

I N D E X.

	PAGE
Amended Notice of Appeal	1
Petition of Appeal	3
Answer to Petition of Appeal	5
Bill for Specific Performance	6
Answer of Gustav A. Lehr and Bertha P. C. Lehr	29
Petition	40
Affidavit	42
Order to Substitute	43
Order to Amend	44
Order to File Answer	46
Answer of Rose Schlichting	47
Replication	49
COMPLAINANT'S TESTIMONY:	
George M. Dare—Direct	56
Cross	74
Recalled—Cross	85
Llewellyn Hildreth—Direct	77
Cross	78

	PAGE
Miss Anna M. Greer—Direct	80
Cross	82
David Friedlander—Direct	83
Cross	84
Exhibit C1, Agreement of Agency	92
Exhibit C2, Agreement for Sale of Land	93
Exhibit C3, Lease	95
Exhibit C4, Receipt	97
Exhibit C5, Letter	98
Exhibit C6, Tax Bill	98
Exhibit C7, Letter	100
Exhibit C8, Deed	101
Exhibit C9, Bond and Warrant	104
Exhibit C10, Mortgage	106
Exhibit C11, Deed	112
Exhibit C12, Mortgage	116
Exhibit C13, Deed	122
Exhibit C14, Deed	125
Conclusions	129
Final Decree	133

AMENDED NOTICE OF APPEAL.
IN CHANCERY OF NEW JERSEY.

(Filed September 30, 1926.)

<p style="text-align: center;">Between</p> <p style="text-align: center;">DAVID FRIEDLANDER, <i>Complainant,</i> and GUSTAV A. LEHR, <i>et al.,</i> <i>Defendants.</i></p>	}	<p style="text-align: center;">On Bill for Specific Performance. Amended Notice of Appeal.</p>	10
--	---	--	----

The complainant, David Friedlander, appeals from the final decree made in this court, by the Chancellor on the advice of Vice-Chancellor Robert H. Ingersoll, dismissing the bill filed in the above stated cause, denying specific performance of the contract or agreement to convey the lands and premises described in the pleadings, and the whole thereof, to the Court of Errors and Appeals in the last resort in all causes.

Dated: Camden, New Jersey, September 29th, 1926.

WM. S. DARNELL,
BOURGEOIS & COULOMB,
Solicitors for Complainant, 30
David Friedlander.

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

WM. S. DARNELL,
BOURGEOIS & COULOMB,
Of Counsel with Complainant, David Friedlander.

[ENDORSED]

September 30th, 1926.
Service of copy of the within amended notice of appeal is hereby acknowledged.

Cole & Cole,
Sol. for Defendants.

PETITION OF APPEAL.

IN CHANCERY OF NEW JERSEY.

Between	}	On Bill for Specific Performance. Petition of Appeal.
DAVID FRIEDLANDER,		
<i>Complainant,</i>		
and		
GUSTAV A. LEHR, <i>et al.</i>	}	10
<i>Defendants.</i>		

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

The petition of David Friedlander, the appellant 20
in the above stated cause, respectfully shows that
your 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 the twenty-seventh day
of August, in the year of our Lord, one thousand
nine hundred and twenty-six (1926) wherein the said
David Friedlander was complainant and Charles
Lehr, substituted defendant of Gustav A. Lehr, de-
ceased, Bertha P. C. Lehr and Rose Schlichting were 30
defendants in this respect, to wit:—The entire de-
cree which sets forth, orders, adjudges and decrees
as follows, viz:

“It is on this 27th day of August, 1926, on
motion of Cole and Cole, solicitors of answer-

ing defendants, Ordered that the bill of complaint be, and the same is, dismissed, with costs, with allowance of one hundred dollars as counsel fee to be taxed as a part of the costs and collected in the manner provided by statute and rules.”

And your petitioner humbly appeals from the whole of the decree of the Chancellor dismissing the
 10 bill of complaint on the ground that the same is erroneous, for that the trial Court, notwithstanding the undisputed testimony of the written appointment of George M. Dare, as his agent by the defendant, Gustav A. Lehr, the subsequent sale by said Dare, as agent to complainant of the property named in said appointment of agency, and the subsequent execution of agreement in writing between the parties to said suit for the purchase and sale of said lands and premises, wrongfully concluded that Dare
 20 was the agent of Friedlander and not of Lehr, and also for that the testimony shows, that the conveyance of said lands and premises to defendant, Rose Schlichting, a member of the family of the defendants, was fraudulent and mere subterfuge upon the part of the defendants to avoid the agreement made by said defendants, Gustav A. Lehr and Bertha P. C. Lehr, to complainant, and with notice to the said Rose Schlichting; Also for that by the preponderance of proof submitted, and which are undenied,
 30 the complainant was entitled to a specific performance of said contract and the relief prayed for in said bill of complaint.

