A. Not at all. I did offer it and he said he would call for it when he needed it.

Q. When did he first call for it after May, 1925? A. The first call was on the first of August, 1925, and he got the check August 1, 1925.

Q. You say that none of the bodies of these checks are made out in the name of your wife? A. No, they're not.

Q. Is that correct? A. That's correct.

Q. Is that the custom that you follow, that you make out the body of all your checks? A. I did make out the body of my checks.

Q. Why did you leave just one blank check for a large amount? A. There was no other way in which I could keep my agreement with Mr. Sculthorp.

Q. Why didn't he get in touch with you? A. My wife couldn't get in touch with me.

Q. Where were you? A. I was in Jersey City.

Q. Couldn't she get you by telephone? A. I am in my office very seldom.

Q. Or with a telegram? A. Who would receive it?

Q. You have an office? A. Yes, but I have no office girl.

Q. You conduct a business? A. Yes.

Q. And I assume that you get mail there? A. I do.

Q. And telegrams, if such be needed? A. Yes.

Q. And because you couldn't be reached at a moment's notice by Mr. Sculthorp in Jersey City you left a check signed in blank in Keansburg? A. Mr. Sculthorp stipulated that I should have my money for immediate use and wanted to be able to reach me at any minute, and the only way I could keep my agreement with him was to leave a check with my wife so that she could fill it in and send it to him immediately when he wanted it.

Q. If it was your understanding with Mr. Sculthorp that he might have it on a moment's notice why didn't you give him a check right then? A. I offered to but he said he didn't need it right then.

Q. You came home every week end? A. I did.

Q. Didn't you get in touch with your wife during the week? A. Once a week.

Q. Couldn't it be be very easy for Mr. Sculthorp to notify you that he needed $5,000? A. Nobody could reach me on a few minutes' notice by wire or 'phone, and that is the reason I left the check. I never did that but this once for this purpose. This was not for my wife; this was for Sculthorp when he needed it and called for it. He could have had it in June or July, but he only wanted it when he called for it. It was never my practice to leave blank checks signed with my wife.

Q. I know, but it was testified that you would not leave your wife sufficient money for her needs and that at such times she could fall back on

these signed checks. A. She had cash to run the boarding-house. She always gets in cash from the boarders and doesn't need my money.

Q. Did you give her any money? A. She got it every week.

Q. Do you think she got enough income from the boarding-house without calling upon you? A. I am a good provider and she don't have to run around cashing checks.

Q. Is it not true that some of your checks were made out to cash and endorsed on the back yourself that you left with your wife—that you signed them and endorsed them on the back? A. No, for the simple reason that they are cashed in New Jersey. How can she use them when they were in Keansburg. She certainly could not cash it.

Q. Are those all the checks that you have? A. They are not a few checks. You are holding the book, yourself, and I testified they are all here.

Q. I know you testified to it, but I am asking you for the fact. A. They're all here.

Q. Between May, 1925, when you say you left this check in blank, and August, 1925, didn't Mrs. Sculthorp make any request on you to give him some money on the deal? A. No.

Q. Did you go back to him and ask him if he needed any money in the deal? A. It was agreed—

Q. Answer my question. A. I didn't ask him, no.

Q. Why didn't you go back to him and ask him if he needed any in this deal? A. Our agreement was that he would ask me for the money as he needed it.

Q. You were over to Mr. Sculthorp's home almost every week end with Mr. Jones, discussing the property? A. Yes.

Q. And you didn't ask him on any of those occasions whether he needed money? A. I didn't, because at that time he was misleading me by telling me that he hadn't bought it, but on the first of May—

Q. He was misleading you by telling you he had not bought the property? A. Yes, he lied to me.

Q. And, therefore, you made no effort at all to ask him if he needed money? A. What period do you mean?

Q. I am now speaking about the period between May when the so-called check was in your safe for $5,0000, and August, the time when you actually paid it. A. During that period Sculthorp told me he hadn't bought anything; that he had an option on it and was trying to buy cheaper than what they wanted; and, of course, I didn't offer him any money at that period, for the reason he didn't need anything and I thought he didn't want anything.

Q. If he hadn't bought anything will you tell us why you had this check ready? A. My agreement with Mr. Sculthorp was that I have my check ready, and it was ready.

Q. That is your only explanation? A. There can't be any other. My money was ready.

MRS. GENEVIEVE STEPPANSKI, recalled on behalf of the complainants, in rebuttal, testified as follows:

Direct-examination by Mr. Eichmann:

Q. I show you Exhibit C-1, being a check of Mr. Steppanski to Sculthorp for $5,000; did your husband leave that check with you? A. He did.

Mr. Quinn: I think all of this testimony has gone in. It isn't rebuttal. It means that I must cross-examine all over again.

Mr. Eichmann: I withdraw it.

Q. Aside from this check, Exhibit C-1, did your husband ever, before he left that check with you, leave any other signed blank check with you? A. No, he did not.

Q. So that check, Exhibit C-1, is the only signed blank check which he ever left with you? A. Yes.

Q. Did you ever cash any of your husband's checks? A. No.

Q. Did you ever endorse any of your husband's checks? A. No, I never did.

Q. Did he ever give you a check for cash? A. No.

Q. You have heard the testimony of Mrs. Sculthorp that she had numerous conversations with you, in which you told her that your husband many times left checks with you in blank to be cashed by you or filled in; you have heard that testimony, haven't you? A. Yes, I have.

Q. Did you ever have any such conversation with Mrs. Sculthorp? A. No, I never did.

CROSS-EXAMINATION by Mr. Quinn:

Q. You and Mrs. Sculthorp were very close friends? A. Yes, very dear friends.

Q. Used to see each other almost every day? A. Not every day; I was too busy to leave.

Q. You mean to say that you did not tell Mrs. Sculthorp that your husband did not leave you enough in cash and that he did leave blank checks to use in an emergency? A. I never said anything like that to Mrs. Sculthorp.

(MISS) ALICE CASEY, sworn on behalf of the complainants, in rebuttal, testified as follows:

Direct-examination by Mr. Eichmann:

Q. You are a stenographer? A. Yes.

Q. In the employ of the Maryland Coal & Coke Company? A. Yes.

Q. And is Mr. Jones connected with that company? A. Yes, he is a manager of it.

Q. Were you in the employ of the Maryland Coal Co. during the month of January, 1927? A. Yes.

Q. Do you take dictation from Mr. Jones? A. Yes.

Q. Did you in the month of January, 1927, take dictation? A. Yes.

Q. From Mr. Jones? A. Yes.

Q. I show you Exhibit C-41, being a letter written by Mr. Jones to Mr. Sculthorp, dated

January 11, 1927; do you recall mailing such a letter to Mr. Sculthorp? A. Very clearly.

Q. Do you recall Mr. Jones dictating that letter to you? A. Yes.

Q. Have you your original note-book here? A. Yes.

Q. Showing your notes of the letter as dictated to you? A. Yes.

Q. Will you produce it. A. (Producing book).

Q. From what date to what date is that note-book? A. From December, 1926, to January, 1927.

Q. Do you recall this particular sentence from the letter: "I think you will remember that I only intended to put $5,000 into this proposition in the first place, but you wired Stanley asking if I could make it $10,000 in order to enable you to get the property you wanted, and I agreed to it." A. Yes, sir.

Q. Will you refer to your original notes and read that statement from your notes. A. (Reading from note-book, as follows): "I think you will remember I only intended to put $5,000 into this proposition in the first place but you wired Stanley asking if I could make it $10,000 in order to enable you to get the property you wanted, and I agreed to it."

Q. Does that book contain any letters other than personal letters of Mr. Jones? A. It contains letters of the Maryland Coal & Coke Co. and another company.

Q. How many personal letters of Mr. Jones are in that book? A. I do not recall how many for just this one party.

Q. You think that is the only one? A. There may be others.

Q. But most of the letters in that book are company letters? A. Yes.

Q. And do you preserve all your note-books of that company? A. To a certain date back. I have back to 1926.

Q. You say you recall mailing the letter to Mr. Sculthorp? A. Yes, sir.

Q. How is it that you happen to recollect that? A. Because the letter was out of the ordinary; it wasn't a company letter.

Q. The letter was out of the ordinary? A. From my usual business.

CROSS-EXAMINATION by Mr. Quinn:

Q. Do you recall where you mailed the letter? A. Yes.

Q. Where? A. In the building.

Q. No, where you directed it? A. Mr. J. L. Sculthorp, President Sculthorp Realty Co., Delray, Florida.

Q. No street address at all? A. I do not recall the street address.

Q. Does your note-book indicate that? A. Yes.

Q. You say you recall this because it was an unusual letter? A. Yes. I recall that that was about the time that the bubble had bursted and they all were losing their money.

Q. At that time did Mr. Jones ask you to make an investigation of the telephone company so that he could make a record of the telephone? A. Mr. Jones did ask me about it.

Q. Did he ask you to investigate and find out whether you could get a copy of the telegram from Delray? A. Yes.

Q. Did you do that? A. No.

Q. Did he come back and ask you if you had done it? A. Yes.

Q. After he instructed you, or after you had written this letter referring to a telegram, did he ask you to make an investigation for the purpose of getting a copy of that telegram? A. I do not recall.

Q. I thought you said he did ask you to do it. A. He did ask me about the telegram, but I did not.

Q. Did he ask you if you could trace it? A. He did.

Q. Then you do recall his having asked you to trace the telegram? A. Yes.

Q. Did you ever make an effort to do it? A. Yes.

Q. And what effort did you make? A. I looked in my note-book.

Q. For the telegram? A. Yes.

Q. The telegram referred to in this letter was one from Jesse Sculthorp to Atlantic Highlands. A. Well, I didn't know anything about the telegram.

Q. Then when you said you recalled asking about the telegram, you simply looked through your note-book to find out about the telegram? A. I supposed he was referring to a telegram that Mr. Jones was sending to Mr. Sculthorp.

Q. Don't you recall writing this letter, in which Mr. Jones said that you send a letter or telegram to Stanley? A. Yes.

Q. Why did you look in your note-book for a telegram to Stanley Sculthorp? A. Because Mr. Jones had sent telegrams down to Florida and I misunderstood your question. I thought you were referring to a telegram that Mr. Jones had sent.

Q. So that Mr. Jones never asked you to investigate and trace this telegram referred to in this letter from Sculthorp to his son? A. No.

Q. Did he ever discuss with you the actual existence of this telegram referred to in this letter? A. Only at the time of writing the letter.

Q. That is the only one you took for him with respect to this proposition? A. I took other letters.

Q. With reference to this particular subject? A. That's all.

RE-DIRECT-EXAMINATION by Mr. Eichmann:

Q. You say that you had some talk about some telegram that Mr. Jones had sent to Sculthorp around that time? A. Yes.

Q. I show you Exhibits C-40 and C-34—

Mr. Quinn: We don't dispute that she sent other telegrams.

Mr. Eichmann: All right; that is all. We rest.

DEFENDANT'S REBUTTAL.

JOHN E. JONES, recalled on behalf of the defendant, in rebuttal, testified as follows:

Direct-examination by Mr. Quinn:

Q. At the time you wrote this letter of January 11th, you realized that all of you had lost your money in this venture? A. No.

Q. Didn't think you had lost it? A. No.

Q. That it was perfectly good? A. Mr. Sculthorp told me it was.

Q. Do you mean to tell me under oath that on January 11, 1927, you thought your investment was still good in Florida? A. Sure.

Q. What effort did you make to find this telegram, or trace a copy of this telegram, which you referred to in this letter, if any? A. I don't know that I made any.

Q. You made none at all? A. I did not.

(No cross-examination.)

Mr. Eichmann: I will recall Mr. Steppanski on this matter.

E. J. STEPPANSKI, recalled on behalf of the complainants, testified as follows:

Direct-examination by Mr. Eichmann:

Q. What effort did you make, Mr. Steppanski, to trace that telegram which was sent by Jesse L. Sculthorp to his son, Stanley? A. I made every known effort to try and get a copy of it.

Q. What did you do? A. I called up the Western Union Telegraph Company in Jersey City, and asked the manager if they had copies there, and word came back that they had all been destroyed; that they only kept them a certain length of time.

CROSS-EXAMINATION by Mr. Quinn:

Q. Show me copy of the telegram that came? A. I can show you the telephone bill for that purpose.

Q. I don't want the telephone bill. A. What telegram?

Q. The one you just referred to. A. I said I received this information from him. He had it investigated for me.

Q. What you are telling us now is what somebody told you? A. Well, it was the manager of the Western Union Telegraph Company who informed me, and he charged me for sending a telegram to Delray.

Q. Where did you send the telegram out? A. The manager sent it out.

Q. Where? A. Jersey City.

Q. To what address? A. I don't know.

Q. Tell me the address. A. I don't know.

Q. Why did you send a telegram to ascertain whether there was such a telegram in existence? A. I did not personally send any telegram, but I paid for the service.

Q. What is the name of the man? A. I don't recall his name.

Q. Where is his office? A. In Jersey City.

Q. Where? A. I don't know, sir.

Q. Didn't you talk with him? A. He didn't give his name.

Q. What number? A. Western Union Telegraph Co.

Q. What office did you call, I mean; where in Jersey City? A. The Western Union Telegraph Company, office of the manager.

Q. Where did you call from, your home? A. My place of business.

Q. How close is the nearest telegraph office to your place of business? A. It was the closest one.

Q. Which one? A. I don't know.

Q. How can you say it was the closest one if you don't know where it is? A. I think that is the only one.

Q. Where is it, if you did send it? A. I did send it. I can get you my telephone bills.

Q. Your telephone bill I'm not interested in. Where was that office you called? A. I called the main office, wherever that was, I don't know.

Q. You mean to say you called them over the 'phone? A. I did.

Q. How did you get your reply to your request? A. By 'phone.

Q. Is there a telegraph office near your place of business? A. No.

Q. How far away? A. Oh, it must be two or three miles.

Q. Where is your place of business? A. Hudson City section, Jersey City.

Q. How much did you pay for it? A. For what?

Q. You said you paid for the investigation. A. Yes, I did; if I rightly remember it was about $8.

Q. Who rendered the bill? A. It was charged to my telephone bill.

Q. And what was the nature of the charge? A. Telegrams to Delray and Atlantic Highlands.

Q. Did you telephone to Atlantic Highlands yourself? A. No, sir.

Q. Were you in Atlantic Highlands at all last summer? A. What summer?

Q. This summer and last summer? A. This summer I don't think I was in Atlantic Highlands not once.

Q. When did you begin this extensive investigation to find out about that telegram? A. Just as soon as I found out he had defrauded me.

Q. When was that? A. In the latter part of January, 1927.

Q. All right. Now, in the summer of 1928, last summer, were you at Atlantic Highlands? A. No, I wasn't.

Q. In Keansburg? A. Yes.

Q. Only a couple of miles away? A. Yes.

Q. Why didn't you go over to Atlantic Highlands and find out for yourself whether there was a telegram? A. I had taken that up with the manager in my home town.

Q. As a matter of fact, you never did make an investigation? A. I did make an investigation and I paid for it, and you know I did, too. I went to the main office and asked them if they couldn't help me out.

Q. Did you ever go down to the main office in Jersey City? A. No, I don't think I ever was in the main office.

Q. Why didn't you go down to the main office and ascertain instead of paying them for that telephone call about this matter? A. I was waiting for them to clean it up for me.

Q. Now, I want you to give me a correct answer if you can regarding this investigation. In January, 1925, you tried to ascertain where the telegram was? A. No, I didn't ascertain at all; I told the man to take care of the case.

Q. Are you sure of that date, because I want to look it up.

Mr. Eichmann: I object to the question. Mr. Quinn puts the date January, 1925, and previously it was January, 1927.

Mr. Quinn: 1927, I guess, is correct.

Q. Is that when you started to look up this telegram? A. No.

Q. When was it? A. After Mr. Eichmann had taken hold of the case.

Q. When was that? A. It was the end of May, 1927. I know it was sometime thereafter when I realized we should try and get them and then I got on the job, but I had no results.

Q. Did you call them up to make a report back to you over the telephone? A. I called up.

Q. And asked for a report. When you called up and asked for the main office whom did you ask for? A. The manager.

Q. You don't know his name? A. I don't recall it at this time. But I can tell you another little incident if you want to hear it.

Q. You started in on May, 1927, and when did you definitely ascertain that you couldn't produce this telegram? A. I couldn't fix any definite date.

Q. Was it a week or 10 days, or two weeks? A. It might have been the end of May and it may have been in June or July.

Q. On what monthly bill was this charge of $8 for service? A. I shall have to look that up.

RE-DIRECT-EXAMINATION by Mr. Eichmann:

Q. What is that little incident you refer to? A. Later on I called up the manager on a different matter, that is, in regard to another telegram connected with this case, and when I mentioned my name it came to him and he said, "You are the same fellow I did that other favor for?" And I says, "Yes." He says, "By the way, you haven't paid that bill," and I says, "If it is open on my books, and in all probability it is still open against me although my recollection is that it was charged to my telephone bill."

RE-CROSS-EXAMINATION by Mr. Quinn:

Q. The manager told you it was still open on his records? A. As unpaid by me.

Q. That is all the talk you had with the manager? A. Yes.

Q. It was the same man? A. I presume he was the same man, because he recalled the incident.

Case closed.

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COMPLAINANTS' EXHIBITS.

EXHIBIT C-1.

No. 2711

EDWARD J. STEPPANSKI

Modern Plumbing and Heating Contractor
Phone Webster 4901 621 Palisade Avenue

Jersey City, N. J. August 21-1925

Pay to the
order of J. L. Sculthorp $5000.00
* * Five Thousand Dollars * *

THE TRUST COMPANY OF NEW JERSEY
Peoples Safe Deposit Branch
55-40 Jersey City, N. J.

Payable in New York City through
Northern New Jersey Clearing House

EDWARD J. STEPPANSKI

Stub:

No. 2711
8/21 1925
Order of
J L Sculthorp 5000

NOTE: Above entries on check stub were filled out in pencil.

Endorsed:

Dep to the c/o of J. L. Sculthorp
Received Payment through the Nor N. J. Clearing House Prior endorsements guaranteed Aug 26 1925 Federal Reserve Bank of N. Y.
Also endorsement stamp of Atlantic Highlands Nat'l Bank Atlantic Highlands, N. J., Aug 25

EXHIBIT C-2.

No. 2713

EDWARD J. STEPPANSKI

Modern Plumbing and Heating Contractor
Phone Webster 4901 621 Palisade Avenue

Jersey City, N. J. June 6-1925.

Pay to the
order of Charles H. Englee Lumber Co. $49.02
Forty-nine 02/100 Dollars

THE TRUST COMPANY OF NEW JERSEY
Peoples Safe Deposit Branch
55-40 Jersey City, N. J.

Payable in New York City through
Northern New Jersey Clearing House

EDWARD J. STEPPANSKI.

Stub:

No. 2713
6/6 1925
Order of
Engler-Keansburg 49.02
Engler 49.02

Endorsed:

Pay to the order of Keansburg National Bank, Keansburg, N. J. C. H. Engler Engler Lumber Company

Received Payment Through the Nor. N. J. Clearing House Prior endorsements guaranteed Jun 13 1925 Federal Reserve Bank of N. Y.

Pay to the order of any Bank, Banker or Trust Company (All Prior Endorsements Guaranteed) Keansburg National Bank 55-465 Keansburg, N. J. G. B. Lorsen, Cashier

Exhibit C-2

No. 2714

EDWARD J. STEPPANSKI

Modern Plumbing and Heating Contractor
Phone Webster 4901 621 Palisade Avenue

Jersey City, N. J. June 11-1925.

Pay to the
order of Cash $100.00
One hundred no/100 Dollars

THE TRUST COMPANY OF NEW JERSEY
Peoples Safe Deposit Branch
55-40 Jersey City, N. J.

Payable in New York City through
Northern New Jersey Clearing House

EDWARD J. STEPPANSKI.

Stub:

No. 2714
6/11 1925
Order of
Pay roll 100—

149.02

Endorsed:

Edward J. Steppanski

Exhibit C-2

No. 2715

EDWARD J. STEPPANSKI

Modern Plumbing and Heating Contractor
Phone Webster 4901 621 Palisade Avenue

Jersey City, N. J. June 12 1925.

Pay to the
order of Philip Grece $40.00
Forty no/100 Dollars

THE TRUST COMPANY OF NEW JERSEY
Peoples Safe Deposit Branch
55-40 Jersey City, N. J.

Payable in New York City through
Northern New Jersey Clearing House

EDWARD J. STEPPANSKI.

Stub:

No. 2715
6/12 1925
Order of
Philip Grece 40.—
deducted before check 2722

NOTE: Above entries on stub were made in lead pencil.

Endorsed:

Philip W. Grece

Received Payment Through Northern New Jersey Clearing House Prior Endorsements Guaranteed 13 Jun 15 1925 The Merchants National Bank Jersey City, N. J.

Exhibit C-2

No. 2716

EDWARD J. STEPPANSKI

Modern Plumbing and Heating Contractor
Phone Webster 4901 621 Palisade Avenue

Jersey City, N. J. June 10 1925

Pay to the
order of Bridgman Co. $15.53
* * Fifteen Dollars Fifty Three Cents * *

THE TRUST COMPANY OF NEW JERSEY
Peoples Safe Deposit Branch
55-40 Jersey City, N. J.

Payable in New York City through
Northern New Jersey Clearing House

EDWARD J. STEPPANSKI.

Stub:

No. 2716
6/10 1925
Order of
Bridgman Co. 15.53
15.72
2% 19
15.53

Endorsed:

Pay to the order of National State Bank Newark, N. J. Bridgman Co.

Pay to the order of any Bank, Banker or Trust Co. Jun 16 1925 Mail Teller N Endorsements Guaranteed Nat'l Bank of Commerce 1-23 in New York

Received Payment Through the Nor. N. J. Clearing House Prior Endorsements Guaranteed Jun 16 1925 Federal Reserve Bank of N. Y.

Exhibit C-2

Pay Nat'l Bank of Commerce New York City, N. Y., or order Nat'l State Bank, Newark, N. J. Arthur W. Greason, Cashier.

No. 2717

EDWARD J. STEPPANSKI

Modern Plumbing and Heating Contractor
Phone Webster 4901 621 Palisade Avenue

Jersey City, N. J. June 10-1925.

Pay to the
order of West Hoboken Plumbing Supply Co. $459.59
* * Four Hundred Fifty Nine Dollars
Fifty Nine Cents * *

THE TRUST COMPANY OF NEW JERSEY
Peoples Safe Deposit Branch
55-40 Jersey City, N. J.

Payable in New York City through
Northern New Jersey Clearing House

EDWARD J. STEPPANSKI.

Stub:
No. 2717
6/10 1925
Order of
W. H. Plumbing Supply Co. 459.59
468.97
2% 9.38

Endorsed:
For Deposit to The Account of West Hoboken Plumbing Supply Co.
Commonwealth Trust Co. Paid Jun 16 1925 Union City, N. J.
The Trust Company of (illegible) Town of Union Branch Town of Union

Exhibit C-2

No. 2718

EDWARD J. STEPPANSKI

Modern Plumbing and Heating Contractor
Phone Webster 4901 621 Palisade Avenue

Jersey City, N. J. June 10-1925.

Pay to the
order of Hudson Plumbing Supply Co. $29.85
* * Twenty Nine Dollars Eighty Five
Cents * *

THE TRUST COMPANY OF NEW JERSEY
Peoples Safe Deposit Branch
55-40 Jersey City, N. J.

Payable in New York City through
Northern New Jersey Clearing House

EDWARD J. STEPPANSKI.

Stub:

No. 2718
6/10 1925
Order of
Hudson Plumbing Supply Co. 29.85

504.97

Endorsed:

Pay West New York Trust Co. West New York, N. J. or order Hudson Plumbing Supply Co. Inc.

Received Payment through Northern New Jersey Clearing House Association Prior endorsements guaranteed 15e Jun 13 1925 West New York Trust Company West New York, N. J.

Exhibit C-2

No. 2719

EDWARD J. STEPPANSKI

Modern Plumbing and Heating Contractor
Phone Webster 4901 621 Palisade Avenue

Jersey City, N. J. June 10-1925.

Pay to the
order of New York Telephone Co. $5.65
* * Five Dollars Sixty Five Cents * *

THE TRUST COMPANY OF NEW JERSEY
Peoples Safe Deposit Branch
55-40 Jersey City, N. J.

Payable in New York City through
Northern New Jersey Clearing House

EDWARD J. STEPPANSKI.

Stub:

No. 2719
6/10 1925.
Order of
N. Y. Telephone Co. 5.65

Endorsed:

Pay to the order of Union Trust & Hudson County National Bank of Jersey City, N. J. Jun 13 1925 New York Telephone Co. E. A. Gurnee, Treasurer.

Received payment through the Northern New Jersey Clearing House (illegible) Prior endorsements guaranteed 55-32 Jun 15 1925 Union Trust & Hudson County Nat'l Bank Jersey City, N. J.

Exhibit C-2

No. 2720

EDWARD J. STEPPANSKI

Modern Plumbing and Heating Contractor
Phone Webster 4901 621 Palisade Avenue

Jersey City, N. J. June 10-1925.

Pay to the
order of Marcy Stove Repair Co. $2.79
* * Two Dollars Seventy Nine Cents * *

THE TRUST COMPANY OF NEW JERSEY
Peoples Safe Deposit Branch
55-40 Jersey City, N. J.

Payable in New York City through
Northern New Jersey Clearing House

EDWARD J. STEPPANSKI.

Stub:

No. 2720
6/10 1925
Order of
Marcy Stove Repair Co. 2.79

Endorsed:

Pay to Commercial Trust Company of New Jersey Grove Street Branch Jersey City, N. J. or order Marcy Foundry Co. Marcy Stove Repair Co.

Received Payment through Northern New Jersey Clearing House Prior endorsements guaranteed Jun 12 1925 Commercial Trust Co. of New Jersey Grove Street Branch S. L. Hetrick, Asst. Treas.

Exhibit C-2

No. 2721

EDWARD J. STEPPANSKI

Modern Plumbing and Heating Contractor
Phone Webster 4901 621 Palisade Avenue

Jersey City, N. J. June 10-1925.

Pay to the
order of Imperial Garage $6.59
* * Six Dollars Fifty Nine Cents * *

THE TRUST COMPANY OF NEW JERSEY
Peoples Safe Deposit Branch
55-40 Jersey City, N. J.

Payable in New York City through
Northern New Jersey Clearing House

EDWARD J. STEPPANSKI.

Stub:

No. 2721
6/10 1925.
Order of
Imperial Garage 6.59

Endorsed:

Imperial Garage Wm. Towney Prop.

Exhibit C-2

No. 2722

EDWARD J. STEPPANSKI

Modern Plumbing and Heating Contractor
Phone Webster 4901 621 Palisade Avenue

Jersey City, N. J. June 10-1925.

Pay to the
order of Warren Plumbers' Supply Co. $26.00
* * Twenty Six Dollars * *

THE TRUST COMPANY OF NEW JERSEY
Peoples Safe Deposit Branch
55-40 Jersey City, N. J.

Payable in New York City through
Northern New Jersey Clearing House

EDWARD J. STEPPANSKI.

Stub:

No. 2722
6/10 1925.
Order of
Warren Plumbers' Supply Co. 26.00

Endorsed:

Pay to the order of Union Trust and Hudson County National Bank Warren Plumbers' Supply Company, Inc.

Received payment through Northern New Jersey Clearing House (illegible) Prior endorsements guaranteed 55-32 Jun 13 1925 (Balance also illegible)

Exhibit C-2

No. 2723

EDWARD J. STEPPANSKI

Modern Plumbing and Heating Contractor
Phone Webster 4901 621 Palisade Avenue

Jersey City, N. J. June 10-1925.

Pay to the
order of Manhattan Plumbing Supply Co.
$154.81

* * One Hundred Fifty Four Dollars
Eighty One Cents * *

THE TRUST COMPANY OF NEW JERSEY
Peoples Safe Deposit Branch
55-40 Jersey City, N. J.

Payable in New York City through
Northern New Jersey Clearing House

EDWARD J. STEPPANSKI.

Stub:

No. 2723
6/10 1925.
Order of
Manhattan Plumbing Supply Co. 154.81
157.91
2% 3.10

154.81

Endorsed:

Pay to the order of First National Bank of Jersey City Manhattan Plumbing Supply Co. Received Payment through Northern New Jersey Clearing House Association Prior endorsements guaranteed Jun 12 1925 First National Bank Jersey City N. J. 55 Henry Brown, Jr., Cashier 23

Exhibit C-2

No. 2725

EDWARD J. STEPPANSKI

Modern Plumbing and Heating Contractor
Phone Webster 4901 621 Palisade Avenue

Jersey City, N. J. June 23-1925.

Pay to the
order of Cash $50.00
Fifty no/100 Dollars

THE TRUST COMPANY OF NEW JERSEY
Peoples Safe Deposit Branch
55-40 Jersey City, N. J.

Payable in New York City through
Northern New Jersey Clearing House

EDWARD J. STEPPANSKI.

Stub:

No. 2724 (2724 marked out and 2725 written in with lead pencil)
6/23 1925
Order of
Pay Roll 50.—

Endorsed:

Edward J. Steppanski

Exhibit C-2

No. 2724

EDWARD J. STEPPANSKI

Modern Plumbing and Heating Contractor
Phone Webster 4901 621 Palisade Avenue

Jersey City, N. J. June 17-1925.

Pay to the
order of Cash $50.00
Fifty no/100 Dollars

THE TRUST COMPANY OF NEW JERSEY
Peoples Safe Deposit Branch
55-40 Jersey City, N. J.

Payable in New York City through
Northern New Jersey Clearing House

EDWARD J. STEPPANSKI.

Stub:

No. 2725 (marked out and figure 2724 written in with lead pencil)
June 24 1925 (marked out)
Order of
Woodward Wanger Co. 48.80
Void
(Two lines above here are marked out)
Cash 50.—

Endorsed:

Edward J. Steppanski

Exhibit C-2

No. 2726

EDWARD J. STEPPANSKI

Modern Plumbing and Heating Contractor
Phone Webster 4901 621 Palisade Avenue

Jersey City, N. J. June 24 1925.

Pay to the
order of Woodward-Wanger Co. $48.80
* * Forty Eight Dollars Eighty Cents * *

THE TRUST COMPANY OF NEW JERSEY
Peoples Safe Deposit Branch
55-40 Jersey City, N. J.

Payable in New York City through
Northern New Jersey Clearing House

EDWARD J. STEPPANSKI.

Stub:

No. 2726
June 24 1925
Order of
Woodward Wanger Co. 48.80

Endorsed:

Pay to the First National Bank or order Woodward-Wanger Company
Received Payment through the Nor. N. J. Clearing House Prior endorsements guaranteed Jun 29 1925 Federal Reserve Bank of N. Y.
Pay to the order of any Bank, Banker or Trust Co. Previous Endorsements Guaranteed Jun 27 1925 The First National Bank 3-20 Philadelphia, Pa. Carl H. Chaffee, Cashier

Exhibit C-2

No. 2727

EDWARD J. STEPPANSKI

Modern Plumbing and Heating Contractor
Phone Webster 4901 621 Palisade Avenue

Jersey City, N. J. June 24-1925.

Pay to the
order of Louis Brey $1.25
* * One Dollar Twenty Five Cents * *

THE TRUST COMPANY OF NEW JERSEY
Peoples Safe Deposit Branch
55-40 Jersey City, N. J.

Payable in New York City through
Northern New Jersey Clearing House

EDWARD J. STEPPANSKI.

Stub:

No. 2727
June 24 1925
Order of
Louis Brey 1.25

50.05

Endorsed:

Pay The Trust Company of New Jersey People's Safe Deposit Branch Jersey City, N. J., or order Louis Brey

Exhibit C-2

No. 2728

EDWARD J. STEPPANSKI

Modern Plumbing and Heating Contractor
Phone Webster 4901 621 Palisade Avenue

Jersey City, N. J. June 26-1925.

Pay to the
order of Cash $100.00
One hundred no/100 Dollars

THE TRUST COMPANY OF NEW JERSEY
Peoples Safe Deposit Branch
55-40 Jersey City, N. J.

Payable in New York City through
Northern New Jersey Clearing House

EDWARD J. STEPPANSKI.

Stub:

No. 2728
6/26 1925
Order of
Cash 100.—

Endorsed:

Edward J. Steppanski.

Exhibit C-2

No. 2729

EDWARD J. STEPPANSKI

Modern Plumbing and Heating Contractor
Phone Webster 4901 621 Palisade Avenue

Jersey City, N. J. June 27-1925.

Pay to the
order of Harry Polanee $98.78
Ninety-eight 78/100 Dollars

THE TRUST COMPANY OF NEW JERSEY
Peoples Safe Deposit Branch
55-40 Jersey City, N. J.

Payable in New York City through
Northern New Jersey Clearing House

EDWARD J. STEPPANSKI.

Stub:

No. 2729
6/27 1925.
Order of
Harry Polanen 98.78

Endorsed:

Harry Poluner
Received Payment through the Nor. N. J. Clearing House Prior endorsements guaranteed Jun 30 1925 Federal Reserve Bank of N. Y.
Pay to the order of any Bank, Banker or Trust Company (All Prior Endorsements Guaranteed) Keansburg National Bank 55-468 Keansburg N. J. C. B. Lonsen, Cashier

Exhibit C-2

No. 2730

EDWARD J. STEPPANSKI

Modern Plumbing and Heating Contractor
Phone Webster 4901 621 Palisade Avenue

Jersey City, N. J. July 2nd 1925

Pay to the
order of James Radigan, City Collector
$460.46
Four Hundred Sixty 46/100 Dollars

THE TRUST COMPANY OF NEW JERSEY
Peoples Safe Deposit Branch
55-40 Jersey City, N. J.

Payable in New York City through
Northern New Jersey Clearing House

EDWARD J. STEPPANSKI.

Stub:

No. 2730
7/2 1925
Order of
Jersey City Taxes 460.46

Endorsed:

Pay to order A. Harry Moore, City Treasurer of Jersey City, N. J. James Radigan, City Collector

Pay Union Trust & Hudson Co. Nat. Bank or order City of Jersey City A. Harry Moore, Treas.

Received Payment through the Northern New Jersey Clearing House Ass'n Prior Endorsements Guaranteed Jul 3 1925 Union Trust and Hudson County National Bank 55-32 Jersey City, N. J.

Exhibit C-2

No. 2731

EDWARD J. STEPPANSKI

Modern Plumbing and Heating Contractor
Phone Webster 4901 621 Palisade Avenue

Jersey City, N. J. June 25-1925.

Pay to the
order of New York Colored Mission $2.00
* * Two Dollars * *

THE TRUST COMPANY OF NEW JERSEY
Peoples Safe Deposit Branch
55-40 Jersey City, N. J.

Payable in New York City through
Northern New Jersey Clearing House

EDWARD J. STEPPANSKI.

Stub:

No. 2731
6/25 1925
Order of
N. Y. Colored Mission 2—

Endorsed:

Pay to the order of Mechanics and Metals National Bank of the City of New York Fifth Avenue Branch The Board of Managers of The New York Colored Mission Benjamin H. Doane Treas.
Received Payment through the Check Department of the Federal Reserve Bank of New York 1-4 Jul 7 1925 Prior Endorsements Guaranteed Mechanics & Metals National Bank Fifth Avenue Branch
Pay to the order of Federal Reserve Bank of New York Prior Endorsements Guaranteed 1-4

Exhibit C-2

Jul 7 1925 Mechanics & Metals National Bank New York, N. Y. Arthur M. Aitken, Cashier Received Payment through the Nor. N. J. Clearing House Prior Endorsements Guaranteed Jul 8 1925 Federal Reserve Bank of N. Y.

No. 2732

EDWARD J. STEPPANSKI

Modern Plumbing and Heating Contractor
Phone Webster 4901 621 Palisade Avenue

Jersey City, N. J. June 29-1925.

Pay to the
order of Carson Shoe Co. $1.00
* * One Dollars * *

THE TRUST COMPANY OF NEW JERSEY
Peoples Safe Deposit Branch
55-40 Jersey City, N. J.

Payable in New York City through
Northern New Jersey Clearing House

EDWARD J. STEPPANSKI.

Stub:

No. 2732
6/29 1925.
Order of
Carson Shoe Co. 1.00
Shoes 3.95
Deposit 1.00

C. O. D. 2.95

Exhibit C-2

Endorsed:

Carson Shoe Co. J. Cifersky
S. T.
Pay to the order of any Bank, Banker or Trust Co. All Prior Endorsements Guaranteed Jul 2 1925 The First National Bank 55-527 West New York, N. J. C. G. Leeds, Cashier
Pay any Bank, Banker or Trust Co., or order All Prior Endorsements Guaranteed 1-54 Jul 3, 1925 The National Park Bank of N. Y.
Received Payment through the Nor. N. J. Clearing House Prior Endorsements Guaranteed Jul 3 1925 Federal Reserve Bank of N. Y.

No. 2708

EDWARD J. STEPPANSKI

Modern Plumbing and Heating Contractor
Phone Webster 4901 621 Palisade Avenue

Jersey City, N. J. May 26-1925.

Pay to the
order of The Brooklyn Citizen $10.00
* * Ten Dollars * *

THE TRUST COMPANY OF NEW JERSEY
Peoples Safe Deposit Branch
55-40 Jersey City, N. J.

Payable in New York City through
Northern New Jersey Clearing House
EDWARD J. STEPPANSKI.

Stub:

No. 2708
May 26 1925
Order of
The Brooklyn Citizen 10.—

Exhibit C-2

Endorsed:

For deposit The Brooklyn Citizen
Pay any Bank, Banker or Trust Co. or order
Prior Endorsements Guaranteed 1-113 Jun 1
1925 The Peoples Trust Co. Main Office Brooklyn, N. Y. Arthur W. Rennert, Secretary
Received Payment through the Nor. N. J. Clearing House Prior Endorsements Guaranteed Jun
2 1925 Federal Reserve Bank of N. Y.

No. 2709

EDWARD J. STEPPANSKI

Modern Plumbing and Heating Contractor
Phone Webster 4901 621 Palisade Avenue

Jersey City, N. J. May 26-1925.

Pay to the
order of Prudential Insurance Co. $12.55
* * Twelve Dollars Fifty Five Cents * *

THE TRUST COMPANY OF NEW JERSEY
Peoples Safe Deposit Branch
55-40 Jersey City, N. J.

Payable in New York City through
Northern New Jersey Clearing House

EDWARD J. STEPPANSKI.

Stub:

No. 2709
May 26 1925
Prudential Ins. Co. 12.55

34.25

Exhibit C-2

Endorsed:

1785563
For deposit only Prudential Ins. Co. N. N. Haskell, Supt.
The Trust Co. of N. J. Paid May 29 1925
Hoboken Branch

No. 2710

EDWARD J. STEPPANSKI

Modern Plumbing and Heating Contractor
Phone Webster 4901 621 Palisade Avenue

Jersey City, N. J. May 26-1925.

Pay to the
order of Jersey Central Power & Light Co. $3.00
* * Three Dollars * *

THE TRUST COMPANY OF NEW JERSEY
Peoples Safe Deposit Branch
55-40 Jersey City, N. J.

Payable in New York City through
Northern New Jersey Clearing House

EDWARD J. STEPPANSKI.

Stub:

No. 2710
May 26 1925.
Order of
Jersey Central Power & Light Co. 3—

Exhibit C-2

Endorsed:

Pay to order of Peoples National Bank, Keyport, N. J., or order Jersey Central Power & Light Co. Successors to Monmouth Lighting Co.

Pay to the order of The National Park Bank of New York, N. Y. (All Prior Endorsements Guaranteed) Peoples National Bank 55-333 of Keyport, N. J. H. S. Burrowes-Cashier.

Pay to any Bank, Banker or Trust Co. or order All Prior Endorsements Guaranteed 1-54 Jun 1 1925 The National Park Bank of N. Y. 4

Received Payment through the Nor. N. J. Clearing House Prior Endorsements Guaranteed Jun 1 1925 Federal Reserve Bank of N. Y.

Jersey City, N. J. May 28 1925 No. X

THE TRUST COMPANY OF NEW JERSEY 55-40
Peoples Safe Deposit Branch

Pay to the
order of Cash $125.00
One hundred twenty-five 00/100 Dollars

Payable in New York City through
Northern New Jersey Clearing House

EDWARD J. STEPPANSKI.

Stub:

Cash 5/28/25 125—
Pay Roll

Endorsed:

Edward J. Steppanski

EXHIBIT C-3.

C. Y. BIRD

ATTORNEY AT LAW

Cromer Building

DELRAY, FLORIDA

June 2, 1925.

We, the undersigned, owners of the East one half of the Southeast Quarter of the Southwest Quarter of the Northeast Quarter of Section 8, Township 46, Range 43 East, containing five acres, less the Southeast corner of the said five acre tract, said corner being 75 feet on the East line by 135 feet on the South line, hereby acknowledge receipt of the payment of $500.00 as a binder on the purchase of the above described property by Jesse P. Sculthorp.

It is understood and agreed that the purchase price of said property is to be $12,000.00, payable as follows: $500.00 cash, the receipt of which is hereby acknowledged; $3500.00 cash 10 days after delivery of abstract; balance of $8,000.00 to be paid in three equal installments of $2,668.66 each, due in one, two and three years respectively with interest at 8%. All papers are to be placed in the Ocean City Bank in escrow as soon as a warranty deed has been executed by the owners.

MELVIN S. BIRD Seal
S. EUGENE BIRD Seal
JESSE L. SCULTHORP Seal

R. B. Hut
C. Y. Bird

EXHIBIT C-4.

June 1st, 1925.

Mr. A. C. Evans,
Cashier Delray Bank & Trust Company,
Delray, Florida.

IN RE: Escrow Agreement, Plottner-Sculthorp.

Dear Sir:

You will please hold the attached deed in escrow, upon the following terms and conditions:

1. Mr. J. L. Sculthorp is to pay to A. A. Plottner the sum of $45,000.00, for the property described in the attached deed, in the following manner:

   a. $3,000.00 binder, the receipt of which is hereby acknowledged;

   b. $5,000.00 cash, upon delivery of abstract of title to the property described in the attached deed;

   c. $5,000.00 cash on or before thirty days from date of delivery of abstract;

   d. $9,500.00 payable on or before sixty days from date of delivery of abstract, at which time Mr. Sculthorp is to execute a purchase money mortgage securing the balance of the purchase price, to-wit: $22,500.00 payable on or before one and two years from date of delivery of deed in equal annual installments, evidenced by two promissory notes, bearing interest at the

rate of eight per cent per annum, payable semi-annually.

You are hereby instructed to deliver to Mr. J. L. Sculthorp the attached warranty deed upon the payment of the above sum and upon the execution of the said purchase money mortgage as above set forth.

Yours very truly,

A. A. PLOTNER (Seal)
JESSE SCULTHORP (Seal)

C. Y. Bird

(Pencil notation in margin: Doc A A Plotner Recd Abstract Jun 2/25 Sec Payment due July 1 Third Payment due July 31)

EXHIBIT C-5.

P. O. BOX 732

J. & G. DAVIS
229-231 N. Miami Ave.
MIAMI, FLORIDA,

June 12th, 1925.

Received of U, B, Williams, of Delray Florida, For himself, his Heirs or Assigns, the Sum of Five Hundred, ($500,00 Dollars, As a Binder for the Purchase of, The North West Quarter of Lot 3, being the North Half, of the South West Quarter, of the North West Quarter, of the South East Quarter, of Section 8, Township 46, South of Range 43, East, Palm Beach County Florida,

Exhibit C-5

The Total Purchase Price is Ten Thousand ($10000,00 Dollars, payable as follows, Four Thousand Cash, On account of which the Money herein receipted for shall apply, to be paid on or before July, 12th, 1925, Five Hundred, $500,00) Dollars By the assumption by the Purchaser of a Mortgage in that amount encumbering said property, dated June 17th, 1924, payable in one Year, The Balance or Five Thousand Five Hundred, $5500,00) Dollars, to be paid in three equal Instalments, One, Two, and Three Years from this date, and bearing Interest at the rate of Eight, (8) Percent, payable Semi-Annually,

All adjustments as to Interest and Taxes, shall be prorated as of this date,

In the event the Purchaser fails to make said Payments on or before July 12th, 1925, as herein provided, Then in that event the Money herein receipted for, shall be retained as liquidated damages,

In the event the Abstract can not be brought down to date in Ten days, the purchaser will then be allowed Twenty, (20) days from date of Delivery of Abstract,

GORDON DAVIS
ROSE M. DAVIS

Abe. L. Krauss
Sam Blanck

EXHIBIT C-6.

(Two Checks)

Atlantic Highlands, N. J. June 2 1925 No. 11993

THE ATLANTIC HIGHLANDS NATIONAL BANK

Pay to the
order of Melvin S. Burd & S. E. Burd $3500.00
Thirty-five Hundred Dollars

Collectible at par through Federal Reserve Bank, New York
in escrow Ocean City Bank

J. L. SCULTHORP

Endorsed:

Melvin S. Burd and S. Eugene Burd per M. S. Burd

(Also endorsed by stamp of five banks which are mostly illegible.)

Atlantic Highlands, N. J. June 2 1925 No. 11994

THE ATLANTIC HIGHLANDS NATIONAL BANK

Pay to the
order of Melvin S. Burd & S. E. Burd $500.00
Five Hundred Dollars

Collectible at par through Federal Reserve Bank, New York
dep c/o Five acres Land

J. L. SCULTHORP

Exhibit C-7

Endorsed:

Stamped on face: N. P. 63-410
Melvin S. Burd S. Eugene Burd

(Also endorsed by stamp of four banks which are mostly illegible.)

EXHIBIT C-7.

(Four Checks)

Atlantic Highlands, N. J. May 28 1925 No. 11991

THE ATLANTIC HIGHLANDS NATIONAL BANK

Pay to the
order of Doc A. A. Plotner $3000.00
Insured Three Thousand Dollars Insured
Three Thousand Dollars

Collectible at par through Federal Reserve Bank, New York
dep c/o of Fifteen acres of
Land (illegible)

J. L. SCULTHORP

(Stamped on Face: Certified Atlantic Highlands National Bank T. M. Maison Jr. Cashier)
(Another illegible stamp on face.)

Endorsed:

Doc. A. A. Plotner

(Also the stamps of several banks which are illegible.)

Exhibit C-7

Atlantic Highlands, N. J. June 2 1925 No. 11992

THE ATLANTIC HIGHLANDS NATIONAL BANK

Pay to the
order of Doc A. A. Plotner $5000.00
Insured Five Thousand Dollars Insured
Five Thousand Dollars

Collectible at par through Federal Reserve Bank, New York
Payment c/o Fifteen acres
of Land

J. L. SCULTHORP

(Stamped on Face: Certified Atlantic Highlands National Bank T. M. Maison, Jr. Cashier)

Endorsed:

Doc. A. A. Plotner

(Also the stamp of several banks which are illegible.)

Atlantic Highlands, N. J. June 28 1925 No. 11999

THE ATLANTIC HIGHLANDS NATIONAL BANK

Pay to the
order of Doc. A. A. Plotner $5000.00
Five Thousand Dollars

Collectible at par through Federal Reserve Bank, New York
c/o Contract

J. L. SCULTHORP

Exhibit C-7

Endorsed:

Credit a/c Doc. A. A. Plotner

(Also the stamp of several banks which are illegible.)

Atlantic Highlands, N. J. Aug. 1th 1925 No. 12019

THE ATLANTIC HIGHLANDS NATIONAL BANK

Pay to the
order of Doc A. A. Plotner $9500.00
The Sum of $9500 and 00 Cts
Ninety five Hundred Dollars

Collectible at par through Federal Reserve Bank, New York
As per agreement

J. L. SCULTHORP

Endorsed:

For Credit a/c Doc A. A. Plotner

(Also the stamp of several banks which are intermingled and illegible.)

EXHIBIT C-8.

(Two Checks)

Atlantic Highlands, N. J. July 1 1925 No. 12003

THE ATLANTIC HIGHLANDS NATIONAL BANK

Pay to the
order of Gordon & Rose M. Davis $3500.00
Thirty Five Hundred Dollars

Collectible at par through Federal Reserve Bank, New York
bal of First Payment on Five
acres near Lake Ida at Delray Fla

J. L. SCULTHORP

Endorsed:

Gordon & Rose M. Davis
Gordon Davis

(Also the stamps of three banks which are illegible.)

Atlantic Highlands, N. J. June 13 1925 No. 11998

THE ATLANTIC HIGHLANDS NATIONAL BANK

Pay to the
order of N. B. Williams $500.00
Five Hundred Dollars

Collectible at par through Federal Reserve Bank, New York
dep c/o Five acres of Land
as per receipt

J. L. SCULTHORP

Exhibit C-9

(Stamped on Face: Teller No. 1 Bank of Delray.)

Endorsed:

U. B. Williams
S. T. Ledford

(Also the stamp of several banks which overlap and are illegible.)

EXHIBIT C-9.

THIS INDENTURE, Made this 13th day of June, A. D. 1925, BETWEEN Melvin Burd and Elizabeth Burd, his wife; and S. Eugene Burd, single, of the County of Palm Beach, in the State of Florida, parties of the first part, and J. L. Sculthorp of the County of Palm Beach, in the State of Florida, party of the second part.

WITNESSETH, That the said parties of the first part, for and in consideration of the sum of Ten ($10.00) Dollars and other Valuable Considerations to them in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained and sold to the said party of the second part, his heirs and assigns, forever, the following described land, situate, lying and being in the County of Palm Beach and State of Florida, to wit:

The East One-half (E½) of the Southeast Quarter (SE¼) of the Southwest Quarter (SW¼) of the Northeast Quarter (NE¼), known as East half of the East Half of Lot 1

of subdivision of Section 8, Township 46 South, Range 43 East, containing 5 acres, more or less.

However, there is included in the above description, but expressly excepted and excluded from this conveyance, a certain lot or parcel of ground described as follows, to wit:

Beginning at a point of the East boundary line of said property, 16 feet from the center of the rock road (the center of the rock road being the Southeast corner of said property); thence North along said East boundary line, 75 feet; thence West 135 feet; thence South 75 feet; thence East 135 feet to the point of beginning.

And the said parties of the first part do hereby fully warrant the title to said land, and will defend the same against the lawful claims of all persons whomsoever.

In Witness Whereof, the said parties of the first part have hereunto set their hands and seals the day and year above written.

MELVIN BURD (Seal)
S. EUGENE BURD (Seal)
ELIZABETH BURD (Seal)

Signed, sealed and delivered
in presence of us:
R. H. Porter
Julia Bradshaw
As to Melvin Burd and
S. Eugene Burd
John B. Cook
Virginia S. Cook
As to
Elizabeth Burd.

2—$1.00
2—$5.00
U. S. I. R.
Stamps
S. E. B.

Exhibit C-9

STATE OF MICHIGAN
COUNTY OF GENESEE

I HEREBY CERTIFY That on this day personally appeared before me, an officer duly authorized to administer oaths and take acknowledgments, Elizabeth Burd to me well known to be the person described in and who executed the foregoing deed, and acknowledged before me that she executed the same freely and voluntarily for the purposes therein expressed.

AND I FURTHER CERTIFY, That the said Elizabeth Burd known to me to be the wife of Melvin Burd on a separate and private examination taken and made by and before me, separately and apart from her said husband, did acknowledge that she made herself a party to said deed for the purpose of renouncing, relinquishing and conveying all her right, title and interest, whether dower, homestead or of separate property, statutory or equitable, in and to the lands described therein, and that she executed the said deed freely and voluntarily and without and compulsion, constraint, apprehension or fear of or from her said husband.

WITNESS my hand and official seal at Flint, County of Genesee and State of Michigan, this 16th day of June A. D. 1925.

JOHN B. COOK
Notary Public, State of Michigan
My Commission Expires Apr. 16, 1928.

(N. P. Seal)

Exhibit C-9

STATE OF FLORIDA
COUNTY OF PALM BEACH

I hereby certify that on this day personally appeared before me, an officer duly authorized to administer oaths and take acknowledgments, Melvin Burd and S. Eugene Burd, an unmarried man, to me well known to be the persons described in and who executed the foregoing deed, and ac-

x

knowledged before me me that they executed the same freely and voluntarily for the purposes therein expressed.

WITNESS my hand and official seal at Delray, County of Palm Beach and State of Florida this 13th day of June, 1925.

JULIA BRADSHAW
Notary Public for the State of Florida at Large.
My Commission Expires Feb. 24, 1929.

(N. P. Seal)

Filed, August 3rd, 1925 at 8:40 A. M.
Recorded, August 25, 1925 in
Deed Book 297, at page 41.
FRED E. FENNO Clerk Circuit Court.
By Leon D. Bushong Deputy Clerk.

STATE OF FLORIDA,
COUNTY OF PALM BEACH

I, Fred E. Fenno, Clerk of the Circuit Court of the Fifteenth Judicial Circuit of Florida, in and for Palm Beach County, do Hereby Certify that the above and foregoing is a true and cor-

Exhibit C-9

rect copy of the record of a Deed from Melvin Burd and wife and S. Eugene Burd, single to J. L. Sculthorp, as filed for record in this office on August 3, 1925 at 8:40 A. M. and recorded on August 25, 1925, in Deed Book 297, at page 41.

WITNESS my hand and official seal at West Palm Beach, Florida, this the 28th day of January, A. D. 1928.

FRED E. FENNO,
Clerk Circuit Court.

(Seal)

STATE OF FLORIDA,
COUNTY OF PALM BEACH. } ss.

I, C. E. Chillingworth, Judge of the Circuit Court of the Fifteenth Judicial Circuit, in and for Palm Beach County, Florida, Do Hereby Certify that Fred E. Fenno, whose name is subscribed to the foregoing certificate and attestation, is the duly appointed and qualified Clerk of the Circuit Court of the Fifteenth Judicial Circuit, in and for Palm Beach County, Florida, and that the seal thereto affixed is the genuine seal of the said Court, and that the said certificate and attestation are in due form and made by the proper officer, and that full faith and credit are due and ought to be given to all of the official acts of said Clerk, as well in courts of judicature as elsewhere.

In Testimony Whereof I have hereunto set my hand and seal at West Palm Beach, Palm Beach County, Florida, this the 31 day of January, A. D. 1928.

C. E. CHILLINGWORTH,
Judge of the Circuit Court of
Palm Beach County, Florida.

Exhibit C-9

COUNTY OF PALM BEACH. }
STATE OF FLORIDA, } ss.

I, Fred E. Fenno, Clerk of the Circuit Court of the Fifteenth Judicial Circuit, in and for Palm Beach County, Florida, Do Hereby Certify that the Honorable C. E. Chillingworth is Judge of the Circuit Court of Palm Beach County, Florida, duly commissioned, qualified and acting, and that the signature to the foregoing certificate is genuine and in his own proper handwriting, and that full faith and credit are due and ought to be given to all of his official acts as well in courts of judicature as elsewhere.

In Testimony Whereof I have hereunto set my hand and the seal of said Court at West Palm Beach, Palm Beach County, Florida, this 31 day of January, A. D. 1928.

(Seal)

FRED E. FENNO,
Clerk of the Circuit Court of
Palm Beach County, Florida.

EXHIBIT C-10.

THIS INDENTURE, Made this 1st day of June A. D. 1925 BETWEEN A. A. Plotner, unmarried of the County of Palm Beach in the State of Florida, party of the first part, and J. L. Sculthorp of the County of Palm Beach in the State of Florida, party of the second part,

WITNESSETH, That the said party of the first part, for and in consideration of the sum of Ten ($10.00) Dollars and other valuable considerations to him in hand paid by the party, of the second part, the receipt whereof is hereby acknowledged, has granted, bargained and sold to the said party of the second part, his heirs and assigns forever, the following described land, situate, lying and being in the County of Palm Beach, State of Florida, to wit:

The North One-half (N½) of the Northeast One-quarter (NE¼) of the Northwest One-quarter (NW¼) of the South-east One-quarter (SE¼), and the West One-half (W½) of the Southeast One-quarter (SE¼) of the Southwest One-quarter (SW¼) of the Northeast One-quarter (NE¼) and the East One-half (E½) of the Southwest One-quarter (SW¼) of the Southwest One-quarter (SW¼) of the Northeast One-quarter (NE¼) of Section Eight (8) Township Forty-six (46) South of Range Forty-three (43) East, containing Fifteen (15) acres.

4—$10.00
1—$ 5.00
U. S. I. R.
Stamps
6-1-25

Exhibit C-10

And the said party of the first part does hereby fully warrant the title to said land, and will defend the same against the lawful claims of all persons whomsoever.

IN WITNESS WHEREOF, The said party of the first part has hereunto set his band and seal the day and year above written.

A. A. PLOTNER (Seal)
_____ (Seal)

Signed, sealed and delivered
in the presence of us:
C. Y. Byrd
R. H. Porter

STATE OF FLORIDA,
COUNTY OF Palm Beach

I HEREBY CERTIFY, That on this day personally appeared before me, an officer duly authorized to administer oaths and take acknowl-
x
edgments, A. A. Plottner, unmarried to me well known to be the person described in and who executed the foregoing deed, and acknowledged before me that he executed the same freely and voluntarily for the purposes therein expressed.

WITNESS my hand and official seal at Delray, County of Palm Beach and State of Florida, this 1st day of June A. D. 1925

C. Y. BYRD

Notary Public, State of Florida at Large.
My Commission Expires July 13, 1927.
Notary Public, State of Florida at Large.
My Commission Expires July 13, 1927.
(N. P.)
(Seal)

Exhibit C-10

State of Florida, County of Palm Beach.

I do hereby certify that the foregoing is a true copy of the original Deed filed in my office for record at 9:30 A. M. on the 3, day of Sept. 1925, and recorded this 30 day of Sept. A. D. 1925.

FRED E. FENNO Clerk,
By Leon D. Bushong, D. C.

STATE OF FLORIDA,
COUNTY OF PALM BEACH.

I, Fred E. Fenno, Clerk of the Circuit Court of the Fifteenth Judicial Circuit of Florida, in and for Palm Beach County, do Hereby Certify that the above and foregoing is a true and correct copy of the record of a Deed, from A. A. Plotner, unmarried to J. L. Sculthorp, as filed for record in this office on September 3, 1925 at 9:30 A. M. and recorded on September 30, A. D. 1925, in Deed Book 301 at page 354.

WITNESS my hand and official seal at West Palm Beach, Florida, this the 28th day of January, A. D. 1928.

FRED E. FENNO,
Clerk Circuit Court.

(Seal)

STATE OF FLORIDA,
COUNTY OF PALM BEACH. } ss.

I, E. C. Chillingworth, Judge of the Circuit Court of the Fifteenth Judicial Circuit, in and for Palm Beach County, Florida, Do Hereby Certify that Fred E. Fenno, whose name is subscribed to the foregoing certificate and attesta-

tion, is the duly appointed and qualified Clerk of the Circuit Court of the Fifteenth Judicial Circuit, in and for Palm Beach County, Florida, and that the seal thereto affixed is the genuine seal of the said Court, and that the said certificate and attestation are in due form and made by the proper officer, and that full faith and credit are due and ought to be given to all of the official acts of said Clerk, as well in courts of judicature as elsewhere.

In Testimony Whereof I have hereunto set my hand and seal at West Palm Beach, Palm Beach County, Florida, this the 31 day of January, A. D. 1928.

C. E. CHILLINGWORTH,
Judge of the Circuit Court of
Palm Beach County, Florida.

STATE OF FLORIDA,
COUNTY OF PALM BEACH. } ss.

I, Fred E. Fenno, Clerk of the Circuit Court of the Fifteenth Judicial Circuit, in and for Palm Beach County, Florida, Do Hereby Certify that the Honorable C. E. Chillingworth is Judge of the Circuit Court of Palm Beach County, Florida, duly commissioned, qualified and acting, and that the signature to the foregoing certificate is genuine and in his own proper handwriting, and that full faith and credit are due and ought to be given to all of his official acts as well in courts of judicature as elsewhere.

In Testimony Whereof I have hereunto set my hand and the seal of said Court at West Palm

Beach, Palm Beach County, Florida, this 31 day of January, A. D. 1928.

(Seal)

FRED E. FENNO,
Clerk of the Circuit Court of
Palm Beach County, Florida.

EXHIBIT C-11.

THIS INDENTURE, Made this 8th day of September, A. D. 1925 BETWEEN Gordon Davis and Rose M. Davis, his wife of the County of Dade in the State of Florida, parties of the first part, and Jesse L. Sculthorp of the County of Monmouth in the State of New Jersey, party of the second part,

WITNESSETH That the said parties of the first part, for and in consideration of the sum of Ten ($10) Dollars and other valuable Consideration to

x

them in hand paid by the part of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, and sold to the said party of the second part, his heirs and assigns, forever the following described land, situate, lying and being in the County of Palm Beach and State of Florida, to-wit:

The North West Quarter (NW¼) of Lot Three (3) being the North Half, (N½) of the South West Quarter (SW¼) of the North West Quarter (NW¼) of the South East Quarter (SE¼)

of Section Eight, (8), in Township Forty-Six (46) South of Range Forty Three (43) East.

It is Covenanted and agreed that as part of the purchase price for the above described property, the grantee assumes the payment of a certain Mortgage heretofore executed by the undersigned, to Adolph Hofman, dated July 9, 1924, on which there is a balance due of $500.00, being a note dated July 9, 1924 payable two years after its date with 8% interest payable semi-annually. Grantee to pay taxes for the year 1925.

1—$10.00
U. S. I. R.
Stamp
9-8-25

x

And the said part of the first part do hereby fully warrant the title to said land, and will defend the same against the lawful claims of all persons whomsoever.

IN WITNESS WHEREOF, The said parties x of the first part hereunto set their hand and x seal the day and year above written.

GORDON DAVIS (Seal)
ROSE M. DAVIS (Seal)

Signed, sealed and delivered
in presence of :
Beachshine
Mitchell Wolfson

Exhibit C-11

STATE OF FLORIDA,
COUNTY OF Dade

I HEREBY CERTIFY, That on this day personally appeared before me, an officer duly authorized to administer oaths and take acknowledgments, Gordon Davis and Rose M. Davis, his wife, to me well known to be the person x described in and who executed the foregoing deed, and acknowledged before me that they executed the same freely and voluntarily for the purposes therein expressed.

AND I FURTHER CERTIFY, That the said Rose M. Davis known to me to be the wife of the said Gordon Davis on a separate and private examination taken and made by and before me, separately and apart from her said husband, did acknowledge that she made herself a party to said deed for the purpose of renouncing, relinquishing and conveying all her right, title and interest, whether of dower, homestead, or separate property, statutory or equitable, in and to the lands described therein, and that she executed the said deed freely and voluntarily and without any compulsion, constraint, apprehension or fear of or from her said husband.

WITNESS my hand and official seal at Miami, County of Dade and State of Florida, this 8th day of September, A. D. 1925.

MITCHELL WOLFSON
Notary Public for the State of Florida at Large.
My Commission Expires January 15, 1926.

(N. P.)
(Seal)

Exhibit C-11

State of Florida, County of Palm Beach.

I do hereby certify that the foregoing is a true copy of the original Deed filed in my office for record at 11:50 A. M. on the 12" day of Sept. 1925, and recorded this 5th day of Oct. A. D. 1925.

FRED E. FENNO Clerk,
By Leon D. Bushong D. C.

STATE OF FLORIDA,
COUNTY OF PALM BEACH.

I, Fred E. Fenno, Clerk of the Circuit Court of the Fifteenth Judicial Circuit of Florida, in and for Palm Beach County, do Hereby Certify that the above and foregoing is a true and correct copy of the Record of a Deed, from Gordon Davis and wife to Jesse L. Sculthorp, as filed for record in this office on September 12th, 1925 at 11:50 A. M. and recorded on October 5th, 1925, in Deed Book 303, at page 372.

WITNESS my hand and official seal at West Palm Beach, Florida, this the 28th day of January, A. D. 1928.

FRED E. FENNO,
Clerk Circuit Court.

(Seal)

Exhibit C-11

STATE OF FLORIDA,
COUNTY OF PALM BEACH. } ss.

I, C. E. Chillingworth, Judge of the Circuit Court of the Fifteenth Judicial Circuit, in and for Palm Beach County, Florida, Do Hereby Certify that Fred E. Fenno, whose name is subscribed to the foregoing certificate and attestation, is the duly appointed and qualified Clerk of the Circuit Court of the Fifteenth Judicial Circuit, in and for Palm Beach County, Florida, and that the seal thereto affixed is the genuine seal of the said Court, and that the said certificate and attestation are in due form and made by the proper officer, and that full faith and credit are due and ought to be given to all of the official acts of said Clerk, as well in courts of judicature as elsewhere.

In Testimony Whereof I have hereunto set my hand and seal at West Palm Beach, Palm Beach County, Florida, this the 31 day of January, A. D. 1928.

C. E. CHILLINGWORTH,
Judge of the Circuit Court of
Palm Beach County, Florida.

Exhibit C-11

STATE OF FLORIDA,
COUNTY OF PALM BEACH. } ss.

I, Fred E. Fenno, Clerk of the Circuit Court of the Fifteenth Judicial Circuit, in and for Palm Beach County, Florida, Do Hereby Certify that the Honorable C. E. Chillingworth is Judge of the Circuit Court of Palm Beach County, Florida, duly commissioned, qualified and acting. and that the signature to the foregoing certificate is genuine and in his own proper handwriting, and that full faith and credit are due and ought to be given to all of his official acts as well in courts of judicature as elsewhere.

In Testimony Whereof I have hereunto set my hand and the seal of said Court at West Palm Beach, Palm Beach County, Florida, this 31 day of January, A. D. 1928.

(Seal)

FRED E. FENNO,
Clerk of the Circuit Court of
Palm Beach County, Florida.

EXHIBIT C-12.

(Five Stubs from Stock Certificate Book of Sculthorp Realty Company, Inc.)

CERTIFICATE

No. 1

For Five Hundred Shares
Issued to
JESSE L. SCULTHORP
Dated 8/26th 1925
From Whom Transferred

Dated 19

No. Original Certificates	No. Original Shares	No. of Shares Transferred

Received Certificate No.
For Shares
this day of 19

(On back of stub there are two 10-dollar and one 5-dollar Revenue Stamps cancelled: 8/26/25 J. L. S. Pres.)

CERTIFICATE

No. 2

For One Hundred Shares
Issued to
EDWARD J. STEPPANSKI
Dated 8/26th 1925
From Whom Transferred

Dated 19

Exhibit C-12

No. Original Certificates	No. Original Shares	No. of Shares Transferred

Received Certificate No.
For Shares
this day of 19

(One 5-dollar Revenue Stamp on back, cancelled: J. L. S.)

CERTIFICATE

No. 3

For One Hundred Shares
Issued to
JOHN E. JONES
Dated 8/26/25 19
From Whom Transferred

Dated 19

No. Original Certificates	No. Original Shares	No. of Shares Transferred

Received Certificate No.
For Shares
this day of 19

(On back of stub there is one 5-dollar Revenue Stamp cancelled: J. L. S.)

Exhibit C-12

CERTIFICATE

No. 4

For Forty Shares
Issued to
STANLEY F. SCULTHORP
Dated 8/26/25 19
From Whom Transferred
Dated 19

No. Original Certificates	No. Original Shares	No. of Shares Transferred

Received Certificate No.
For Shares
this day of 19

(On back of stub there are two 1-dollar Revenue Stamps, cancelled: J. L. S.)

CERTIFICATE

No. 5

For Ten Shares
Issued to
MILTON KRUSE
Dated 8/26/25 19
From Whom Transferred
Dated 19

Certificates No. Original	Shares No. Original	Transferred No. of Shares

Received Certificate No.
For Shares
this day of 19

(On back of stub there are two 25-cent Revenue stamps cancelled: J. L. S. Pres.)

New Jersey State Library

EXHIBIT C-13.

(One Check)

THE TRUST COMPANY OF NEW JERSEY

PEOPLE'S SAFE DEPOSIT BRANCH

No. 2769A. Jersey City, N. J. October 20 1925

Pay to the
order of Sculthorp Realty Co., Inc. $5,000.00
Five thousand no/100 Dollars

Payable in New York City through the
Northern New Jersey Clearing House

EDWARD J. STEPPANSKI.

(Stamped on Face: N. P. 63-4 10 The Ocean City Bank 1 Delray, Florida.)

Endorsed:

Dep to the c/o of Sculthorp Realty Co. J. L. Sculthorp Pres. & Treas.

(Also stamped by three banks which stamps are mostly illegible.)

EXHIBIT C-14.

THIS INDENTURE, made this 5th day of November, A. D. 1925, between J. L. Sculthorp and Lottie — Sculthorp, his wife of the County of Palm Beach, in the State of Florida, parties of the first part, and Sculthorp Realty Company, Inc., a corporation existing under the laws of Florida, with its principal place of business in the County of Palm Beach in the State of Florida, part of the second part;

WITNESSETH, that the said parties of the first part, for and in consideration of the sum of ten ($10.00) dollars and other valuable considerations to them in hand paid by the part — of the second part, the receipt whereof is hereby acknowledged, have granted, bargained and sold to the said party of the second part, its successors and assigns, forever, the following described land, situate, lying and being in the County of Palm Beach and State of Florida, to-wit:

Tract 1. The North half (N½) of the Northeast Quarter (NE¼) of the Northwest Quarter (NW¼) of the Southeast Quarter (SE¼) and the West half (W½) of the Southeast Quarter (SE¼) of the Southwest Quarter (SW¼) of the Northeast Quarter (NE¼) and the East half (E½) of the Southwest quarter (SW¼) of the Southwest Quarter (SW¼) of the Northeast Quarter (NE¼) of Section 8, Township 46, South of Range 43 East, containing fifteen (15) acres more or less, being the same property conveyed to the undersigned by A. A. Plotner by deed dated June 1st, 1925.

Exhibit C-14

The above property is subject to a mortgage executed by the undersigned to A. A. Plotner, dated July 31st, 1925 given to secure the payment of two (2) notes for eleven thousand two hundred fifty ($11,250.00) dollars each, payable in one (1) and two (2) years after date, with interest at eight per cent (8%) payable semi-annually.

Tract II. The east half (E½) of the Southeast quarter (SE¼) of the Southwest quarter (SW¼) of the Northeast quarter (NE¼) also described as the East half (E½) of the East Half (E½) of Lot one (1) of the subdivision of Section 8, Township 46, South of Range 43 East, containing five (5) acres, more or less.

However, there is included in the above description but expressly excepted and excluded from this conveyance a certain lot or parcel of ground described as follows, to-wit:

Beginning at a point on the East boundary line of said property sixteen (16) feet from the center of the rock road (the center of the rock road being the Southeast corner of said property), thence North along said East boundary line Seventy-five (75) feet; thence West one Hundred Thirty-five (135) feet; thence south Seventy-five (75) feet; thence East One Hundred Thirty-five (135) feet to the point of beginning.

The above tract of land containing five (5) acres, more or less is subject to a certain mort-

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gage executed by the under signed, to Melvin — and S. Eugene Burd, dated June 13th, 1925, given

Exhibit C-14

to secure the payment of three (3) promissory notes in the amount of two thousand six hundred sixty-six and 66/100 ($2,666.66) Dollars, each, payable on or before one (1) Two (2) and three (3) years after date, respectively with interest at eight per cent (8%) payable semi-annually.

Tract III. The Northwest quarter (NW¼) of lot three (3) being the North half (N½) of the Southwest quarter (SW¼) of the Northwest quarter (NW¼) of the Southeast quarter (SE¼) of Section 8, Township 46 South of Range 43 East.

This property is subject to a mortgage executed by Gordon Davis and wife to Adolf Hofman, dated July 9th, 1924, on which there is a balance due of Five Hundred ($500.00) Dollars, being a note dated July 9th, 1924, payable two (2) years after date, with interest at eight per cent. (8%) payable semi-annually.

Also subject to a certain mortgage, executed by the undersigned to Gordon Davis, dated September 9th, 1925, given to secure the payment of three (3) notes for one Thousand Eight Hundred Thirty-three and 33/100 ($1,833.33) each, payable in one (1) Two (2) and three (3) years after date, respectively, with interest at eight per cent (8%) per annum, payable semi-annually.

The grantee assumes the payment of all the above described mortgages, together with interest thereon, as part of the purchase price for the above described property.

Exhibit C-14

And the said parties of the first part do hereby fully warrant the title to said land, and will defend the same against the lawful claims of all persons whomsoever.

IN WITNESS WHEREOF, the said parties of the first part have hereunto set their hand — and seals the day and year above written.

JESSE L. SCULTHORP (Seal)
LOTTIE S. SCULTHORP (Seal)

Signed, sealed and delivered
in presence of us:
KITTIE S KRUSE
BLANCHE E ADAM

1 $1.00
U. S. I. R.
Stamp
.J. L. S. & S. R. Co..
11-28-25

STATE OF NEW JERSEY
COUNTY OF MONMOUTH

I HEREBY CERTIFY that on this day personally appeared before me, an officer duly authorized to administer oaths and take acknowledgments, J. L. Sculthorp and Lottie — Sculthorp, his wife, to me well known to be the persons described in and who executed the foregoing deed, and acknowledged before me that they executed the same freely and voluntarily for the purposes therein expressed.

Exhibit C-14

x

And I Further Certify, that the said Lottie — Sculthorp, known to me to be the wife of the said J. L. Sculthorp on a separate and private examination taken and made by and before me, separately and apart from her said husband, did acknowledge that she made herself a party to said deed for the purpose of renouncing, relinquishing and conveying all her right, title and interest, whether dower, homestead or of separate property, statutory or equitable, in and to the lands described therein, and that she executed the said deed freely and voluntarily and without any compulsion, constraint, apprehension or fear of or from her said husband.

Witness my hand and official seal at Monmouth, County State of New Jersey, this 8th day of December, A. D. 1925.

G. A. COUCH
Notary Public
(N. P. Seal) Notary Public
My Commission Expires June 16th, 1928.

Filed Jan 21, 1926 at 12:25 P. M.
Recorded Jan 22, 1926, in
Deed Book 338, page 132
Fred E. Fenno Clerk Circuit Court.
Leon D. Bushong Deputy Clerk.

STATE OF FLORIDA,
COUNTY OF PALM BEACH.

I, Fred E. Fenno, Clerk of the Circuit Court of the Fifteenth Judicial Circuit of Florida, in

Exhibit C-14

and for Palm Beach County, Florida, do Hereby Certify that the above and foregoing is a true and correct copy of the record of a Deed, from Jesse L. Sculthorp, and wife to Sculthorp Realty Company, as filed for record in this office on Jan 21, 1926, at 12:25 P. M. and recorded on January 22, 1926, in Deed Book 338, at page 132.

WITNESS my hand and official seal at West Palm Beach, Florida, this the 28th day of January, A. D. 1928.

FRED E. FENNO,
Clerk Circuit Court.

(Seal)

STATE OF FLORIDA,
COUNTY OF PALM BEACH. } ss.

I, C. E. Chillingworth, Judge of the Circuit Court of the Fifteenth Judicial Circuit, in and for Palm Beach County, Florida, Do HEREBY CERTIFY that Fred E. Fenno, whose name is subscribed to the foregoing certificate and attestation, is the duly appointed and qualified Clerk of the Circuit Court of the Fifteenth Judicial Circuit, in and for Palm Beach County, Florida, and that the seal thereto affixed is the genuine seal of the said Court, and that the said certificate and attestation are in due form and made by the proper officer, and that full faith and credit are due and ought to be given to all of the official acts of said Clerk, as well in courts of judicature as elsewhere.

In Testimony Whereof I have hereunto set my hand and seal at West Palm Beach, Palm Beach

Exhibit C-14

County, Florida, this the 31 day of January, A. D. 1928.

C. E. CHILLINGWORTH,
Judge of the Circuit Court of
Palm Beach County, Florida.

STATE OF FLORIDA,
COUNTY OF PALM BEACH. } ss.

I, Fred E. Fenno, Clerk of the Circuit Court of the Fifteenth Judicial Circuit, in and for Palm Beach County, Florida, Do Hereby Certify that the Honorable C. E. Chillingworth is Judge of the Circuit Court of Palm Beach County, Florida, duly commissioned, qualified and acting, and that the signature to the foregoing certificate is genuine and in his own proper handwriting, and that full faith and credit are due and ought to be given to all of his official acts as well in courts of judicature as elsewhere.

In Testimony Whereof I have hereunto set my hand and the seal of said Court at West Palm Beach, Palm Beach County, Florida, this 31 day of January, A. D. 1928.

(Seal)

FRED E. FENNO,
Clerk of the Circuit Court of
Palm Beach County, Florida.

EXHIBIT C-15.

RECORD OF MINUTES

SCULTHORP REALTY COMPANY, INC.

Minutes of the First Meeting of the Stockholders

A meeting of the stockholders and incorporators of the Sculthorp Realty Company, Inc., was held on the 27th day of October, A. D. 1925, at 10:00 o'clock p. m. in the office of C. Y. Byrd in the City of Delray, Palm Beach County, Florida, each subscribing stockholder and incorporator with the exception of Stanley F. Sculthorp, being present. Notice of said meeting was duly waived.

The meeting was regularly called to order by Jesse L. Sculthorp, one of the incorporators, who stated the object of the meeting, as being a meeting called for the purpose to complete the organization of the Sculthorp Realty Company, Inc., elect directors, etc.

On motion duly made, seconded and carried, Jesse L. Sculthorp was elected as Chairman of this first meeting of the stockholders, and Stanley F. Sculthorp was elected Secretary.

The purpose of the corporation was then fully gone into by discussion from all stockholders. It was agreed that such Corporation should purchase property, develop such property by subdividing it into streets and lots, construct suitable streets and add other improvements and sell out lots.

Exhibit C-15

It was agreed that the Corporation should first purchase from J. L. Sculthorp, certain property located in Palm Beach County, Florida, described as follows:

First Tract: The N½ of the NE¼ of the NW¼ of the SE¼ and the W½ of the SE¼ of the SW¼ of the NE¼ and the E½ of the SW¼ of the SW¼ of the NE¼ of Section 8, Township 46 South of Range 43 East, containing 15 acres, more or less.

Second Tract: The E½ of the SE¼ of the SW¼ of the NE¼ also described as the E½ of the E½ of Lot 1 of the subdivision of Section 8, Township 46 South of Range 43 East, containing 5 acres, more or less. However, there is included in the above description but expressly excepted and excluded from the deed a certain lot or parcel of ground described as follows: Beginning at a point on the East boundary line of said property, 16 feet from the center of the rock road (the center of the rock road being the SE corner of said property; thence North along said East boundary line 75 feet; thence West 135 feet; thence South 75 feet; thence East 135 feet to the point of beginning.

Third Tract: The NW¼ of the Lot 3, being the N½ of the SW¼ of the NW¼ of the SE¼ of Section 8, Township 46 South of Range 43 East.

It was further agreed that a total purchase price of $100,000.00 should be paid for the above

described property. At this time, J. L. Sculthorp, owner of said property offered to release all other stockholders and incorporators of this corporation from purchasing such property, expressing his willingness to keep the property and develop it himself. However, all of said stockholders and incorporators refused to consider this proposal, and in the general discussion, it was shown that each of the said incorporators had made a personal inspection of the property, and had consented that it be purchased for the total amount of $100,000.00.

It was shown that the said J. L. Sculthorp had purchased said property several months previously, and had made certain cash payments, and had executed certain notes. It was further shown that there were certain existing mortgages against such property which were to be assumed by the Corporation as part of the purchase price for such property, such mortgages being described as follows:

Against Tract 1; a mortgage executed by J. L. Sculthorp and wife to A. A. Plotner dated July 31, 1925 given to secure the payment of two notes of $11,250.00 each payable in 1 and 2 years after date with interest at 8% per annum, payable semi-annually.

Against Tract 2; a mortgage executed by J. L. Sculthorp and wife to Melvin and S. Eugene Burd dated June 13, 1925, given to secure the payment of 3 notes in the amount of $2,666.66 each, payable on or

before 1, 2 and 3 years after date respectively, with interest at 8% per annum, payable semi-annually.

Against Tract 3; a mortgage executed by Gordon Davis and wife to Adolf Hofman, dated July 9, 1924, on which there is a balance of $500 being a note dated July 9, 1924, payable 2 years after date with interest at 8% per annum, payable semi-annually.

Also; a mortgage executed by J. L. Sculthorp and wife to Gordon Davis, securing the payment of three notes for $1,833.-33 each, payable in 1, 2 and 3 years with interest at 8% per annum, payable semi-annually.

The total amount of such mortgages to be assumed amounting to $36,500.00, thereby leaving a cash amount of $63,500.00 to be paid J. L. Sculthorp, representing the different cash payments heretofore made by J. L. Sculthorp and the profit of J. L. Sculthorp in the sale of such property to this Corporation.

Upon the Charter and subscription list being presented and read, the following were shown as the subscribing stockholders to the capital stock of such Corporation:

Jesse L. Sculthorp,	Subscribed for	500	Shares
Stanley F. Sculthorp	" "	50	Shares
Edward J. Steppanski,	" "	100	Shares
John E. Jones,	" "	100	Shares

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The said Edward J. Steppanski paid in the cash amount of $5,000 on his stock; the said John E. Jones paid in the cash amount of $5,000 on his stock. Each of these incorporators made satisfactory arrangements as to the payment of the balance due on the 100 shares of stock subscribed for by each, and it was ordered on motion duly made and carried that 100 shares of stock be issued to each of the above named.

The said amount of $10,000 was in turn paid over to J. L. Sculthorp to apply on the purchase price of the property, leaving a balance of $53,-500.00 due the said J. L. Sculthorp. It was shown that the said Jesse L. Sculthorp had subscribed for 500 Shares, and that Stanley F. Sculthorp had subscribed for 50 Shares, which shares were to be paid for by the said Jesse L. Sculthorp. It was thereupon voted that 500 Shares of stock in said corporation be issued to Jesse L. Sculthorp and 50 Shares to Stanley F. Sculthorp in full settlement of the balance due on the cash payment on said property. This left a balance of $1500.00 due by the said Jesse L. Sculthorp for such stock, and the said Jesse L. Sculthorp having made satisfactory arrangements for the payment of such sum of $1500.00, it was ordered on motion duly made and carried that all of such stock be issued. At the request of the said Jesse L. Sculthorp and Stanley F. Sculthorp, 40 Shares of such stock was ordered issued to Stanley F. Sculthorp and 10 Shares to Milton Kruse, and the President and Secretary were ordered to issue such stock. Upon motion

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duly made and carried, the stockholders proceeded to the election by ballot of four directors, and the following named stockholders, having been nominated for directors, were by unanimous vote elected: Jesse L. Sculthorp; Stanley F. Sculthorp; Edward J. Steppanski and John E. Jones.

Thereupon the Chairman declared such persons to be elected Board of Directors of this corporation, to serve until their successors are elected and qualified.

On motion duly made and carried, the foregoing minutes were read and approved.

There being no further business to come before this meeting, the said meeting, was, upon motion duly made and carried, adjourned.

J. L. SCULTHORP,
President.

Attest:
Stanley F. Sculthorp,
Secretary.

The Secretary signs and attests the above minutes presented to him by the President after the stockholders had discussed such minutes.

(Seal of Sculthorp Realty Company)

Exhibit C-15

SCULTHORP REALTY COMPANY, INC.

Minutes of the First Meeting of the Directors

Following the adjournment of the stockholders' meeting of the Sculthorp Realty Company, Inc., held on the 27th day of October A. D. 1925, the directors of said corporation assembled at the same place and time, whereupon the meeting was duly called to order by Jesse L. Sculthorp.

Upon roll call, the following were shown to be present: Jesse L. Sculthorp; Edward J. Steppanski; John E. Jones, and each of said directors duly waived notice of such meeting.

On motion duly made and carried, the following officers were elected to serve for the ensuing year and until their successors are duly elected and qualified:

Jesse L. Sculthorp, President & Treasurer;

Stanley F. Sculthorp, Secretary;

Edward J. Steppanski, Asst. Treasurer and Vice-Pres.;

John E. Jones, Asst. Secretary.

On motion duly made and carried, it was decided that no officer or director should be paid any salary or compensation as such officer, but that each officer and director should be paid the reasonable value of any services performed by him on behalf of the said corporation.

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On motion duly made and carried, a seal of the Corporation was adopted in the form and having the words Sculthorp Realty Company, Inc., as shown by the impression thereof on the margin hereof. (Seal)

On motion duly made and carried, the attached set of By-Laws were read and accepted as the by-laws of the said Corporation, subject to amendments.

On motion duly made and carried, Jesse L. Sculthorp was appointed active manager of the corporation, with instructions to look after the property of the subdivision, arrange to have it subdivided, lots sold, etc.

The minutes of the stockholders meeting held on this date were duly read, and on motion duly made and carried, such minutes were also made a part of the minutes of this meeting. On motion duly made and carried, the foregoing minutes were read and approved. WHEREUPON THE MEETING ADJOURNED.

J. L. SCULTHORP,
President.

Attest:
Stanley F. Sculthorp,
Secretary.

The Secretary signs and attests the above minutes presented to him by the President after the stockholders had discussed such minutes.

(Seal of Sculthorp Realty Company)

Exhibit C-15

MINUTES

SCULTHORP REALTY COMPANY, INC.
PALM BEACH COUNTY
FLORIDA

November 21, 1925.

The meeting of the Sculthorp Realty Company held October 27th, 1925, in Delray, Florida, was continued at 48 Seventh Ave., Atlantic Highlands, N. J., on the above date.

All officers and stockholders were present. J. L. Sculthorp, John E. Jones, Edward J. Steppanski, Stanley F. Sculthorp, Milton Kruse.

A motion was made by Mr. Steppanski and seconded by Mr. Jones that Mr. J. L. Sculthorp go ahead and get bids on the sidewalks, curbing, grading, rock roads, electric lines and water mains, also go ahead with work having lots filled where necessary. This motion also gives Mr. J. L. Sculthorp authority to go ahead and sign necessary contracts to complete the above mentioned work, when bids have been received. This motion was carried.

The following figures were submitted for work to be done in Lake Ida Gardens:
Eight inch rock paving, rolled,

oil finish	$12,108.00
Four inch sidewalk, five feet wide	7,614.00
Five by fourteen inch curbing	1,116.44

Exhibit C-15

The above figures are within fifteen percent of the actual cost.

J. L. Sculthorp reports that he is trying to buy ten acres of land on the north side of Lake Ida for which he has offered $50,000.

J. L. Sculthorp also reports that new contracts had to be printed, several changes being made in the restrictions.

The following figures were submitted from the City Manager of Delray:

3800 feet of Six inch cast iron water pipe @ 1.35	$5,130.00
5 six inch steamer fire hydrants at $65	325.00
40 white way posts, installed as shown on map @ 111	$4,440.00

A motion made by Steppanski and seconded by Jones that the Company accept property contracted for by members of Company at Gainesville, Florida. There being 162 fifty foot lots. Also four lots contracted for at Boynton, Florida. This motion was carried.

A motion by Jones seconded by Steppanski that Company take over Ford car for $325. Also that a check be drawn for expense of taking car to Florida, and also operating expense. The amount being about $84.00.

On motion the meeting adjourned until call of the chair.

(Seal) STANLEY F. SCULTHORP,
Secy.

(Seal of Sculthorp Realty Company)

Exhibit C-15

Adjourned meeting held in Atlantic Highlands, N. J.

A motion made by Steppanski and seconded by Jones and carried that streets on Lake Ida Gardens be graded and sidewalks be laid.

A motion by Jones and seconded by Steppanski that a field office be built on property. This motion was carried.

A motion by Jones and seconded by Steppanski that J. L. Sculthorp buy some shrubery and trees to beautify property. This motion was carried.

A motion made by Jones and seconded by Steppanski that J. L. Sculthorp be authorized to borrow some money from the Ocean City Bank, to be used for developing Lake Ida Gardens.

A motion was made and carried that the Company except the lots purchased at Boynton.

A motion was made and carried that Byrd and Porter be employed to return contracts on the Boynton Lots and also to have notes cancelled and turn property back to its owners.

A motion by Steppanski and seconded by Jones that the President, J. L. Sculthorp be authorized to pay all bill.

A motion was made and carried that the lots in Lake Ida Gardens be reduced to Market Value.

A motion was made and carried that a letter be written to Davis to the effect that the best we can do on the note due is to pay $500 and renew

the balance for six months. We will pay it off at the end of the six months.

The meeting was opened for a general discussion on the Gainesville property. The sense of the meeting was that Arthur Stringfellow be authorized to sell lots at $500 each size 100 x 100. Terms as low as $25 down and $25 a month interest on the balance. Lots to be sold from map which he has of property. Company will pay him 10% commission. Moneys collected be placed in Gainesville Bank. This money will all go to pay off Mortgages. Commission will be paid out as the money comes in. Request Arthur to see his father, Broome and Colson and see if this meets with their approval.

The meeting adjourned until the call of the chair.

(Seal) STANLEY F. SCULTHORP,
Secretary.

(Seal of Sculthorp Realty Company)

LAKE IDA GARDENS

Mortgage Notes Dated June 13th, 1925.
To: Melvin S. Burd and S. Eugene Burd
Payable at: Bank of Delray

Notes Due:	June 13th, 1926.	$2666.66
	June 13th, 1927.	2666.66
	June 13th, 1928.	2666.66

Total Five Acres
Interest payable semi annually
Interest payable December 13th, 1925 and June 13th, 1926.

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Mortgage Notes Dated July 9th, 1924.
To: Adolph Hofman
Payable at:
Notes due: July 9th, 1926. $500.00
Interest payable semi annually at 8%
Interest due January 9th, 1926.
This note is against the Gordon Davis five acres.

F. W. D.
Gordon Davis Five Acres
To: Gordon Davis Notes dated September 9th, 1925.
Payable at:
First Note due:

September 9th, 1926	$1833.33
September 9th, 1927	$1833.33
September 9th, 1928	$1833.34
Total	$5500.00

Interest payable semi annually
First interest due March 9th, 1926.

Plottner 15 Acres

Mortgage Notes Notes dated July 31, 1925.
To: A. A. Plottner
Payable at: Bank of Delray, Florida.
First Note due:

July 31, 1926	$11,250.00
July 31, 1927	$11,250.00

Interest payable semi annually.
First interest period January 31, 1926.

Exhibit C-15

T. B. Stringfellow and W. S. Broome

Total cost $9000. 37 lots 100 x 100
$1500. due when abstract and mortgage is ready.
Mortgage Notes
To: T. B. Stringfellow and W. S. Broome
Payable at: First National Bank of Gainesville.
First Note due:

October 14th, 1926	$2333.33
October 14th, 1927	2333.33
October 14th, 1928	2333.33

Total amount $7000.00

Interest on the Stringfellow and Broome Notes payable semi annually.
Interest due: April 14th, 1926 and October 14th, 1926.

Boynton 4 Lots

Total cost $11,000.00
First credit 2,200.00
Balance payable to:
Payable at:
Terms: Quarterly with interest at 8%.

Mortgage Notes dated November 9th, 1925.
To: J. H. Colson
Payable at: The First National Bank of Gainesville.

February 24th, 1926 payment due	$1000.00
Notes due one year from date	$2500.00
Two years from date	$2500.00
Three years from date	$2500.00

Interest payable semi annually at 8%.

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SCULTHORP REALTY COMPANY INC.

MINUTES OF ANNUAL MEETING OF STOCKHOLDERS

A meeting of the stockholders of the Sculthorp Realty Company, Inc., was held in Delray, Florida, at the home of J. L. Sculthorp, its President on the 22d day of January, 1927, at 3.30 o'clock P. M., this being the annual meeting of such stockholders.

Upon roll call the following were present:

J. L. Sculthorp
E. J. Steppanski
J. E. Jones

Those absent being Stanley F. Sculthorp and Milton Kruse.

All members present duly waived notice of such meeting, and consented that such meeting be held as the annual meeting of such Corporation.

Upon motion made by E. J. Steppanski and seconded by J. E. Jones, the present board of Directors were re-elected to serve for the ensuing year.

WHEREUPON THE MEETING ADJOURNED, AND IMMEDIATELY THEREAFTER THE DIRECTORS OF SCULTHORP REALTY COMPANY met at the same place and time, with all the Directors except Stanley F. Sculthorp being present; all duly waived notice of the meeting.

On motion made by E. J. Steppanski and seconded by J. E. Jones, the present officers of Scul-

thorp Realty Company, were re-elected to serve for another year, and until their successors are duly elected and qualified.

There being no further business to come before the meeting, the meeting adjourned until Tuesday, January 25, 1927, at which time a meeting shall be held at the same place at 10:30 A. M.

J. L. SCULTHORP,
President.

Attest
Stanley F. Sculthorp,
Secretary.

(Seal) It being agreed that these minutes be signed by the Secretary though he was not present.)

SCULTHORP REALTY COMPANY, INC.

MINUTES OF DIRECTORS MEETING HELD ON JANUARY 25th, 1927.

An adjourned meeting of the directors of Sculthorp Realty Company, Inc., was held in Delray, Florida, at the home of J. L. Sculthorp, President, at 10:30 o'clock A. M. on the 25th day of January, A. D. 1927. A roll call showed the following directors to be present:

J. L. Sculthorp
E. J. Steppanski
J. E. Jones

Stanley F. Sculthorp was absent. All the directors present waived notice of such meeting.

Exhibit C-15

Considerable discussion was had as to business conditions, the condition of Sculthorp Realty Company, Inc., etc., and on motion duly made by E. J. Steppanski seconded to J. E. Jones, and unanimously carried, it was voted that the President be instructed to communicate with all the mortgage holders of the said Corporation with reference to reducing such mortgages and the notes secured thereby.

A financial report for the Corporation was made by J. L. Sculthorp, President. Considerable discussion of this report followed, and two of the directors, E. J. Steppanski and J. E. Jones expressed their dissatisfaction at such report, and refused to accept it, and therefore the report was not approved.

Bills owing by the Corporation were next presented, such bills being as follows:

City of Delray for taxes	$157.50
State & Co. taxes and Drainage taxes	131.77
Office Rent for 3 months	75.00
Int. due on mortgages	

On motion duly made by J. E. Jones and seconded by E. J. Steppanski, all the above bills were ordered paid.

After some discussion, it was decided that the President should see the officials of the City of Delray with reference to having a rock road from Swinton Avenue to Lake Ida constructed, and upon motion made by E. J. Steppanski and seconded by J. E. Jones, the President was instructed to take this matter up with the City officials of the City of Delray.

Exhibit C-16

Upon motion duly made and carried, the foregoing minutes were read and approved.

There being no further business, the meeting adjourned.

J. L. SCULTHORP,
President.

Attest:
Stanley F. Sculthorp,
Secretary.

(Signed by the Secretary, after the meeting on such minutes being presented to him by President.

(Seal of Sculthorp Realty Company)

EXHIBIT C-16.

No. 2832

EDWARD J. STEPPANSKI

Modern Plumbing and Heating Contractor
Phone Webster 4901 621 Palisade Avenue

Jersey City, N. J. Jan. 15, 1926.

Pay to the
order of Sculthorp Realty Co. $280.50
Two hundred eighty 50/100 Dollars

THE TRUST COMPANY OF NEW JERSEY
Peoples Safe Deposit Branch
55-40 Jersey City, N. J.

Payable in New York City through
Northern New Jersey Clearing House

EDWARD J. STEPPANSKI

Endorsed:

Dep to the % of Sculthorp Realty Co., J. L. Sculthorp, Pres.

Exhibit C-16

Pay to the order of any Bank, Banker or Trust Co. Previous endorsements guaranteed Jan. 30, 1926. The Florida National Bank of Jacksonville. Jno. A. News, Cashier. 63 5.

Pay to the order of any Bank, Banker or Trust Co. (Prior endorsement guaranteed)

Received payment through the Nor. N. J. clearing house. (Prior endorsements guaranteed) Federal Reserve Bank of N. Y.

No. 2771

EDWARD J. STEPPANSKI

Modern Plumbing and Heating Contractor
Phone Webster 4901 621 Palisade Avenue

Jersey City, N. J. Nov. 2, 1925.

Pay to the
order of J. L. Sculthorp $412.50
Four Hundred twelve 50/100 Dollars

THE TRUST COMPANY OF NEW JERSEY
Peoples Safe Deposit Branch
55-40 Jersey City, N. J.

Payable in New York City through
Northern New Jersey Clearing House

EDWARD J. STEPPANSKI.

Endorsed:

Deposit to the Acc't of Jesse L. Sculthorp

Received Payment through the Nor. N. J. Clearing House. (Prior endorsements guaranteed.) Nov. 7, 1925. Federal Reserve Bank of N. Y.

Also stamped by a bank in Atlantic Highlands, N. J., on Nov. 6, 1925. (Most of stamp is illegible.)

EXHIBIT C-17.

SCULTHORP REALTY CO., INC.

OWNERS AND DEVELOPERS OF HIGH GRADE BUILDING LOTS

Lake Ida Gardens
Delray, Fla.

Let Us Help You Secure a House or a Bungalow in Florida

FIELD OFFICE
Corner N. W. 4th Ave. and N. W. 8th St.

March 30th, 1926.

My dear Friend Jones:

I suppose you think I have forgotten you and you are wondering what I am doing.

Things are still very quiet here. Some property changing hands, but not much change in business. I haven't sold a lot since I have been here, but I have lots of people out looking the property over.

I am still working hard getting the property in shape. I have anywhere from ten to nineteen teams working every day grading, besides the concrete gang. I have about half of the sidewalks down and ought to finish the grading in about two weeks, then I will have to shut down until I can get more money to finish up the job. If there is any business here this summer, I will be on the job to turn the property over, otherwise, I will come North for a month and will call around and see you and talk things over. I guess we will come North about the first of May. No doubt, you have heard that everything is at a stand still here, but I am not discouraged, as I

believe that we ought to sell our property at a good profit. I can not see where we are going to lose anything as we could sell for cost and get our money back.

When you can send the balance due on your stock, I can use it as I have two cars of rock coming in this week, besides cement and the pay-roll. If I have good luck in getting my money in from Keansburg, I will loan it to the Company to use, as we have some payments coming due in May, June, July and also in October and November. I am in hopes that I can make a few sales to get some cash to meet these payments.

Have you been down to Keansburg yet? I am trying to sell my bungalow. Do you know of any one that would like to buy the house and two lots? I will sell for $12500. $5000. down and the balance in one, two, three and four years at 6%. The two lots and garage on Sea View Ave. I will sell for $3000. $1000. down and the balance in one, two, and three years.

I am mailing you a few small maps to give to your friends and see if you can sell a few lots on easy terms. 10% down and 5% quarterly, and on the cheap lots $100. down and $25. per month. All lots guaranteed high and dry or money refunded and all lots within the City limits of Delray.

Write and let us know all the news. We all send our best regards to the family.

Very truly yours,

J. L. SCULTHORP.

EXHIBIT C-18.

EDWARD J. STEPPANSKI
SANITARY PLUMBING AND GAS FITTING
HEATING AND ROOFING
621 Palisade Avenue

Jersey City, N. J., May 3, 1926.

J. L. Sculthorp, Esq.,
Delray, Fla.

My dear Mr. Sculthorp:

I suppose you have been wondering why I haven't written before. The answer is I didn't want to write until I was able to send you some money, which I know you need. Things have not been going here as nice as they should, and I don't think I will be able to get any money together before at least a couple of weeks.

There has been a little scandle with the banks in Jersey City, with the result it is extremely hard to borrow. However, in a few weeks things will let up, I am told. When I realized that there was no use in my going south, I had to go in the market and purchase plumbing material to get started again right, and I also had to buy a new car. This was absolutely necessary. I bought a master six Buick Sedan, and this took almost $2000.00 alone. Between these and doctor bills it kept me going. Both our babies were sick, and I had the grip as well as Mrs. S. At

Exhibit C-18

the present time I am suffering from a blood tumor right below the left ear, the result of a cut while shaving on Easter Sunday. It is a bothersome thing. The minute my doctor saw it he told me he could do nothing for me and sent me to a specialist, who seems to be getting the best of it. If it keeps on disappearing as it has the last week I will be rid of it entirely in a couple of weeks more. However some growth had formed there in a short time.

I understand you are coming north shortly. Then we can have a real old fashioned talk. Things seem to be very quiet down south. However, it cannot be helped. Everyone will have to put his shoulder to the wheel and do his share. I intend to do mine to the best of my ability.

I have an appointment with Mr. Moscovich for Wednesday evening, and will take the Boynton matter up with him.

Kindly excuse this short letter, and remember me to everybody.

I wish you success and health, and may God bless you all.

Sincerely,

EDWARD J. STEPPANSKI.

EXHIBIT C-19.

EDWARD J. STEPPANSKI
SANITARY PLUMBING AND GAS FITTING
HEATING AND ROOFING
621 Palisade Avenue

Jersey City, N. J., May 13, 1926.

J. L. Sculthorp, Esq.,

My dear Mr. Sculthorp:

Your letter received, and I saw Mr. Jones about raising money for June 15th. At this time he is unable to say exactly how much he can raise, and as you expect to be up here very shortly we can then get together and see what can be done. At this time I am unable myself to say definitely just how much I can borrow, but will do the best I can.

Am trying very hard to sell or rent the White House. I have had several parties who wanted to rent, but they proved unreliable.

Business here is picking up now, and I hope things down there will pick up real soon.

When are you coming up, and how long will you stay?

I hope you are all well, and wish to be remembered to all.

The children are well, and so is Mrs. S. and her mother.

Sincerely,

EDWARD J. STEPPANSKI.

EXHIBIT C-20.

Bills Owing	
Byrd and Porter	$ 25.00
Butler, Barnett & Taylor	276.76
Delray Abstract & Title Co.	100.00
Notes Outstanding in	
Ocean City Bank	5500.00
Loans from J. L. S.	

Total Cost of acreage to Sculthorp Realty Co. $100,000.00

Balance Due on Notes and Mortgages as follows:

June 13th, 1926	$ 2,666.66
July 9th, 1926	500.00
July 31st, 1926	11,250.00
Sept. 9th, 1926	1,833.33
June 13th, 1927	2,666.66
July 31st, 1927	11,250.00
Sept. 9th, 1927	1,833.33
June 13th, 1928	2,666.68
Sept. 9th, 1928	1,833.34
	$36,500.00

Approximate List of Expenses

Supplies		$193.00
Expense		744.35
Commission		600.00
Advertising		375.15
Sidewalks	Contract	5366.85
"	"	192.00
"	"	12.00

Exhibit C-20

J. L. S. Concrete Blocks Chg JLS	95.00
Kruse Drawing Account	175.00
" Labor "	110.00
Rent for Office	25.00
J. H. Colson	2000.00
T. B. Stringfellow	2000.00
Arthur Stringfellow	1500.00
M. & S. E. Burd—Office Bldg.	1032.84
Murdock & Murdock	3275.00
Interest	1968.66
Taxes	198.39
Butler, Barnett & Taylor	786.25
Byrd and Porter	375.54
Grading	5614.25
W. E. Baker	205.00
Insurance on Ford	59.12
East Coast Abstract & Title Co.	37.50
Advertising	82.00
City of Delray—Electric	455.00
Palms	278.00
Clearing five acres	175.00
	$27930.90

EXHIBIT C-21.

August 1, 1926.

Note	$6900.00
Surveyor	193.16
Interest	
Stringfellow	245.00
Hoffman Note	540.00
Byrd	28.50
East Coast Abstract Co	5.00
Colson	300.00
Note Delray Bank	550.00
	$8,761.16
	.133
	1,165.23

EXHIBIT C-22.

55-40

THE TRUST COMPANY OF NEW JERSEY
PEOPLE'S SAFE DEPOSIT BRANCH

No. x Jersey City, N. J. Aug. 2, 1926.

Pay to the order of Sculthorp Realty Co. Inc. of Florida, $1165.23

One Thousand One Hundred sixty-five and 23/100 Dollars

Exhibit C-23

Payable in New York City through the Northern New Jersey Clearing House.
Safe Deposit
Vaults.

EDWARD J. STEPPANSKI.

Sculthorp Realty Co Inc Fla
J L Sculthorp Pres

Pay any Bank, Banker or Trust Company or Order. Aug. 2, 1926.
(Rest is illegible.)

EXHIBIT C-23.

THIS INDENTURE, Made this Eighteenth day of October, A. D. 1926, between SCULTHORP REALTY COMPANY, Inc., of Florida, a corporation existing under the laws of Florida, with its present place of business in the County of Palm Beach, and in the State of Florida, party of the first part, and JESSE L. SCULTHORP, of Atlantic Highlands, Monmouth County, New Jersey.

x

WITNESSETH That the said parties of the first part, for and in consideration of the sum of Ten ($10.00) Dollars. and other valuable considera-

x

tion to them in hand paid by the party of the second part, the receipt whereof is hereby ac-

x

knowledged, have granted, bargained, and sold to the said party of the second part, his heirs and

assigns. forever, the following described land, situate, lying and being in the County of Palm Beach and State of Florida, to-wit:

TRACT 1. The North half (N½) of the Northeast quarter (NE¼) of the Northwest quarter (NW¼) of the Southeast quarter (SE¼) and the West half (W½) of the Southeast quarter (SE¼) of the Southwest quarter (SW¼) of the Northeast quarter (NE¼ and the East half (E½) of the Southwest quarter (SW¼) of the Southwest quarter (SW¼) of the Northeast quarter (NE¼) of Section 8, Township 46, South of Range 43 East, containing fifteen (15) acres, more or less, being the same property conveyed to J. L. Sculthorp by A. A. Plotner by deed dated June 1st, 1925.

The above property is subject to a mortgage executed to A. A. Plotner, dated July 31st, 1925, given to secure the payment of two (2) notes for Eleven Thousand Two Hundred Fifty ($11,250.00) Dollars, each, payable in one (1) and two (2) years after date, with interest at eight per cent (8%), payable semi-annually.

TRACT II. The East half (E½) of the Southeast quarter (SE¼) of the Southwest quarter (SW¼) of the Northeast quarter (NE¼) also described as the East half (E½) of the East Half (E½) of Lot One (1), of the subdivision of Section 8, Township 46, South of Range 43 East, containing five (5) acres, more or less,

Exhibit C-23

However, there is included in the above description but expressly excepted and excluded from this conveyance a certain lot or parcel of ground described as follows, to-wit: Beginning at a point on the East boundary line of said property sixteen (16) feet from the center of the rock road (the center of the rock road being the Southeast corner of said property). thence North along said East boundary line seventy-five (75) feet; thence West One Hundred thirty-five (135) feet; thence South seventy-five (75) feet; thence East One hundred and thirty-five feet (135) feet, to the point of beginning.

The above tract of land containing five (5) acres more or less, is subject to a certain mortgage executed to Melvin——and S. Eugene Burd, dated June 13th, 1925, given to secure the payment of three (3) promissory notes in the amount of Two Thousand Six Hundred Sixty-six and 66/100 ($2,666.66) Dollars each, payable on or before one (1) two (2) and three (3) years after date, respectively, with interest at Eight per cent (8%) payable semi-annually.

x

Tract III. The Northwest quarter (NW¼) of Lot Three (3), being the North half (N½) of the Southwest quarter (SW¼) of the Northwest Quarter (NW¼) of the Southeast quarter (SE¼) of Section 8, Township 46, South of Range 43 East.

Exhibit C-23

Subject to a certain mortgage, executed to Gordon Davis, dated September 9th, 1925, given to secure the payment of three (3) notes for One Thousand Eight Hundred Thirty-Three and 33/100 ($1,833.33) each, payable, in one (1), Two (2), and three (3) years after date, respectively, with interest at Eight per cent (8%) per annum, payable semi-annually.

Excepting parcel of land heretofore sold to Jesse L. Sculthorp.

The grantee assumes the payment of all the above described mortgages, together with interest thereon as part of the purchase price for the above described property.

x

And the said party of the first part do ——— hereby fully warrant the title to said land, and will defend the same against the lawful claims of all persons whomsoever.

In Witness Whereof, the said party of the first part has caused these presents to be signed in its name by its President, and its corporate seal to be affixed, attested by its Secretary the day and year above written.

Signed, sealed and delivered
in our presence:
Etta Lockhart
Charles R. Snyder

SCULTHORP REALTY COMPANY, INC.,
Of Florida,

(Corp) By Jesse L. Sculthorp
(Seal) President

Attest: Stanley F. Sculthorp
Secretary.

Exhibit C-23

County of Palm Beach, }
State of Florida. } ss:

I, an officer authorized to take acknowledgments of deeds according to the laws of the State of Florida, duly qualified and acting, HEREBY CERTIFY that Jesse L. Sculthorp and Stanley F. Sculthorp, respectively as President and Secretary of the SCULTHORP REALTY COMPANY, Inc., of Florida, to me personally known, this day acknowledged before me that they executed the foregoing mortgage as such officers of said corporation, and that they affixed thereto the official seal of said corporation; and I FURTHER CERTIFY THAT I know the said persons making said acknowledgment to be the individuals described in and who executed the said mortgage.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal at Delray, said County and State, this 22nd day of October, A. D. 1926.

JULIA BRADSHAW,
Notary Public for the State of
(N. P.) Florida at Large.
(Seal) My commission expires Feb. 24, 1929.

Filed October 29th, 1926, at 9:50 A. M.
Recorded October 29th, 1926, in
Deed Book 402, at page 78.
Fred E. Fenno CLERK CIRCUIT COURT
Leon D. Bushong D. C.

Exhibit C-23

State of Florida,
County of Palm Beach.

I, Fred E. Fenno, Clerk of the Circuit Court of the Fifteenth Judicial Circuit of Florida, in and for Palm Beach County, do Hereby Certify that the above and foregoing is a true and correct copy of the record of a Deed, from Sculthorp Realty Company, Inc., of Florida, to Jesse L. Sculthorp, as filed for record in this office on October 29th, 1926, at 9:50 A. M. and recorded on October 29th, 1926, in Deed Book 402, at page 78.

Witness my hand and official seal at West Palm Beach, Florida, this the 24th day of January, A. D. 1928.

FRED E. FENNO,
Clerk Circuit Court.

(Seal)

STATE OF FLORIDA,
COUNTY OF PALM BEACH. } ss.

I, C. E. Chillingworth, Judge of the Circuit Court of the Fifteenth Judicial Circuit, in and for Palm Beach County, Florida, Do Hereby Certify that Fred E. Fenno, whose name is subscribed to the foregoing certificate and attestation, is the duly appointed and qualified Clerk of the Circuit Court of the Fifteenth Judicial Circuit, in and for Palm Beach County, Florida, and that the seal thereto affixed is the genuine seal of the said Court, and that the said certificate and attestation are in due form and made by the proper officer, and that full faith and credit are due and ought to be given to all of the

official acts of said Clerk, as well in courts of judicature as elsewhere.

In Testimony Whereof I have hereunto set my hand and seal at West Palm Beach, Palm Beach County, Florida, this the 31 day of January, A. D. 1928.

C. E. CHILLINGWORTH,
Judge of the Circuit Court of
Palm Beach County, Florida.

STATE OF FLORIDA,
COUNTY OF PALM BEACH. } ss.

I, Fred E. Fenno, Clerk of the Circuit Court of the Fifteenth Judicial Circuit, in and for Palm Beach County, Florida, Do Hereby Certify that the Honorable C. E. Chillingworth is Judge of the Circuit Court of Palm Beach County, Florida, duly commissioned, qualified and acting. and that the signature to the foregoing certificate is genuine and in his own proper handwriting, and that full faith and credit are due and ought to be given to all of his official acts as well in courts of judicature as elsewhere.

In Testimony Whereof I have hereunto set my hand and the seal of said Court at West Palm Beach, Palm Beach County, Florida, this 31 day of January, A. D. 1928.

(Seal)

FRED E. FENNO,
Clerk of the Circuit Court of
Palm Beach County, Florida.

EXHIBIT C-24.

115 First Avenue
Branch Offices:
Keansburg, N. J.,
and
Porth Monmouth, N. J.

Telephone 58
Let us Help You
Secure a House or a
Bungalow for the
Summer

SCULTHORP REALTY CO., INC.
Developers of High-
Grade Building Lots

Atlantic Highlands, N. J.
Nov 3/26

Mr. John E. Jones
361 E. 28 St.
Brooklyn, N. Y.

Dear Jones

We have two notes due the ninth and thirteenth of this month at the Ocean City Bank at Delray and we have got to pay something on them and would like for you to send me you check for as much as you can spare to be paid on the above notes I have written to Mr. Steppanski about same and I must rush this through at once as we only have a few days to pay. I have expect you down but have not seen you as yet what do you think of a new Name for the Lake Ida Property say Lake Ida Realty Co inc of Fla. or can you sugest a better Name or would you rather split up the property and each take their share. kindly let me know your views about the above, Trusting that you and your family are all in the best of health and that you will take a run down and see us

Very Truly Yours

J L SCHULTHORP

EXHIBIT C-25.

115 First Avenue — Telephone 58

Branch Offices:
Keansburg, N. J.,
and
Port Monmouth, N. J.

Let us Help You
Secure a House or a
Bungalow for the
Summer

SCULTHORP REALTY CO., INC.
Developers of High-
Grade Building Lots

Atlantic Highlands, N. J.
Nov 3/26

Mr E. J. Steppanski
621 Palisade ave
Jersey City N. J.

My dear Steppanski

we have two notes due at the Ocean City Bank at Delray Fla on the ninth and thirteenth of this month to gather with interest and would ask if you can send me your check for Two hundred and Fifty dollars and I am writting Mr Jones also to try and pay something and I will also put my check in to be paid on ac of the notes and int. I have not herd from Mr jones thought he would be down but have not seen him.

how are you getting along with your foot and finger I hope that its getting along fine and that you will soon be out again and Trusting that all of your family are in the best of health and that you will bring them all down to Atlantic Highlands some week end and see us,

Trusting that I may hear from you from an early date

Very Truly Yours

what do you think of the Name of Lake Ida Realty Co Inc of Fla do you like this name or can you sugest something better,

J L SCULTHORP

EXHIBIT C-26.

Jesse L. Sculthorp Pres.
Stanley F. Sculthorp Sec'y & Treas.

SCULTHORP REALTY CO., INC.
Everything in Real Estate
115 First Avenue
Atlantic Highlands, N. J.

Dec I th 1926

Mr John E. Jones
361 E 28 St
Brooklyn, N. Y.

Dear sir

Please find inclose list of payments that will be due in January 1927 and will have to be paid or we will have to give up the property and loose what we have paid in on % of the property that we purchased in Fla. kindly let me know if you want to keep the payments up or let the property go, its up to you to raise your part if you want to help hold the property and would like for you to let me know at once what you want to do so

Exhibit C-26

that I will guide myself accordingly, I am leaving Dec 6 on the Orange Blossom Train same place as last year the train leave at 9-30 A. M. we will arrive at the depot at 9 A M. train list of payments that has got to be meet or we will have to give up,

Plotner Note & Mtg due	$5.250.00	
Intrest due	1.080.00	
		$6,330.00
Burd int due Dec 11/26		320.00
Bank notes must be Paid		4.500.00
.. .. int - around		100.00
Davis .. and int		1.000.00
.. int		360.00
		$12.610.00

this is besides the taxes
if we could pay part of the above we may get an extension on part

J L SCULTHORP
Pres

Sculthorp Realty Co
Inc of Fla

EXHIBIT C-27.

New York Philadelphia Baltimore
Newport News

GREENVILLE COALING AND EXPORT CORPORATION
90 West Street
New York

John E. Jones
Manager

6778
Telephone Rector 6779

December 3rd, 1926.

Sculthorp Realty Company, Inc.,
153 Atlantic Avenue,
Atlantic Highlands, N. J.

Attention of Mr. J. L. Sculthorp,
President.

Gentlemen:

This will acknowledge receipt of your letter of the 1st inst in regard to payments which we have to meet in January next.

I really do not know what to say about this at this time, but if you will get up some kind of an official report of the Company, as to how we stand and what monies we have paid out, I will make every effort to see what I can do in the matter.

For your information, I have never seen any official report of this Company, as you said the books were in Florida. In as much as you are

now going down there, I do not think you should have much trouble in getting up a report. I feel as though I would like to know what monies the Company has spent out and just where we stand.

Very truly yours,

J. E. JONES.

JEJ/AC

EXHIBIT C-28.

SCULTHORP REALTY CO., INC.

OWNERS AND DEVELOPERS OF HIGH GRADE BUILDING LOTS
Lake Ida Gardens
Delray, Fla.

Let Us Help You Secure a House or a Bungalow in Florida

FIELD OFFICE
Corner N. W. 4th Ave. and N. W. 8th St.

Dec 14/26

P. O. Box 1092

Mr. E. J. Steppanski
821 Palisade ave
Jersey City N. J.

Dear Steppanski

I am on the job cleaning the sidewalks from sand and grass the wind has blew the sand and covered most all the sidewalks and the grass has grown over the walks. I have been working hard for the past few days trying to get things look-

ing better I also have Mrs S. helping me to get the grass pulled out,

I was at the Borough council meeting last evening and our taxes has got to be paid this week and I have no money to pay them with unless you have sent me that money that you were to send to me at Atlantic Highlands on that note that I paid for the Company,

I am working on several customers trying to sell them a lot for One Thousand dollars each or one of the lots facing the Lake for Twenty five hundred to Three Thousand dollars so that we can get some money to work with and get things started, I am thinking about turning the Office Bld. in a bungalow and sell same to get things started

I had quite some trouble getting my car started the clutch had frozen fast from standing all summer. The weather is wonderful here it regestured 72 at 8 A. M. and at 1 P. M. it regestured 80 but you donot mind the heat as it is so pleasent here,

things are a little quiet at present but quite some touris comming in most every day and the movies are crowded most every night and that is a good sign and the Main street seens th be crowded every day and night with autos,

in referance to the storm there were very little damage here at Delray just a few small shacks such as our chicken coops are up north blew down did not amount to much and there were a few roofs damaged,

I am going to try and sell some of the 25 Ft lots for $400. or $350. cash or even $300.) to turn

Exhibit C-28

some of the property as if we donot do something and if we donot raise the cash for the payments when they come due we will loose every thing and that will not be so good, I still have great Faith in our Subdivision if we can only hold on for a while I believe that we ought to make some money but it may take a little time to turn the property but if I get a chance to unload and get xxx half of our money back I will do so unless you want to hold x on for a while if each one would do their part we could carry the thing throught O. K. see if you can send check for as much as posibly so that I can pay the taxes,

best regards to all the Family and hope that your foot is xxx well and that business is rushing, write and let me know all the news, I sure was surprised to x see you at the Depot at N. Y. just before we left. Yours

J. L. SCULTHORP.

EXHIBIT C-29.

SCULTHORP REALTY CO., INC.

OWNERS AND DEVELOPERS OF HIGH GRADE
BUILDING LOTS
Lake Ida Gardens
Delray, Fla.

Let Us Help You
Secure a House or a
Bungalow in Florida

FIELD OFFICE
Corner N. W. 4th Ave.
and N. W. 8th St.

Dec 21/26

Mr. John E. Jones
361 E 28 St.
Brooklyn, N. Y.

Dear Jones

Just a few lines to let you know how things are here the weather is wonderful, this morning at 8 A. M. it registered 80 and was around that all day but we had a nice breeze and did not mind the heat,

I understand that you had 2 degrees above zero some weather or some difference between the two states we were to Miami Monday looking at some of the buildings that were wrecked, but you would hardly know that they had a storm, except some of the small Blds. and some of xx the trees had been blown down, did quite some damage in various places, but mostly cleared up, and things looks very prosperious again, there were a lot of People in Miami and there are a lot of touris comming in every day from all over the U. S. I meet a party from Cal. today and he will be here for the winter,

things are looking better every day but of course we do not know how Real Estate will sell this winter.

Exhibit C-29

I am offering some of the 25 ft lots for $400.) each on easy terms or $350) cash I believe that if I could sell some for $300.) for cash I will let them go to get things started, I have been working very hard cleaning the sidewalks, but I am hiring a party to help get the grass and sand off, so that they will look half desent, when I get some prospects, I was to see one of the parties that holds one of the Mtgs. and ask him if he would throw off some on the Mtg as other parties were reducing the mtg to about half, but he would not do a thing, so its up to us to raise some money to meet the mtg or turn the property back to them again and loose what we have paid, I would not like to loose, but its up to us all to protect ourselves I am willing to Mtg some of my property if you and Steppanski will raise your part to hold on untel we can sell and get some of our money back, what do you think about it, I would like for you and your wife to come to Delray also Steppanski and look the property over and see what you think about it, it looks good to me, I believe that if we could hold on for a year or so we would come out O). K. talk things over with Steppanski and let me know what you want to do within the next week so that I will know what to do, I am willing for each party to take a few lots over as security if you want to, we would have to pay about Five hundred dollars per lot to get them released I am willing for each one to take as many as they want as these lots ought to sell for at least One Thousand dollars each or more in a short time, there was a large wale came ashore in the inlet at Boca Ratone Monday and some men were try-

Exhibit C-29

ing to get the oil out from the Whale some crowd on the beach looking at the monster was about 48 feet long, how is business up north the cold weather ought to make business good, we owe the Burd Bros Eight Thousand dollars on five acres that I filled in and put out palm trees and sidewalks on the property shall we turn it back to them or shall we pay the interest that is past due we owe $320.) int I am trying to sell my home here to raise some money to help meet the payments but its hard to sell just at present I am willing to do most any thing if you and Mr Steppanski will do the same to help out or if you can interest any one in some stock to help us out, write and let me know all the news and what you think about each one taking over some lots for and paying for the release on same to protect ourselves,

we are all well and hope that you are all the same

wishing you a merry merry Christmas and a Happy xxxxxxxx and prosperous New Years,

Yours

J. L. SCULTHORP,
Pres

I will get the report out right after the first of the year.

EXHIBIT C-30.

SCULTHORP REALTY CO., INC.

OWNERS AND DEVELOPERS OF HIGH GRADE
BUILDING LOTS
Lake Ida Gardens
Delray, Fla.

Let Us Help You
Secure a House or a
Bungalow in Florida

FIELD OFFICE
Corner N. W. 4th Ave.
and N. W. 8th St.

Dec 30th 1926

Mr. John E. Jones
361 E. 28 St.
Flatbush.
Brooklyn, N. Y.

Dear Mr. Jones

There will be a Stockholders meeting at the Office on the Property of the Sculthorp Realty Co Inc of Florida on Jan 8th 1927 at 2 P. M. Sharp,
This meeting is an important meeting to take up with the Stockholders weather we want to contune with the Property known as the Lake Ida Gardens No 1 and Lake Ida Gardens No 2 also the Gainesville Property at Gainesville Florida, This is very inportent as if you want to contune on with the property each Stockholder must pay their portion of the payments that are past due also the payments that has got to be paid this January also the notes in the Bank and the Taxes if the Stockholders donot want to contune on with the payments we will have to turn the Property back to the parties that hold the

mortagues, or if any of the Stockholders want to take over any portion of the Property or Lots by paying for the releases and portion of the notes and taxes they may do so within the next Ten to Fifteen days from above date,

Releases on Five acre tracts with 24 lots can be released for about Six Thousand dollars besides a portion of the notes and Taxes,

Lots in Block A. B. D. &. E. can be released for $400.) each and Lots in Block C can be released for about $750.) each besides a portion of the said notes and taxes

I would advise each Stockholder to act at once and let me know what they want to do as it is to each member interest to take over as many lots as posibly to protect their interest as it may appear,

Yours

SCULTHORP REALTY Co. INC OF FLORIDA

J. L. Sculthorp.

Pres.

EXHIBIT C-31.

SCULTHORP REALTY CO., INC.

OWNERS AND DEVELOPERS OF HIGH GRADE
BUILDING LOTS
Lake Ida Gardens
Delray, Fla.

Let Us Help You
Secure a House or a
Bungalow in Florida

FIELD OFFICE
Corner N. W. 4th Ave.
and N. W. 8th St.

Dec 30 th 1926

Mr. Edward. J. Steppanski
621 Palisade ave.
Jersey City, N. J.

Dear Mr. Steppanski

There will be a Stockholders meeting at the Office on the Property of the Sculthorp Realty Co Inc of Florida on Jan 8 th 1927 at 2 P. M. sharp,
This meeting is an inportent meeting to take up xxx with the Stockholders weather we want to contune with the Property known as the Lake Ida Gardens No 1 and Lake Ida Gardens No 2 also the Gaines Ville Property at Gainesville Florida- this is very inportent as if you want to contune on with the property each stockholder must pay their portion of the payments that are past due also the payments that has got to be paid this January also the notes in the Bank and the Taxes,
if the stockholders donot want to contune on with the payments we will have to turn the property back to the Parties that hold the Mortagues or if any of the Stockholders want to take over any portion of the Property or Lots by paying

for the releases and portion of the notes and taxes they may do so within the next Ten to Fifteen days from above date

Releases on five acres will cost about Six Thousand dollars besides a portion of the notes and taxes,

Lots in Block A. B. D. &. E can be released for $400.) each and Lots in Block C. can be released for about $750.) each besides a portion of the said notes and taxes,

I would advise each Stockholder to act at once and let me know what they want to do as it is to each member int to take over as many lots as posibly to protect their int as it may appear,

Yours

SCULTHORP REALTY CO INC OF FLORIDA
J. L. Sculthorp,
Pres

EXHIBIT C-32.

EDWARD J. STEPPANSKI

SANITARY PLUMBING AND GAS FITTING
HEATING AND ROOFING
621 Palisade Avenue

Jersey City, N. J., Jan. 1, 1927.

Mr. J. L. Sculthorp,

My dear Mr. Sculthorp:

First I wish you all a Happy and most Prosperous New Year. May good health be yours and may God take care of you.

Exhibit C-32

My foot is getting along very slowly. Today is the first time I had a shoe on, for just a short time. However, it felt good to get it off again.

Mr. and Mrs. Jones were over one night xxxx last week, and we had quite a talk. He claims that when he gets an official statement of our company, showing exactly where we are financially, he will try and raise money.

I am very sorry that I have not as yet been able to send you my share of that note payment. However, I will be able to do this in probably a few days now, as everybody has been holding off from paying me until after the first of January. So when I get your next letter I will have the money ready, and you had better let me know whether I am to send it to you direct, or to Stanley, and also how to make it out. I mean, to whom payable. This foot of mine has put me back quite a little, and I don't mean may-be, and I want you to know that I am not holding back, but simply because I absolutely have not got it.

Jones talked to me a lot about the $10,000. being all the money he had, but I want to tell you that practically every cent I have in this company *I borrowed.* So you see I have to pay quite a little interest here every once in a while. Jones at least had the money, while I had to borrow it, so you see I am in a worst position than he is.

We have, of course, paid the greater part of the purchase price on the Lake Ida property, and I cannot understand why the mortgagees wont

make some cut, as they are all doing it. We, cannot, however, think of throwing up the sponge, as the balance to be still paid is not so great. No doubt we will have to carry the property a while, but this cannot be helped, but I think that eventually we will come out O. K. and get our money back. God knows I need it. If we have to give it up it will ruin me. That is why I am trying to do my bit xxx and as I told you when you left that you can depend on me to do my share, no matter how hard it may fall on me. Just at present I am a little behind (which is entirely due to hard luck and to my foot) but I will catch up shortly.

With reference to Boynton, I saw Mr. Moscovitch the other day. He told me to tell you not to do anything about the lots, as in his opinion the owners are going to make some proposition that will make it interesting, as at present nobody (not even the employees of Murdock & Murdock, who also bought considerably of this tract) is making any payment whatsoever. He thinks a good sized cut is coming. He also claims that the money paid on the lots can all be applied to any one lot, less 15% of the purchase price of the lots to be returned, as this was the commission paid out to Murdock & Murdock. So the best thing we can do is to wait, and perhaps after they reduce the price of the lots we might at least get one with the money we have paid in.

What are you doing about Gainesville? I think that when they see that you are not going to go through with the deal they will give you all the time and terms you want. They are all

Exhibit C-32

doing it. They had the property for forty years, and don't want it back. I like this property and would like to hold on. Will do my share. Why not take run up and look the ground over. xx I think it is worth while. *See what improvements have been made near us, and what they are asking for property around us.* That will give you some idea. After you have all the facts, then see Colson and Stringfellow, and I'm sure satisfactory terms can be made. The lots did not cost us much, and possibly they xxxx may make a cut. At any rate, I believe they could be turned in a short time at a good profit.

At any rate do not sign anything back. As I understand the situation the courts are so crowded that it takes a long long time to get any action, and in the meantime something might turn up. And if the worse comes to the worse, you will only have to pay the court fees involved. We are in a different position than most purchasers, inasmuch as we have one cheap track and the other with most money paid in, where it will pay us to hold on, whereas most of the others have little paid in and find it cheaper to get away. What do you think?

I am going to try and get down. However, will await the statement and get your views on the above first, before I decide.

It is now almost 3 o'clock in the morning, and I'm all in; so Good-night, and may God bless you all.

Sincerely,

EDDIE.

EXHIBIT C-33.

DUPLICATE

NIGHT LETTER Jan. 3/27

J. L. Sculthorp,
Lake Ida Gardens,
P. O. Box #1092
Delray, Fla.

Registered letter received today. Impossible to get there Saturday. Wrote you letter Jan first explaining situation You should receive it Wednesday.

Can arrange to get down in two weeks. Could meeting be postponed until then. Wire me as to postponment. Writing letter tonight.

E. J. STEPPANSKI.

EXHIBIT C-34.

COPY

January 4th, 1927.

Mr. J. L. Sculthorp, President,
Sculthorp Realty Co.,
Delray, Florida.

IMPOSSIBLE TO MAKE FLORIDA AT THIS TIME DO NOT KNOW WHAT MY SHARE IS KINDLY SEND FULL FINANCIAL REPORT SIGNED BY YOU AND I WILL THEN DO BEST I CAN

J. E. JONES.

EXHIBIT C-35.

1927 JAN 5 PM 30

MZN756 9 NITE 1 EXTRA DELRAY FLO 5
X607

EDWARD J STEPHANSKI.
621 PALISADE AVE JERSEYCITY NJ.

MEETING ADJOURNED UNTIL JAN 22
TELEPHONE JOHNS.

J. L. SCULTIORP PRES

22

EXHIBIT C-36.

SCULTHORP REALTY CO., INC.

OWNERS AND DEVELOPERS OF HIGH GRADE
BUILDING LOTS
Lake Ida Gardens
Delray, Fla.

Let Us Help You Secure a House or a Bungalow in Florida

FIELD OFFICE
Corner N. W. 4th Ave. and N. W. 8th St.

Jan 6/27

Mr John E. Jones
361 E. 28 St
Flatbush, Brooklyn
N. Y.

Dear Mr. Jones

Your wire received and you state that you do not know what your share is would state that

that will have to be figured out later as Steppanski and I have been putting up all the money for payments that has been paid so far, I have loaned to the Company about Eighteen to Twenty Thousand dollars to meet their obligations, of course I will have to look over my checks and see how much I have loaned to the Company I am getting out a report so all the Company can have one, but there are some payments past due and will have to be taken care of at once or we will loose out, we have got to raise at least Nine Thousand dollars and that will carry us over untel this next summer the Burd Bros told me that if we would make them a payment and int they would make a reduction in the Mtg. I am going to see the other parties again and try to get them to reduce their Mtgs but Plottner refused to allow any thing off and I will eather write Davis or go to Miami and see him within a few days, the taxes are past due and the Borough has promised to give us a reduction, providing that we pay them at xxx once, Jones the best thing for us all is to raise the money and hold on untel we can sell the property and get some of our money back

I sold my house in Keansburg and loaned the money to the Company and put it in the Property and I am willing to do my part if the rest will do theirs but if you are going to lay down and not put up your part why I am ready to stop also, as I cannot go any futher without help from you I am willing to divide up the property and each one pay their part of the Mtgs. and give each party a deed for some of the lots or if each one will put up their part of the Payments

Exhibit C-36

we can hold the property togather but something must be done at once and the Meeting of the Stockholders has been xxxx Adgurned untel Jan 22/27 and I would like for you to be present if Posibly if not give Mr E. J. Steppanski a proxy to vote for you as he sees fit, each party should raise at least Three Thousand dollars each to meet the payments this month if you come down you can see what improvements has been done and how the property looks as I am sure that if you looked over the property you would want to hold same if you donot want to put any more money in it and if you want one of my Four Family houses at Highlands N. J. for you Stock I will take it over Providing you do so at once as if we let this property go by the board I would not do any thing,
let me hear from you by return mail.

Yours

SCULTHORP REALTY CO INC FLA.
J. L. Sculthorp,
Pres.

EXHIBIT C-37.

SCULTHORP REALTY CO., INC.

OWNERS AND DEVELOPERS OF HIGH GRADE
BUILDING LOTS
Lake Ida Gardens
Delray, Fla.

Let Us Help You Secure a House or a Bungalow in Florida

FIELD OFFICE
Corner N. W. 4th Ave. and N. W. 8th St.

Jan 6/27

Mr. E. J. Steppanski
621 Palisade ave
Jersey City, N. J.

My dear Steppanski

Your wire received and also your letter and wish you all a Happy and Prosperious New Year and the best of health and may God bless you all and help us through with out troubles and business,

I am sorry to hear that your foot is not all well as yet but hope that it will be OK. so that you and your wife can take a trip to this wonderful country and injoy some of this wonderful sunshine,

we have had a little cool weather for the past few nights but very nice days,

I received a wire from Jones he ask for a statement but I have been very busy getting the property in shape so that when I had some clients to look over the property that it would look good to them there were some people out here wednesday and they like it very much and I offered them some lots for $750.) each and they said that they would let me know later,

Exhibit C-36

I have quite some work to do as yet but I am going to get out a report so that all the Company can have one it may take a few days before I can get to work with the report, and I see no reason why any of the Company should hold back their part of the payments as I hope that they are not afraid to trust me if so I am willing to give up and stop at once as the books will show just what has been paid out,

in referance to the money that has been put in this property you state that you had to borrow the money I would state that I had to borrow the money also and sold my Home in Keansburg and loaned the money to the Company,

I do not see where Jones should complain about the report as he has not put no money in the Co. sence he made the first payment as I told him that you and I had put up all the money to make the payments and in case he sell any of the Property we will get our money back first and the expences out before any one gets their money back,

we owe Plottner about Sixteen Thousand and Int and Davis around Five Thousand and Burd Bro Eight Thousand besides the notes the Burd Bro said that if we make them a payment that they would make a reduction of one payment, Plottner refuse to give us a reduction but I am going back to see him again and see what I can do, I am going to see Mr. Davis about a reduction in referance to the Gainesville Property would state that it will cost about Twenty five to Thirty dollars to go to Gainesville and stay for two or three days as it will take at least a day to go and

Exhibit C-37

another day to come back again if not more, we have paid the largest part of the Mtgs and I believe that we ought to hold on untel we can sell and get our money back but I must have help to carry it through or I will have to stop also, if we cannot carry this property it will be inposibly to carry the Gainesville property

I am glad to hear that we may get a lot in Boynton for what money we have paid in,

you know that if we cannot make the payments it would be the proper thing to deed the property back to the original owners and save them the trouble foreclossing as it would not be Just to ourselves or to others as they could hold Judgement against us, you state that you will wait for the Statement and get your views before you deside what to do, this is very bad as you know about what has been done, and you know that there was only two lots sold and only the first payment made and a dep on two other lots but nothing have been paid sence,

I am expecting you and your wife next week and you can look over the property and see how it looks and see what work has been done and you can give your own views about the Property and what to do about the payments, I will have the reports ready for the meeting and we can go over them together, in referance to the check make same payable to the Sculthorp Realty Co. inc Fla. and mail same to Delray Fla

I am about to rent an office on Atlantic ave so that I can be handy in case there are some buyers looking for us and I am in need of funds to get started at once and if you can mail me your check at once I will pay the taxes and a few other bills and do some Advertising in the papers

Exhibit C-38

Trusting that I may hear from you from an early date

Very Truly Yours

Sculthorp Realty Co. Inc Fla.
J. L. SCULTHORP,
Pres.

EXHIBIT C-38.

SCULTHORP REALTY CO., INC.

Owners and Developers of High Grade Building Lots
Lake Ida Gardens
Delray, Fla.

Let Us Help You Secure a House or a Bungalow in Florida

FIELD OFFICE
Corner N. W. 4th Ave. and N. W. 8th St.
Jan 7/27

Mr J. E. Jones
361 E 28 St
Flatbush Bklyn
N. Y.

My dear Jones

In my other letter I forget to put this list in so I am sending same to you to show you what the Company owes on c/o of Mtgs and Note,

Plottner Mtg		$16.000.00
Int for six Months		
Burd Bros	8000.00	
less reduction	2666.00	
		5.334.00
Davis		4.500.00
Ocean City Bank Note		2.000.00
		$27,834.00

Exhibit C-38

This is beside the Gainesville Mtgs
you know what the Delray Property cost the Company and this is what we owe on the Mtgs and it looks to me that we should all put our bit up and pay it off and hold on for a year or so and I believe that we ought to get our money back, we have to make a payment this month for Nine Thousand dollars and than nothing more untel March and that is about $1500. and than in July and I believe that we can get an extention on some of the payments, in referance about one of my double houses in Highlands N. J. I will withdrawl that offer as you should hold on with us and see this through,

J L SCULTHORP
Pres.

(Right-hand margin) I am going to try and sell enough lots at a reduced price to pay the mtg off if we have to sell about twenty or twenty five and than hold the bal for higher prices.

(Left-hand margin) I am going to try and get Plottner and Davis give us a reduction also so you see that it will cut the mtg down.

EXHIBIT C-39.

SCULTHORP REALTY CO., INC.

Owners and Developers of High Grade
Building Lots
Lake Ida Gardens
Delray, Fla.

Let Us Help You Secure a House or a Bungalow in Florida

FIELD OFFICE
Corner N. W. 4th Ave. and N. W. 8th St.

Jan 7/27

Mr E. J. Steppanski
621 Palisade ave
Jersey City N. J.

My dear Steppanski

I am inclosing a list of what we owe on Mtgs are as follows

Plottner Mtg		$16.000.00
Burd Bros	$8000.00	
less reduction	2666.00	
		5.334.00
Davis Mtg		4.500.00
Ocean City Bank Note		2.000.00
		$27,834.00

This is besides the Gainesville Mtgs
you know what the Delray property cost the Company and I think that we have done very nicely so far and see no reason why each one should not do their bit and pay the payments this month we will have to raise Nine Thousand dollars and no more payments untel April about $1500.) and than the other in July and I believe that we can

get some extentions xxxx on some of the payments

I am trying hard to sell about Twenty five lots for cost or a little less to get enough money to pay off the Mtgs and than we can hols for higher prices to get our money back and I will stick on the job as long as the rest are willing to do their part,

when you come down take the Orange Blossom from N. Y. and get off at Delray you pass by the Lake in front of my house and let me know and I will meet you at the depot,

so be sure and come its very inportent that you should come Jones also if he can but if he cannot come ask him to give you a proxy signed by him and have a witness to his signature

I donot like to take you away from your business but business will be going on after we pass on through King Sol. Temple

Yours

SCULTHORP REALTY CO. INC. FLA.

Pres.

EXHIBIT C-40.

WESTERN UNION
TELEGRAM

January 7th, 1927

Mr. J. L. Sculthorp, President,
Sculthorp Realty Company,
Delray, Fla.

Why don't you send financial report as requested in telegram of the fourth I do not know what my share amounts to and in order to raise money I must have same signed by you kindly wire at my expense when I may expect same

J. E. JONES

EXHIBIT C-41.

New York, January 11th, 1927.

Mr. J. L. Sculthorp, President,
Sculthorp Realty Company,
Delray, Fla.

Dear Mr. Sculthorp:

Your letters of the 6th and 7th inst received and contents noted.

I am very sorry for all concerned that we got into such a jam, but if you will remember out talk in Keansburg when I asked you what would happen if we were unable to meet our payments, and

you said then that you would simply take over the mortgages, and there was no fear of losing out on that account. Nevertheless, if there is any reasonable way you can suggest to work this matter out, I am willing to do so. I would be willing to turn over my stock to you or to Mr. Steppanski, or to anybodyelse you think would want it for any reasonable amount, in order to reduce the cost to you. I think you will remember that I only intended to put $5000.00 into this proposition in the first place, but you wired Stanley asking if I could make it $10,000.00 in order to enable you to get the property you wanted, and I agreed to it.

I wrote you on December 4th asking for a financial report signed by you, as to just how the Company stood, and you said you would send it up just as soon as you reached Florida. My only reason for wanting same was to try to borrow some money in order to help out. I do not know of anybody who would advance money on stock without knowing something about how the Company stood financially, but up to this writing you have not sent me a financial report, as requested, signed by you.

I know you have advanced monies to make improvements on the property, but the Company's books should show how much.

If you feel as though we are going to lose the property why should we want to deed any of it back, and I would not consent to do so. If the people who hold our mortgages are not willing

to help us, why not let them foreclose, as everyone else in Florida are making all kinds of concessions in order to keep things going.

In regard to the Gainesville property, I will agree to do anything you want to do provided you try to save some of our money. You told me that you had nine lots released, and the one which you took over for yourself. What will become of these in the event of us losing all the other property. I feel that you should try and sacrifice this property for whatever you could get in order to get at least some of our money back.

As to the Boynton property, you will remember that this was bought in the Company's name, but we advanced payments outside of the Company's money. My share was about $690.00 and Mr. Steppanski's share was $690.00 and your share was to be about $1380.00 I think, but you received a check back for about $550.00.

Hoping that you and Mrs. Sculthorp are in the best of health.

Very truly yours,

JEJ AC By J. E. JONES.

EXHIBIT C-42.

EDWARD J. STEPPANSKI

SANITARY PLUMBING AND GAS FITTING

HEATING AND ROOFING

621 Palisade Avenue

Jersey City, N. J., 1/17/27

My dear Mr Sculthorp

Jones is coming along and we will be there on Saturday Jan. 22nd at 2 P. M. for the meeting. It seems too bad to spend all this money for travelling when we could use it for better purposes.

Regards to all from all.

Yours in haste,

EDWARD J. STEPPANSKI.

EXHIBIT C-43.

SCULTHORP REALTY CO., INC.

Owners and Developers of High Grade
Building Lots
Lake Ida Gardens
Delray, Fla.

Let Us Help You Secure a House or a Bungalow in Florida

FIELD OFFICE
Corner N. W. 4th Ave. and N. W. 8th St.

Jan 17/27

Mr E. J. Steppanski
621 Palisade ave
Jersey City N. J.

My Dear Steppanski

I have been waiting to hear from you in referance to comming to the meeting this Saturday at 2 P. M. sharp. this is a very inportent meeting and all members should be present and give their views as to what we should do about giving up the Property or going on with the payments, if we give it up, we will loose what we have paid in, and no one will be held responsible as each member has been notified as to what should be done. Jones does not want to do any thing but thinks that I should carry him through, this is inposibly for me to do as I am about brooke and if I do my share I have got to borrow same to make good and each member should do the same xxxxxxxxxxxxxx to protect their interest or take their loss, the Burd Bros payment is past due and they want their money also the int or they will start Foreclosure at once and Plotner Note is due within a few days and something must be done at once besides the note in the bank

Exhibit C- 43

must be paid and it is to your intrest that you should know just how we stand, there is some work being done Southeast of our property and it looks as their may be something doing of coarse I donot look to sell many lots this season but I understand that there are a few people looking for some real bargens and I would be glad to unload for half what we have in the property unless each member would put up their part so that we can go through with the property I have rented a new Office in the Arcade Bld on Atlantic- ave and we will hold the meeting in our new Office wehave got to have the Office where people can find us as I am doing some Advertising and trying hard to sell a few lots less than cost to get some ready cash to meet our Obligations and hope that you will see your way clear to be at the meeting, if posibly would like for you to bring along your wife and let her stay for a while as I know that she would like it here, best wishes to all, and the best of Health

Yours

SCULTHORP REALTY CO INC FLA.
J L SCULTHORP
Pres.

P. S.
let me know what day and
what Train I may expect you
take the Orange Blossom from
N. Y. C.
bring along a list of all money paid over to the Company and the dates so that I can check them up with my c/o

EXHIBIT C-44.

REPORT OF SCULTHORP REALTY CO., INC., OF FLORIDA FOR THE YEAR OF 1925 AND 1926.

DISBURSEMENTS

Supplies	347.44
Expenses	768.25
Commissions	600.00
Advertising	457.15
Construction labor and material for—	
Sidewalks	5570.85
Cement blocks chg to J. L. S.	95.00
Labor and Office help	285.00
Office rent	25.00
New Office Building	1032.84
Palm trees del on property	278.00
Grading and filling property	5664.25
Insurance	59.12
City of Delray	455.00
Clearing Land—Five acres	266.00
The East Coast Abstract Co.	42.50
Delray Abstract Company	250.00
Taxes	198.39
Butler, Barnett, and Taylor, Surveyers	986.25
Colson J. H. c/o lots at Gainesville	2000.00
Stringfellow Arthur for Colson property	1500.00
Stringfellow T. B. c/o lots at Gainesville	2000.00
Davis G. c/o Mtg	833.33
Hoffman A. for Mtg. on Davis acreage	500.00
Plotner c/o Mtg	6000.00
Ocean City Bank for c/o Notes	3500.00
Interest	3668.66
Burd & Porter	450.00
Baker W. E. Attorney Gainesville	205.00
Murdock & Murdock c/o Boynton Lots	3275.00
	$41,313.32

EXHIBIT C-45.

STATEMENT OF THE SCULTHORP REALTY COMPANY, INC., OF FLORIDA

ASSETS AND LIABILITIES JAN. 1/1927

	Assets	Cr.		Liabilities
Gainesville		1500.		
Colson, J. H.	11,000.00	1000.		
		1000.		
		———	3500.	7,500.00
Stringfellow, T. B.	9,000.00	500.		
		1500.		
		———	2000.	7,000.00
Boynton Lots		2200.		
Murdock & Murdock	11,000.00	1100.		
		———	3300.	7,800.00
Property known as the Plotner Property Fifteen acres	67,500.00	51,500.		16,000.00
Property known as the Burd Bros. Property Five acres Less Plot 75′ x 134′	17,500.00	9,500.		8,000.00
Property known as Davis Property Five acres	15,000.00	10,500.		4,500.00
	131,000.00	80,300.		50,800.00
Grading	5,664.25			
Sidewalks	5,570.85			
Todor sedan Ford	300.00			
Office Furniture	143.00			
Wheelbarrow	5.00			
El. Poles & Wire	455.00			
New Office	1050.00			
Signs—	110.00			

Exhibit C-46

Loans			
The Ocean City Bank—			2,000.00
J. E. Jones			690.00
E. J. Steppanski			690.00
J. L. Sculthorp			1,380.00
E. J. Steppanski			1,165.23
.. ..			300.00
J. L. Sculthorp			17,352.65
	144,298.10	$80,300.00	$74,377.88

Company Inc. for Seventy Five Thousand dollars Fully Paid in.

J. L. Sculthorp	Five Hundred Shares
E. J. Steppanski	One Hundred Shares
E. J. Jones	One Hundred Shares
S. F. Sculthorp	Fifty — — — Shares

EXHIBIT C-46.

This Indenture, Made this 27th day of January, A. D. 1927, Between Jesse L. Sculthorp and x Lottie ——— Sculthorp, his wife, of Atlantic Highlands, Monmouth County, New Jersey, parties of the first part, and Sculthorp Realty Company, Inc., a Florida corporation, with its principal place of business in the County of Palm Beach and State of Florida, party of the second part,

Witnesseth, That the said parties of the first part, for and in consideration of the sum of Ten

Exhibit C-46

Dollars and other valuable considerations to them in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained and sold to the said party of the second part, its successors and assigns, forever, the following described land, situate, lying and being in the County of Palm Beach, State of Florida, to-wit:

TRACT I. The North half (N½) of the Northeast quarter (NE¼) of the Northwest quarter (NW¼) of the Southeast quarter (SE¼) and the West half (W½) of the Southeast quarter (SE¼) of the Southwest quarter (SW¼) of the Northeast quarter (NE¼) and the East Half (E½) of the southwest quarter (SW¼) of the Southwest quarter (SW¼) of the Northeast quarter (NE¼) of Section 8, Township 46 South, Range 43 East, containing fifteen (15) acres, more or less, being the same property conveyed to J. L. Sculthorp by A. A. Plotner by deed dated June 1st, 1925, except Lot 1 of Block "C" and Lot 13, of Block "E" of Lake Ida Gardens, according to plat thereof on file in the office of the Clerk of the Circuit Court in and for said County.

The above property is subject to a mortgage executed to A. A. Plotner, dated July 31st, 1925, given to secure the payment of two notes for Eleven Thousand Two Hundred Fifty Dollars ($11,250.00) each, payable in one and two years after date, with interest at eight per cent. payable semi-annually.

Exhibit C-46

TRACT II. The East half (E½) of the southeast quarter (SE¼) of the southwest quarter (SW¼) of the Northeast quarter (NE¼) also described as the East half (E½) of the East Half (E½) of Lot one (1) of the sub-division of Section 8, Township 46 South, Range 43 East, containing five (5) acres more or less. However, there is included in the above description but expressly excepted and excluded from this conveyance, a certain lot or parcel of ground described as follows, to-wit: BEGINNING at a point on the East boundary line of said property Sixteen (16) feet from the center of the rock road (the center of the rock road being the Southeast corner of said property:) thence North along said East boundary line seventy-five (75) feet; thence West one hundred thirty-five (135) feet; thence South seventy-five (75) feet; thence east one hundred thirty-five (135) feet to the point of beginning.

The above tract of land containing five (5) acres, more or less, is subject to a certain mort-

x

gage executed to Melvin ——— and S. Eugene Burd, dated June 13th, 1925, given to secure the payment on three promissory notes in the amount of Two Thousand Six Hundred Sixty-six and 66/100 Dollars ($2,666.66) each, payable on or before one, two and three years after date, respectively, with interest at eight per cent. payable semi-annually.

Exhibit C-46

TRACT III. The Northwest quarter (NW¼) of Lot Three (3), being the North Half (N½) of the Southwest quarter (SW¼) of the Northwest quarter (NW¼) of the Southeast quarter (SE¼) of Section 8, Township 46 South, Range 43 East.

Subject to a certain mortgage executed to Gordon Davis, dated September 9th, 1925, given to secure the payment of three notes for One Thousand Eight Hundred Thirty-three and 33/100 Dollars, ($1,833.33) each, payable in one, two and three years after date, respectively, with interest at eight per cent. per annum, payable semi-annually.

EXCEPTING parcel of land heretofore sold to Jesse L. Sculthorp.

The grantee assumes the payment of all the above described mortgages, together with interest thereon, as part of the purchase price for the above described property.

And the said parties of the first part do hereby fully warrant the title to said land, and will defend the same against the lawful claims of all persons whomsoever.

IN WITNESS WHEREOF, the said parties of the first part have hereunto set their hands and seals on this the day and year first above written.

JESSE L. SCULTHORP (Seal)
LOTTIE S. SCULTHORP (Seal)

Signed, sealed and delivered
in our presence:
Aileen Johnston
B. H. Lamberton

Exhibit C-46

State of Florida,
County of Palm Beach, } ss:

I HEREBY CERTIFY, That on this day personally appeared before me, an officer authorized to administer oaths and take acknowledgments of deeds, Jesse L. Sculthorp and Lottie x ——— Sculthorp, his wife, to me well known and by me known to be the persons described in and who executed the foregoing deed, and they acknowledged to and before me that they executed the same for the uses and purposes therein expressed.

AND I FURTHER CERTIFY That the said Lottie x ——— Sculthorp is to me well known to be the wife of the said Jesse L. Sculthorp, and that she this day acknowledged to and before me, on a separate and private examination taken and made by and before me, separately and apart from her said husband, that she made herself a party to and executed the said deed freely and voluntarily, and without any compulsion, constraint, apprehension or fear of or from her said husband.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at West Palm

New Jersey State Library

Beach, in said County and State, this, the 27th day of January, A. D. 1927.

AILEEN JOHNSTON,
Notary Public.

(N. P. Seal) My Commission expires:
March 29, 1930.

Filed January 28th, 1927 at 8:40 A. M.
Recorded February 1st, 1927. In
Deed Book 410. Page 186.
Fred E. Fenno, Clerk Circuit Court.
By Leon D. Bushong, D. C.

State of Florida,
County of Palm Beach, } ss:

I, Fred E. Fenno, Clerk of the Circuit Court of the Fifteenth Judicial Circuit of Florida, in and for Palm Beach County, do Hereby Certify that the above and foregoing is a true and correct copy of the record of a Deed, from Jesse L. Sculthorp and wife to Sculthorp Realty Company, Inc., as filed for record in this office on January 28th, 1927 at 8:40 A. M. and recorded on February 1st, 1927, in Deed Book 410, at page 186.

WITNESS my hand and official seal at West Palm Beach, Florida, this the 27th day of January, A. D. 1928.

FRED E. FENNO,
(Official Seal) Clerk Circuit Court.

Exhibit C-46

STATE OF FLORIDA,
COUNTY OF PALM BEACH. } ss.

I, E. C. Chillingworth, Judge of the Circuit Court of the Fifteenth Judicial Circuit, in and for Palm Beach County, Florida, Do Hereby Certify that Fred E. Fenno, whose name is subscribed to the foregoing certificate and attestation, is the duly appointed and qualified Clerk of the Circuit Court of the Fifteenth Judicial Circuit, in and for Palm Beach County, Florida, and that the seal thereto affixed is the genuine seal of the said Court, and that the said certificate and attestation are in due form and made by the proper officer, and that full faith and credit are due and ought to be given to all of the official acts of said Clerk, as well in courts of judicature as elsewhere.

In Testimony Whereof I have hereunto set my hand and seal at West Palm Beach, Palm Beach County, Florida, this the 31 day of January, A. D. 1928.

C. E. CHILLINGWORTH,
Judge of the Circuit Court of
Palm Beach County, Florida.

Exhibit C-46

STATE OF FLORIDA,
COUNTY OF PALM BEACH. } ss.

I, Fred E. Fenno, Clerk of the Circuit Court of the Fifteenth Judicial Circuit, in and for Palm Beach County, Florida, Do Hereby Certify that the Honorable C. E. Chillingworth is Judge of the Circuit Court of Palm Beach County, Florida, duly commissioned, qualified and acting, and that the signature to the foregoing certificate is genuine and in his own proper handwriting, and that full faith and credit are due and ought to be given to all of his official acts as well in courts of judicature as elsewhere.

In Testimony Whereof I have hereunto set my hand and the seal of said Court at West Palm Beach, Palm Beach County, Florida, this 31 day of January, A. D. 1928.

(Seal)

FRED E. FENNO,
Clerk of the Circuit Court of
Palm Beach County, Florida.

EXHIBIT C-47.

MINUTES

SCULTHORP REALTY CO., INC.,

PALM BEACH COUNTY
FLORIDA

Lake Ida Gardens

Original copy of
Minutes made by
E. J. Steppanski, Jan. 31, '27
at office of Sculthorp
Realty Co. Inc., of N. J.
at Atlantic Highlands
N. J.

Mortgage Notes Dated June 13, 25
To: Melvin S. Burd and S. Eugene Burd
Payable at: Bank of Delray
Notes due: June 13, 1926—2666.66
" " 1927 "
" " 1928 "
Total Five Acres
Interest payable semi annually
" " Dec. 13, 1925 & June 13, '26.

Mortgage Notes Dated July 9, 1924
To: Adolph Hofman
Payable at
Notes due: July 9, 1926— 500.00
Interest payable semi annually at 8%
" due Jan 9, 1926.
This note is against Gordon Davis 5 acres.

Exhibit C-47

F. W. D.
Gordon Davis Five Acres
To: Gordon Davis Notes dated Sept. 9-1925
Payable at:
First Note due Sept. 9-1926 1833.33
" 9, 1927 1833.34
" " 1928 1833.33

5500—

Interest payable semi annually
First interest due March 9-1926

Plottner 15 acres

Mortgage Notes Notes dated July 31-1925
To: A. A. Plottner
Payable at: Bank of Delray Fla
First Note due July 31-1926 11.250.00
" 31-1927 11.250
Interest payable semi annually
First interest period Jan. 31, 1926

T. B. Stringfellow and W. S. Broome

Total cost $9000 37 lots 100 x 100
$1500 due when abstract and mortgage is ready.
Mortgage Notes.
To: T. B. Stringfellow and W. S. Broome
Payable at: First National Bank of Gainesville.
First Note due: Oct. 14-26- 2333.33. 10/14/27
2333.33- 10/14/28 2333.33. 7.000
Interest on the Stringfellow and Broome Notes payable semi annually.
Interest due: April 14-1926 and Oct. 14-1926.

Exhibit C-47

Boynton 4 lots.

Total cost 11,000.00
First credit 2,200.00

Balance payable to:

Payable at:

Terms: Quarterly with interest at 8%
Mortgage Notes dated Nov. 9-1925.
To: J. H. Colson
Payable at: The First National Bank of Gainesville.

Feb. 24-1926 payment due	1000.—
Notes due one year from date	2500.—
Two years from date	2500.—
Three years from date	2500.—

Interest payable semi-annually at 8%

Nov. 21-1925.

The meeting of the Sculthorp Realty Co. held Oct. 27-1925, in Delray-Fla. was continued at 48-7 Ave. Atlantic Highlands, N. J. on the above date.

All officers and stockholders were present—J. L. Sculthorp, John E. Jones, Edward J. Steppanski, Stanley F. Sculthorp, Milton Kruse.

A motion was made by Mr. Steppanski and seconded by Mr. Jones that Mr. J. L. Sculthorp go ahead and get bids on the sidewalks, curbing, grading, rock roads, electric lines and water mains, also go ahead with work having lots filled

where necessary. This motion also gives Mr. J. L. Sculthorp authority to go ahead and sign necessary contracts to complete the above mentioned work, when bids have been received. This motion was carried.

The following figures were submitted for work to be done in Lake Ida Gardens:

eight inch " rock paving-rolled-oil finish	12.108—
four " sidewalk 5 ft. wide	7.614—
Five by fourteen inch curbing	1.116xx

The above figures are within fifteen percent of the actual cost.

J. L. Sculthorp also reports those new contracts had to be printed, several changes being made in the restrictions.

The following figures were submitted from the City Manager of Delray:

3800 ft. of 6" cast iron water pipes @ 1.35	5.130.—
5-6" steamer fire hydrants @ 65	325.—
40-white way posts, installed as shown on map @ 111	4.440.00

A motion made by Steppanski and seconded by Jones that the Company accept property contracted for by members of Company at Gainesville, Florida. There being 162-fifty foot lots. Also four lots contracted for at Boynton, Florida. This motion was carried.

A motion by Jones seconded by Steppanski that Company take over Ford car for $325. Also

that a check be drawn for expense of taking car to Florida, and also operating expense. The amount being about $84.

On motion the meeting adjourned until call of the chair.

(New Sheet)

Adjourned meeting held in Atlantic Highlands N. J.

A motion by Steppanski and seconded by Jones and carried that streets on Lake Ida Gardens be graded and sidewalks be laid.

A motion by Jones and seconded by Steppanski that a field office be built on property. This motion was carried.

A motion by Jones and seconded by Steppanski that J. L. Sculthorp buy some shrubery and trees to beautify property. This motion was carried.

A motion made by Jones and seconded by Steppanski that J. L. Sculthorp be authorized to borrow money from the Ocean City Bank to be used for developing Lake Ida Gardens.

A motion was made and carried that the Company except the lots purchased at Boynton.

A motion was made and carried that Byrd and Porter be employed to return contracts on the Boynton Lots and also to have notes cancelled and turn property back to its owners.

Exhibit C-47

A motion by Steppanski and seconded by Jones that the President J. L. Sculthorp be authorized to pay all bill.

A motion was made and carried that the lots in Lake Ida Gardens he reduced to market value.

A motion was made and carried that a letter be written to Davis to the effect that the best we can do on the note due is to pay $500 and renew the balance for six months. We will pay it off at the end of the six months.

The meeting was opened for a general discussion on the Gainesville property. The sense of the meeting was that Arthur Stringfellow be authorized to sell lots at $500 each-size 100 x 100. Terms as low as $25 down and $25 a month. Interest on the balance. Lots to be sold from maps which he has of property. Company will pay him 10% commission. Money collected be placed in Gainesville Bank. This money will all go to pay off mortgages. Commission will be paid out as the money comes in. Request Arthur to see his father, Broome and Colson and see if this meets with their approval.

The meeting adjourned until the call of the chair.

Secretary.

EXHIBIT C-48.

THE TRUST COMPANY OF NEW JERSEY

People's Safe Deposit Branch

Jersey City, N. J., Oct. 4, 1926.

Pay to the
order of Sculthorp Realty Co. Inc., Fla. $300.00
Three Hundred and no/100 Dollars

Payable in New York City through
the Northern New Jersey Clearing
House.

EDWARD J. STEPPANSKI.

Endorsed:

Sculthorp Realty Co Inc Fla
J L Sculthorp Pres

Received payment through the Northern Clearing House. (Prior Endorsements Guaranteed.) Oct. 8, 1926. Federal Reserve Bank of N. Y.

Pay any Bank, Banker or Trust Company or order Oct 6 1926

EXHIBIT C-49.

Telephone Webster 4901

EDWARD J. STEPPANSKI
SANITARY PLUMBING AND GAS FITTING
HEATING AND ROOFING
621 PALISADE AVENUE

Cut

Jersey City, N. J., ...

LIST OF CHECKS

August 21, 1925	Payable to	J. L. Sculthorp	5,000.00
October 20, 1925	"	" J. L. Sculthorp Realty Co. Inc.	5,000.00
Nov. 2, 1925	Payable to	J. L. Sculthorp	412.50
Jan. 15, 1926	"	" Sculthorp Realty Co.	280.50
Aug. 2, 1926	"	" Sculthorp Realty Co. Inc.	1,165.23
Oct. 4, 1926	"	" Sculthorp Realty Co. Inc.	300.00
			12,158.23

EXHIBIT C-51.

Flatbush Branch

THE PEOPLES TRUST COMPANY

Borough of Brooklyn

New York, Aug. 25th, No. 344

Pay to the
order of J. L. Sculthorp $5000.00
Five Thousand and no/100 Dollars

JOHN E. JONES

Endorsed:

Dep to the % of J L Sculthorp
Pay any Bank, Banker or Trust Company or Order (Prior Endorsements Guaranteed) Aug 28, 1925.

EXHIBIT C-52.

New York, January 20th 1926 No. 348

Flatbush Branch

THE PEOPLES TRUST COMPANY

Borough of Brooklyn

Pay to the
order of Sculthorp Realty Company $690.00
Six Hundred and Ninety Dollars

JOHN E. JONES.

Endorsed:

Dep to the % of Sculthorp Realty Co
J L Sculthorp Pres

Pay to the order of Any Bank, Banker or Trust Co. (Previous Endorsements Guaranteed) Jan 30 1926 The Florida National Bank of Jacksonville, Florida, John R. New, Cashier

Morning Work Received Payment through Federal Reserve Bank of New York Feb 1 1926 (Prior Endorsements Guaranteed) The National Park Bank of N. Y.

Also rubber stamp endorsement of Ocean City Bank of Delray, Fla., which is illegible.

EXHIBIT C-53.

New York, October 26th 1925 No.——

Flatbush Branch

THE PEOPLES TRUST COMPANY

Borough of Brooklyn

Pay to the
order of Sculthorp Realty Company Inc.
$2000.00
Two thousand and no/100 Dollars

JOHN E. JONES.

Endorsed:

Dep to the % of Sculthorp Realty Co
J L Sculthorp Pres

Pay Any Bank, Banker or Trust Co. or order (All Prior Endorsements Guaranteed) The Ocean City Bank of Delray Florida. Balance of endorsement illegible.

Received Payment through City Collection Dept. of the Federal Reserve Bank of N. Y. Nov 16 1925 The National City Bank of N. Y.

Pay to the order of any Bank, Banker or Trust Co. Previous endorsements guaranteed Nov 12 1925. The Florida National Bank 63-5 Jacksonville Florida John A. Newsom, Cashier

EXHIBIT C-54.

Exhibit C-51

New York, April 12th, 1926. No. 355

Flatbush Branch

THE PEOPLES TRUST COMPANY

Borough of Brooklyn

Pay to the
order of Sculthorp Realty Company $250.00
Two Hundred & Fifty and no/100 Dollars

JOHN E. JONES.

Endorsed:

Dep to the % of Sculthorp Realty Co Inc
J L Sculthorp Pres

Morning Work Received Payment through Federal Reserve Bank of New York 1-54 Apr 24 1926 1-54 (Prior Endorsements Guaranteed) National Park Bank of N. Y.

Pay to the order of Any Bank, Banker or Trust Co. (Previous Endorsements Guaranteed) Apr 22 1926 The Florida National Bank of Jacksonville Florida.

(Also stamped of the Ocean City Bank of Delray, Fla.)

Exhibit C-54

New York, March 4th 1926 No. 353

Flatbush Branch

THE PEOPLES TRUST COMPANY

Borough of Brooklyn

Pay to the
order of Sculthorp Realty Company $250.00
Two Hundred & Fifty and no/100 Dollars

JOHN E. JONES.

Endorsed:

Dep to the % of Sculthorp Realty Co Inc
J L Sculthorp Pres

Pay Any Bank, Banker or Trust Company Mar 13 1926 The Ocean City Bank of Delray Florida.

Morning Work Received Payment through Federal Reserve Bank of New York Mar 17 1926 (Prior Endorsements Guaranteed)

(Also stamped of the Florida National Bank of Jacksonville, Fla. which has been perforated and is mostly illegible.)

Exhibit C-54

New York, January 30th 1926 No. 349

Flatbush Branch

THE PEOPLES TRUST COMPANY

Borough of Brooklyn

Pay to the
order of Sculthorp Realty Company $1500.00
Fifteen Hundred and no/100 Dollars

JOHN E. JONES

Endorsed:

Dep to the % of Sculthorp Realty Co
J L Sculthorp Pres

Pay Any Bank, Banker or Trust Company or Order (All Prior Endorsements Guaranteed) Feb 8 1926 The Ocean City Bank of Delray, Florida.

Pay to the Order of Any Bank, Banker or Trust Co. (Previous Endorsements Guaranteed) Feb 11 1926 The Florida National Bank of Jacksonville Florida.

Morning Work Received Payment through Federal Reserve Bank of New York 1-54 Feb 13 1926 1-54 (Prior Endorsements Guaranteed) The National Park Bank of N. Y.

Exhibit C-54

New York, January 27, 1926 No. 350

Flatbush Branch

THE PEOPLES TRUST COMPANY

Borough of Brooklyn

Pay to the
order of Sculthorp Realty Company $1000.00
One Thousand and no/100 Dollars

JOHN E. JONES

Endorsed:

Dep to the % of Sculthorp Realty Co
J L Sculthorp Pres

Pay to the Order of Any Bank, Banker or Trust Company (Previous Endorsements Guaranteed) Feb 5 1926 The Florida National Bank of Jacksonville, Florida.

Received Payment through City Collection Dept.. of the Federal Reserve Bank of N Y Feb 8 1926 The National City Bank of N. Y.

EXHIBIT C-55.

JONES' CHECKS

Aug 25-'25—	J. L. Sculthorp—	5.000
Oct. 26-'25—	Sculthorp Realty Co. Inc.	2.000
Jan. 20-'26—	Sculthorp Realty Co.—	690.
Jan. 27-'26—	" " "	1000.
Jan. 30-'26—	" " "	1500.
March 4-'26—	" " "	250.
April 12-'26—	" " "	250.
		10,690

EXHIBIT C-56.

Feb 1/27

Mr Byrd & Porter
If the Sculthorp Realty Co minute book is at your office kindly let O. E. Falls see same.

SCULTHORP REALTY CO INC FLA

J L Sculthorp
Pres

EXHIBIT C-57.

STATE OF FLORIDA

OFFICE OF SECRETARY OF STATE

I, H. Clay Crawford, Secretary of State of the State of Florida, DO HEREBY CERTIFY that the above and foregoing is a true and correct copy of

CERTIFICATE OF INCORPORATION
OF
SCULTHORP REALTY COMPANY, INC.

as filed in this office September 3, 1925.

Given under my hand and the Great Seal of the State of Florida at Tallahassee, the Capitol, this the seventh day of September, A. D. 1925.

(Seal) H. CLAY CRAWFORD,
Secretary of State

Rubber Stamp:

(State of Florida Received Sep 3-1925 Secretary of State.)

TO THE SECRETARY OF STATE, TALLAHASSEE, FLORIDA:

We, the undersigned persons, hereby file this certificate of incorporation in the office of the Secretary of State, as required by law, on the 26 day of August, A. D. 1925.

Jesse L. Sculthorp,
Stanley F. Sculthorp,
Edward J. Steppanski,
John E. Jones.

Exhibit C-57

CERTIFICATE OF INCORPORATION OF SCULTHORP REALTY COMPANY, INC.

ARTICLE I.

The name of the Corporation shall be SCULTHORP REALTY COMPANY, INC., and its principal place of business shall be Delray, Palm Beach County, Florida, with the right, power and authority to establish and maintain branches anywhere else in the United States or in foreign countries.

ARTICLE II.

The general nature of the business to be transacted by the Corporation shall be as follows: The Corporation is hereby authorized to carry on, and license others to carry on all or any part of the several businesses enumerated in this paragraph, to-wit: The business of manufacturers, merchants, traders, importers, exporters and dealers in and with goods and wares and merchandise of every description, of establishing, financing, developing, managing, operating and carrying on industrial, commercial, trading, manufacturing, mechanical, metallurgical, engineering, building, chemical, ice, real estate, logging, lumbering, agricultural, plantation, dairying, and maritime enterprises, undertakings, propositions, concessions or franchises in all their respective branches, to act as the agent or broker for others in selling or purchasing real estate, and otherwise to act as the agent, factor

or broker for other persons or corporations; to act as the agent, factor or broker for other persons or corporations for the sale of insurance of all kinds, making adjustments of losses and transacting any other business in connection with the sale of insurance; of constructing, equipping, improving, working, developing, purchasing, selling, leasing, hiring mortgaging, operating and dealing in and with public and quasi-public and development works and conveniences including docks, harbors, piers, wharves, canals, reservoirs, embankments, and improvements; sewages, drainage, sanitary and other engineering works, steam, water, water power, water supply, electric plants, and refrigerating plants; warehouses, market buildings, tunnels, bridges, conduits, viaducts, and other works and conveniences of public and quasi-public use or utility; or the purchasing or otherwise acquiring, maintaining, selling, pledging, mortgaging, leasing, hiring, and fulfilling any contracts, franchises or concessions for or in relation to the construction, execution, equipment, improvement, management, operation, or control of such works and of undertaking, executing, carrying out, disposing of, or otherwise turning to account the same; and also, so far as necessary or incidental to, or connected with anyone or more or all of the corporate purposes, to undertake any legal transaction or operation undertaken or carried on by capitalists or financiers, and to carry on a general financial business and financial operations of all kinds and to conduct a general real estate, development, and brokerage business.

Exhibit C-57

ARTICLE III.

The capital stock of said corporation shall be Seventy Five Thousand ($75,000.00) Dollars, divided into Seven Hundred Fifty (750) Shares, of the par value of One Hundred ($100.00) Dollars each, payable in lawful money of the United States of America, or in property, labor, or services at a just valuation to be fixed by the directors at the organization meeting had after the granting of the Charter herein applied for; and which capital stock shall be sold, issued, assigned and transferred only in accordance with such by-laws as the company may from time to time make, change, or alter, with a lien reserved in favor of the company upon all of its capital stock for any indebtedness which may at any time be due by the holder of the same unto the company, and which shall be a lien thereon superior to all other liens or claims of every character and all assignments or transfers of stock of this corporation shall be subject thereto.

ARTICLE IV.

Said corporation shall exist perpetually.

ARTICLE V.

The business of the corporation shall be conducted and carried on by a President, Vice-President, Secretary and Treasurer and such other officers as may be named, and a board of directors consisting of not less than three nor more than nine, to be determined upon by the stockholders. The following officers shall serve until

the first regular meeting of the corporation, to-wit:

Jesse L. Sculthorp, Delray Florida, President and Treasurer;

Stanley F. Sculthorp, Atlantic Highlands, N. J., Secretary;

Edward J. Steppanski, 621 Palisade Avenue, Jersey City, N. J., Assistant Treasurer and Vice-President;

John E. Jones, 361 E. 28th Street, Brooklyn, New York, Assistant Secretary.

Said officers shall hold their respective offices and shall serve as a board of directors. The directors shall be elected at the annual meeting of the stockholders to be held at the principal office of the company on the first Thursday in January of each and every year after the present year of 1925. The officers named in this charter shall hold their respective offices until the annual meeting in January, 1926, and until their successors are duly qualified and elected.

ARTICLE VI.

The highest amount of indebtedness or liability to which the corporation may at any time subject itself, shall be Four Hundred Thousand ($400,000.00) Dollars.

ARTICLE VII.

The amount of capital with which this corporation shall begin business, shall be the amount of Seventy-five Thousand ($75,000.00) Dollars.

Exhibit C-57

ARTICLE VIII.

The names and residences of the subscribers and incorporators and the amount of capital stock subscribed for by each of them shall be as follows, to-wit:

Jesse L. Sculthorp, Delray, Florida, 500 Shares;
Stanley F. Sculthorp, Atlantic Highlands, N. J., 50 Shares;
Edward J. Steppanski, 621 Palisade Avenue, Jersey City, N. J., 100 Shares;
John E. Jones, 361 E. 28th Street, Brooklyn, New York, 100 Shares.

JESSE L. SCULTHORP (Seal)
STANLEY F. SCULTHORP (Seal)
EDWARD J. STEPPANSKI(Seal)
JOHN E. JONES (Seal)

State of New Jersey, }
County of Monmouth, } ss:

On this day personally appeared before me, a notary public in and for said County and State, Jesse L. Sculthorp, Stanley F. Sculthorp, Edward J. Steppanski and John E. Jones, to me well known and known to be the persons described in and who signed the foregoing Charter, and they acknowledged before me that they signed the same for the purposes therein expressed.

Witness my hand and official seal at Atlantic Highlands, said County and State, this 26th day of August, A. D. 1925.

JOHN L. SWEENEY,
Notary Public of
New Jersey.

My commission expires:
Oct. 10, 1928. (Seal)

EXHIBIT D-1.

Transcript of record of proceedings in the Circuit Court of Palm Beach County, Florida, in the suit of Edward J. Steppanski and John E. Jones, Plaintiffs, vs. Jesse L. Sculthorp, defendant, therein lately pending.

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Exhibit D-1

On February 21, 1927, Praecipe for Summons was filed in the following words and figures:

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR PALM BEACH COUNTY. AT LAW.

EDWARD J. STEPPANSKI and JOHN E. JONES, Plaintiffs, vs. JESSE L. SCULTHORP, Defendant.	Precipe For Summons Ad Respondendum. Damages: $30,000.00

The Clerk of the above court will please issue a summons ad respondendum directed to the above named defendant requiring him to appear in the above Court on the 7th day of March, A. D. 1927, and oblige.

OTHO E. FALLS,
Attorney for Plaintiffs.

Exhibit D-1

On February 21st, 1927, Summons Ad Respondendum, was issued, which was filed February 25, 1927, together with Sheriff's return, in the following words and figures:

SUMMONS AD RES.

State of Florida
County of Palm Beach

IN The Name of
THE STATE OF FLORIDA

To all and Singular the Sheriffs of the State of Florida—Greeting:

We Command You To Summon Jesse L. Sculthorp if he be found in the State of Florida, personally to be and appear before the Judge of our Circuit Court for Palm Beach County, at the Court House in West Palm Beach, on the first Monday in March next, being a rule day of our said Court, and on the 7th day of March 1927, to answer Edward J. Steppanski and John E. Jones, in action Damages $30,000.00 and have then and there this writ.

WITNESS Fred E. Fenno, Clerk of said Circuit Court for the County of Palm Beach and the seal of said Court at West Palm Beach, Florida, aforesaid, this 21st day of February A. D. 1927.

FRED E. FENNO, Clerk.
By Merle P. Johnston,
Deputy Clerk.

(Circuit Court)
(Seal)

Exhibit D-1

Endorsed on back thereon:

Received this summons February 21
1927, and served the same Feby 23
1927, by delivering a true copy thereof
to Jesse L. Sculthorp the within-named
defendant. In Palm Beach County Florida

Copy	25
Service	100
Mileage	450
Return	25
	6.00

R. C. Baker
Sheriff of Palm Beach
County, Fla.,

By J. D. Raulerson
Deputy Sheriff.

Exhibit D-1

On March 7, 1927, Appearance was filed in the following words and figures:

In the Circuit Court of the Fifteenth Judicial Circuit of Florida in and for Palm Beach County. At Law No. 3512.

Edward J. Steppanski and John E. Jones, Plaintiffs, vs. Jesse L. Sculthorp, Defendant.	Appearance.

The Clerk of said court will please enter our appearance for the defendant Jesse L. Sculthorp named above on the Rule Day in March, A. D. 1927.

Kearley Fisher, Van Metre & Chapman,
Attorneys for Defendant.

Exhibit D-1

On April 4, 1927, Declaration was filed in the following words and figures:

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR PALM BEACH COUNTY. AT LAW.

EDWARD J. STEPPANSKI and JOHN E. JONES,
Plaintiffs,
vs.
JESSE L. SCULTHORP,
Defendant.
} Declaration

COMES Now, Edward J. Steppanski of Jersey City, State of New Jersey and John E. Jones of New York City, State of New York, plaintiffs, and file this their Declaration against Jesse L. Sculthorp of the County of Palm Beach, State of Florida for this, to-wit:

That heretofore, to-wit: during the month of May 1925, the plaintiffs and the defendant entered into a verbal agreement to form a Florida Corporation to engage in the Real Estate business in the State of Florida.

During the month of June 1925, the plaintiffs each agreed to subscribe to One Hundred (100) shares of stock at a par value of One Hundred ($100.00) Dollars per share in the proposed corporation, making thereby a total of Ten Thousand ($10,000.00) Dollars to be paid in by each of the plaintiffs.

Exhibit D-1

During the month of August 1925, each of the plaintiffs paid to the defendant, the sum of Five Thousand ($5,000.00) Dollars and signed the Articles of Incorporation that the defendant had had prepared, the name of said corporation being "Sculthorp Realty Co., Inc.," and during the summer of 1926 the stock was fully paid for by the plaintiffs, and issued to the plaintiffs.

The plaintiffs further aver that on June 1, 1925 the defendant, in his individual capacity, had acquired title to the following property situated in the County of Palm Beach, State of Florida, more particularly described as follows, to-wit:

North one-half of northeast quarter of northwest quarter of southeast quarter, and west one-half of southeast quarter of southwest quarter of northeast quarter and east one-half of southwest quarter of southwest quarter of northeast quarter, all in Section 8, Township 46, South, Range 43 East, containing 15 acres more or less;

from one A. A. Plotner; a deed to said property was taken subject to no mortgages upon the land; that the defendant and his wife executed a mortgage in the amount of Twenty-two Thousand Five Hundred ($22,500.00) Dollars to the said A. A. Plotner; that the total amount paid for said property did not exceed Forty-five Thousand ($45,000.00) Dollars; that the amount of cash paid upon delivery of the deed did not exceed Twenty-two Thousand Five Hundred ($22,500.00) Dollars.

Exhibit D-1

Plaintiffs further aver that the said defendant, on June 13, 1925, in his individual capacity, acquired title to the following property situated in the County of Palm Beach, State of Florida, more particularly described as follows, to-wit:

East one-half of southeast quarter of southwest quarter of northeast quarter, known as the east one-half of Lot One of subdivision of Section 8, Township 46 South, Range 43 East, containing 5 acres more or less, excepting the following parcel: Beginning at a point on the east boundary of said property 16 feet from center of rock road (the center of rock road being the southeast corner of said property), thence north along said east boundary line 75 feet, thence west 135 feet, thence south 75 feet, thence east 135 feet to the point of beginning,

from the following people to-wit: Melvin Burd, Elizabeth Burd and S. Eugene Burd; that the defendant and his wife executed a mortgage in the amount of Eight Thousand ($8000.00) Dollars to said Melvin Burd, Elizabeth Burd and S. Eugene Burd; that the deed was taken subject to no mortgages upon the land; that the total amount paid for said property did not exceed Twelve Thousand ($12,000.00) Dollars; that the amount of cash paid upon delivery of deed did not exceed Four Thousand ($4,000.00) Dollars.

Plaintiffs further aver that on September 8, 1925, the said defendant in his individual capacity acquired title, in his own name, to the following property situated in the County of Palm Beach, State of Florida, more particularly described as follows, to-wit:

Exhibit D-1

Northwest quarter of Lot Three (3), being the north one-half of southwest quarter of northwest quarter of southeast quarter of Section 8, Township 46 South, Range 43 East, containing five acres more or less,

The plaintiffs aver that the title of this land was subject to a mortgage in the amount of Five Hundred ($500.00) Dollars to the former owners of said land, Gordon Davis, and Rose M. Davis; that the total amount of case paid upon delivery of the deed did not exceed Forty-five Hundred ($4500.00) Dollars and the total amount paid for said last described property did not exceed Ten Thousand Five Hunrded ($10,500.00) Dollars.

The plaintiffs allege that the total amount of cash paid upon delivery of the three (3) aforesaid deeds did not exceed Thirty-one Thousand ($31,000.00) Dollars; that the total amount paid for all of the aforesaid property did not exceed Sixty-seven Thousand Five Hundred ($67,500.00) Dollars; that the defendant purchased all of the aforesaid property in the name of his wife and himself.

During the month of October 1925, the defendant stated to each of the plaintiffs that he could purchase, for the said corporation, the aforesaid property from third parties for the sum of One Hundred Thousand ($100,000.00) Dollars. The defendant, at this time, was the owner of the aforesaid property himself.

Without a meeting of the Board of Directors of the corporation, said Board of Directors con-

sisting of the defendant, each of the plaintiffs and one Stanley Sculthorp, the son of the defendant, and without any appraisal of the Board of Directors, the defendant and his wife, on November 5, 1925, conveyed to Sculthorp Realty Co., Inc., the aforesaid property, the defendant himself fixing the valuation at One Hundred Thousand ($100,000.00) Dollars, by which conveyance the said corporation was to pay the defendant Thirty-two Thousand Five Hundred ($32,500.00) Dollars more than he paid for the aforesaid property. Plaintiffs allege that, at the time of these transfers, no officer or agent of the corporation represented the corporation except the defendant; that the defendant represented to the plaintiffs that he was purchasing the aforesaid property in the name of the corporation from third parties; that each of the plaintiffs were out of the State of Florida at the time of the transfer. And the said plaintiffs in fact say that by means of the premises, the said defendant, on the times aforesaid, falsely and fraudulently deceived and misled the plaintiffs, and thereby greatly damaged the said plaintiffs.

And for this also that heretofore, to-wit: on October 18, 1926, the defendant, as president of the Sculthorp Realty Co. Inc., by Warranty Deed, conveyed to himself individually, all of the aforesaid property; that this last mentioned conveyance was made without a meeting of the Board of Directors and without any notice to or knowledge by the plaintiffs who still were and are Directors of the corporation. During the months of November and December and the early part

Exhibit D-1

of January 1927, the defendant made repeated demands upon each of the plaintiffs that they contribute further sums to pay mortgages against the aforesaid property, said defendant stating that these mortgages were due upon land owned by the aforesaid corporation. At this last mentioned time, the corporation did not own the record title to said property, and the defendant required money to pay his own obligations.

Yet the said defendant, well knowing the said land to be the property of the aforesaid corporation, but contriving and fraudulently intending to deceive and defraud the said plaintiffs, in this behalf, by means of the premises, have greatly damaged the plaintiffs thereby.

WHEREFORE, The plaintiffs claim that they have been injured and claim damages in the amount of Thirty Thousand ($30,000.00) Dollars.

OTHO E. FALLS,
Attorney for Plaintiffs.

Exhibit D-1

On May 2, 1927, Praecipe for Judgment by Default, was filed in the following words and figures:

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR PALM BEACH COUNTY. AT LAW.

EDWARD J. STEPPANSKI and JOHN E. JONES, Plaintiffs, vs. JESSE L. SCULTHORP, Defendant.	Praecipe for Judgment By Default.

The Clerk of the above Court will please enter a judgment by default against the above named defendant, Jesse L. Sculthorp, for failure to plead or demur to the declaration of the plaintiffs on or before May 2, A. D. 1927, and oblige.

O. E. FALLS,
Attorney for Plaintiffs.

Exhibit D-1

On May 2, 1927, Demurrer was filed in the following words and figures:

In the Circuit Court of the Fifteenth Judicial Circuit of Florida, in and for Palm Beach County. At Law #3512.

Edward J. Steppanski and John E. Jones, Plaintiffs, vs. Jesse L. Sculthorp, Defendant.	Demurrer.

Comes now the defendant Jesse L. Sculthorp, by his undersigned attorneys, and demurs to the declaration herein filed, and says that the same is bad in substance and that the substantial matters of law to be argued are as follows:

1. Said declaration is so vague, indefinite and uncertain as to state no cause of action.

2. It does not appear that the plaintiffs have suffered any legal wrong committed by the defendant.

3. It appears that the tort sued upon, if any, was practiced upon a third party not joined in said suit.

Kearley Fisher, Van Metre & Chapman,
Attorneys for Defendant.

Exhibit D-1

CERTIFICATE OF COUNSEL.

I, H. C. Fisher, do hereby certify that I am one of counsel for the defendant in the foregoing suit; that I have read the foregoing demurrer and that in my opinion the same is well founded in point of law.

H. C. FISHER.

State of Florida,
County of Palm Beach } ss:

On this day personally appeared before me, a Notary Public in and for said County and State, H. C. Fisher, who, being by me first duly sworn on oath, deposes and states, that he is agent and attorney for the defendant in the foregoing case; that said defendant is beyond the limits of the State of Florida; that affiant is duly authorized by said defendant to make this affidavit in his behalf; that affiant has read the foregoing demurrer and that the same is interposed in good faith and not for the purpose of delay.

H. C. FISHER,

Sworn to and subscribed before me
this 2nd day of May, A. D. 1927.
Juanita Hough
Notary Public.
My commission expires:
Mar 10 — 1928
(N. P.)
(Seal)

Exhibit D-1

On May 25, 1927, Notice of Hearing on Demurrer was filed in the following words:

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR PALM BEACH COUNTY. AT LAW.

EDWARD J. STEPPANSKI and JOHN E. JONES, Plaintiffs, vs. JESSE L. SCULTHORP, Defendant.	Notice of Hearing on Demurrer.

To Messrs. Kearley, Fisher, Van Metre & Chapman, Attorneys for Defendant, Jesse L. Sculthorp:

Please take notice that I am hereby setting down for hearing, the demurrer of the defendant to the declaration of the plaintiff in the above entitled cause on the 1st day of June, A. D. 1927, at 3 o'clock P. M. in the Judge's Chambers in the Court House at West Palm Beach, Florida or as soon thereafter as a hearing can be obtained.

You will govern yourself accordingly.

OTHO E. FALLS,
Attorney for Plaintiff.

I, Horace Van Metre of the firm of Kearley, Fisher, Van Metre & Chapman, Attorneys for the defendant, Jesse L. Sculthorp, do hereby accept

service of the foregoing notice and acknowledge receipt of a copy of the same this 25th day of May, A. D. 1927.

HORACE VAN METRE,
Attorneys for Plaintiff.

On May 25, 1927, Praecipe Setting Down Demurrer For Hearing, was filed, which was recorded in Minutes Circuit Court 18, at page 333, in the following words and figures:

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR PALM BEACH COUNTY. AT LAW.

EDWARD J. STEPPANSKI and JOHN E. JONES, Plaintiffs, vs. JESSE L. SCULTHORP, Defendant.	Praecipe Setting Down Demurrer For Hearing.

The Clerk of the above Court will please set down for hearing, the demurrer of the defendant, filed on May 2, A. D. 1927 to the declaration of the plaintiff in the above entitled cause on this day and oblige.

Exhibit D-1

Above demurrer is hereby set down for hearing by plaintiff, this 25th day of May A. D. 1927.

FRED E. FENNO Clerk
By F. L. Burnett, D. C.

(Circuit Court)
(Seal)

On June 10, 1927, Order Sustaining Demurrer, was filed which was recorded in Minutes Circuit Court Record No. 18, at page 382, in the following words and figures:

In the Circuit Court Fifteenth Judicial Circuit of Florida #2412 Law
In and for Palm Beach County

EDWARD J. STEPPANSKI, *et al*
vs.
JESSE L. SCULTHORP
} Order Sustaining Demurrer

The foregoing cause coming on this day to be heard upon defendants' demurrer to the declaration, and the same having been argued by counsel for the respective parties and duly considered by the Court, it is ordered that said demurrer be and the same is hereby sustained.

It is further ordered that the plaintiffs be allowed until the July 1927 Rule Day to file their amended declaration, if they be so advised.

Done and Ordered at Chambers this 10th day of June A. D. 1927.

C. E. CHILLINGWORTH,
Judge.

Exhibit D-1

On August 1, 1927, Praecipe for Dismissal, was filed in the following words and figures:

In the Circuit Court of the Fifteenth Judicial Circuit of Florida in and for Palm Beach County. At Law #3512.

Edward J. Steppanski and John E. Jones, Plaintiffs, vs. Jesse L. Sculthorp, Defendant.	Praecipe For Dismissal.

The Clerk of said Court will please enter an order dismissing the above cause on account of the failure of the plaintiffs to file an amended declaration, as required by law and in accordance with the order of the Court dated June 10, 1927.

Kearley Fisher, Van Metre & Chapman,
Attorneys for Defendant.

Exhibit D-1

On August 1st, 1927, Order of Dismissal was filed, which was recorded in Minutes Circuit Court No. 18, at page 547, in the following words and figures:

IN CIRCUIT COURT, FIFTEENTH JUDICIAL CIRCUIT

In and for Palm Beach County, Florida

EDWARD J. STEPPANSKI and JOHN E. JONES, vs. JESSE L. SCULTHORP,	Order of Dismissal C. L. 3512

The defendant herein, having filed his praecipe for dismissal of the above entitled cause, for failure to file amended declaration as required by order dated June 10, 1927.

IT IS ORDERED That the suit be and the same is hereby dismissed at the cost of the plaintiffs, Edward J. Steppanski, and John E. Jones

Done and ordered at West Palm Beach, Florida, this 1st day of August 1927.

FRED E. FENNO
Clerk Circuit Court.
By Merle P. Johnston, D. C.

(Circuit Court)
(Seal)

Exhibit D-1

CERTIFICATE OF CLERK

I, Fred E. Fenno, Clerk of the Circuit Court in and for the County of Palm Beach, State of Florida, do hereby certify that the foregoing pages numbered from one to eighteen inclusive, contain a correct transcript of the record of the proceedings in the case of Edward J. Steppanski and John E. Jones, plaintiffs, against Jesse L. Sculthorp, Defendant, and a true and correct recital and copy of all such papers and proceedings in said cause, as appears upon the records and files of my office.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Circuit Court, this 17th day of May, A. D. 1928.

FRED E. FENNO,
Clerk of the Circuit Court
For the County of Palm Beach.

(Circuit Court)
(Seal)

EXHIBIT D-2.

SCULTHORP REALTY CO., INC.

OWNERS AND DEVELOPERS OF HIGH GRADE
BUILDING LOTS
Lake Ida Gardens
Delray, Fla.

Let Us Help You Secure a House or a Bungalow in Florida

FIELD OFFICE
Corner N. W. 4th Ave. and N. W. 8th St.

May 3rd, 1926

Mr. John E. Jones,
361 East 28th Street,
Brooklyn, N. Y.

Dear Mr. Jones:

The lot payment in Boynton is past due. Shall we pass them up? I believe we should give them up, as I have just received word that the party who holds the mortgage on the fifteen acres at Lake Ida Gardens will not extend his mortgage, therefore, we will have to raise $15,000. (Fifteen Thousand Dollars) to meet same the middle of June, and also some interest that is due. How much can you raise?

If you can raise about $3500. to $4000. and Mr. S. the same, I will try and raise the rest.

I expect to come North some time this month and I will explain every thing to you.

Very truly yours,

SCULTHORP REALTY CO. INC.
J. L. Sculthorp
Pres.

Answer

EXHIBIT D-3.

New York Philadelphia Baltimore
Newport News

GREENVILLE COALING AND EXPORT CORPORATION

90 West Street
NEW YORK

John E. Jones
Manager

6778
Telephone Rector 6779

February 24th, 1926.

Mr. J. L. Sculthorp,
Sculthorp Realty Co., Inc.,
Delray, Fla.

Dear Mr. Sculthorp:

I received your letter of the 9th inst, and was very glad to hear from you.

Regarding the selling of the Boynton lots, whatever you do in this matter will be agreeable to me. I suppose by this time you have your office started, and are getting in shape to do some business. I note you say you have the signs painted and already to be lettered. I am enclosing under separate cover the stamp which you requested me to get for you—Sculthorp Realty Company, Inc., also an ink pad with same. I expect to send you another check within a day or so on account of stock. I am slow getting this matter straightened out, but things did not work out for me the way I expected, nevertheless, I will have it cleaned up in a very short time.

Exhibit D-3

You certainly escaped a lot of bad weather here in New York, when you went to Florida, as the month of February was so very cold, nothing but Zero weather and snow storms.

No doubt you have heard that the strike has been settled, but very little coal has reached New York, and prices range from $29.00 to #32.oo per ton.

Mrs. Jones & I have had very bad colds, but we are getting along alright now. Business has been very slow with me in the last month, on account of the Railroads being in such bad shape, which made it impossible to get coal. I have coal now on the Road for over a month, and have not received it as yet.

Mrs. Jones say she has not received any letter from Mrs. Sculthorp, but I told her that Mrs. S. might be a whole lot like her in regard to writing letters.

I hope by the time you receive this letter that you have got started on your plans and are selling some lots.

For your information, I know a party here who has ten acres to offer in So. Tampa, which he says is all high and dry ground. He has been offered $5000. for same on terms of one half cash and the balance within a year, but he turned it down. He says he wants $5000. for the ten acres in cash.

I see that young Pearl has come home. Tell Mrs. S. that Mr. Pearl's daughter—Alice, played the same trick on her people as Dorothy played on us; brought home a husband to her father.

Exhibit D-4

I hope this will find you and your family in the best of health, and remain,

Very truly yours,

J. E. JONES.

JEJ/AC

EXHIBIT D-4.

COPY

SCULTHORP REALTY CO., INC.
Delray, Fla.

Jan. 28/27

Mr. John E. Jones,
c/o P. O. B. 1761
West Palm Beach,
Fla.

Dear Sir:

I received a letter inquiring about the five acres of land that our Company has for sale here at Delray. Kindly let me know what you think we should sell this five acres for in your conversation the other day you said to sell for around $7,500.00. Kindly advise at once. I am also writing to Mr. E. J. Steppanski about same.

I also received a letter from the Ohio bank stating that if we paid the interest that they would renew the note on the Mtg. that will give us more time to try and sell the property.

I am also inclosing a copy received from The First American Bank & Trust Co. of West Palm Beach.

Very truly yours,
SCULTHORP REALTY CO.
J. L. Sculthorp, Pres.

EXHIBIT D-5.

New York Philadelphia Baltimore
Newport News

GREENVILLE COALING AND EXPORT CORPORATION

90 West Street
NEW YORK

John E. Jones
Manager

6778
Telephone Rector 6779

April 12th, 1926.

Mr. J. L. Sculthorp,
Sculthorp Realty Co.,
Delray, Fla.

Dear Mr. Sculthorp:

I am enclosing herewith my check amounting to $250.00 in payment of balance due on stock in the Sculthorp Realty Company. I am very sorry to have held this up so long, but I could not help it on account of things being so slow, practically nothing doing in my business at all.

I received your letters and was very glad to hear from you. I did not answer same, expecting every day to get some money. I received your Plat 2 of Lake Ida Gardens. Also your maps and note what you say about same. It is useless to try to sell any property up here in Florida as nobody seems to be interested just now, and everybody thinks the Boom is about finished. I am very sorry that things are so slow down there and I am wondering where

Exhibit D-5

we are going to get the money to meet our payments unless you have luck in selling off some of the property. I think you have a payment due on the Boynton property this month. Will you kindly advise me if I am right, as I will have to try to raise the money to pay same. I feel that we should sell this property off, if such a thing can be done on account of other payments we have to meet in the near future. How does the Gainesville property look. I suppose the slump has hit there also. I understood your letter to say that you had some of the walks laid. How does the property show up. Is there anything doing with the dredging people on filling in on the lake.

Dorothy and Fred do not seem to pull together. I am very much afraid that this is a poor match and will not amount to anything.

When do you think you will come up North. If there is anything we can do for you at Keansburg, please let us know, and we will be glad to do it. We expect to go down there about the first of May.

Hoping this will find you and your family in the best of health, I remain.

Very truly yours,

J. E. JONES.

JEJ/AC

EXHIBIT D-6.

SCULTHORP REALTY CO., INC.

OWNERS AND DEVELOPERS OF HIGH GRADE BUILDING LOTS

Lake Ida Gardens
Delray, Fla.

Let Us Help You Secure a House or a Bungalow in Florida

FIELD OFFICE Corner N. W. 4th Ave. and N. W. 8th St.

April 23rd, 1926

Mr. J. E. Jones,
361 East 28th Street,
Brooklyn, N. Y.

Dear Mr. Jones:

Your letter received and also check for $250. on account of stock.

With reference to the Boynton lots, call up Steppanski and tell him to see Moskovitz and have him credit all the money we have paid in on one lot and take the others back and sell them, as he promised to turn them over for us within six months. We would not have bought them if he had not promised this. I would be willing to lose what I have paid in, rather than to carry the contract through. If we take a loss, we will make it up on something else.

I have 23,220 square feet fo sidewalk finished and the streets mostly finished and part of the front filled in, but I am going to shut down and wait until I can do some business and finish up next Fall. I am trying to sell a few lots at cost

to get some money in, but there is nothing doing at present. I understand that a lot of the large developments are going to start up again and have things ready for next Fall.

I bought a hundred palms and set them out on the property and it sure does look fine.

The Mrs. and I expect to come North some time in May, but do not know the exact date yet. I want to get some business straightened up first.

We are all well here, and hope this finds you and your family the same.

Best wishes to all,

Very truly yours,

J. L. SCULTHORP.

We have a Mtg due sometime in June for $11,-500. and Int. We all will have to dig up some money I have written for an extension of the Mtg but have not as yet got a reply.

EXHIBIT D-7.

New York Philadelphia Baltimore
Newport News

GREENVILLE COALING AND EXPORT CORPORATION

90 West Street

NEW YORK

John E. Jones
Manager

6778
Telephone Rector 6779

January 30th, 1926.

Mr. J. L. Sculthorp,
Sculthorp Realty Corp.,
Delray, Fla.

Dear Mr. Sculthorp:

I am enclosing herewith my check amounting to $1500.00 in payment on account of stock in the Sculthorp Realty Company. This makes a total of $9500.00, the balance amounting to $500. I will send along with in the next few days. Will you kindly advise me when you receive the checks.

You and your family are surely lucky at this time to be away from Atlantic Highlands, as the weather up here is sure some cold.

I received your letter and was very glad to here that you expect to get started on the grad-

ing within a couple of weeks, and that the Gainesville property is coming through alright. I think as you say, it will be much better to let anybody sell the property as Hitt seems to be a little slow in getting started. I hope they will finish your house up in good shape for you, as it must be very unpleasant for your family where the men are working around all day. I hope when you get your office started you will get some of the property out on contract. How do things look in Boynton, and has there been much improvement made in Delray since we left.

We were sorry to here that Mrs. S. was not feeling well, and hope she is better by this time.

With kind regards to you and your family, I remain.

Very truly yours,

J. E. JONES.

JEJ/AC

EXHIBIT D-8.

New York, January 26th, 1926.

Mr. J. L. Sculthorp,
Sculthorp Realty Company,
Delray, Fla.

Dear Mr. Sculthorp

I am enclosing herewith check amounting to $1000.00, being on account for stock in the Sculthorp Realty Company. For your information, I will mail check for the balance amounting to $2000.00 within the next few days, as I have every-thing all arranged for the money, and should have my check here within a day or two.

I am very sorry if I have held you up any in this matter, as I expected some money to come through, which did not materialize. Nevertheless, I will pull through alright.

I was at the Highlands yesterday, and saw Stanley. He was telling me that he had heard from you, and that Mr. Gelhaus had taken the sales of his property from Webb & Doran. Stanley tells me he heard from Mr. Hitt, and said that he tells him that things are beginning to pick up in and around Delray. I hope you are successful in getting your developments started, so that you can get some of the property out on contract.

Give my regards to your family, I remain.

Very truly yours,

JOHN E. JONES.

JEJ/AC

EXHIBIT D-9.

115 First Avenue
Branch Offices:
Keansburg, N. J.,
and
Port Monmouth, N. J.

Telephone 58
Let us HelpYou
Secure a House or a
Bungalow for the
Summer

SCULTHORP REALTY CO., INC.
Developers of High-
Grade Building Lots

Atlantic Highlands, N. J.
November 8th, 1926.

J. E. Jones
361 East 28th St.,
Brooklyn N. Y.

Dear Friend Jones:

I received a notice from the Ocean City bank, calling in the note of twenty five hundred dollars, due November 11th. This will have to be paid this week to save trouble and costs. I hope that you will be able to send me a thousand dollars to help pay it off. I am writing to Steppanski to see what he can do. There is another note down there, which is due the last part of this month, on which we will have to pay interest and probably something on the principle.

Hoping that you and family are all keeping well, I am

Very truly yours

J. L. SCULTHORP

P. S. This money was used on account of developing the property at Lake Ida Gardens.

EXHIBIT D-10.

SCULTHORP REALTY CO., INC.

OWNERS AND DEVELOPERS OF HIGH GRADE
BUILDING LOTS
Lake Ida Gardens
Delray, Fla.

Let Us Help You Secure a House or a Bungalow in Florida

FIELD OFFICE
Corner N. W. 4th Ave. and N. W. 8th St.

Feb. 9th, 1926.

Dear Mr. Jones:

I received your check for $1500. on account of stock as per your letter. I am drawing the stock and having it signed, ready for delivery.

We are working hard trying to get things straightened up. The office will be ready in about a week. We made several signs and put them up today, so we will have them painted tomorrow and ready to be lettered.

I had a Real Estate agent to see me from Miami and he says if we will sell the lots at 10% down and 5% quarterly, he believes that we can soon sell all of them, providing I get busy with the improvements. I am expecting a party to start this week grading, but they all promise and do not show up, so I am getting a colored man to grade a street, and see how he makes out.

I have several customers in view, but it is hard to get their money, but I will keep plugging and hope that I will sell all the lots by Spring.

With reference to the Boynton lots, I believe we should turn them over and if we only get our money back, we could use it for improvements.

Exhibit D-11

What do you think about it? I will also write Mr. "S" about them.

Will you go to Goldsmith Bros. on Nassau Street and order a rubber stamp for me with Sculthorp Realty Co. Inc. on it. It will cost about thirty cents. You can pay for same and I will pay you when I see you.

I am trying my best to get rock to start making the curb and sidewalks. Will write more about it later.

Best wishes to all,

When are you and Mrs. Jones coming down?

J. L. SCULTHORP

EXHIBIT D-11.

New York, January 11th, 1927.

Mr. J. L. Sculthorp, President.
Sculthorp Realty Company,
Delray, Fla.

Dear Mr. Sculthorp:

Your letters of the 6th and 7th inst received and contents noted.

I am very sorry for all concerned that we got into such a jam, but if you will remember our talk in Keansburg when I asked you what would happen if we were unable to meet our payments, and you said then that you would simply take over the mortgages, and there was no fear of losing

out on that account. Nevertheless, if there is any reasonable way you can suggest to work this matter out I am willing to do so. I would be willing to turn over my stock to you or to Mr. Steppanski, or to anybody else you think would want it for any reasonable amount, in order to reduce the cost to you. I think you will remember that I only intended to put $5000.00 into this proposition in the first place, but you wired Stanley asking if I could make it $10,000.-00 in order to enable you to get the property you wanted, and I agreed to it.

I wrote you on December 4th asking for a financial report signed by you, as to just how the Company stood, and you said you would send it up just as soon as you reached Florida. My only reason for wanting same was to try to borrow some money in order to help out. I do not know of anybody who would advance money on stock without knowing something about how the Company stood financially, but up to this writing you have not sent me a financial report, as requested, signed by you.

I know you have advanced monies to make improvements on the property, but the Company's books should show how much.

If you feel as though we are going to lose the property why should we want to deed any of it back, and I would not consent to do so. If the people who hold our mortgages are not willing to help us, why not let them foreclose, as everyone else in Florida are making all kinds of concessions in order to keep things going.

Exhibit D-12

In regard to the Gainesville property, I will agree to do anything you want to do provided you try to save some of our money. You told me that you had nine lots released, and the one which you took over for yourself. What will become of these in the event of us losing all the other property. I feel that you should try and sacrifice this property for whatever you could get in order to get at least some of our boney back.

As to the Boynton property, you will remember that this was bought in the Company's name, but we advanced payments outside of the Company's money. My share was about $690.00 and Mr. Steppanski's share was $690.00, and your share was to be about $1380.00 I think, but you received a check back for about $550.00.

Hoping that you and Mrs. Sculthorp are in the best of health,

Very truly yours,

J. E. JONES.

JEJ/AC

EXHIBIT D-12.

55-369

No. 16074

Atlantic Highlands, N. J., Dec 8/25 192

THE ATLANTIC HIGHLANDS NATIONAL BANK

Pay to the Order of Byrd & Porter
One Hundred .....Dollars
$100 00/100

J. L. SCULTHORP.

EXHIBIT D-14.

(COPY)

BYRD & PORTER
Attorneys at Law
Cromer Building
Delray, Florida

C. Y. Byrd
R. H. Porter

December 16th, 1925.

Mr. J. L. Sculthorp,
Atlantic Highlands, N. J.

Dear Mr. Sculthorp:

We are returning you herewith executed warranty deed and recommend the following: that you have said deed acknowledged before a Notary Public, having an official seal, and that said official seal be affixed to said acknowledgment, and the date of the expiration of his commission also be shown.

As soon as you have had said deed acknowledged, we will have the same recorded and place $100.00 revenue stamps on the same, as suggested in your letter.

Yours very truly,

BYRD & PORTER,
By C. Y. Burd.

CYB:AS

New Jersey
Court of Errors and Appeals

Between EDWARD J. STEPPANSKI and JOHN E. JONES, Complainants-Respondents, and JESSE L. SCULTHORP, Defendant-Appellant.	64-309 On Bill for Rescission. On Appeal from the Court of Chancery.

Brief of Appellant

PRELIMINARY STATEMENT.

This is an appeal from a decree of the Court of Chancery rescinding an alleged verbal agreement between the parties and decreeing the repayment to respondents of the approximate sum of Twenty-one Thousand Five Hundred Dollars ($21,500.00) plus interest from the year 1925.

This action arose out of the Florida boom of 1925 and is the aftermath of the 1927 explosion of the inflated condition of that market; and it is not unfair to say that this case would not be before the Court had the boom continued.

The matter was tried for four days before Honorable John Bentley, but due to his regretable and untimely death before his decision, it

was then re-referred to, considered and decided by the Honorable John O. Bigelow on the printed record. The Vice-Chancellor had no opportunity of viewing the witnesses or hearing their testimony.

The appellant and respondents were friends. Appellant was a realtor for many years in the vicinity of Atlantic Highlands; respondent Steppanski was a plumbing contractor in Jersey City and a summer hotelkeeper at Keansburg. Respondent Jones was a coal salesman for upwards of twenty years.

The appellant, prior to and during the year 1925, had engaged himself in the real estate business in Florida, and upon his return from one of his trips from Florida, the respondents came to his home on numerous occasions thereafter and induced him to permit them to become interested in one of his Florida deals because at that time Florida real estate profits was generally the outstanding topic of discussion. After at least eight conferences in appellant's home in June, 1925, he finally stated to respondents that he had contracted to buy three tracts of land in Florida and had been offered a substantial profit thereon, but that he would turn over this property to a newly formed corporation for One Hundred Thousand Dollars ($100,000.00), permit them to invest Five Thousand Dollars ($5,000.00) each, and that his profit would be represented by stock in this corporation.

The incorporation was formed in September of 1925 and stock issued, and in the month of October, 1925, respondents went to Florida with the appellant, viewed the land, made a general investigation, and thereafter invested an addi-

tional Five Thousand Dollars ($5,000.00) each. It is conceded by respondents that before making the second investment of Five Thousand Dollars ($5,000.00) each, and after personal inspection of the land in Florida, the appellant told them that if they were not satisfied with the project they could have all of their money back. Due, no doubt, to their own observations while in Florida and the tremendous profits being made at that time, they both refused the return of their money and stated that they desired to continue because it appeared as though much money could be made. At this time, it is said that Florida resembled a curb market with open buying and selling in the street, on contract.

In the year 1927 the collapse occurred and the respondents then started suit in the law courts of Florida against the appellant, in which suit they asked for *damages*. While that suit was pending and before its dismissal by the Florida court, respondents commenced the present suit in our Court of Chancery upon a different theory, and in this suit they pray for a *rescission;* and it will hereafter be pointed out by reference to the exemplified copy of the law proceeding in Florida that the present Chancery action is predicated upon and has been molded around an entirely different state of facts than the Florida proceeding.

In the present action the bill asks for a rescission of an alleged verbal contract to invest their money and is based upon one theory, viz:

> "That the cost of the land in question was misrepresented to them; that it was represented to have cost One Hundred Thousand Dollars ($100,000.00), whereas

the cost was only Sixty-seven Thousand Five Hundred Dollars ($67,500.00)."

Our appeal is taken upon the following grounds:

(1) That there was no fraud.

(2) That the cost of the property was not a material fact, nor was such a representation relied upon or an inducing factor.

(3) That the rule of *caveat emptor* applies.

(4) The doctrine of election of remedies applies, respondents having pursued a different remedy in the law court, which proceeded from an opposite and irreconcilable claim of right than the present action.

REVIEW OF TESTIMONY.

The evidence being voluminous, we think it appropriate to review certain parts thereof with reference to both appellant's and respondents' contentions. The allegation of respondents stands practically uncorroborated as to the verbal agreement upon which they rely, as to the representation that the land in question was to cost One Hundred Thousand Dollars ($100,000.00). They, however, attempt to corroborate it by circumstantial evidence, and they say that in May of 1925 Sculthorp told them that he could purchase certain property in Florida and requested them to invest Five Thousand Dollars ($5,000.00) each and that in accordance with this statement they both agreed to become interested, and Steppanski left a blank check with his wife to be delivered to appellant Sculthorp upon demand. The check and stub are No. 2711 (Vol. 2, p. 313, ll. 10

to 32), and it will be noted that the stub of this check is written in pencil. Check No. 2712 was blank, and for that reason does not appear in the record. Steppanski's wife also testified that this check was left with her in May, to be delivered to appellant Sculthorp upon demand, but the check was not delivered until August, 1925. Sculthorp denies that he ever made any arrangement in May, 1925, with respondents, and only after his return in the latter part of June, 1925, at the repeated requests of the respondents did he permit them to be associated with him in three tracts of land which he had purchased in the usual Floridian method, by contract in June, 1925, just before he returned to New Jersey. These three tracts are known as the "Burd-Platner-Davis Land."

Mrs. Sculthorp testifies that on several occasions Mrs. Steppanski had told her that her husband, who was in Jersey City during the greater part of the week, would frequently leave checks with her, signed in blank, for business purposes (Vol. 1, p. 287, ll. 10 to 28).

Respondents urge that the time of the first payment to some extent is important in view of the fact that their contention is that in May, 1925, Sculthorp was to buy land in which they were to become interested, while Sculthorp's contention is that the land was already purchased by him when the respondents became interested in June, 1925. It is conceded that all three of these tracts were contracted for by Sculthorp on the following dates:

Platner tract, June 1, 1925 (Vol. 2, p. 339, Exhibit C-4).

Burd tract, June 2, 1925 (Vol. 2, p. 338, Exhibit C-3).

Davis tract, June 12, 1925 (Vol. 2, p. 340, Exhibit C-5).

It is also conceded that Mr. Sculthorp did not return from the South until the latter part of June, 1925.

Respondent Jones also testifies that Sculthorp stated to him that he, Sculthorp, would purchase property in Florida, and that then a corporation would be formed in which they would all participate in the stock issue, and he states that Sculthorp told him that this property would cost One Hundred Thousand Dollars ($100,000.00).

Outside of the testimony of the two respondents there is no other proof as to the cost being One Hundred Thousand Dollars ($100,000.00) for this property. Upon this testimony the case of respondents chiefly rests, yet, in the action which they brought in Florida and which was dismissed after argument (Vol. 2, p. 479, &c., Exhibit D-1), respondents based their claim of damages upon an entirely different theory, in which their claim was that appellant Sculthorp owned these properties in his own name, paying Sixty-seven Thousand Five Hundred Dollars ($67,500.00) therefor, and defrauded them by transferring the properties into the corporation, himself fixing a value of One Hundred Thousand Dollars ($100,000.00) and taking a profit in stock from the corporation of Thirty-two Thousand Five Hundred Dollars ($32,500.00), and the Florida attorney of respondents states that he drew the Florida declaration from facts given to him by his clients.

The learned Vice-Chancellor, no doubt, due to the numerous cases of the departed Vice-Chancellor Bentley which he had to decide on the record, entirely overlooked the Florida suit, and that the respondents were giving an entirely new version of this transaction in their New Jersey action.

The record will disclose by admission, that after Sculthorp returned from Florida, the respondents were at his home no less than eight times, talking over this Florida project and that at no time did the appellant make any effort to induce them to go into his realty deal.

While respondents claim that the misrepresentation as to the cost of this property was made in June, 1925, it is conceded that they paid no money until August, 1925, just a short time before the Florida incorporation, which was filed September 3, 1925.

Appellant Sculthorp produced his son, Stanley Sculthorp, and his daughter, Mrs. Kittie Kruse, who testified in substance to having heard the numerous conversations between the appellant and respondents in the appellant's home in June of 1925, in which he stated to them, after repeated requests, that if they wanted to go in on a Florida deal, he would throw in the land which he had bought and would take his profit in stock in a corporation to be formed.

The evidence shows that the lands in question were purchased with Sculthorp's money in June of 1925 and that respondents made no payments until August of 1925, almost three months after their purchase, and that then the property was transferred to the newly formed corporation.

Appellant also produces proof from one James VanMater, a banker of Atlantic Highlands, who was present in Florida in October, 1925, with the respondents, when they went to Florida to inspect the land; that on that occasion he heard Mr. Sculthorp say to the respondents that if, after their inspection, they did not like the project, he would return their money to them, which they refused.

The respondents contend that because the corporate minutes of their meetings cannot be reconciled with fact, this is an indication of fraud. This was a closed corporation, with Sculthorp part time in Florida and part time in New Jersey, and complete corporate minutes could not be expected under the then existing conditions.

The evidence will show that Sculthorp himself spent months actually laboring in the fields of this Southern development and that his actual cash loss was approximately Forty-two Thousand Dollars ($42,000.00), not including a year's time and labor in the furtherance of the development.

ARGUMENT.

POINT I.

THERE WAS NO FRAUD, NO MISREPRESENTATION HAVING BEEN MADE UPON WHICH RESPONDENTS RELIED.

In order that the true picture of this transaction may be seen, it will be necessary to comment at length on the testimony to show the utter lack of intention to defraud, but before making these

references and to clearly understand the inconsistent and entirely different theories and facts of the Florida and New Jersey actions brought by respondents, we would ask the Court to read the declaration filed in the Florida suit (Vol. 2, pp. 479 to 485), and the bill of complaint filed in the present action (Vol. 1, pp. 5 to 19, incl.).

It will be noted that in paragraph 3 of the Florida suit (Vol. 2, p. 479, ll. 33 to 40), that Ten Thousand Dollars ($10,000.00) is charged as the sum to be invested for the purpose of a proposed corporation only, and (in Vol. 2, p. 480, ll. 13 to 20) the declaration alleges that the three tracts of land in question had already been purchased by the appellant in his own individual capacity. (This is contrary to the Jersey suit.)

In Volume 2, page 482, lines 30 to 40, the declaration sets out that during the month of October, 1925 (in the present action it is June, 1925), that the appellant stated that this land could be purchased for the corporation for the sum of One Hundred Thousand Dollars ($100,000.00). In the present suit the allegation is that appellant had paid $100,000.00 for the property. In Volume 2, page 483, lines 8 to 15, the truth of the appellant's story can be found in this allegation on the Florida declaration, which is as follows:

> "The defendant and his wife, on November 5, 1925, conveyed to Sculthorp Realty Co., Inc., the aforesaid property, THE DEFENDANT HIMSELF FIXING THE VALUATION AT ONE HUNDRED THOUSAND ($100,000.00) DOLLARS, by which conveyance the said corporation was to pay the defendant Thirty-two Thousand Five Hundred ($32,500.00) Dollars more than he paid for the aforesaid property."

Then (in Vol. 2, p. 483, ll. 16 to 30), we find the following charge of fraud:

> "Plaintiffs allege that at the time of these transfers, no officer or agent of the corporation represented the corporation except the defendant; that the defendant represented to the plaintiffs that he was purchasing the aforesaid property in the name of the corporation from third parties; that each of the plaintiffs were out of the State of Florida at the time of the transfer. And the said plaintiffs in fact say that by means of the premises, the said defendant, on the times aforesaid, falsely and fraudulently deceived and misled the plaintiffs, and thereby greatly damaged the said plaintiffs."

And, in the last paragraph of the complaint (Vol. 2, p. 484, ll. 12 to 20) fraud is again charged in a different manner than contained in the action at bar.

The Florida declaration does not in any manner allege as in the Jersey action "that respondents were defrauded by reason of misrepresentation as to the cost." The Court will note that the above declaration was prepared by one Otho Falls, attorney of the respondents, upon information acquired from them, and a copy of the complaint was forwarded to the respondents by their attorney, and no change whatever was made or suggested by them (Vol. 1, p. 182, ll. 18 to 30, and p. 186, ll. 8 to 20).

An examination and comparison of the Florida transaction and the Jersey bill of complaint will disclose an entirely different state of facts, both of which could not be true, and suggests the thought that because the Florida suit was dis-

missed on demurrer as disclosing no cause of action, that a new set of facts was compiled by the respondents and incorporated and testified to in the present case.

The Florida suit is based on the theory that the appellant owned the land in question but conveyed it to the corporation for the purpose of making unwarranted profits; while in the Jersey action the complaint is based on the theory of agency and that at the time of the so-called contract, the appellant was not the owner of the land.

Respondents found their case on the single theory that the cost of this property was misrepresented to them, and that Sculthorp, after May, 1925, was to purchase Florida property for a proposed corporation. Appellant denies this story and says that the property which was to be transferred to the incorporation was purchased under contract by him in the early part of June, 1925, and that upon his return from Florida, the respondents requested that they be taken into the proposition and that thereupon he agreed to form a corporation and take his profit in stock. Appellant's contention in this regard is borne out in the testimony showing that all of these properties were contracted for purchase between June 1st and June 12th, 1925 (Exhibit C-3, dated June 2, 1925, Vol. 2, p. 338; Exhibit C-4, dated June 1, 1925, Vol. 2, p. 339; Exhibit C-5, dated June 12, 1925, Vol. 2, p. 340).

This alone substantiates the story of appellant and refutes the story of respondents. But for the purpose of argument, if the appellant were placed in the role of a promoter, he would still

have the right to turn this property over to a proposed corporation at a profit.

In the recent case of *Allenhurst Park Estates* v. *Smith,* 101 N. J. Equity at page 594, it is said:

> "It cannot be doubted that under our decisions a promoter may purchase property on his own account for any price he can, with the intention of selling it at a higher price to a company formed or to be formed, and sell it to that company at a profit, so long as he does so fairly. And that under such circumstances no rule of law or equity prohibits such profits."

The Court further said:

> "But that the promoter has his place in society and his usefulness in the world of business is beyond question. He is usually a man of vision, and his visions are not always dispelled by the sunlight of experience. Without him, much of the material success and industrial progress of this country would not have been attained * * *. He, as well as the corporation which he organizes, or its stockholders, has its rights and is as much entitled to the protection of this court as are those who seek to share in the fruits of his labor. As this promoter's profit doctrine is 'judge-made law,' and as state policy is indicated by the action of the legislature and not by the courts (*Bigelow* v. *Old Dominion Copper Co., supra*), it cannot be said that there is anything in the public policy of this state requiring a different application of equitable principles to promoters than to other litigants."

The respondents have attempted to create a fiduciary relationship between themselves and the appellant, but the testimony clearly shows that

they were not induced to go into this transaction, but repeatedly requested Mr. Sculthorp to permit them to become a part. This can be found in the testimony of Steppanski (Vol. 1, p. 159, ll. 5 to 40, and p. 160, ll. 5 to 20). Steppanski says:

> "Q. You and Jones were running over to his house about every night? A. Not every night; only once a week.
>
> Q. You only lived across the street from him and Jones? A. Yes.
>
> Q. About how many times would you say you were in his house discussing Florida property? A. About eight times."

Conclusive proof that respondents were not induced to go into this transaction by appellant, but were anxiously requesting to be let in can be found in the testimony of respondent Jones (Vol. 1, at p. 215, beginning with line 20) as follows:

> "Q. You expected to make money down there? A. Absolutely; I wanted to make some money.
>
> Q. And that was the reason for your going over to Mr. Sculthorp's and asking him if he could get you in on it? A. Yes, but he had spoken to us already.
>
> Q. But you were anxious to become interested with him? A. We had an agreement with him.
>
> Q. He wasn't asking you to go in with him, was he? A. We had an agreement with him then.
>
> Q. Answer my question: He wasn't asking you to go into it? A. He was going to let us in on it."

Steppanski testified that the son of Mr. Sculthorp told him that he had received a telegram from his father, requesting that they increase their investment from Five Thousand to Ten

Thousand Dollars (Vol. 1, p. 70, ll. 5 to 15). No such telegram was produced in evidence for the reason that there was none in existence. That conversation was supposed to have taken place on June 10, 1925, when, as a matter of fact, the first payment of the respondents was not made until August, 1925, and it seems incredible that the respondents would ask for the second payment of $5,000.00 three months before the first payment was made.

On the way down to Florida in October, 1925, the respondents and appellant purchased more property at Gainesville. As late as January 1, 1927, Steppanski had full knowledge of the Florida holdings and so expressed himself in his letter (Vol. 2, p. 425, ll. 5 to 18, and in ll. 20 to 30) he says:

> "At any rate, do not sign anything back. As I understand the situation the courts are so crowded that it takes a long time to get any action, and in the meantime something might turn up. And if the worse comes to the worse, you will only have to pay the court fees involved. We are in a different position than most purchasers, inasmuch as WE HAVE ONE CHEAP TRACK and the other with most money paid in, where it will pay us to hold on, whereas most of the others have little paid in and find it cheaper to get away. What do you think?"

In the above letter, we find Steppanski commenting upon the fact that one of the three tracts in question was a very cheap one. How could he determine the cheapness of that tract unless he knew its cost and value prior thereto? Again, we have a confirmance of the appellant's claim

that he told him he would put this property in the corporation and take his profit in stock.

Steppanski says that the cost of this land was not an inducement for his investment. In Volume 1, on page 144, lines 9 to 17, he says:

> "Q. And you inspected the land? A. Yes.
> Q. You were satisfied with it? A. Yes.
> Q. You had in mind that he told you it cost $100,000? A. I did.
> Q. And you were satisfied with that? A. Yes.
> Q. After having gone over the land and inspected it? A. Yes."

And with reference to the cost of the land, in Volume 1, page 133, lines 25 to 38, he says:

> "Q. Was one of the inducements which caused you to go into this land deal in Florida the fact that this land had cost $100,000.00? A. No.
> Q. That was no inducement at all that caused you to go into the deal? A. No.
> Q. Now, do you understand that question? A. I think I do.
> Q. That was not one of the inducements that caused you to go into it? A. No.
> Q. What was the inducement that caused you to go into it? A. I wanted to make some money and friendship.
> Q. Something else? A. Nothing else."

From the above it is clear that the cost of this land was not a material fact upon which the respondents relied.

In February, 1926, a year before respondents brought their Florida action, Steppanski knew of the cost and value of Florida land and suggested another purchase by Sculthorp (Vol. 2, p. 496, ll. 30 to 38).

Before making the second installment of $5,000.00, while in Florida, he talked with other agents about the value of land in that vicinity (Vol. 1, p. 148, ll. 28 to 35). Respondents knew that their investment in Florida was a gambling proposition (Vol. 1, p. 135, ll. 18 to 40, and p. 136, ll. 1 to 25).

Steppanski was in other Florida transactions before associating himself with Mr. Sculthorp (Vol. 1, p. 146, ll. 30 to 42). In these transactions he made no effort to ascertain the cost, but apparently relied on his own judgment.

In the case of *Condon* v. *Sandhowe,* 127 Atl. p. 101, the Court, Bentley, V. C., lays down the doctrine which should apply here, in citing the following language from one of our early opinions:

> "A person who wilfully closes his eyes to avoid seeing what he believes he would see if he kept them open must be considered to have seen what a man with his eyes open would have seen."

The Court said, further:

> "The investigation, as it turned out, was very superficial and did not discover all the proofs although there was abundant opportunity for that purpose, as there was in the case at bar. Nevertheless, it was decided by the House of Lords that the vendor had cut off any claim to being misled by his own act, and that if he undertakes to judge for himself and is not successful thereat he should not be allowed to set up his own carelessness."

And further:

> "Had there been any effort to frustrate the attempt of the defendants in their examination of the building, a different situa-

tion would have been presented. The completest opportunity was afforded them in this respect."

Respondents have adroitly tried in this case to show a fiduciary relationship but have failed to substantiate that by proof. We find no cases where one going into a transaction knowing it to be speculative and purely a gamble, can fall back on the subterfuge of a fiduciary relationship in a joint gambling venture.

In the case of *Bardner* v. *Kelso* (Ill.), 127 N. E. page 337, fiduciary relationship is defined as follows:

> "The term fiduciary or confidential relation, as used in this connection, is a very broad one. It has been said that it exists and that relief is granted in all cases in which influence has been acquired and abused—in which confidence has been reposed and betrayed. The origin of the confidence and the source of the influence are immaterial. The rule embraces both technical fiduciary relations and those informal relations which exist whenever one man trusts in and relies upon another. The only question is, does such a relation in fact exist?
>
> "* * *. The mere fact of the making of the contract does not, of itself, constitute proof of such relation. The record discloses no circumstances or transactions between them from which an inference of a fiduciary relation could be drawn."

Respondents say that the first knowledge received by them that this land cost $67,500.00 was after their attorney discovered that the deeds did not contain revenue stamps for $100.00. This was not the fault of the appellant, as will be dis-

closed by his check (Exhibit D-12, Vol. 2, p. 509) and also from the letter of his attorneys (Exhibit D-14, Vol. 2, p. 510), in which they promised to follow his instructions to place $100.00 revenue stamps on the deeds.

The properties in question were purchased in June of 1925 by the appellant, with his own funds and respondents paid no money until August of 1925. The respondents were both business men of long standing. They both knew that Florida real estate manipulations were a gamble and had full knowledge of the inflated condition there, inasmuch as it was a matter of public knowledge. They say that the cost price was not a material inducement to them. It is conceded by both of them that the appellant, Sculthorp, offered to return their money to them while on the ground at Florida. They both refused it and both knew of and were satisfied with the value and cost of the land at that time.

In the case of *Wise* v. *Fuller*, 29 N. J. Eq. p. 257, it is said:

> "No definition of fraud can be framed which will serve as a safe test in every case. The best effort in that direction must prove abortive. Each case must be determined on its own peculiar facts. It is not every untruthful statement that will invalidate a contract. Avarice is so strong in the average man that he naturally extols what he desires to sell, and depreciates what he wants to buy. All bargaining is conducted on the principle that each party is at liberty to get such advantages in the transaction as are allowed by the morals of trade. A contract is rarely made where each party strives to give the other all the benefit to be derived from the transaction.

> Gain or profit is the fundamental object of all traffic. Generally, mere expressions of opinion, estimate or judgment, even if false, do not constitute fraud. It may be said, generally, an actionable misrepresentation consists in a false statement respecting a fact material to the contract, and which is influential in producing it. Statements of value made by a vendor during the negotiations between the parties, although known to be excessive, do not ordinarily constitute a warranty or a fraud. *Uhler* v. *Semple,* 5 C. E. Gr. 291."

It is hardly conceivable that the appellant, Sculthorp, would turn over an interest in his land which he purchased in Florida at the peak of the boom, at the same price that he paid, and good business judgment would indicate that the natural thing for him to do would be to turn it over by taking a profit in the newly formed corporation, and this likewise would be the fair thing to do. If the boom had lasted and the property sold, respondents would not complain about the cost because all of the parties then concerned would have made profit.

The learned Vice-Chancellor on his opinion (Vol. 1, p. 53, ll. 30 to 38) states:

> "Sculthorp testified that the complainants never inquired of him what he paid for the land or what profit he was making on his sale to the corporation. It is rather difficult to believe that Steppanski and Jones would not have been curious on that point."

Yet this is the actual fact and in Volume 1, page 143, lines 1 to 40), Steppanski says that he did not inquire as to the cost, which is a further indication of the truth of Sculthorp's story that

the only figure discussed was the figure of $100,000.00 at which the property was to be turned over to the corporation.

To stamp the appellant with being a deceiver and to cause him to sustain the $20,000.00 loss of respondents, in addition to his own actual investment of over $40,000.00, the proof of fraud should be clear and convincing, but on the contrary, the actions of Mr. Sculthorp in this transaction are clothed with the utmost fairness. For instance:

(a) While respondents agreed to go into the transaction in June of 1925, they were not called upon to expend any money until the latter part of August, 1925 (Vol. 1, p. 83, ll. 8 to 12).

(b) Before the second installment of $5,000.00 was paid at Florida after inspection, Sculthorp offered to pay back all of their money if they were not satisfied (Vol. 1, p. 145, ll. 30 to 40).

(c) When the crash came, Sculthorp wanted to save respondent Jones his money and offered to deed him one of his homes to recompense him (Vol. 2, p. 429, ll. 15 to 20); and requested both of them to come to Florida and inspect their enterprise.

It is difficult to reconcile the actions of Mr. Sculthorp with that of a dishonest man, in view of his bona fide offer to the respondents in October, 1925, after inspection of this property, to pay them back the money that they had put in before they made any further investment, and respondents' answer to this is far from being convincing or logical.

All of the parties, while in Florida, also purchased property at Gainesville (Vol. 1, p. 147, ll. 18 to 30). The Vice Chancellor in his finding has also decreed the return of these moneys which they all purchased jointly and the respondents in their bill of complaint have insisted on the return of these sums.

The true amounts invested in the three tracts in question by respondents are as follows: Steppanski, $10,381.90, and Jones, $9,013.69 (Vol. 1, p. 233, ll. 35 to 40). Yet the decree in favor of Steppanski is $11,465.23 with interest from 1925 and in favor of Jones for $10,000.00 with interest from 1925.

Under the conditions which these parties entered into this enterprise, it was purely a joint venture, each one knowing that it was a speculative undertaking with each having equal opportunity to determine its consequences. There was no fiduciary relationship. The respondents both say that the cost of these properties was not a material factor.

In the case of *Industrial Savings Co.* v. *Plummer,* 84 N. J. Eq. at page 184 (Court of Errors and Appeals), it is said:

> "The common law affords to everyone reasonable protection against fraud and dealing; but it does not go to the romantic length of giving indemnity against the consequences of indolence and folly, or a careless indifference to the ordinary and accessible means of information. Every person reposes at his peril in the opinion of others, when he has equal opportunity to form and exercise his own judgment."

The Court further said:

> "Nothing can call forth this Court into activity but conscience, good faith and reasonable diligence; when these are wanting the Court is passive and does nothing."

POINT II.

THE COST OF THE PROPERTY IN QUESTION WAS NOT A MATERIAL REPRESENTATION NOR WAS IT RELIED UPON OR AN INDUCEMENT.

Throughout the testimony, it appears that respondents made no inquiry as to cost and stated that the cost was not the procuring inducement for them to invest their money. The rule applicable is stated in *Pomeroy's Equity,* Volume 2, p. 1843, Section 890, as follows:

> "Another element of a fraudulent misrepresentation, without which there can be no remedy, legal or equitable, is, that it must be relied upon by the party to whom it is made, and must be an IMMEDIATE CAUSE OF HIS CONDUCT WHICH ALTERS HIS LEGAL RELATIONS. Unless an untrue statement is believed and acted upon, it can occasion no legal injury. It is essential, therefore, that the party addressed should trust the representation, and be so thoroughly induced by it that, judging from the ordinary experience of mankind, in the absence of it he would not, in all reasonable probability, have entered into the contract or other transaction."

In the case of *Holbrook* v. *Connor,* 60 Me., p. 578, a declaration was filed, setting forth facts similar to the case at bar and involving a state-

ment of the cost of land which induced the plaintiff to subscribe its stock in a corporation. The Court said:

> "The only other allegation on which the plaintiff rests his action, is that which relates to the price paid for the land. We think that such a statement though false, is not sufficient to sustain an action."

In the same case, citing *Hemmer* v. *Cooper,* 8 Allen, p. 334, the Court said:

> "The representations of a vendor of real estate to the vendee, as to the price paid for it, are to be regarded in the same light as representations respecting its value. A purchaser ought not to rely upon them; for it is settled that, even when they are false, and uttered with a view to deceive, they furnish no ground of action."

And, citing *Manning* v. *Albee,* 11 Allen, p. 622, says:

> "This Court has repeatedly recognized and acted upon the rule of common law, by which the mere statements of the vendor, either of real or personal property, not being in the form of a warranty, as to its value, or the price which he has given, or been offered for it, are assumed to be so commonly made by those holding property for sale, in order to enhance its price, that any purchaser who confides in them is considered AS TOO CARELESS OF HIS OWN INTERESTS TO BE ENTITLED TO RELIEF, even if the statements are false and intended to deceive."

The Massachusetts Courts have laid down the same doctrine as to representations, as to price or cost, and in the case of *Cooper* v. *Lovering,* 106 Mass., p. 79, says:

> "It has been repeatedly decided that representations of a vendor, as to the value or cost of the property to be sold, or as to offers for it made by others, even though false, are not representations upon which a purchaser ought to rely, and are not sufficient to furnish any ground of action."

In *Mooney* v. *Miller,* 102 Mass., p. 220, the same doctrine is recognized.

See also *Long* v. *Woodman,* 58 Maine, p. 52.

In the case of *Holbrook* v. *Connor, supra,* 60 Maine, p. 578, it was sought to distinguish the case from the rule by attempting to show that the defendant was the agent of the plaintiff and that a fiduciary relationship existed, and upon that point the Court said:

> "In the case at bar, the defendants, in making the purchase of the land, were not the agents of the association, nor did they assume to act for or in their behalf. The purchase was made before the company was formed, and, so far as appears, before its organization was contemplated. The contract of the parties does not refer to the original purchase. So far as the land is referred to it provides simply for a sale, which is completed by a deed subsequently given. True it was sold for the purpose of forming a joint stock company, of which the defendants were to be members; still it was but a sale, and the parties to this case stand to each other in the relation of GRANTOR AND GRANTEE and no other, and in the writ are so declared to be. Viewing the authorities then, as bearing upon the admitted facts of this case, they would seem to be nearly all one way, very clearly showing, that a false repre-

sentation, by the vendor, of the price paid for land, will not lay the foundation for an action. The statement of the vendor, that he paid a certain price for his land, if true, can be no more than an indication of his opinion of its value, and when we consider the various motives which may, and often do actuate men in making their purchases, and especially when it is done for the purposes of SPECULATION, it is but the slightest proof of such an opinion.

"It is, however, claimed that the price paid is a definite fact, the truth or falsity of which is susceptible of satisfactory proof, while assertions of quality and value are necessarily matters of opinion which are too uncertain for judicial cognizance. But it should also be remembered, that a misrepresentation, to be the foundation of an action, must relate, not only to an existing fact, but to a material one; one which will enable the purchaser more intelligently to form his own opinion of the value of the property. Now, as we have already seen, the price paid, if correctly stated, is but an uncertain indication of the vendor's opinion."

In the case of *Hemmer* v. *Cooper,* 8 Allen, p. 334, held:

"The representations of a vendor of real estate to the vendee, as to the price paid for it, are to be regarded in the same light as representations respecting its value. A purchaser ought not to rely upon them; for it is settled that, even when they are false, and uttered with a view to deceive, they furnish no ground of action."

Respondents seek to distinguish the case at bar upon the ground that a fiduciary relationship existed, but as seen above there can be no fiduciary

relationship where parties enter into a joint venture, especially a speculative one, and it would be a harsh rule that would permit the gambler or speculator to avail himself of profit if the venture is successful, and, on the other hand, to seek relief where the speculation is unsuccessful and make the claim that his brother speculator then acted as his agent.

POINT III.

THE RULE OF CAVEAT EMPTOR APPLIES, RESPONDENTS HAVING HAD AN OPPORTUNITY TO VIEW AND INSPECT LANDS IN QUESTION.

It is conceded that the first installment made by respondents was made in or about August, 1925, and that in the month of October, 1925, respondents went to Florida with the appellant and there examined the lands, and before paying their second installment of $5,000.00 were offered the opportunity to be repaid their money if they were not satisfied with the project after inspection. This, they refused to do.

In the case of *Industrial Savings Co.* v. *Plummer,* 84 N. J. Eq., p. 184, Justice Minturn, speaking for the Court of Errors and Appeals, held:

> "That the opportunity of examining the property and its value, and of verifying the representations made, cast a duty upon the defendants of exercising reasonable diligence in their own behalf upon estimates of value, which were open to their observation, judgment and investigation, and in the absence of actual fraud, relief upon that ground alone will not be afforded in equity. In such a situation the doctrine of *caveat emptor* applies."

In 39 *Cyc.*, p. 1279, the rule is laid down in the following language:

> "If the purchaser, instead of relying upon false representations, makes an actual inspection of the property contracted for or if he has an opportunity for inspecting the same, and the matter concerning which the false statement is made is one which would be disclosed by such inspection, the general rule is that the doctrine of *caveat emptor* applies, notwithstanding a false statement made by the vendor, except in cases where the fraud of the vendor prevents the purchaser from discovering the actual facts."

In 12 *R. C. L.*, p. 360, Section 114, the rule is stated:

> "Where a party to whom representations are made is put upon inquiry by his knowledge of the facts and undertakes to make an investigation of his own, and the other party does nothing to prevent this investigation from being as full as the investigator chooses to make it, the investigator will not usually be heard to say that he had the right to rely on such representations."

In 12 *R. C. L.*, p. 359, Section 113, the rule and its reasons are given as follows:

> "In addition to actual reliance, a party asserting fraud of a false representation must have had the right to rely thereon; wherefore the representation must have been made to him either directly or indirectly and must have been of such a nature that it was reasonably calculated to deceive him, and to induce him to do that which otherwise he would not have done."

From the conceded facts in this case, it is apparent that the respondents, after making their investigation of these lands in Florida, saw fit to go on with their gamble, were put upon notice both as to value and price and elected to ride on the crest of this boom for the purpose of making easy money, rather than to take back the money already invested. Surely, this eliminates any question of agency and indicates clearly that the respondents were acting upon their own volition, judgment and opinion.

POINT IV.

THE DOCTRINE OF ELECTION OF REMEDIES APPLIES; RESPONDENTS HAVING PURSUED THEIR REMEDY, IF ANY, IN THE LAW COURTS, WHICH PROCEEDED FROM AN OPPOSITE AND IRRECONCILABLE CLAIM OF RIGHT THAN THE PRESENT ACTION.

On April 4, 1927, suit was commenced by respondents against the appellant in the Florida law court (Vol. 2, p. 479) and on August 1, 1927, after argument and on demurrer, said suit was dismissed (Vol. 2, p. 492).

On or about May 26, 1927, respondents commenced the present suit in our Chancery Court against the appellant.

In the Florida action, respondents relied upon their verbal contract and sought damages in the sum of $30,000.00 (Vol. 2, p. 484); but in the case at bar respondents committed themselves to a *rescission* of their contract and prayed for the return of the money paid.

We take it to be the settled law of this State:

> "That in the case of an executed contract the party defrauded has the right to pursue one of two remedies, either he may rescind the contract, return what he has received under it, and sue to recover back what he has paid, or he may affirm the contract and sue for his damages in an action for deceit; BUT HE CANNOT PURSUE BOTH REMEDIES."

Above quotation taken from *Moran* v. *Tucker*, R. I., 101 Atl., at page 328.

Our Court of Errors and Appeals has definitely passed upon the election of remedies under circumstances as presented in the case at bar.

In the case of *Claron* v. *Thommessen*, 96 N. J. Eq., p. 650 (Court of Errors and Appeals) held:

> "Where a purchaser sues to recover a deposit made under an agreement to purchase lands he thereby commits himself to a rescission of the contract, and cannot thereafter compel specific enforcement of the contract in equity."

The Court said (Lloyd, J.):

> "Having taken this step in rescission of the contract, he will not now be permitted to seek its enforcement in a Court of conscience."

In the case of *Maturi* v. *Fay*, 98 N. J. Eq., p. 377 (Court of Errors and Appeals), complainants started suit and the law courts discontinued the same and then commenced action upon equitable grounds. The Court said:

> "If this is a correct assumption of the facts, it is clear that is comes specifically within the situation involved in *Claron* v.

> *Thommessen,* 96 N. J. Eq. 650, and would be governed by the opinion of the Court of Errors and Appeals in that case."

The Court of Errors and Appeals again approved this doctrine by unanimous vote.

The same doctrine is adopted and followed in the case of *Van Buren* v. *Fine,* 101 N. J. Eq., at page 376, where the Court says:

> "There appears to be no dissent to the general doctrine that in order that the commencement of an action at law or a suit in equity, which is not prosecuted to judgment or decree and which results in no benefit to the prosecuting party or detriment to the defendant, shall have the effect to bar any other remedy the prosecuting party may have, the remedies must proceed from apposite and irreconcilable claims of right, and must be so opposite or inconsistent that a party cannot logically assume to follow one without renouncing the other."

It would therefore seem to be clear that the respondents, having commenced their action in Florida in the law courts, wherein they affirm their alleged contract and ask for damages, and then proceed to suit in our Chancery Court, wherein they disaffirm and rescind their contract, that they are barred under the rule above stated, in the present action, having made their election in the Florida proceedings.

CONCLUSION.

The question of fact involved in this case is very sharply drawn as to whether or not the alleged misstatement of cost, upon which this suit is based, was ever made by the appellant, Scul-

thorp. Logically, there would seem to be no reason for him to induce respondents to come into this Florida deal unless he needed money quickly, and the facts show that the properties were purchased by his own money and he made no call upon the respondents for money until August, 1925, almost three months after the purchase. A deceiver and defrauder is not usually so lenient with his subjects in the matter of procuring and taking their money from them.

It will not be denied by the respondents that the offer made was by appellant to respondents to pay back to them all of their money before they made any further investment and after they had personally inspected the general situation. Surely, to determine dishonesty, we must go to the facts surrounding the alleged dishonest act, and the refusal of the respondents, after inspection, to take back their money, confirms the fact that they, too, were speculators and should be bound by their own acts and should not be relieved under the subterfuge of agency, which question would never have been raised if the Florida boom had continued.

In view of the respondents' testimony that the cost was not a material representation and that there was no reliance upon it (appellant denies making such representation), we urge that the elements of fraud have not been shown. The respondents had every opportunity to judge for themselves as to whether or not they would make this investment, and with their eyes open and upon the very ground in Florida, they judged for themselves and saw fit to continue.

The appellant's version as to the circumstances under which the respondents became associated

with him is corroborated by abundant testimony, but the Court, having no opportunity to judge the calibre and demeanor of these witnesses, must look to the general facts and testimony to determine which of the parties is truthful. It will no doubt be argued that the minutes of the corporation, not being complete and correct, that this indicates a fraudulent act to conceal, but the facts concerning the original transaction and the subsequent action of all the parties will be more helpful in determining the true status.

The suit commenced in Florida, alleging a different state of facts, which suit was dismissed, and the commencement of a suit in New Jersey upon the present theory, indicate that the respondents will go to great length for the purpose of making their case stand.

It is respectfully submitted that the decree should be reversed for the following reasons:

(1) On the facts.

(2) That no fraud was shown.

(3) That the rule of *caveat emptor* applies.

(4) That there was no material representation upon which the respondents relied and consequently fraud could not be implied.

(5) That the doctrine of election of remedies applies.

Respectfully submitted,

QUINN, PARSONS & DOREMUS,
Solicitors of Defendant-Appellant.

JOHN J. QUINN,
Of Counsel.

New Jersey Court of Errors and Appeals

EDWARD J. STEPPANSKI and JOHN E. JONES, Complainants-Appellees, vs. JESSE L. SCULTHORP, Defendant-Appellant.	On Appeal from Court of Chancery.

BRIEF ON BEHALF OF COMPLAINANTS-APPELLEES.

This is an appeal from a decree made by the Chancellor on the advice of Vice Chancellor Bigelow in favor of complainants-appellees.

The bill in this case is to rescind for fraud, an agreement under which complainants-appellees were induced to turn over moneys to the defendant-appellant for investment in Florida real estate purchased in the name of defendant-appellant, and thereafter to be conveyed to a corporation to be formed by defendant-appellant, and to decree the return of the moneys paid by complainants-appellees to defendant-appellant under said agreement.

Facts.

The defendant-appellant Jesse Sculthorp's first conversations relative to the matters in controversy was with complainant-appellee, John E. Jones, about May 1, 1925 (State of Case, Vol. 1, p. 188, lines 15-21). He told Jones about the great profits

that were being made in Florida real estate, and asked Jones whether he wanted to go in with him. Jones said he would take a chance on $5,000 (State of Case, Vol. 1, p. 188, line 26, to p. 189, line 18). On the morning of May 9, 1925, Sculthorp met complainant-appellee, Edward J. Steppanski, on the porch of Steppanski's boarding house in Keansburg, and spoke about the profits to be made in Florida real estate, and asked Steppanski whether he wanted to go in with Sculthorp and Jones, that Jones and Steppanski could each put in $5,000 and Sculthorp would put in whatever balance was necessary. Steppanski said he wanted to consult his wife about it. This is set forth in the testimony of Steppanski (State of Case, Vol. 1, p. 60, line 7, to p. 61, line 10) as follows:

> "Q. What is the date of your first conversation with Jesse L. Sculthorp with reference to the matters involved in this case? A. I had my first conversation with Jesse L. Sculthorp in reference to matters in Florida real estate, on or about the 9th day of May 1925.
>
> Q. What was that conversation? A.* * * He said, 'Steppanski I have known you for a good many years and you have been a brother Mason and a neighbor to me; I want you to get in an honest boom; I have spoken to Jones and Jones is going in and I am asking you; I am asking you and no one else. If you have any cash to put up you can make a quick turnover and make some real money.' I said, 'Mr. Sculthorp, how much cash do I need?' and he said, 'Jones is going to put up $5,000; if you can put up $5,000 I would put in whatever difference is necessary to go through with whatever we buy.' I said, 'Well, that is very nice of you to ask me, I think I will go in. It looks to me as a good thing, but I would like to speak to my wife first and get her consent before I go in a deal of this sort.' He said, 'I am going to leave in a few days; can you let me know

definitely this afternoon?' I said, 'Yes I can,' and I went in the house."

About 5 o'clock that same afternoon, May 9, 1925, Sculthorp again met Steppanski and Jones, and both of them stated that they were willing to go into a syndicate with Sculthorp. Sculthorp said he would go down to Florida and buy a tract of land on the best terms and for the cheapest price possible, and they would then form a corporation and stock would be issued to each of them in proportion to the cash invested by each, and that he would turn over the property to the corporation when formed. Sculthorp stated that he was leaving in a short time for Florida, that if he needed any money in order to purchase some property, he would get in touch with his son, Stanley Sculthorp, who could immediately notify both Steppanski and Jones, so that they could immediately turn over the necessary money to Stanley Sculthorp. Steppanski and Jones were to have their money ready whenever Sculthorp called for same in any amount up to $5,000. Sculthorp said he had some money of his own and whenever he was short he would call on complainants-appellees. This arrangement is set forth in the testimony of Steppanski (State of Case, Vol. 1, p. 61, line 27, to p. 63, line 10) as follows:

"Q. Did you have any conversation with Mr. Sculthorp on the same day, May 9, 1925? A. Yes.

Q. About what time? A. He came back in the afternoon about five o'clock.

Q. And where was this conversation held? A. On the porch of my house.

Q. Who were present? A. Mr. Jones, myself and Mr. Sculthorp.

Q. Will you tell us what that conversation was? A. Mr. Sculthorp said, 'Steppanski did you definitely decide what you are going to do.'

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I said, I was going in for $5,000 the same as Jones is. He said, 'I am going down in a few days on business for my other syndicate and while down there I will try and buy some property that I have seen. It is on the Lake in Delray. I don't know who the owners are or what they want, but it is nicely located and I am going to try to buy it.' He said, 'We will form a Florida corporation, issue shares of $100 a share, and there will only be the three of us in it. We will all be officers and know what is going on.' I said, 'Mr. Sculthorp I haven't got $5,000 in cash now, but I can raise the money in 24 hours. Will it be all right if I give you a check in a day or so.' He said, 'There is no hurry, I have some money of my own down South which I can use, but I want you to have your money ready for immediate delivery. Stanley is going to take care of my affairs while I am South and I will be in touch with him and should I require more money than that, I will wire him and I want you to give him whatever I need at once.' I said, 'That is satisfactory, I will have my money ready any time Stanley calls, and should I not be there, my wife will give it to Stanley.' Jones said, 'I have my money ready; all I have to do is to have it transferred from my savings account into my checking account.' I said, 'Mr. Sculthorp, I don't know anything about a corporation; I never belonged to one, and I never was in Florida; I don't know anything about the real estate business; I will have to leave it to you.' He said, 'You can leave it to me. I will do the best I can. I will buy at the best price and upon the best terms possible. I will buy all in trust for the corporation and just as soon as we are organized, I will turn it over to the corporation at once.' I said, 'That is very fair and anything you do will be satisfactory to me'."

(See also testimony of Jones, State of Case, Vol. 1, p. 190, lines 5 to 41.)

Sculthorp left for Florida May 25, 1925. Answer to supplemental interrogatory No. 4 in evidence as follows (State of Case, Vol. 1, p. 68, lines 7 to 10):

> "4. On what date did you leave the state of New Jersey in order to go to Florida in the month of May 1925?
> "A. About May 25, 1925."

At that time Mrs. Steppanski was down in Keansburg preparing to open up her boarding house which was to open up on Decoration Day, 1925, and Mr. Steppanski was in Jersey City, where he conducted a plumbing business. He came down to Keansburg only week ends. After Sculthorp left for Florida on May 25, Mrs. Steppanski telephoned her husband in Jersey City, either May 26 or 27, 1925. On May 28, 1925, Mr. Steppanski left Jersey City for Keansburg for the week end, taking with him a blank check, Exhibit C-1, drawn on the Trust Company of New Jersey. After he arrived at Keansburg he signed this check in blank and gave it to his wife (testimony of Steppanski, State of Case, Vol. 1, p. 64, lines 5-28, and p. 67, lines 14-16; Mrs. Steppanski, State of Case, Vol. 1, p. 163, line 33 to p. 164, line 9, and Mrs. Groesel, State of Case, Vol. 1, p. 171, line 24 to p. 172, line 11), with instructions to put the same in the safe and to hold it until she received word from Stanley Sculthorp as to how much his father wanted under their agreement, and then to fill in this check for the amount specified by Stanley Sculthorp not to exceed $5,000. This check was signed in blank on May 28, 1925 (State of Case, Vol. 1, p. 67, line 10). The cancelled checks and the stubs of the check book from which this check was taken were offered in evidence, Exhibit C-2, from No. 2708 to No. 2710, being the checks and stubs immediately preceding the check in question (State of Case, Vol. 1, p. 66, line 28; State of Case, Vol 2, p.

334, line 21, to p. 337, line 20), and No. 2712 to No. 2732 (State of Case, Vol. 1, p. 65, lines 29-31; State of Case, Vol. 2, p. 314, line 5, to p. 334, line 18), immediately following the check in question, which is No. 2711. The three numbered checks and stubs immediately preceding the check in question are all dated May 26, 1925, and the stub and cancelled check immediately following it, No. 2713, is dated June 6, 1925, No. 2712 being marked "void". The checks and stubs all have printed numbers on them in regular sequence. This clearly indicates that the check Exhibit C-1 which has the printed number 2711, was taken out of the book subsequent to May 26, 1925, and prior to June 6, 1925. This corroborates the testimony that it was actually removed from the check book and signed May 28, 1925.

The purpose of Mr. Steppanski delivering this check on May 28, 1925, to his wife signed in blank was in order to carry out his agreement with Sculthorp to have his money ready for immediate delivery whenever Stanley Sculthorp requested it (State of Case, Vol. 1, p. 291, line 33, to p. 292, line 24). Steppanski was in the plumbing business in Jersey City. He had an office and a telephone, but there was nobody in the office to take messages and he was out most of the day on his plumbing work (State of Case, Vol. 1, p. 296, line 32, to p. 297, line 38). It would be difficult for Standley Sculthorp to get in touch with him personally in case the money was wanted immediately (State of Case, Vol. 1, p. 297, lines 27-38). Consequently, Steppanski arranged this method of leaving the check signed in blank with his wife, and whenever Stanley Sculthorp requested the money he could get in touch with Mrs. Steppanski and she would fill out the check and deliver it immediately.

On June 10, 1925, Stanley Sculthorp communicated with Mrs. Jones and Mrs. Steppanski and told

them to have their husbands get in touch with him (State of Case, Vol. 1, p. 167, lines 23-38). Mr. Steppanski got in touch with him by telephone and Mr. and Mrs. Jones called at Stanley Sculthorp's home. Stanley Sculthorp told them that he had received a telegram from his father to the effect that he had selected some choice property which required more money than he anticipated, and his father wanted to know whether Steppanski and Jones could each increase their investment from $5,000. to $10,000. Both of them agreed to do this. This is set forth in the testimony of Steppanski (State of Case, Vol. 1, p. 68, line 20, to p. 70, line 15), as follows:

> "A. I called Stanley on the wire. I reached him in his office.—I said to Stanley, 'What is it?'
>
> The Court: Have you fixed the time? Is this June 10?
>
> A. On or about the 10th of June, 1925. He said, 'I just received a wire from Pop. He has selected some very fine property, but it is going to cost considerably more money than he figured it would.—Pop wants to know if you can't increase your investment from five to ten thousand dollars. He says you will have to act quick, as he does not want to lose it.' I said, 'Have you seen Jones?' He said, 'I did.' I said, 'What is Jones going to do?' He said, 'Jones has increased his from five to ten thousand.' I said, 'You can tell the Pop I will increase my investment from five to ten thousand.' "

(See also testimony of Jones, State of Case, Vol. 1, p. 191, line 23 to p. 192, line 18, and Mrs. Jones, Vol. 1, p. 169, line 11 to p. 170, line 14.)

Sculthorp returned from Florida about June 28, 1925. Answer to supplemental interrogatory No. 5 as follows (State of Case, Vol. 1, p. 68, lines 12 to 14):

"5. On what date did you return to New Jersey from the aforesaid trip to Florida? A. The latter part of June, 1925."

While down there he purchased three tracks of land for a total consideration of $67,000. Answer to interrogatory 73 in evidence as follows (State of Case, Vol. 1, p. 75, lines 24 to 29):

"73. What was the total consideration which you in fact paid for all three parcels hereinbefore referred to, to wit, the parcels conveyed to you (1) by Melvin Burd and others, (2) by A. A. Plotner, and (3) by Gordon Davis and wife? A. $67,000."

He entered into three contracts for the purchase of three tracts, one with Melvin S. Burd and Eugene Burd, dated June 2, 1925, for $12,000. (Ex. C-3), State of Case, Vol. 2, p. 338, one with A. A. Plotner, dated June 1, 1925, for $45,000. (Ex. C-4), State of Case, Vol. 2, p. 339, and one with Gordon Davis and Rose Davis, dated June 12, 1925 (Ex. C-5, State of Case, Vol. 2, p 340., for $10,000., the three contracts totaling $67,000. On each of these he paid a deposit and obligated himself to buy these properties for the aforesaid total consideration of $67,000. While down there he instructed his Florida attorneys, Byrd and Porter, to draw up incorporation papers for the organization of the company in which he, Jones and Steppanski were to be interested, to be known as Sculthorp Realty Company of Florida (State of Case, Vol. 1, p. 80, lines 10 to 13). Upon Sculthorp's return from Florida, Steppanski and Jones called to see him, and asked him whether he had bought any property. He told them he had not bought anything as yet, that he had an option on three tracts of land for a total purchase price of $100,000., that the owners wanted $5,000. an acre, which he thought was too much and that he

had agents working on the proposition trying to have the price reduced to $4,000. an acre. This is set forth in the testimony of Steppanski (State of Case, Vol. 1, p. 77, line 30 and p. 78, line 30), as follows:

> "Q. Aside from that conversation with Stanley Sculthorp, did you have any communication with Jesse L. Sculthorp while he was down in Florida between May 25, 1925, and the end of June? A. No, I had no correspondence with him or conversation.
>
> Q. When was the next time that you spoke to Jesse L. Sculthorp? A. Upon his return from Florida at the end of June, 1925
>
> Q. And where was that conversation? A. At his house at Keansburg, New Jersey, opposite my house.
>
> Q. Who were present? A. Mr. Jones, Mr. Sculthorp and myself.
>
> Q. What was the conversation? A. Mr. Jones asked him 'Did you buy anything?' He said, 'No.' Jones said, 'What is the matter?' He said, 'I have an option, however, on three tracts of land from three separate owners, but they want $100,000. for this property.' And Jones said, 'Is the property all right?' He said 'It is good property, but it is a whole lot more than I intended to spend, and I want your approval before buying it.' I said, 'Do you think we can make any money with it?' He said, 'I think we can—I know we can, it's good property, property that can be turned over in six weeks—make a quick turn over.' 'Well,' I said, 'go ahead and buy it.' He said, 'I am trying to get it cheaper, I have an agent working on this. I have made an offer of $4,000. an acre for the Lake property. They want $5,000. an acre.' That was all of that conversation."

From the foregoing it is evident that Sculthorp upon his return from Florida at the end of June, 1925, immediately misrepresented the facts to Steppanski and Jones, in that he told them he had not

yet bought the property and had options to purchase the property for $100,000. and was negotiating to lower the price, whereas in truth he had actually entered into binding contracts of purchase (Exs. C-3, C-4 and C-5), State of Case, Vol. 2, pages 338, 339 and 340, for a purchase price of $67,000., and had not merely taken options for a price of $100,000., and was not in fact negotiating to lower the price from $100,000.

Every week end from then on which was about the beginning of July, 1925, to about August 20 or 21, 1925, Steppanski and Jones would go to see Sculthorp and ask him if he had heard anything yet in regard to the property, and each time he would tell them that he did not hear anything (State of Case, Vol. 1, p. 79, line 26 to p. 80, line 36). About August 5, 1925, he told them that he thought he would have to pay the full price and Jones told him to go ahead and get the property (State of Case, Vol. 1, p. 80, line 37 to p. 81, line 13). On August 21, 1925, Sculthorp told them that he had bought the property and he had to have money immediately. This conversation was in Sculthorp's home which was across the street from Steppanski's boarding house in Keansburg. Steppanski told him he could have his check immediately. Steppanski then went across the street, took out the blank check from the safe and filled in the rest, the date August 21, 1925, payable to Jesse L. Sculthorp in the amount of $5,000. He took the check back to Sculthorp's home and handed it to Sculthorp. See testimony of Steppanski (State of Case, Vol. 1, p. 81, line 31 to p. 82, line 22), as follows:

> "He (Sculthorp) says, 'I got that property but I need money right away'. He said, 'Can you each let me have a check for $5,000. now'. —I said, 'I can let you have mine at once'. I went over across the street to my house and

got the check out of my safe that I had left there in May; it was left there May 28—."

THE COURT: Exhibit C-1.

"A. —and I filled in the date."

"Q. I show you Exhibit C-1; is this the check that you are referring to? A. That is the check."

"Q. All right, go ahead. A. Before I went over to the house, I asked Mr. Sculthorp to whom to make the check payable, and he said, 'to J. L. Sculthorp'. I went over to the house and got the check out of the safe, that is the same check that I signed May 28, 1925, and I filled in the date and the amount and the name and took it over to his house and I gave it to him."

Jones gave his check for $5,000. a few days later. Sculthorp admits receiving $10,000. from Steppanski and Jones in August, 1925, and that at that time he had already contracted to buy the three tracts in question, and that this money was used to pay for the property. See answers to interrogatories (State of Case, Vol. 1, p. 82, line 33 to p. 83, line 22), as follows:

"131. In August, 1925, did you receive $10,000. from complainants Steppanski and Jones? If so, what did you do with the money? A. Yes. This money was placed in the Atlantic Highlands National Bank and check out in payment on account of a note for the purchase of the Plotner property and the checks are in my possession."

"78. When did you first receive from Steppanski and Jones their first investment of $5,000. each? A. Some time in August, 1925."

"80. At the time you received from Steppanski and Jones their first investment of $5,000. each, which of the aforesaid three parcels of land had you already contracted to pur-

chase? A. At the time Steppanski and Jones made their first installment I had already contracted to purchase the three parcels above mentioned"

On August 25, 1925, Sculthorp got in touch with Steppanski and Jones and told them to go with him the next day to Atlantic Highlands to sign the corporation papers, that the papers had come from the Florida attorneys and were ready to be signed. The next day, August 26, 1925, Sculthorp took Steppanski and Jones in his automobile to Atlantic Highlands. On the way down Jones asked Sculthorp what price he finally had to pay for the land. Sculthorp told him and Steppanski he had to pay the full price of $100,000., that that was the best possible price he could get it for, that he took title to the property in his own name because the corporation was not yet formed, but that he would deed it over to the corporation after it was formed (State of Case, Vol. 1, p. 84, lines 18 to 36). The incorporation papers were signed in Atlantic Highlands, Steppanski and Jones each subscribing for $10,000. worth of stock, and the balance of $55,000. stock, at Sculthorp's direction was apportioned $50,000. to Jesse L. Sculthorp, and $5,000. to his son, Stanley (Ex. C-57) State of Case, Vol. 2, page 469, at page 473.

In October, 1925, Steppanski, Jones and Sculthorp went down to Florida at Sculthorp's request. On the way down they stopped at Gainesville and purchased a small tract of land. A few days later they purchased another tract at Boynton with the understanding that this was to be an individual purchase, in which Steppanski and Jones each were to have a one-quarter share and Sculthorp a one-half share (State of Case, Vol. 1, p. 90, line 13 to p. 91, line 12). Steppanski's and Jones' share of the

cash required on the Boynton proposition was $690. (State of Case, Vol. 1, p. 98, line 5 to p. 99, line 41), which was paid by them. Steppanski and Jones spent two weeks down in Florida. They were on the land about three times, each time for one-half hour to an hour, spending most of their time on problems of grading and otherwise improving the land. While down there, Sculthorp introduced them to his attorney, Mr. Byrd of Byrd and Porter, who organized the corporation. This was on October 27, 1925, at 10 A. M. They spent about five minutes in Byrd's office, the conversation being entirely casual, and there was no meeting of their corporation held (State of Case, Vol. 1, p. 91, line 21 to p. 93, line 23). That was the only time they were in Byrd and Porter's office. While in Florida, Steppanski gave Sculthorp another payment of $5,000. on October 20, 1925, and Jones gave him another $2,000. on October 26, 1925.

Upon their return from Florida the early part of November, 1925, a meeting of the corporation was held at Atlantic Highlands. This was the first meeting. Nothing important was discussed at the meeting, questions being mainly regarding contracts for grading, etc.

In November, 1925, Sculthorp executed a deed conveying the property to the Sculthorp Realty Company of Florida. The deed had a one dollar revenue stamp attached, indicating that it was simply a transfer for a nominal consideration (Ex. C-14), State of Case, Vol. 2, page 367, at page 370, and Vol. 1, page 92, line 27.

Sculthorp returned to Florida about January 15, 1926, and stayed down there until May, 1926 (State of Case, Vol. 1, p. 100, line 39). Upon his return another meeting of the company was held. Jones asked for a statement of the company, and Scul-

thorp said all the records were down in Florida, and all he could get was an approximate statement of disbursements. Jones said he was satisfied with this. Sculthorp then made up a statement, Exhibit C-20 (State of Case, Vol. 2, p. 398), which he handed to Jones, being a statement of disbursements. Jones asked him why they were charged with interest from June, 1925, when the property was purchased in August, 1925. Sculthorp stated that he had an option from June, 1925, and under the practice of Florida, he was required to pay interest from the time of the option (State of Case, Vol 1, p. 102, lines 7-13). This was untrue as he had actually purchased the property in June. Further payments were made by Steppanski and Jones, the total paid by them to Sculthorp totalling approximately $22,848.23, Exhibit C-49 (State of Case, Vol. 2, p. 460), and Exhibit C-55 (State of Case, Vol. 2, p. 467).

Sculthorp returned to Florida December 6, 1926 (State of Case, Vol. 1, p. 105, line 10), and stayed there until some time in February, 1927. On October 18, 1926, without consulting Steppanski and Jones, without their knowledge or consent, and without any resolution or meeting of the Board of Directors of the Sculthorp Realty Company, he caused the three tracts in question to be conveyed by the corporation to himself. The deed, Exhibit C-23 (State of Case, Vol. 2, p. 401) at page 404, is signed by himself as president and Stanley Sculthorp as secretary. Stanley Sculthorp's signature is acknowledged in Florida, although Stanley Sculthorp never was in the State of Florida (State of Case, Vol. 1, p. 277, line 8) at any time. After making this conveyance, he wrote a number of letters to Steppanski and Jones requesting further moneys for interest and part payments on mortgages.

See Exhibit C-26 (State of Case, Vol. 2, p. 410), letter from Sculthorp to Jones, December 1, 1926.

Exhibit C-29 (State of Case, Vol. 2, p. 416), Sculthorp to Jones, letter dated December 21, 1926.

Exhibit C-24 (State of Case, Vol. 2, p. 408), letter from Sculthorp to Jones, November 2, 1926.

Exhibit C-25 (State of Case, Vol. 2, p. 409), letter from Sculthorp to Steppanski, November 3, 1926.

Exhibit C-28 (State of Case, Vol. 2, p. 413), letter from Sculthorp to Steppanski, December 14, 1926.

Exhibit C-30 (State of Case, Vol. 2, p. 419), letter from Sculthorp to Jones, December 30, 1926.

Exhibit C-31 (State of Case, Vol. 2, p. 421), letter from Sculthorp to Steppanski, December 30, 1926.

It is evident from these letters that he was concealing that he had already conveyed the property to himself.

After conveying the property to himself, he wrote a letter suggesting that the property be turned back to the people they bought it from in order to save them the necessity of foreclosing, Exhibit C-37 (State of Case, Vol. 2, p. 430). This Jones opposed, Exhibit C-41 (State of Case, Vol. 2, p. 437).

When Sculthorp asked for more money Jones wrote a letter to Sculthorp, Exhibit C-27 (State of Case, Vol. 2, p. 412), dated December 3, 1926, and two telegrams, Exhibit C-34 (State of Case, Vol. 2, p. 426), and Exhibit C-40 (State of Case, Vol. 2, p. 437), dated January 4, 1927, and January 7, 1927, to send Jones a financial statement of the company. Sculthorp called a meeting of the company for January, 1927, and promised to have a statement of the company ready at the meeting. Steppanski and Jones went down to Florida to attend the meeting on January 22, 1927. Jones asked for the financial

statement. Sculthorp handed him a so-called statement, Exhibit C-44 (State of Case, Vol. 2, p. 443), which merely set forth disbursements made by the company. Jones insisted that that was no statement, that he wanted a statement, on the strength of which he could borrow money and turn it over to the company (State of Case, Vol. 1, p. 108, line 31 to p. 109, line 12). Sculthorp adjourned the meeting for a few days so that he could prepare such a statement.

In the meantime, Steppanski and Jones consulted a Florida attorney, Otho E. Falls, and instructed him to make an investigation of the records (State of Case, Vol. 1, p. 175, lines 18-21). On the adjourned date Sculthorp handed Steppanski and Jones a financial statement of the company, Exhibit C-45 (State of Case, Vol. 2, p. 444). This statement set forth, among other things, the Plotner, Burd and Davis parcels in separate items. These items when totaled up amounted to $100,000. Testimony of Falls (State of Case, Vol. 1, p. 186, line 29 to p. 187, line 8), as follows:

> "Q. I show you this statement, Exhibit C-45, (State of Case, Vol. 2, p. 444); can you tell me which of these properties refer to the three tracts in Lake Ida Gardens? A. The first tract is popularly known as the Plotner property listed at $67,500. The second tract is that listed as the Burd Brothers' property, $17,500. The property known as the Davis property, the third one, is listed at $15,000.
>
> Q. What is the total of those three tracts?
>
> The Court: $100,000.
>
> Q. $100,000. does not appear in the statement. A. The figure $100,000. does not appear, but the total price of the property added up does. There is where I got that information."

Steppanski and Jones asked Sculthorp to see all the records and contracts of the company and he

said that they were up north in his safe at Atlantic Highlands (State of Case, Vol. 1, p. 110, line 41, to p. 111, line 5). Jones asked Sculthorp to sign the statement and he refused to sign it unless Jones and Steppanski also signed it, although he, Sculthorp, was in sole control of all the books and records of the company and he personally prepared the statement from the records in his possession (testimony of Sculthorp, State of Case, Vol. 1, p. 256, lines 24-34). Steppanski stated that he was going to verify every item on that statement and the meeting ended up in a row.

In the meantime, Falls had searched the records and had escertained from the revenue stamps on the deeds made by Burd, Plotner and Davis, respectively, to Sculthorp, that Sculthorp had paid no more than $67,500. for the property. Accompanied by Steppanski and Jones, Falls called upon Sculthorp and asked Sculthorp if he would answer certain questions with regard to the transactions, that he need not answer if he did not wish to. Sculthorp said that he would be glad to answer all questions. Falls told him that he had searched the records and had found from the revenue stamps that he had paid no more than $67,500. for the property, and in the statement which Sculthorp had given to Steppanski and Jones, the three tracts, Burd, Plotner and Davis, are separate items totaling $100,000. Falls asked him to explain the discrepancy between the $67,500. apparent purchase price and $100,000. the total of the items in question, mentioned in the statement. This is admitted by Sculthorp (State of Case, Vol. 1, p. 263, lines 23-28).

> "Q. Did he ask you to explain the discrepancy between sixty-seven and one hundred thousand price in the statement? A. That is my answer.
>
> Q. Will you answer that? A. I recall he asked me something about it."

Sculthorp stated that he refused to answer the question. Falls also told him that he had also found from the records that in October, 1926, Sculthorp caused the property to be conveyed back to himself, and Falls asked why he had done so. The only answer Sculthorp would give was that he did it for the good of the company. This is admitted by Sculthorp (State of Case, Vol. 1, p. 264). Falls threatened trouble unless the matter was straightened out at a conference between themselves and Sculthorp's attorneys. The foregoing is set forth in the testimony of Falls (State of Case, Vol. 1, p. 176, line 16, to p. 177, line 28), as follows:

> "A. I went to Delray, Florida, with Steppanski and Jones to see Mr. J. L. Sculthorp—Mr. Sculthorp then invited us all into his house—I told Mr. Sculthorp that I had been retained by Messrs. Steppanski and Jones; that if he did not wish to answer any of my questions now he could get himself an attorney and we could go over the facts with his attorney. He said, 'I will be glad to answer any questions.' I said, 'Well, I have made a search of the records at the Palm Beach Court House and I find there the revenue stamps attached to three deeds by which you acquired title to three tracts of land included in Lake Ida Gardens, and that the revenue stamps amount to $67.50, that were attached or affixed to those deeds.' I said, 'By this statement which is shown to me by Messrs. Steppanski and Jones this morning and obtained from you, you state that the sum of $100,000. was paid for these three tracts of land. I would like you, Mr. Sculthorp, to tell me the reason for this discrepancy in the price.' Mr. Sculthorp refused to answer the question.
>
> Q. What did he say? A. He just said, 'I will refused to answer the question.'
>
> Q. Then what happened? A. I then asked Mr. Sculthorp why did he later reconvey the three tracts of land from the corporation to

himself, and he replied that he did that act for the good of the company."

The next day, Falls together with Jones and Steppanski met Sculthorp at the office of Kearley and Fisher, Sculthorp's attorneys. Falls again asked for an explanation of the discrepancy between the $67,500. purchase price and the amount of $100,000. charged to the company. Kearley replied that Sculthorp owned the property personally and had the right to turn it over to the company at whatever profit he cared to turn it over for. Kearley then produced a deed whereby Sculthorp reconveyed the property to Sculthorp Realty Company, to which Falls objected because there was no resolution of the company regarding it. Kearley stated that the corporation conveyed it to Sculthorp without a resolution of the Board of Directors, and it could be conveyed back to the company without a resolution. Testimony of Falls (State of Case, Vol. 1, p. 178, line 39 to p. 179, line 8). Sculthorp admits this (State of Case, Vol. 1, p. 264, lines 27-30).

"Q. Do you recall stating that it was deeded without any resolution and it would be deeded back without any resolution? A. I do, yes."

Steppanski asked Sculthorp if Sculthorp bought the property for himself, why was it that Steppanski and Jones paid in their money in August, and title to one of the parcels was taken in September. Sculthorp stated that as to this one parcel he was in the wrong. Falls then stated, "Gentlemen we have been defrauded, and I rescind the entire transaction for fraud and demand back the moneys that my clients have paid in". Steppanski then instructed Falls to bring proceedings against Sculthorp both civilly and criminally. See testimony

of Falls (State of Case, Vol. 1, p. 179, lines 9-28), as follows:

> "Then Mr. Steppanski said, 'Why is it Mr. Sculthorp, that we sent you some money in August and then you took title to the property—all the property—in September, 1925,' and Mr. Sculthorp said, 'Well, I admit that I did wrong in that particular case;' that was in regard to the property the third tract bought from Gordon Davis and Rose M. Davis, his wife, and then I told Mr. Kearley that we wanted our money back. Mr. Sculthorp said that he was broke and did we want to put more money in the property or not. Then I got up and said, 'Gentlemen, these clients of mine have been defrauded and we demand our money back.' Mr. Steppanski then instructed me to proceed both civilly and criminally against Mr. Sculthorp and we walked out of the office."

Steppanski and Jones then returned to New Jersey.

The latter part of January, 1927, Falls obtained the consent of Sculthorp's attorneys to examine the records of the corporation (State of Case, Vol. 1, p. 180, lines 17-24). Sculthorp gave him a letter addressed to Byrd and Porter, Exhibit C-56 (State of Case, Vol. 2, p. 467), to see all the records and contracts, but the records could not be found in their office. The records were actually up north in Atlantic Highlands in Sculthorp's safe. Sculthorp agreed to write to his son to forward the records down south to let Falls inspect them, but after a number of attempts on the part of Falls to see these minutes, Falls finally started suit on behalf of Steppanski and Jones against Sculthorp in Florida for fraud, and sought to recover the moneys paid in by Steppanski and Jones (State of Case, Vol. 1, p. 181, line 37 to p. 182, line 41).

In the meantime and before the institution of said suit, Steppanski and Jones on January 31, 1927, both found Stanley Sculthorp at Atlantic Highlands, and demanded permission to see the minutes, contracts and records of the Sculthorp Realty Company (State of Case, Vol. 1, p. 212, lines 5-13). Stanley Sculthorp produced the minutes of November, 1925 and May, 1926, of which Steppanski made an exact copy, the copy being in evidence and marked Exhibit C-47 (State of Case, Vol. 2, p. 453). See testimony of Stanley Sculthorp (State of Case, Vol. 1, p. 279, lines 5-7). The minutes of November, 1925 refer to a continuation of an alleged meeting held in Florida October 27, 1925. No such meeting was held in Florida October 27, 1925, that being the date that Steppanski and Jones were introduced to Byrd at the latter's office and stayed there five minutes without discussing any business. Steppanski asked Stanley Sculthorp for the minutes of October 27, 1925, that were referred to in the minutes of November, 1925, and Stanley Sculthorp stated that he did not have them, that they were down South (State of Case, Vol. 1, p. 121, lines 14-33). In his answers to interrogatories and on cross examination, Sculthorp stated that all the minutes including the minutes of October 27, 1925 were in his safe at Atlantic Highlands. Answers to interrogatories (State of Case, Vol. 1, p. 125, line 36 to p. 126, line 38). (State of Case, Vol. 1, p. 249, lines 32-38). Stanley Sculthorp promised to write to his father to have these minutes forwarded from Florida up north, and after Steppanski made several attempts to see these minutes Stanley Sculthorp told him that at his father's request he had forwarded all the minutes and records of the company to his father in Florida.

The present suit was started in May, 1927 and shortly thereafter the Florida suit was discon-

tinued. Steppanski seeks to recover in this suit, the sum of $11,465.23, being the moneys he paid over to Sculthorp, $12,158.23, Exhibit C-49 (State of Case, Vol. 2, p. 460), less $690. paid on the purchase of the Boynton lots (State of Case, Vol. 1, p. 125, lines 21 to 31), and Jones seeks to recover $10,000. being the moneys he paid to Sculthorp, $10,690., Exhibit C-55 (State of Case, Vol. 2, p. 467), less $690. paid on the Boynton purchase (State of Case, Vol. 1, p. 206, lines 5-14).

Sculthorp denies that he made any agreement with Steppanski and Jones on May 9, 1925, or that he had any conversations with them relative to the matter before he left for Florida, May 25, 1925. He says that his first conversation with them was a day or two after he returned from Florida, June 28, 1925, and that he made an agreement with them about the middle of July, 1925, and told them then that he had bought the land personally and would go in with them in a corporation, they to invest $10,000. and he to get stock for his land which was to be put in at a figure of $100,000., representing a profit to himself.

His testimony that there was no agreement made before he left for Florida appears to be absolutely false, in view of the check which Steppanski turned over to his wife on May 28, 1925 signed in blank with instructions to fill it in up to $5,000. and deliver it to Stanley Sculthorp whenever he requested it. The date of this check is rendered certain by its position in the check stub book because the check stub and cancelled check immediately preceding it is dated May 26, 1925, and the check stub and cancelled check following it June 6, 1925. All these checks and stubs have numbers on them printed in sequence, making it impossible for Exhibit C-1 (State of Case, Vol. 2, p. 313), to have been used after the numbered checks immediately

following it (See p. 5 of this brief). Sculthorp did not return from Florida until June 28, 1925, so that if he had had no agreement with Steppanski and Jones until after he returned from Florida, it would be impossible to explain the existence of this check and its position in the check book. It will be noticed that there was no cross examination with reference to this check after the direct examination of Steppanski. Steppanski's signature on the check which was placed on it on May 28, 1925, is in black ink and the rest of the check which was filled in August 21, 1925, is in blue ink. The ink in both cases was obtained from ink on the desk in the office of Mrs. Steppanski's boarding house. Her diary written with the same ink was offered in evidence (Ex. C-50) to show that the same black ink with which the check was written was contained in her diary from May, 1925 to July 2, 1925 (State of Case, Vol. 1, p. 166, lines 19-24), and that the blue ink which is contained on the rest of the check is the same blue ink as is contained in her diary from July 2, 1925, through the month of August 1925 (State of Case, Vol. 1, p. 166, lines 29-33). The defendant sensing the importance of the date the check was signed as indicated by its position in the check book made a poor attempt to explain this by having Mrs. Sculthorp testify that she had numerous conversations with Mrs. Steppanski in which Mrs. Steppanski told her that many times Mr. Steppanski left with her checks signed in blank so that she could cash the same whenever she had to, inasmuch as he left her very little cash (State of Case, Vol. 1, p. 287, line 14 to p. 288, line 40). On cross examination at first she could not say whether she had two or one hundred such conversations with Mrs. Steppanski (State of Case, Vol. 1, p. 289, lines 5-13), but finally stated there were many conversations (State of Case, Vol. 1, p. 289, lines 14-

24). She could not say what led up to any particular conversation nor when pressed could she give any particular conversation in the years 1925, 1926 or 1927 (State of Case, Vol. 1, p. 289, line 26 to p. 290, line 16). In order to demonstrate that her testimony was absolutely perjured and that no such conversations ever took place, complainant-appellee presented for the inspection of the Court, and opposing counsel, his check books in the Trust Company of New Jersey, and Keansburg National Bank, being the only two banks in which he had check accounts, these check books containing every cancelled check issued by Steppanski on the Trust Company of New Jersey from March 1924 to March 1927, and on the Keansburg National Bank for the years 1925, 1926 and 1927. These books were offered for inspection and were thoroughly looked over by defendant-appellant's counsel and the Court. Not a single check bore the endorsement of Mrs. Steppanski, not a single check was made to her order, not a single check was made in her handwriting (State of Case, Vol. 1, p. 293, line 32 to p. 294, line 26). Every check that was made to cash was endorsed by Mr. Steppanski and cashed by him in Jersey City and not in Keansburg (State of Case, Vol. 1, p. 298, lines 14-22). Both Mr. and Mrs. Steppanski testified that outside of this one check, Exhibit C-1 (State of Case, Vol. 2, p. 313), Steppanski never left a check with his wife signed in blank (State of Case, Vol. 1, p. 293, lines 37-41 and p. 300, lines 18-25), that she had plenty of cash from her boarding house receipts (State of Case, Vol. 1, p. 297, line 39 to p. 298, line 3), and did not have to have around any checks signed in blank by her husband; that this particular check was signed in blank in order to carry out the agreement with Sculthorp that Steppanski should have the check ready for immediate delivery in an amount up to

$5,000. to be designated. Sculthorp's story that he had no agreement with Steppanski and Jones before he returned from Florida on June 28, 1925 is further belied by the fact that in accordance with his prior arrangement to have Stanley Sculthorp communicate with Steppanski and Jones regarding money requirements, Stanley Sculthorp did on June 10, 1925, have a conversation with Mr. and Mrs. Steppanski and Mr. and Mrs. Jones stating that he had received a telegram from his father in which his father stated that he had some choice property which required more money than he anticipated, and his father wanted to know whether they could each increase their investment from $5,000. to $10,000. (See pp. 6-7 of this brief).

We respectfully refer to the cross examination of Stanley Sculthorp on this point. He was asked numerous details with regard to this conversation in connection with the telegram, and in each instance he would answer, "I do not recall." We quote from his examination, in part (State of Case, Vol. 1, p. 280, line 11 to p. 282, line 11):

> "Q. About the 10th of June 1925, didn't you call Mr. Steppanski on the 'phone at the White House at Keansburg? A. I do not recall it.
>
> Q. And didn't Mrs. Steppanski answer the 'phone and did you say to her, 'Can you get in touch with Mr. Steppanski; Pop has a choice piece of real estate but it will require more money than anticipated and he wants to know if Mr. Steppanski can increase his investment from $5,000. to $10,000., and it is important to have a quick response or we may lost it'? A. I can't recall it.
>
> Q. Did Steppanski get in touch with you in Atlantic Highlands and say whether they will agree to this proposition? A. I cannot recall it.
>
> Q. Did Mr. and Mrs. Jones drive over to your home at Atlantic Highlands that same night? A. I don't recall it.

Q. Did you stand on the running-board with one foot on the car and talk to Mr. and Mrs. Jones? A. I don't recall it.

Q. Did you say, 'I received a wire from Pop; he has a choice piece of real estate in view, but it will require more money than he anticipated, and Pop wants to know if you can increase your investment from $5000. to $10,000'? A. I do not recall it.

Q. Did Jones say, 'What is Steppanski going to do'? A. I do not recall it.

Q. Did you say 'Steppanski said he would increase his investment from $5,000. to $10,000. if you would'? A. I do not recall it.

Q. Did Jones say, 'I don't know where I am going to get the extra $5,000., but if Steppanski has increased his, I will go in, too; tell your father it is Okay'? A. I do not recall.

Q. I show you a letter, Exhibit C-41, written by Jones to your father, in which it is stated, 'I think you will remember that I only intended to put $5,000. into this proposition in the first place, but you wired Stanley asking if I would make it $10,000. in order to enable you to get the property you wanted, and I agreed to it.' Is that correct? A. I have no knowledge whether it is or not."

This clearly indicates that he was trying to evade answering these particular questions because he knew that on June 10, 1925, he had this particular conversation regarding increasing the investment from $5,000. to $10,000. When he was asked by his own counsel as to what he meant when he said, "I do not recall," the witness paused and did not answer at all (State of Case, Vol. 1, p. 283, lines 32-34).

"Q. You have answered several questions by saying, 'I do not recall'; what do you mean by saying do not recall?' A. (Witness pauses.)"

This is quite significant indicating that the witness was trying to evade answering the questions.

There was introduced in evidence a letter written by Jones to Sculthorp, Exhibit C-41 (State of Case, Vol. 2, p. 437), in which Jones refers to the telegram written by Sculthorp to Stanley Sculthrop requesting increasing the investment from $5,000. to $10,000. The stenographer to whom Jones dictated this letter, Alice Casey, was produced and she read the letter from her original notes as contained in the note book of the Greenville Coal and Coke Company, by whom she and Jones are employed (State of Case, Vol. 1, p. 301, line 39 to p. 302, line 33). These note books of the company contained a few of Jones' personal letters. She testified that she recalled mailing the letter to Sculthorp (State of Case, Vol. 1, p. 303, lines 13-19). Sculthorp when questioned about this, stated he did not recall receiving the letter (State of Case, Vol. 1, p. 254, lines 12-14). He admitted, however, that he never wrote a letter to Jones contradicting the statements contained in Jones' letter (State of Case, Vol. 1, p. 254, lines 29-30). That Sculthorp actually received Jones' letter is quite evident from another letter Sculthorp wrote to Steppanski, Exhibit C-43 (State of Case, Vol. 2, p. 441), in which Sculthorp refers to the contents of another part of Jones' letter, Exhibit C-41 (State of Case, Vol. 2, p. 437). Jones in his letter to Sculthorp, Exhibit C-41 (State of Case, Vol. 2, p. 437), reminded Sculthorp of his promise in case of trouble, he, Sculthorp, would take over the mortgages. This appears from the following excerpt from Exhibit C-41 (State of Case, Vol. 2, p. 437):

> "If you remember our talk in Keansburg, when I asked you what would happen if we were unable to meet our payments, and you said then that you would simply take over the mortgages."

Sculthorp in his letter to Steppanski written shortly after, says that, Exhibit C-43 (State of Case, Vol. 2, p. 441, lines 30-31):

> "Jones does not want to do anything, but thinks I should carry him through."

The dates of these two letters are so close together as to indicate that Sculthorp wrote the letter to Steppanski after reading the contents of Jones' letter. The foregoing further corroborates the fact that Sculthorp on June 10, 1925, sent a telegram to his son, Stanley Sculthorp, to request Steppanski and Jones to increase their investment from $5,000. to $10,000.

A number of letters written by Sculthorp to Steppanski and Jones are in evidence. Not a single letter mentioned or hints that the corporation bought the property from Sculthorp. On the contrary quite a few letters are so worded as to lead fairly to the inference that he bought the property for the benefit of Steppanski, Jones and himself as a syndicate. The following excerpts from letters written by Sculthorp indicate this:

Exhibit C-37 (State of Case, Vol. 2, p. 432, lines 7-8). Letter written by Sculthorp to Steppanski, January 6, 1927.

> "We ought to hold on until we can sell and get our money back."

Exhibit C-38 (State of Case, Vol. 2, p. 434, lines 11-12). Letter Sculthorp to Jones, January 7, 1927.

> "I believe that we ought to get our money back."

Exhibit C-39 (State of Case, Vol. 2, p. 436, lines 9-10. Letter Sculthorp to Steppanski, January 7, 1927.

"We can hold for higher prices to get *our* money back."

Exhibit C-43 (State of Case, Vol. 2, p. 441, lines 27-28). Letter Sculthorp to Steppanski, January 17, 1927.

"We will lose what *we have paid in.*"

Exhibit C-26 (State of Case, Vol. 2, p. 410, lines 33-35). Letter from Sculthorp to Jones, December 1, 1926, asks for further payments, or

"We will have to give up the property and lose what we have paid in on account of the property that *we purchased in Florida.*"

It will be noticed, Sculthorp says, "we purchased in Florida" indicating that Steppanski, Jones and Sculthorp went in together and not that Sculthorp was turning it over to the syndicate at a profit to himself.

Exhibit C-29 (State of Case, Vol. 2, p. 417, lines 17-20). Letter from Sculthorp to Jones, December 21, 1926.

"So it is up to us to raise some money to meet the mortgage or *turn the property back to them again* and lose what *we have paid.*"

The suggestion in this letter to turn the property back to the people they bought it from and lose what they paid in, certainly indicates that he bought it originally for the benefit of the syndicate, Steppanski, Jones and Sculthorp.

Exhibit C-17 (State of Case, Vol. 2, p. 394, lines 5-8). Letter from Sculthorp to Jones, March 30, 1926.

"I cannot see where we are going to lose anything, as we can *sell for cost and get our money back.*"

Exhibit C-36 (State of Case, Vol. 2, p. 428, lines 29-30). Letter from Sculthorp to Jones, January 6, 1927.

> "We can sell the property and get *some of our money back.*"

From these letters, it is fair to assume that they were all in at cost price and would profit or lose together.

The foregoing letters further corroborate the contention of complainants that Steppanski, Jones and Sculthorp went into the proposition under an agreement that Sculthorp was to purchase the property for the benefit of the syndicate and turn it over at cost.

When Sculthorp returned from Florida, June 28, 1925, he told Steppanski and Jones that while down in Florida, he had instructed his Florida attorneys to draw up incorporation papers of the Sculthorp Realty Company (State of Case, Vol. 1, p. 80, lines 11-13). Sculthorp denies this and says that he gave these instructions after he returned from Florida, that he wrote a letter to his Florida attorneys ordering the corporation papers to be drawn (State of Case, Vol. 1, p. 255, lines 5-12). When he was asked to produce his copy of this letter he could not produce it, saying that it was mislaid (State of Case, Vol. 1, p. 255, lines 13-18). He admits, however, that he made no attempt to communicate with his Florida attorneys to obtain the original of the alleged copy (State of Case, Vol. 1, p. 255, lines 22-24). It is quite significant that he did not produce the Florida attorneys Byrd and Porter, who could easily have testified if in fact the corporation was ordered after and not before his return from Florida, or he could have written to the Florida attorneys to have them forward to him the original letter which he claims he wrote them, if such a letter had actually been

written. His failure to produce the attorneys or the alleged original letter, or a copy of it, plainly leads to the inference that there was no such letter in existence, because while he was down in Florida he personally instructed these attorneys to incorporate the Sculthorp Realty Company. This further negatives Sculthorp's testimony that when he went down to Florida May 25, 1925, he had no agreement with Steppanski and Jones.

To corroborate his story, Sculthorp produced as witnesses, Kittie Kruse, his daughter, and his son, Stanley Sculthorp, both of whom testified that after Sculthorp returned from Florida, June 28, 1925, and on or about the middle of July, 1925, Sculthorp told Steppanski and Jones that he would go in with them in a corporation and would turn over to the corporation, property which he then owned at a price of $100,000. They both admitted on cross examination that Sculthorp did not tell Steppanski and Jones what the propery cost him, nor did he tell them what profit he was making. Sculthorp also admitted on cross examination that he never told Steppanski and Jones what the property cost him (State of Case, Vol. 1, p. 241, lines 24-28).

> "Q. You didn't tell them that you paid $67,500, did you? A. Not necessarily.
> Q. Did you or didn't you? A. No, I did not.
> Q. You never told what the property actually cost you, did you? A. No, I did not."

(Also testimony of Sculthorp, State of Case, Vol. 1, p. 260, lines 5-13.)

It was admitted by Sculthorp that at the time Steppanski and Jones paid in their first payment of $5,000. in August, 1925, neither of them had been down in Florida, neither of them had seen the land and had no information regarding it, except from Sculthorp (testimony of Sculthorp, State of Case, Vol. 1, p. 216, lines 5-8).

"The Court: The question is did they have any knowledge of the property except what you told them? A. No."

According to the testimony of Sculthorp, Kittie Kruse and Stanley Sculthorp, they would have the Court believe that Steppanski and Jones agreed to purchase land which they had never seen, the cost price of which to Sculthorp they did not know, and the profit which Sculthorp was to make on them they did not know. In other words they would have us believe that Steppanski and Jones agreed to give Sculthorp an unknown profit on the land which they had never seen (Testimony of Sculthorp, State of Case, Vol. 1, p. 261, lines 9-14).

"Q. And you claim that they agreed in July, 1925, that this property would go into a syndicate at $100,000., the syndicate giving you a profit on a piece of property that they had never seen. A. Yes."

Cross examination of Kittie Kruse (State of Case, Vol. 1, p. 272, line 26 to p. 273, line 11), as follows:

"Q. What did he say his profit amounted to? A. He didn't say.

Q. What did he say he paid for the property? A. He did not say what he paid for it.

Q. Was there any discussion as to the amount of profit which your father was going to make? A. No there was not.

Q. And didn't Steppanski and Jones ask your father how much of a profit he was making? A. No, he did not.

Q. Did they ask how much he paid for the property? A. No.

Q. Did your father tell them how much the property was going to cost? A. He told them he would put it in for $100,000."

Q. And you say without any questions from Steppanski and Jones as to how much the

property cost him or how much he was making, they were willing to go into that proposition and pay $100,000. for the property without even seeing it? A. I do."

This testimony does not sound plausible. For Steppanski and Jones to go into a proposition to purchase land from Sculthorp at a profit to Sculthorp, without any questions as to how much the property cost Sculthorp, or how much of a profit he was making, and without ever seeing the property, and without any knowledge of the property, except what Sculthorp told them, is highly incredible. On the other hand, in view of the intimate and friendly relations between Sculthorp, Jones and Steppanski, they visiting each other's homes for years, and Jones and Sculthorp being pals, it seems much more plausible that Sculthorp told Steppanski and Jones that he was acting as the representative of all of them as a syndicate in buying the land at the cheapest price and on the best terms possible, and was turning it over to the syndicate at cost.

Stanley Sculthorp was not a disinterested nor a reliable witness.

He paid nothing for his 40 shares in the Sculthorp Realty Company his father furnishing the consideration (State of Case, Vol. 1, p. 276, line 39 to p. 277, line 7). When his father caused the three parcels of land to be conveyed to himself, without the knowledge or consent of Steppanski and Jones, Exhibit C-23 (State of Case, Vol. 2, p. 401), Stanley Sculthorp participated in the fraudulent conveyance by signing the deed as secretary of the company; although Stanley Sculthorp swore he never was in the State of Florida (State of Case, Vol. 1, p. 277, lines 8-9), the deed Exhibit C-23 (State of Case, Vol. 2, p. 401), is acknowledged by him in the State of Florida.

The testimony of Jesse Sculthorp and Stanley Sculthorp is contradictory, and the actions of Jesse Sculthorp can only be explained as a deliberate attempt to conceal the facts from Steppanski and Jones.

At the meeting of the company in May, 1926, when Jones wanted to see the records of the company, Sculthorp told him and Steppanski that all the records of the Sculthorp Realty Company were down South (State of Case, Vol. 1, p. 101, lines 23-28). In January, 1927 at the meeting in Florida, after Jones had telegraphed him and written that he would want a complete statement, when Steppanski and Jones asked for the contracts and minutes, Sculthorp told them that all the records were up North (State of Case, Vol. 1, p. 262, lines 5-9). In February, 1927, when Stanley Sculthorp showed Steppanski and Jones certain minutes which referred to certain meetings and minutes of an alleged meeting of October 27, 1925, and Steppanski asked Stanley Sculthorp for the alleged minutes of October 27, 1925, Stanley Sculthorp stated that they were down South. Stanley Sculthorp testified there were two minute books; he had one at Atlantic Highlands and the other one was down South (State of Case, Vol. 1, p. 274, lines 10-13).

> "Q. Did you have more than one? A. I had one minute book in Newark (stenographic error, Atlantic Highlands), and one down South.
> Q. I understand you had two minute books?
> A. Yes."

(See also State of Case, Vol. 1, p. 279, lines 18-24.)

Jesse Sculthorp on cross examination and in answer to interrogatories stated that these alleged minutes of October 27, 1925, at that time (February, 1927), were up North in his safe in Atlantic Highlands (State of Case, Vol. 1, p. 249, lines 32-

34, answers to interrogatories, State of Case, Vol. 1, p. 125, line 37 to p. 127, line 27).

When Falls called upon him for the minutes and records, he gave Falls a letter to Byrd and Porter his Florida attorneys, Exhibit C-56 (State of Case, Vol. 2, p. 467), for permission to inspect the minutes although he knew, at that time, that the minutes were up North in his safe at Atlantic Highlands. On cross examination Sculthorp denies sending Falls to Byrd and Porter's office until he was confronted with the letter, Exhibit C-56 (State of Case, Vol. 2, p. 467) (State of Case, Vol. 1, p. 250, lines 8-26), as follows:

> "Q. Isn't it a fact that instead of telling Falls that the minutes were up North, you sent him over to Byrd and Porter's office to see them? A. No, sir.
>
> Q. I show you a paper, is that your signature? A. Looks like it.
>
> Q. Dated February 1, 1927, addressed to Byrd and Porter, saying, 'If the minutes of the Sculthorp Realty Company are at your office, kindly let A. O. Falls see them. Sculthorp Realty Company, J. L. Sculthorp, President', did you sign that? A. Looks like my signature.
>
> Q. Then your statement previously made was incorrect? A. I don't recall that at all.
>
> Q. That is your signature? A. Yes, I think that is my signature."

Later he told Falls in Florida that he would send for these minutes (State of Case, Vol. 1, p. 249, lines 36-38). Both Falls in Florida and Steppanski and Jones in New Jersey, respectively, tried to see these minutes, Falls by repeated calls upon Jesse Sculthorp (State of Case, Vol. 1, p. 180, line 33 to p. 181, line 33), and Steppanski and Jones by repeated calls upon Standley Sculthorp and these minutes were not forthcoming (State of Case Vol. 1, p. 129, line 37,

p. 130, line 15). All these actions indicate a deliberate attempt on the part of Jesse Sculthorp after he knew that suit was going to be started against him to prepare a set of minutes to fit in with his side of the case, and the reason they were not produced in February 1927, was because they were not yet in existence. When these alleged minutes of October 27, 1925 were finally produced on a demand for inspection in this cause, they presented a mass of contradictions indicating clearly that they were framed to fit in with Sculthorp's side of the case.

These minutes of October 27, 1925, contained in Exhibit C-15, (State of Case, Vol. 2, p. 374), referred to the profit of Sculthorp in turning over the property to the corporation. In answer to interrogatories 12 and 15, Sculthorp stated that at this alleged meeting of October 27, 1925, he never discussed the profit he was to make in the transaction, (State of Case, Vol. 1, p. 96, lines 20-26 and p. 97, lines 12-15), as follows:

> "12. Was it in fact stated at said meeting in the presence of Edward J. Steppanski and John E. Jones, that you were making a profit in transferring three parcels of land to the corporation? A. No.
>
> 15. Did you at said meeting tell Steppanski and Jones what profits you were making? A. No."

On cross examination he stated that his answers to the interrogatories that he did not discuss the profits at the meeting, are not true, and that the minutes were correct (State of Case, Vol. 1, p. 242, lines 9-37). These minutes state that Steppanski had paid in $5,000. and arrangements were made to pay in the balance. This was untrue because Steppanski was fully paid up on October 27, 1925, having paid $5,000., August 21, 1925, and $5,000., October 20,

1925 (Testimony of Sculthorp, State of Case, Vol. 1, p. 243, line 7 to p. 244, line 8). The minutes say that Jones paid in $5,000. and arrangements were made to pay the balance. This was untrue because Jones at that time had paid in $7,000., $5,000. on August 25, 1925 and $2,000. on October 26, 1925 (State of Case, Vol. 1, p. 247, lines 7-20). The minutes say that the stock was then ordered to be issued (State of Case, Vol. 1, p. 247, line 21 to p. 248, line 30). Sculthorp's answers to interrogatories show that the stock was issued August 26, 1925, two months previously. See answers to interrogatories 104, 106, 108, 110 and 112 (State of Case, Vol. 1, p. 86, line 23 to p. 87, line 13) (State of Case, Vol. 1, p. 248, lines 28-31), and the cancelled stamps bear the date of August 26, 1925 and the stock certificates bear the date August 26, 1925. The minutes say that notice of the meeting was duly waived. This was untrue. Sculthorp testified that no such waiver was signed by Steppanski and Jones (Testimony of Sculthorp, State of Case, Vol. 1, p. 251, lines 14-21).

As a matter of fact no such meeting was ever held on October 27, 1925 in Florida, (State of Case, Vol. 1, p. 96, lines 30-39), the first meeting being in New Jersey, November 21, 1925 (State of Case, Vol. 1, p. 97, lines 25-28). Both Steppanski and Jones testified that on October 27, 1925, at about 10 A. M. they were introduced to Byrd in his office and the conversation was entirely casual, that there was no meeting there, and that they were there only about five minutes, and that they were not there at 10 P. M. of that day when the alleged meeting was supposed to have been held (State of Case, Vol. 1, p. 91, line 22, p. 93, line 28; State of Case, Vol 1, p. 201, line 10 to p. 202, line 14). If an organization meeting had been hold on October 27, 1925, it is quite probable that at the same meeting a deed would have been executed by Sculthorp conveying the lands

to the new corporation, as this would be the proper thing to do at an organization meeting. As a matter of fact the deed was not executed in Florida at all, it was executed in New Jersey in November 1925. It is quite significant that Sculthorp did not produce for examination the Florida attorneys, Byrd and Porter, or either of them, who could easily have testified as to the validity of these minutes, and as to the claim that at this meeting Sculthorp's profits were discussed (State of Case, Vol. 1, p. 251, lines 36-39). That these attorneys were not produced leads to the inference that they would not have substantiated his claim. He had four months time to produce these attorneys after the presentation of complainants-appellees' case, on June 5 and 6, 1928, before defendant-appellant presented his defense on October 17, 1928.

Steppanski made a copy of the minutes of November 1925, and May 1926, in Stanley Sculthorp's presence, Exhibit C-47 (State of Case, Vol. 2, p. 453). This is an exact copy and shows that the minutes were not signed at that time. When the minutes, Exhibit C-15, (State of Case, Vol. 2, p. 374), including the above minutes and also the minutes of the fictitious meeting of October 27, 1925, were produced on demands for inspection in this cause, they were signed by both Stanley Sculthorp who admitted he never was in the State of Florida in his life, and by Jesse Sculthorp, with a certification that the minutes were discussed, read and approved before being signed. Stanley Sculthorp on cross examination stated that the minutes Steppanski copied, Exhibit C-47, (State of Case, Vol. 2, p. 453), were signed before he showed them to Steppanski and Jones (State of Case, Vol. 1, p. 279, lines 36-40.

> "Q. Isn't it a fact, at the time you showed them the minutes there were no signatures or

corporate seals attached to the minutes? A. My signature was affixed to the minutes when they made a copy of them."

In another part of his cross examination he says they were not signed (State of Case, Vol. 1, p. 278, lines, 33-38). He also says that he was present when the minutes of October 27, 1925, were discussed by Steppanski, Jones and his father, after the Florida suit was instituted (State of Case, Vol. 1, p. 277, lines 35-38).

"Q. And these minutes were discussed by your father, and Steppanski and Jones and yourself, after the suit was started in Florida against your father? A. Yes."

He also states that he was not present at such a discussion (State of Case, Vol. 1, p. 278, lines 9-11).

"I was not present at the meeting when the minutes were discussed."

Jesse Sculthorp on cross examination stated that he never showed these minutes of October 27, 1925, to Steppanski and Jones (State of Case, Vol. 1, p. 249, lines 21-24).

"Q. Now, in answer to interrogatory 47 you said you never showed these minutes to Steppanski and Jones. A. Not until after. I had never shown them to them personally."

See also answer to interrogatory 47 (State of Case, Vol. 1, p. 249, lines 27-30), as follows:

"47. Did you ever show the minutes of October 27, 1925 to Steppanski and Jones or their attorney, Falls? A. Personally, I did not."

It is quite significant that Sculthorp's answer in this cause states that the minutes of the Sculthorp Realty Company will disclose that Steppanski and

Jones had full knowledge of every detail and fact concerning this project (Paragraph 8 of Answer) (State of Case, Vol. 1, p. 38, lines 8-32), thus inferring that they knew Sculthorp was turning the land over to the corporation at a profit. This refers to that portion of the alleged minutes of October 27, 1925, which states that Sculthorp's profit was discussed. In view of the foregoing inconsistencies and contradictions, and also the peculiar actions of both Jesse Sculthorp and Stanley Sculthorp with regard to these minutes, it is quite evident that no meeting of October 27, 1925, was ever held, and that the minutes of that alleged meeting as produced, were written up by Jesse Sculthorp after this controversy arose and for the purpose of strengthening his alleged defense.

Sculthorp's answer, (Paragraph 3) (State of Case, Vol. 1, p. 35, lines 26-31) states that Steppanski and Jones inspected the land before making any investment in it and bought with full knowledge of the value of the land before a cent was paid in. Sculthorp admitted that this is untrue, that when Steppanski and Jones each invested $5,000. in August, 1925, they had not as yet seen the land; that they did not go down to Florida until October, 1925. See testimony of Sculthorp (State of Case, Vol. 1, p. 252, lines 18-40), as follows:

> "Q. In paragraph 3 of your answer you say, 'In accordance with this arrangement, the defendant and complainants went to Florida in or about the month of October, and the complainants personally went upon the land in question at Delray, Florida, and inspected the same and spent two weeks in going over the proposition, and acquired personal knowledge of the value of the land and the details of the development proposition, before their money was invested.' Do you recall that statement in your answer? A. I don't just recall that.

Q. Right here (counsel shows witness the pleading). That is correct, isn't it? That statement appears in your answer, doesn't it? A. It appears there, yes.

Q. Is that statement correct? A. No, they had put $5,000. in that property before they went to Florida."

Sculthorp's actions throughout the transaction were not the actions of an honest man. In October, 1926, he caused the property to be conveyed back by the corporation to himself without a meeting of the company, without a resolution of the directors, and without telling Steppanski and Jones about it (p. 14 of this brief). In fact, he wrote letters to them after he had made this transfer in which he suggested turning the property back to the mortgagees to save them the trouble of foreclosing (p. 15 of this brief). In other letters written after this transfer to himself, he asked them for more money (p. 15 of this brief). When he was confronted by Attorney Falls with the fact that Steppanski and Jones had just learned from an examination of the records that Sculthorp had conveyed the property to himself and pressed for a reason, he said he did it for the good of the company. The next day at the office of his attorneys, Kearley and Fisher, he quickly prepared a deed conveying the property back to the corporation, his attorneys saying that he took it without a resolution of the Board of Directors and he would reconvey it without a resolution. His explanation that he made this conveyance for the good of the company is certainly unsatisfactory. He never would give a real explanation (State of Case, Vol. 1, p. 267, lines 5-7), nor did he produce the attorney in the transfer to testify, although this attorney was located in his home town at Atlantic Highlands and was easily available.

The declaration of trust which he offered in evidence setting forth that he held this land in trust is apparently a mere afterthought. He claims that the declaration of trust and the deed were executed about the same time. The deed was recorded but the alleged declaration of trust was not recorded (State of Case, Vol. 1, p. 267, line 41 to p. 268, line 6). He admits that he never showed the declaration of trust to Steppanski and Jones, but first showed a copy to their attorney Falls in February, 1927 (State of Case, Vol. 1, p. 268, lines 32-35), nor did he ever give Steppanski and Jones a copy of it. Both Steppanski and Jones testified that they knew nothing of the declaration of trust nor of the transfer of the corporate property by the corporation to Sculthorp. When Sculthorp in the latter part of January, 1927, learned that Steppanski and Jones were going to institute suit against him he immediately caused various properties owned by him to be transferred to his wife and daughter (testimony of Sculthorp, State of Case, Vol. 1, p. 265, line 25 to p. 266, line 27). These actions are indicative of a guilty conscience.

Steppanski, Jones and Sculthorp had been friends for many years. Sculthorp was in the real estate business for 20 years (State of Case, Vol. 1, p. 257, lines 25-27), Steppanski in the plumbing business and Jones a coal salesman. They were neighbors and visited each other's homes for years (State of Case, Vol. 1, p. 257, line 37 to p. 259, line 27). Steppanski and Sculthorp belonged to the same fraternal order and sat at the same lodge meetings (State of Case, Vol. 1, p. 258, lines 5-11). Sculthorp and Jones went around together daily as pals when they were down in Keansburg during the summer time (testimony of Jones, State of Case, Vol. 1, p. 223, line 38 to p. 224, line 7), (testimony of Sculthorp, State of Case, Vol. 1, p. 259, lines 31-33).

They were intimate friends and Steppanski and Jones relied implicitly on Sculthorp's honesty and good faith. Because of the close and intimate relationship between the parties, Steppanski and Jones were not on their guard, and relied upon the representations made by Sculthorp. Steppanski and Jones were willing to invest their money in a joint venture with Sculthorp without their seeing the land, trusting to his honesty and his experience in the real estate business. V. C. Bentley referred to this (State of Case, Vol. 1, p. 258, lines 26-28) as follows:

> "The Court: I assume he is leading up to the argument that will be made subsequently that because of the close relationship between these people and the likelihood of their having relied upon those representations, these complainants were not on their guard."

They relied on Sculthorp's representations that he had bought the land in question at the cheapest price and on the best terms possible, and that he had paid $100,000. for it. These representations were false inasmuch as he had paid $67,000. for the land. By reason of these false representations complainants-appellees seek to rescind the agreement for fraud and receive back the moneys which they had paid in under it.

In an attempt to affect the credibility and truth of the appellees' testimony, the appellant in his brief points to discrepancies between the allegations in the declaration in the Florida action and the bill of complaint filed in this case. His intention is apparent. He is trying to lead this Court to believe that the appellees invented a fictitious story for the purpose of this suit after finding that the allegations in the Florida complaint were insufficient. This can very easily be explained. The Florida declaration, as it was drawn by the attor-

ney Falls, contained certain errors of which the appellees had no knowledge until after the bill of complaint was filed in this case. The testimony of Falls (State of Case, Vol. 1, p. 181, line 38 to p. 182, line 41) clearly shows that appellee did not see the Florida declaration and could not revise it until after the bill of complaint in this case was drawn and verified. The bill of complaint in this case was verified on May 26, 1927 (State of Case, Vol. 1, p. 34, line 13) which is the same day upon which Falls mailed a copy of the Florida declaration from Florida to the appellees in Jersey City (State of Case, Vol. 1, p. 182, lines 22-30). This was also admitted by appellant's counsel at the trial (State of Case, Vol. 1, p. 182, line 40).

Appellant also states that the testimony of the appellees was invented by them after they found that the Florida complaint was dismissed on demurrer. This, of course, is not true as the bill of complaint in the present action was sworn to on May 26, 1927 and filed on May 27, 1927, at which time appellees had not yet seen the Florida declaration, and the demurrer to the Florida declaration was not sustained until June 10, 1927, Exhibit D-1 (State of Case, Vol. 2, p. 490, lines 12-40).

It is therefore apparent that the appellees could not have changed their story as a result of the proceedings had in Florida, but that the declaration in Florida which was drawn by the attorney Falls, contained errors which were unknown to the appellees and which they could not revise until after the bill of complaint in this case was filed.

POINT I.

There existed between the complainants-appellees and defendant-appellant a fiduciary relationship.

There exists between the complainants-appellees and defendant-appellant a fiduciary relationship which may be predicated on any one of a number of theories. The first is that of a joint adventure which may be defined as a combination of two or more persons wherein some specific venture a profit is jointly sought possibly without any actual agreement. 33 C. J. p. 841, Section 1. It is also illustrated in the case of *Turtur* vs. *Isserman,* 128 Atl. p. 151, decided by the Court of Chancery. In that case there was an agreement made by four parties to purchase, develop and resell a tract of land through the medium of a corporation to be formed, and each member was to contribute a share of the capital. Such an arrangement was held in this case to constitute a joint adventure.

The parties to a joint adventure are bound to act with the utmost good faith towards each other and a fiduciary relationship exists between such parties. It has also been said that the rules, regulating the conduct of partners towards each other are the same rules that should be applied to joint adventurers. This is held in the case of *Jackson* vs. *Hooper,* 76 N. J. Eq. p. 185, reversed on other grounds in 76 N. J. Eq. 592 and is also illustrated in the case of *Ross* vs. *Stevens,* 45 N. J. Eq. 231. The general rule is set forth in 33 C. J. p. 851, section 36, which is quoted as follows:

> "Where persons engage in a common enterprise by way of joint adventure, each has the

> right to demand and expect from his associates the utmost good faith in all that relates to their common interests. Within the scope of their enterprise they stand in a fiduciary relationship each to the other and are bound by the same standards of good conduct and square dealing as are required between partners."

This proposition is amply supported by citations of the courts of every important State.

Regarding the right to rescind an agreement of joint adventure, the rule is stated as follows:

> "A member who goes into a joint adventure relying upon the fraudulent representations concerning the costs of the property purchased from his associates, was in ignorance that his associates had received a profit from the seller may, upon discovering the fraud, rescind the agreement and recover as damages the moneys contributed by him thereto." 33 C. J. p. 857, Section 52 and cases there cited.

It is therefore shown that the relationship existing between the parties in this case may be that of joint adventurers, and by reason thereof a fiduciary relationship arose and the agreement may be rescinded for the fraud existing in this case.

The next theory upon which the relief sought for may be based, is that of the relationship between the promoter of a corporation and prospective stockholders. It is undisputed that the promoter of a corporation stands in a fiduciary relationship to the corporation and the stockholders, and must therefore act with the utmost good faith toward the stockholders and must disclose to the prospective stockholders any profit which he was to make out of the transaction with the corporation. This proposition is held in the case of *Arnold* vs. *Searing,* 78 N. J. Eq. 146. *Plaquemines Tropical Fruit Co.* vs. *Buck,* 52 N. J. Eq. 219.

In the case of *See* vs. *Heppenheimer, et als.*, 69 N. J. Eq. 36, Vice Chancellor Pitney, discussing this proposition, is quoted as follows:

> "Judge Brown, in his opinion already referred to in 176 U. S. 181 (at p. 203), speaking of those three, says 'These men stood in the light of promoters of the Straw Paper Company,' and he cites Mr. Cook on Stock and Stockholders, in declaring that, 'A promoter is one who brings together the persons who are to become interested in the enterprise, aids in promoting or procuring the subscriptions and sets into motion the machinery which leads to the formation of the corporation itself.' Again, on p. 204, he says: 'The promoter is the agent of the corporation and subject to the disabilities of an ordinary agent; his acts are scrutinized carefully, and he is precluded from taking a secret advantage of the other stockholders. Cook Stock. 651. Accordingly, it has been held that, if persons start a company and induce others to subscribe for shares, for the purpose of selling property to the company when organized, they must faithfully disclose all facts relating to the property which would influence those who form the company in deciding upon the judiciousness of the purchase.
>
> The court in that case in their headnote inserted a clause as follows: 'Promoters of a corporation are bound to the exercise of good faith toward all the stockholders, to disclose all the facts relating to the property, and to select competent persons as directors, who will act honestly in the interest of the shareholders, and are precluded from taking a secret advantage of other shareholders."

The relation between the promoters of a corporation and the persons who have become or who are expected to become subscribers to its capital stock or incorporators, is one of trust and confidence so as to impose upon the promoter the duty to act in

perfect good faith and in the interest of all the subscribers and incorporators. Because of the fiduciary relationship existing between the promoter of a corporation and prospective stockholders, the promoter is bound to make disclosures of every material fact, and in the case of concealment of important facts or of the making of a secret profit by the promoter in the conveyance of property to the corporation, the stockholder may rescind his subscription and recover back what he has paid therefor. Since the promoters of a corporation occupy a trust or fiduciary relationship toward persons who have been induced to join in the enterprise and to subscribe for stock therein, the latter may in the case of fraud or breach of trust resulting in injury to them individually, maintain a suit in equity against the promoter. A person who has been induced to subscribe for stock in a proposed corporation by the fraud of the promoter may rescind his subscription and recover from them what he has paid.

In the case of *Heckscher* vs. *Edenborn,* 203 N. Y. 210; 96, N. E. 441, the defendant was the principal promoter and organizer of a syndicate to raise two and a half million dollars for the acquisition, improvement and development of iron properties. The basic property upon which the syndicate was to be based was the U. S. Iron Co. with the capitalization of one million dollars of which the defendant owned one-half of the capital stock. A written agreement was signed by the subscribers to the syndicate in which it was stated that the U. S. Iron Corp. would be acquired at the par value of the stock together with other properties, and the defendant and two others were to be managers of the syndicate. The first subscription to the agreement was that of the defendant in the amount of $500,000. After the money had been paid in to the man-

agers, the defendant and his associates set about to carry out the agreement and out of the two and a half million dollars raised, $647,500. was used to buy the entire capital stock of the U. S. Iron Co. at $70. per share instead of the par value. The defendant paid for his subscription by turning over to the syndicate his holdings in the U. S. Iron Co. at the rate of $70. per share. The U. S. Iron Co. was re-organized under the name of the Sheffield Coal & Iron Co. Its capital stock increased from one million to two and a half million and stock was issued in that corporation to various subscribers in proportion to their subscriptions. Subsequently, it was discovered by the various subscribers that the defendant had been the owner of half of the capital stock of the U. S. Iron Corp. which was purchased by the syndicate of which, of course, the defendant was the manager. This action was then brought to rescind the agreement and recover back from the defendant the amount paid in by the subscribers. The New York Court of Appeals held that the agreement should be rescinded and the moneys paid in by the subscribers should be recovered back from defendant. The Court held in the first instance that the transaction by which the defendant turned in his stock in the U. S. Iron Co. in lieu of his subscription was in fact a purchase by the defendant and his associates as managers of the syndicate of the defendant's own property.

The Court is quoted as follows:

> "The principle that a person occupying a position of agent to purchase may not sell his own property to his principal is so elementary that it need only be stated. It must be quite as elementary and true that, if one by misrepresentation or suppression of facts when he ought to speak, induces another ignorantly to make a contract, appointing the first his agent to buy,

and conferring upon him discretionary power to purchase his own property, the contract is voidable, and even if executed may be rescinded, and the money recovered back upon restoration of what has been received.

The defendant comes within these principles. When he solicited plaintiff's assignors to become parties to the syndicate and appoint him one of their agents under the circumstances referred to, he must be held to have represented that he was legally qualified to discharge the powers which were being conferred upon him, and the obligation affirmatively rested upon him to inform them of his interest in the property which he was securing authority to buy, if he would hold them to their contract and avoid that imputation of legal misconduct which the law fastens on an agent who attempts to serve the interests of both the principal and himself. He did not occupy the position of an ordinary vendor, but he was inviting others to confer upon him a fiduciary relationship. If he knew and they were ignorant of some fact which touched the very substance of that relationship and legally destroyed his ability to meet its full agreements, it was his duty to advise them of it, and for his failure so to do they were entitled to repudiate the agreement and avoid what had been done under it. Virginia Land Co. vs. Haupt, 90 Va. 533, 537, 19 S. E. 168, 44 Am. St. Rep. 939; Brewster v. Hatch, 122 N. Y. 349, 25 N. E. 505, 19 Am. St. Rep. 498; Bentinck vs. Fenn, L. R. (12 App. Cases) 652, 658, 661."

In the case of *Vreeland* vs. *N. J. Stone Co.*, 29 N. J. Eq. 188, it was held,

> "That any contract of subscription to the stock of a corporation, if procured by fraud, will be set aside."

The Vice Chancellor at page 190 was quoted as follows:

> "Contracts to take stock in a corporation stand upon the same footing as any other conventional obligation. If induced by fraud they create no obligation and the injured party has the right to have them abrogated. The rule is universal whatever fraud creates, justice will destroy. For the general rule no authorities are necessary."

This was also held in the case of *Garrison* vs. *Technic Electrical Works,* 55 N. J. Eq. 708.

The universal rule prescribing the duties of promoters of a corporation to the stockholders is set out as follows in 7 Ruling Case Law, page 70, section 51.

> "Promoters stand in a fiduciary relation to the company to be organized, and those who subscribe for its stock. As such they are bound to act in good faith and to deal with them in perfect candor. The principle on which courts of equity proceed in these cases is a very familiar one. The promoter of a company, like its directors, is deemed to sustain toward the members of the company the relation of a trustee toward his cestui que trust. This being so, he will not be permitted to speculate out of that relation, or to derive any secret advantages from it. He is bound to disclose to them fully all material facts touching his relation to them, and he is liable in an action of fraud to persons whom, by fraudulent representations, he induces to subscribe to the stock of the corporation."

It is also held in the case of *Barcus* vs. *Gales,* 32 C. C. A. 337, 89 Federal 783:

> "That a court of equity has jurisdiction to afford to one who has been induced to subscribe for the capital stock of a corporation by fraud of its promoters and will grant whatever relief the exigencies of the particular case may demand."

The above seems to be the universal rule prevailing in this country as will be seen by referring to the note in 18 L. R. A. (N. S.) page 1106, etc. and the cases there cited.

The relief sought for by the complainants in this case may also be predicated upon a general theory that any contract induced by fraud may be rescinded whether the fraud be actual misrepresentations of fact or constructive fraud committed by a person in a fiduciary relationship. The case of *Wright* vs. *Smith,* 23 N. J. Eq. 106, illustrates the existence of a fiduciary relationship between parties even though there is no actual legal relationship of agency or trustee, etc. The facts in that case are as follows:

The complainant was the owner of a certain interest in some mineral lands in New Jersey, and was desirous of purchasing the fee of the lands, and also was to buy an adjoining tract. The complainant had previously done some business with the defendant and advised him of his desire to purchase the lands. The complainant had an exaggerated idea of the prices which the owners would ask for their lands, but being anxious to buy told the defendant that he would be willing to spend, if necessary, the sum of $4,000. for one tract, and the sum of $7,500. for another. Smith, the defendant, undertook as a friend to negotiate for their purchase and for quite some time was in communication with the two owners and with the complainant discussing the terms and progress of the bargains. The defendant, it was thought, would be able to obtain a better bargain than the complainant, and it was arranged that at the time of the purchase the sellers would convey to the defendant, who would then reconvey to the complainant. Subsequently, the defendant advised the complainant that he had succeeded in buying the one tract for $4,000., and requested the complainant to send him

a check for $500. at once and have $500. more ready within a month, at which time the defendant would convey to the complainant and the balance to be paid by a $3,000. mortgage. Subsequently pursuant to this arrangement, he did convey the premises to the complainant by deed expressing the consideration as the sum of $4,000. Negotiations continued for the purchase of the other property, and some months later it was conveyed from the purchaser to the defendant for an express consideration of $7,000., and both properties were then conveyed from the defendant to the complainant by a deed reciting the consideration as $11,000. It was paid as follows: $3,000. in cash payments; $2,000. by assuming a mortgage on the second tract, and the balance of $6,000. by a bond and mortgage executed by complainant to the defendant. The complainant had never communicated with either of the sellers, and some time later discovered that instead of purchasing the second tract for $7,000. the defendant had paid only $5,500. and none of it in cash. The complainant thereupon inquired regarding the first tract and found that instead of paying $4,000. for that, the defendant had paid only $1,178. This bill was then filed to compel the defendant to account and to have the $6,000. mortgage adjusted to the actual amount. The Court in speaking of the relationship between the parties, is quoted as follows:

> "That he was not formally constituted an agent, with authority to bind the complainant, or that his agreement to act for him was not formally made, are points which, if true, are of no sort of importance. Nor is it important that no agreement was made to compensate him for his services. It is sufficient that he accepted and held situation of trust in reference to procuring the lands. Every man has a trust

> to whom a business is committed by another. Every man is a trustee whose office is to advise or to operate, not for himself, but for others. The principle is general, that a trustee, so far as the trust extends, can never be a purchaser of the property embraced under the trust without the consent of all the persons interested. The rule extends to all cases in which confidence has been reposed, and applies as strongly to those who have gratuitously or officiously undertaken the management of another's property, as to those who are engaged for that purpose, and paid for it. Rankin v. Porter, 7 Watts 387, 390; Fox v. Mackreth, 1 Lead. Cas. in Eq. 92; Keech v. Sandford, 1 ibid. 36."

In the case of *Porter* vs. *Woodruff,* 36 N. J. Eq. 174, the Court discussed the rights and liabilities of parties occupying a fiduciary relationship. In that case the facts were as follows:

The bill of complaint was filed by an aged woman who had no business experience and who had inherited a large estate from her husband. Because of her husband's close relationship with the defendant and her lack of experience in business matters of any kind, her entire estate had been managed and controlled by the defendant who had, the Court subsequently held, violated the confidence reposed in him by the complainant.

The Court is quoted in that case at page 179 as follows:

> "The legal principle to be applied in deciding whether the defendant can successfully resist the complainant's claim, is too firmly established to warrant even the most astute and courageous counsel in attempting to overthrow it or to narrow its scope. The general interest of justice and the safety of those who are compelled to repose confidence in other alike demand that the courts shall always inflexibly maintain that great and salutary rule which

declares that an agent employed to sell cannot make himself the purchaser, nor, if employed to purchase, can he be himself the seller. The moment he ceases to be the representative of his employer and places himself in a position towards his principal where his interests may come in conflict with those of his principal, no matter how fair his conduct may be in the particular transaction, that moment he ceases to be that which his service requires and his duty to his principal demands. He is no longer an agent but an umpire; he ceases to be the champion of one of the contestants in the game of bargain, and sets himself up as a judge to decide, between his principal and himself, what is just and fair. The reason of the rule is apparent; owing to the selfishness and greed of our nature, there must, in the great mass of the transactions of mankind, be a strong and almost ineradicable antagonism between the interests of the seller and the buyer, and universal experience has shown that the average man will not, where his interests are brought in conflict with those of his employer, look upon his employers interests as more important and entitled to more protection than his own.

In such cases the courts do not stop to inquire whether an agent has obtained an advantage or not, or whether his conduct has been fraudulent or not, when the fact is established that he has attempted to assume two distinct and opposite characters in the same transaction, in one of which he acted for himself and in the other pretended to act for another person, and to have secured for each the same measure of advantage that would have been obtained if each had been represented by a disinterested and loyal representative, they do not pause to speculate concerning the merits of the transaction, whether the agent has been able so far to curb his natural greed as to take no advantage, but they at once pronounce the transaction void because it is against public policy. The salutary object of the principle is not to compel restitution in case fraud has

> been committed or an unjust advantage has been gained, but to elevate the agent to a position where he cannot be tempted to betray his principal. Under a less stringent rule, fraud might be committed or unfair advantage taken, and yet, owing to the imperfections of the best of human institutions, the injured party be unable either to discover it or prove it in such manner as to entitle him to redress. To guard against this uncertainty, all possible temptation is removed, and the prohibition against an agent acting in a dual character is made broad enough to cover all his transactions. The rights of the principal will not be changed, nor the capacity of the agent enlarged, by the fact that the agent is not invested with a discretion, but simply acts under an authority to purchase a particular article at a specified price, or to sell a particular article at the market price. No such distinction is recognized by the adjudications, nor can it be established without removing an important safeguard against fraud, Benson v. Heathorn, 1 You. & Col. 326; Conkey v. Bond, 34 Barb. 276, 36 N. Y. 427."

In the case of *Rhodes* vs. *Ries,* 99 N. J. Eq. 638, a bill of complaint was filed by a woman against an attorney for breach of fiduciary relationship. In this case, similar to the case of *Porter* vs. *Woodruff,* the complainant was a very old woman who had no business experience and inherited a large estate upon the death of her husband which she entrusted to the defendant for his care and management. The defendant had the complainant execute a general power of attorney to him for a period of fifty years giving him absolute authority to do as he may see fit with her estate. The bill seeks to set aside a number of assignments and conveyances made, and the Court in discussing the relationship, is quoted as follows:

"The rule is: 'In all transactions between parties occupying relation, whether legal, natural or conventional in their origin, in which confidence is naturally inspired, or, in fact, reasonably exists, the burden of proof is thrown upon the person in whom the confidence is reposed, and who has acquired an advantage, to show affirmatively not only that no deception was practiced thereon, no undue influence used, and that all was fair, open and voluntary, but that it was well understood'. Hall v. Otterson, 52 N. J. Eq. 522 (at p. 528); S. C. on appeal, 53 N. J. Eq. 695. 'Where parties hold positions in which one is more or less dependent upon the other, courts of equity hold that the weaker party must be protected, and they set aside his gifts if he had not proper advice, independently of the other'. Haydock v. Haydock, 34 N. J. Eq. 570."

"In the case of Condit vs. Blackwell, 22 N. J. Eq. 481 (at p. 485), Mr. Justice Van Syckel, speaking for the court of errors and appeals, said: 'The confidence which the relation of attorney and client begets between the parties, and the influence which the attorney thereby acquires, has led to a very close scrutiny of all transactions between them, and the law often interposes to set aside contracts which, between other persons, would be subject to no exception. In such cases, the burden of establishing the perfect fairness, adequacy and equity of the negotiation is thrown upon the attorney, and, in the absence of such proof, courts of equity treat the case as one of constructive fraud'.

'In such transactions the court leans most strongly against the attorney, who, while acting as such, has business relations with his client on his own account'. Perkins v. Deal Beach Realty Co., 92 N. J. Eq. 526 (p. 533)."

The Court in this case held that the conveyance and assignments made by the complainant to the defendant should be set aside on the ground of con-

structive fraud arising from the confidential relationship.

In the case of *Condit* vs. *Blackwell,* 22 N. J. Eq., page 481, the facts were as follows:

The complainant filed a bill to compel the defendant to reconvey to him certain property in New Jersey. The property was conveyed by the complainant to the defendant by a deed for a consideration of $6500. subject to a mortgage of $2500. The only consideration for this conveyance was a conveyance by the defendant to the complainant of some 2500 acres of land in Wisconsin. The complainant's contention is that the defendant's title to the lands in Wisconsin was invalid and that the complainant was induced to make his conveyance by reason of fraud practiced on him by the defendant. The defendant was an attorney and had been acting as such for the complainant with regard to certain lands, and the defendant took advantage of the fiduciary relationship existing between the parties. The Court in its opinion, on page 485, says as follows:

> "It is admitted by Blackwell that at the time of the exchange, and for some years previous thereto, he had been acting as attorney for Condit in paying taxes on other lands held by him in Wisconsin, and that he was also at the same time employed in the capacity of agent by Condit to sell the Orange property. This fiduciary relation thus existing between these parties, the validity of this transaction must be determined by rules of law which are not applicable to ordinary cases. The confidence which the relation of attorney and client begets between the parties, and the influence which the attorney thereby acquires, has led to a very close scrutiny of all transactions between them, and the law often interposes to set aside contracts which, between other persons, would be subject to no exception. In such cases, the bur-

den of establishing the perfect fairness, adequacy and equity of the negotiations is thrown upon the attorney, and in the absence of such proof, courts of equity treat the case as one of construvtive fraud. 1 Story's Eq., 311. In Gibson v. Jeyes, 6 Vesey 278, Lord Eldon expresses the rule to be, 'that if he will mix with character of attorney that of vendor, he shall, if the propriety of the contract comes in question, manifest that he has given his client all that reasonable advice against himself, that he would have given against a third person.' In the case of trustee and cestui que trust, the rule goes to the extent of creating a positive incapacity on the part of the trustee to purchase the trust estate, and gives the cestui que trust power to avoid the conveyance at his option.

Whether the rule relating to attorney and client applies to this case, inasmuch as Blackwell was not Condit's attorney, but agent only in hac re, need not be discussed, because the same considerations pertain to contracts of purchase and sale between principal and agent, and they are not allowed to stand unless there is 'the most entire good faith and a full disclosure of all facts and circumstances, and an absence of all undue influence, advantage, or imposition.' 1 Story's Eq., 315. In Lowther vs. Lowther, 13 Vesey 103, the Lord Chancellor says, 'that an agent to sell shall not convert himself into a purchaser, unless he can make it perfectly clear that he furnished his employer with all the knowledge which he himself possessed.' 'The agent must conceal no facts within his knowledge which might influence the judgment of his principal as to price or value, and if he does, the contract will be set aside.' 1 Story's Eq. 360a. The transaction must be characterized by the utmost good faith. There must be no misrepresentation, and an entire absence of concealment or suppression of any fact within the knowledge of the agent, which might influence the principal; and the

> burden of establishing the perfect fairness of the contract is upon the agent. The following authorities support these propositions. Story on Agency, 210, 211; 2 Sug. on Ven. 887-9, and note; Parkist v. Alexander, 1 Johns. Ch. 394; Banks v. Judah, 8 Conn. 146; Central Ins. Co. v. National Ins Co., 14 N. Y. 91; Huguerin v. Basely, 14 Ves. 273; Lowther v. Lowther, 13 Ves. 102; Selsey v. Rhodes, 2 Sim. & Sty. 41; Fox v. Mackreth, 2 Brown's Ch. 400. And in cases where the agent, without the knowledge of the principal, becomes the purchaser at his own sale, the principal may, at his election, adopt the contract or not."

The Court below had held that the defendant's tax title was valid and therefore dismissed the bill. On appeal, the Court of Errors and Appeals held the tax title to be invalid and held that the defendant had been guilty of constructive fraud which arose out of the relationship between the parties, and therefore reversed the decree of the Court of Chancery and decreed that the conveyance be set aside.

In the case of *Nicholson* vs. *Janeway,* 16 N. J. Eq., 285, the complainant was a co-partner with the defendant in the business of manufacturing and selling paper hangings. Under the terms of the contract, the partnership was to continue until the first of July, 1864. The parties agreed in December, 1861, that the partnership should be dissolved and the defendant purchased the interest of the complainant in the old firm, and the complainant thereupon retired from the firm. The complainant now seeks to set aside the agreement for the dissolution on the ground that one of the defendants, who was the actual manager of the business, failed to disclose to him the exact financial situation of the concern and the share to which the complainant would be entitled. The Court is quoted as follows:

"It is no objection to relief that there was no actual or intentional misrepresentation of a material fact. None is charged. Whether a fraud is effected by silence or by positive misrepresentation, is immaterial. An undue concealment of a material fact to the prejudice of another, which one party is bound in conscience and duty to disclose to the other, and in respect to which he cannot innocently be silent, constitute a fraud, against which equity will relieve. 1 Story's Eq. Jur. 204.

In regard to partners, and all parties occupying towards each other a fiduciary character, the law to prevent undue advantage from the confidence which the relation naturally creates, requires the utmost degree of good faith (uberrima fides) in all transactions between the parties. 1 Story's Eq. Jur. 218.

And hence if a partner who superintends the business and accounts of the concern, by concealment of the true state of the accounts and business, purchases the share of another partner for an inadequate price, by means of such concealment, the purchase will be held void, and the purchaser compelled to account for the real value. Maddeford v. Austwick, 1 Sim. R. 89; 1 Story's Eq. Jur. 220."

The Court held that equitable relief could be granted, but dismissed the bill on the facts.

In the case of *Keen* vs. *James* (Decided by the Court of Errors), 39 N. J. Eq. 527, the facts were as follows:

The defendant testator at the time of his death owned certain stock in a National Bank. He named his executors in his will, among others, the cashier of the bank who had been fraudulently abstracting funds from the bank to such an extent that the whole capital of the bank had been wasted and an assessment upon stockholders to the par value of the stock would be required. The cashier had made false statements to the comptroller as to the condi-

tion of the bank, which statements had been published in newspapers according to the Federal law with the result that the stock had a high market value, and the complainant thereupon offered this cashier a comparatively high price for the purchase of some of his stock. This cashier made the sale as executor. It was shown that when the complainant purchased the stock he was relying upon the reports made by the cashier as to the dividends and the value, and had no others means of forming a judgment as to the intrinsic value of the stock. Complainant thereupon filed his bill for a rescission of the sale as soon as he learned of the real condition of the bank.

The Court holding that the complainant was entitled to rescind, is quoted in part as follows:

> "Prof. Pomeroy, in his discriminating work on equity jurisprudence, very lucidly discusses the elements of fraud affecting contracts, and in treating of fraudulent concealment, lays down this proposition: 'If either party to a transaction conceals some fact which is material, which is within his own knowledge, and which it is his duty to disclose, he is guilty of actual fraud.' 2 Pom. Eq. 901. This accords with the language of this court in Conover v. Wardell, 7 C. E. Gr. 492: 'It is not every concealment, even of facts material to the interest of a party, which will entitle him to the interposition of a court of equity. The case must amount to a suppression of facts which one party, under the circumstances, is bound in conscience and duty to disclose to the other party, and in respect to which he cannot, innocently, be silent.'
>
> The author just named reduces the instances in which there exists a duty of disclosure, to three classes, the first including those where there is a previous fiduciary relation between the parties, the third including transactions which are themselves essentially fiduciary, like

> contracts of insurance, and the second being defined as follows: 'The second class embraces those instances in which * * * it appears that either one or each of the parties, in entering into the contract or other transaction, expressly reposes a trust and confidence in the other; or else, from the circumstances of the case, the nature of their dealings, or their position towards each other, such a trust and confidence in the particular case is necessarily implied. The nature of the transaction is not the test in this class—each case must depend upon its own circumstances. The trust and confidence, and the consequent duty to disclose may expressly appear by the very language of the parties; or they may be necessarily implied from their acts and other circumstances.' 2 Pom. Eq. 902."

In the present case Sculthorp induced complainants-appellees to invest their money in Florida lands which he bought for them and himself as a syndicate, and which was to be turned over to a corporation to be formed. He induced them to subscribe to the stock of this corporation upon the fraudulent representations that he had purchased the land for their benefit at the lowest price and on the best terms possible, and was turning it over to the corporation at cost. Even if he had not actually made these representations it was his duty because of the fiduciary relationship existing between them not to make a secret profit in the transaction, a constructive fraud would arise and entitle complainants-appellees to rescind the agreement under which they subscribed for their stock in the Sculthorp Realty Company, and receive back from defendant-appellant, the money they paid in on returning their stock to defendant-appellant.

But in this case there was not merely constructive fraud by reason of defendant-appellant's failure to act with the utmost good faith to complain-

ants-appellees, but there was actual fraud and misrepresentation in that Sculthorp told them he had paid $100,000. for the property to be transferred to the corporation when in fact he only paid $67,000. They are entitled to rescind the agreement under which they subscribed for stock in the corporation by reason of these false representations of defendant-appellant.

An agreement for the purchase of land induced by false representations will be rescinded and the money paid in decreed to be returned. *Towin* vs. *Pierro,* 97 N. J. Eq. 259, affirmed by the Court of Errors and Appeals, 99 N. J. Eq. 434.

POINT II.

The complainants-appellees relied upon the false and fraudulent representations of the defendant-appellant that he brought the land at the cheapest price and on the best terms possible, and that he paid $100,000. for it.

The appellant contends that the appellees inspected the land before they made the second payment, and were then offered the opportunity to withdraw from the enterprise and receive back what they had invested, but that they were satisfied with what they saw, and that they cannot now complain of appellant's fraudulent conduct.

The fraud upon which this suit is based did not consist of any representations as to the quality of the land or its value. The fraud consisted of misrepresentations by the appellant as to the price he had paid for the land while acting as agent for all the parties. It is quite obvious that the exam-

ination of the land made by the appellees could in no possible way disclose the cost of the land, misrepresentation and concealment of which is the fraud complained of.

There existed between the parties a relationship of trust and confidence. Appellant fraudulently concealed and misrepresented to appellees the price he had paid for the land while acting in a fiduciary relationship with appellees. Under these circumstances appellees after having inspected the land (which inspection could not have disclosed the misrepresentations as to the price appellant paid for the land) were under no duty to investigate the representations made by the appellant as to the price he had paid for the land.

The general rule concerning the duty to investigate where a confidential relationship exists between the parties as in the present case, is stated in 26 C. J. 1158, section 72, as follows:

> "The rule requiring investigation does not apply if a relation of trust or confidence exists between the parties, so that one of them places peculiar reliance in the trustworthiness of the other, but in such cases the latter is under a duty to make a full and truthful disclosure of all materials facts and is liable for either misrepresentation or concealment. * * * The rule that a party has the right to rely upon the full and truthful statement by the one bearing a confidential relation towards him, is not, however, limited to relations held fiduciary as a matter of law, but applies wherever the circumstances induced one party to repose trust and confidence in the other as where confidence is induced by the personal friendship of the parties. The rule is especially applicable if one party knows that the other is relying upon him for a full and truthful statement of all facts as where confidence is expressly reposed."

This rule is clearly illustrated in the case of *Ricketts* vs. *Tompkins,* 73 N. J. Eq. 552. In that case the facts are as follows: The complainant and defendant were cousins. They had inherited property from a deceased aunt who had died intestate, and the complainant was not aware that she had an interest in the property. The defendant obtained by fraud, a deed from the complainant of her interest, and this bill was filed to set aside the deed. V. C. Leaming in his opinion is quoted, at page 555, as follows:

> "I think the case falls within that class of cases where it is the duty of a party having knowledge of material facts to discover them to the other party. While there was no pre-existing fiduciary relation between these parties, the transaction was of such a nature that a trust relationship was necessarily created by force of the very circumstances involved. The transaction was not one between vendor and purchaser. Defendant sought to procure a conveyance to himself of a valuable interest for nothing and to that end approached an owner who was his cousin and who did not know that she owned an interest and who knew nothing about the value of the property in question. Her knowledge was wholly dependent upon the information which defendant should communicate. By reason of her confidence in defendant's integrity she acted upon the information thus communicated and made the conveyance without charge as requested. Under these conditions it seems entirely clear that defendant was charged with the duty of full disclosure, and that any failure upon his part to perform that duty which resulted in loss to complainant is an equitable ground for her relief. Under the circumstances of this case there can be no substantial difference between an affirmative misrepresentation of facts and an incomplete and inadequate statement of what purported to be material facts. Com-

> plainant was, under the existing circumstances, entitled to know and to have been apprised by defendant that she was disposing of an interest of substantial value, and that what the defendant referred to as a will was, in fact, an instrument of no manner or force. These material facts were not disclosed by him, with the result that complainant signed the deed under a misapprehension of the facts, and defendant is clearly responsible for such misapprehension and should not profit by it."

This rule was recently reiterated by V. C. Leaming in the case of *Sabantino* vs. *D'Aloise,* 107 N. J. Eq. 426, at page 431, where the Vice Chancellor said:

> "It is also recognized that the rule requiring investigation is not applied where there exists a relation of trust and confidence and which disarms the victim. 26 C. J. 1158, Ricketts vs. Tompkins, 73 N. J. Eq. 552, Roberts vs. Thompson, 75 N. J. Eq. 576."

The conclusion necessarily reached is that there was no duty upon appellees to investigate the truth of the representations made by the appellant as to the price he paid for the land, because of the fiduciary relationship existing between the parties.

The appellant cites in his brief the cases of *Industrial Savings Co.* vs. *Plummer,* 84 N. J. Eq. 184, and *Condon* vs. *Sandhowe,* 97 N. J. Eq. 204, in support of his contention that the appellees had inspected the property and cannot now complain of his fraud.

Neither of these cases are in point with the case at bar. In the case of *Industrial Savings Co.* vs. *Plummer, supra,* the alleged misrepresentations were concerning, *not the price paid* for the land, *but the value* of the land purchased by the vendee who

entered a counterclaim to rescind the deed in a suit to foreclose a purchase money mortgage. The Court denied his relief on the ground that his action was not promptly brought, and that he could have verified the alleged statements. In that case there did not exist a relationship of trust and confidence.

In *Condon* vs. *Sandhowe, supra,* the defendant by counterclaim sought to rescind a contract for the purchase of real estate by reason of a representation that the building was constructed of hollow tile. The purchaser, with the aid of two builders, made a complete examination of the property and its construction, and the Court held that the examination should have disclosed the fraud; that the parties were dealing at arms length with one another, and the extent of the examination made indicated that the purchaser did not intend to rely upon the representations, but rather upon the investigation made. There was no confidential relationship between the parties. V. C. Bentley said in that case, at page 206:

> "I think there could be no question that the defendants would have been entitled to rely upon any such statement as that with which they charge the complainants. The truth is, however, as I have stated that they did not do so but preferred to investigate the matter for themselves and having done so must be charged with what it is reasonable to assume they found or could have found *if their investigation was made with the completeness to be expected of one who deals at arms length with another.*"

In the case at bar, as shown above, the parties were not dealing at arms length, but there existed between them a relationship of trust and confidence. The inspection of the land by appellees at the invitation of appellant, without making any investigation as to what appellant paid for the property

clearly indicates appellees intended to rely on appellant's statement as to what the property cost appellant.

The appellant's contention is that the fact that the appellees had inspected the land purchased for the enterprise and had expressed themselves as being satisfied, constituted a bar to appellees' relief because of their examination of the land; but as previously pointed out this is untenable for the reason that the examination of the land made by the appellees could in no possible way disclose the cost of the land, misrepresentation and concealment of which is the fraud complained of, nor by reason of the fiduciary relationship existing between the parties were appellees under a duty to conduct a further investigation to determine the truth of appellant's representation as to what he paid for the land.

Appellant says, in his brief, that the cost of the land was not a material fact upon which respondents relied. This statement is the result of a confusion of thought. By reason of the fiduciary relationship between the parties it was the duty of appellant, while acting as agent for all of the parties, to purchase the land for the benefit of all at the cheapest price and on the best terms possible, and to disclose the actual cost paid. Whether the land cost $50,000. or $100,000. or $150,000. was immaterial. What was material was that whatever the land actually cost appellant he was as a fiduciary bound to disclose to respondents the actual price paid. His failure to do so and his statement to respondents that he had paid $100,000. for the land when he actually paid $67,000. for it, was a fraud and deceit. Besides this appellant actively represented to respondents that he had bought the land at the cheapest price and on the best terms possible, to wit, $100,000. By reason of the fiduci-

ary relationship to appellant and the trust and confidence reposed in him, respondents had the right to rely on this statement and they had a right to except that he would disclose the true cost to them whatever it was. As Steppanski puts it (Vol. 1, p. 134, lines 22 to 23):

> "I was deceived by the fact that he said he paid that for it."

POINT III.

The Court did not err in allowing complainants interest on the moneys paid in by them.

The general rule regarding the allowance of interest as damages in cases of this kind is stated in 8 R. C. L. page 553, which is quoted as follows:

> "Some courts hold that the question is to be determined in view of the demands of justice, rather than through the application of any arbitrary rule since in many cases fair compensation for an injury done cannot be accorded without an allowance for interest, and an arbitrary rule prohibiting this allowance would result in a denial of justice. The distinction formerly existing in this regard between liquidated and unliquidated demands, is practically obliterated, and that whenever a verdict liquidates a claim and fixes it as of a prior date, interest shall be allowed on the claim from that date."

The rule is also set forth in 28 L. R. A. (N. S.), in the note on page 50, where it is said:

> "In actions for fraud and deceit where the damages are susceptible of computation, the cases allow interest."

It is also stated in 27 C. J., Section 238, page 88, as follows:

> "Where the amount of plaintiff's loss and the date from which interest should be computed is capable of definite ascertainment, interest may properly be awarded as an element of damages sustained by reason of fraud."

It is also stated in 27 C. J., page 89, as follows:

> "Interest is ordinarily computed from the date at which the money or property was parted with upon the strength of the fraud."

In 27 C. J., Section 462, page 671, it is stated:

> "A fraudulent grantee is chargeable with interest upon the value of the property or its proceeds, from the time he took possession or appropriated it to his own use."

V. C. Stevenson in the case of *Agnew* vs. *Paterson Board of Education,* 83 N. J. Eq. 49 (affirmed 83 N. J. Eq. 336), speaking on the allowance of interest in cases of this kind, said at page 67:

> "It should be borne in mind that the whole tendency of Courts of Equity for a considerable period of time has been to break away from hard and fast rules and charge and allow interest in accordance with principals of equity in order to accomplish justice in each particular case."

This statement was cited with approval and followed by V. C. Lane in the case of *Hoover Steel Ball Co.* vs. *Schaffer Ball Co.,* 90 N. J. Eq. 515.

In 2 Pomeroy's Equity, Section 910, page 1892, the author speaking of relief in cases of fraud, says:

> "The fundamental theory upon which equity acts, is that of restoration.—of restoring the defrauded party primarily to the position

which he occupied before the fraud was committed."

In the case of *Smith* vs. *Boles,* 132 U. S. page 125, an action was brought for fraud and deceit in connection with the purchase of stock of a corporation, and the case came up before the United States Supreme Court on the question of the measure of damages, concerning which, Chief Justice Fuller said at page 129:

> "The gist of the action was that the plaintiff was fraudulently induced by the defendant to purchase stock upon the faith of certain false and fraudulent representations, and so as to the other persons on whose claims the plaintiff sought to recover. If the jury believed from evidence that the defendant was guilty of the fraudulent and false representations alleged, and that the purchase of stock had been made in reliance thereon, then the defendant was liable to respond in such damages as naturally and proximately resulted from the fraud. He was bound to make good the loss sustained, such as the moneys the plaintiff had paid out *and interest,* and any other outlay legitimately attributable to defendant's fraudulent conduct."

For the reasons above stated we respectfully submit that the Court did not err in allowing interest to complainants in the decree.

POINT IV.

This Court should not consider the point raised by the appellant that the doctrine of election of remedies applies in this case.

The appellant in his brief contends that the doctrine of election of remedies applies in this case predicating this contention upon the Florida suit between the same parties. This point was never raised in this case until it is now raised in appellant's brief. It was not raised in the answer of the appellant, nor did it arise at the hearing or in the arguments before the Court below, nor is it set out as error in the appellant's petition of appeal. We might state that the appellant in his answer (State of Case, Vol. 1, p. 42, lines 15 to 22) expressly admits that the Florida action was instituted to obtain the same relief as the present suit; that is, a rescission of the agreement. We quote from appellant' answer as follows:

> "Defendant admits that a suit was instituted in the State of Florida to recover money invested by complainants on account of fraud, and that a rescission is asked for in said suit."

The testimony of the witness, Falls (State of Case, Vol. 1, p. 179, lines 23 to 29) also shows that prior to the institution of appellees' suit in Florida they promptly rescinded the agreement upon discovering the fraud.

The question of election of remedies should not be considered by this Court, because it was not raised in the pleadings nor in any other manner brought to the attention of the Court of Chancery, nor is it set out in appellant's petition of appeal.

The Court cannot be said to have erred in failing to decide a question not presented nor raised before it.

The rule has been very often stated and repeated by our Court of Errors and Appeals that "grounds of objection to a decree not presented in the Court below or set forth in the petition of appeal, need not be considered by a Court of review." See *Penn. Insurance Co.* vs. *Semple,* 38 N. J. Eq. 575; *Cumberland Lumber Co.* vs. *Clinton Hill Lumber Co.,* 57 N. J. Eq. 627; *Boice* vs. *Conover,* 63 N. J. Eq. 273; *Engelhard* vs. *Schroeder,* 92 N. J. Eq. 663.

This rule was very recently reiterated and approved by the Court of Errors and Appeals in the case of *State* vs. *King,* decided May 19, 1930, 150 Atl. 555, where Chancellor Walker is quoted as follows:

> "In Williams v. M. T. Connolly Contracting Co., 74 N. J. Law, 105, at page 108, 65 A. 179, it was held that the state of the case before the Supreme Court did not show that any legal question was raised by the appellant in the trial court and there decided adversely to its contention; which means, of course, that the question must be passed upon by the court below to be reviewable. And the reason is that the judge or judges of the lower court cannot be reversed upon questions never considered by them. *The rule is the same in chancery. In Engelhard* v. *Schroeder,* 92 N. J. Eq. 663, at page 668, 116 A. 717, 21 A. L. R. 957, *the Court of Errors and Appeals held the objection to the decree below, in the brief filed by appellants, was not made a ground of appeal nor brought to the attention of that court and therefore required no consideration in the court above.* See also, Boice v. Conover, 63 N. J. Eq. 275, 53 A. 910; Cumberland Lumber Co. v. Clinton Hill Mfg. Co., 57 N. J. Eq. 627, 42 A. 585; Penn Mut. Life Ins. Co. v. Semple, 38 N. J. Eq. 575.

> In the Semple case just mentioned the Court of Errors and Appeals said that the matter of appeal was not made the subject of proof and consideration in the court below and the court above therefore ought not to give a hearing on the appeal.
>
> In Champlin v. Barthold, 82 N. J. Law, 13, at page 14, 81 A. 490, it was held by the Supreme Court that where a judgment cannot be reversed upon the grounds specified, it is affirmed.
>
> *It must be perfectly obvious that an inferior court cannot be reversed on a question or questions it never decided. For a superior court to do that would not be to review its proceedings and reverse an erroneous decision, but to make a decision as though it was a court of original jurisdiction."*

The rule was also very recently repeated by the Court of Errors and Appeals in the case of *Standard Parlor Suit Co.* vs. *Hudson Upholstering Works, Inc., et al.,* decided January, 1931, not yet reported (#50 May term 1930), in which case a bill of complaint was filed for the appointment of a Receiver of an alleged insolvent corporation, and a petition was filed by the assignee for the benefit of creditors and a number of the creditors, to permit the estate to be administered by the assignee. The Court of Chancery made an order to that effect and the complainant appealed contending that the assignment for the benefit of creditors was invalid for various reasons. Justice Lloyd, writing the opinion of the Court, is quoted as follows:

> "We find it unnecessary to consider this contention as we deem the questions raised not within the pleadings of the cause. It will be observed that the bill as filed by the appellant prayed only for the appointment of a receiver and that the defendant corporation be restrained in its operations. At that time the assignment had already been made and the as-

signee was in possession of the corporation assets. No relief was asked against the assignee or that the assignment be declared void. Its validity, therefore, was not before the trial court and can not be raised here."

For the reasons above stated, it is respectively submitted that this Court should not consider the point raised by the appellant that the doctrine of election of remedies applies in this case.

It is therefore respectfully submitted that the decree of the Court of Chancery appealed from, should be affirmed.

EICHMANN & SEIDEN,
Solicitors for and of counsel
with complainants-appellees.