Your petitioner, therefore, prays that the said decree of the said Chancellor and the whole thereof may be set aside and for nothing holden.

And that your petitioner may have such relief in

the premises as to this Honorable Court shall seem meet.

DAVID FRIEDLANDER,
Petitioner.

WM. S. DARNELL,
Solicitor for and of Counsel with Complainant.

10

We conceive that the complainant has good cause and ground for the appeal in the above entitled cause from the final decree therein.

WM. S. DARNELL,
Counsel for David Friedlander, Complainant.

ANSWER TO PETITION OF APPEAL. 20

Answer of defendant to petition of appeal duly filed in approved form.

30

BILL FOR SPECIFIC PERFORMANCE.

(Filed March 6, 1924.)

IN CHANCERY OF NEW JERSEY.

10

DAVID FRIEDLANDER, <i>Complainant,</i> v. GUSTAV A. LEHR, <i>et al.,</i> <i>Defendants.</i>	}	On Bill for Specific Performance.
---	---	--------------------------------------

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

The complainant, David Friedlander, of the City of Camden, in the County of Camden and State of New Jersey, respectfully shows:

1. That defendant, Gustav A. Lehr, resides at Egg Harbor, in the County of Atlantic and State of New Jersey. The said Lehr is a married man and his wife's name is Bertha P. C. Lehr, who resides with her husband. 30

2. On or about the 4th day of April, 1922, defendant, Gustav A. Lehr, was seized of premises as follows:

All that certain lot or parcel of land situate, lying and being in the City of Wildwood, in the County

of Cape May, in the State of New Jersey and known and designated as lot number sixteen (16) of block number six (6) on a plan of lots of the Wildwood Beach Improvement Company, made by E. S. Taylor and Son, Engineers, 1886, and duly filed in the clerk's office of the County of Cape May, aforesaid, and is bounded and described as follows, to wit:

BEGINNING at a point on the northeasterly side of Oak Avenue at the distance of two hundred and eighty feet southeastwardly from the intersection 10 of the northeasterly side of said Oak Avenue with the southeasterly side of Pacific Avenue and extending thence southeastwardly along the northeasterly side of said Oak Avenue forty feet and at right angles thereto between parallel lines in length or depth northeastwardly one hundred feet. CONTAINING four thousand (4000) square feet of land strict measure.

3. The said Gustav A. Lehr, being so thereof 20 seized did on or about the said 4th day of April, 1922, make, execute and deliver to George M. Dare a certain agreement of agency, wherein and whereby he did appoint said George M. Dare as his sole and lawful agent for the sale of the land and premises above described for the sum of \$6,000.00.

4. On or about the 13th day of April, 1922, the said Gustav A. Lehr, being so seized of the above described premises, through his agent the said 30 George M. Dare, sold and agreed to convey the said premises unto the complainant, the said David Friedlander, and did thereupon on the said 13th day of April, 1922, together with his wife, Bertha P. C. Lehr, make, execute and deliver unto the said David Friedlander, their certain agreement in writ-

ing wherein and whereby they did, among other things, agree to grant and convey the said lands and premises unto the complainant, David Friedlander on or before the first day of June, 1922, upon the payment to them of the sum of \$6,000.00 in the manner following that is to say \$500.00 upon signing and execution of said agreement, the receipt of which was thereby acknowledged and \$2500.00 to be paid at the time of settlement with the balance of \$3,000.00 to be secured to be paid by a first mortgage (purchase money mortgage) upon said premises within three years from the date thereof together with interest thereon at the rate of six per cent per annum, payable semi-annually, said mortgage to be made and executed by complainant to the said defendants on the day of settlement, a copy of which said agreement is hereto annexed, and made a part hereof and marked "Exhibit A," to which for greater certainty complainant hereby refers.

20 5. On said 13th day of April, 1922, complainant paid to the said defendant, Gustav A. Lehr, by and through his agent, the said George M. Dare, the sum of \$500.00 on account of the purchase price of the said lands and premises pursuant to the said agreement of sale above mentioned and marked "Exhibit A."

30 6. On the 31st day of May, 1922, complainant, pursuant to the said agreement, tendered to the said Gustav A. Lehr, at his home in Egg Harbor, Atlantic County, New Jersey, the sum of \$2500.00 in legal tender money of the United States of America and presented to him with the said cash, the bond of complainant in the sum of \$6,000.00 conditioned for the payment of \$3,000.00 at the expiration of one

year from the date thereof, said bond being dated the 31st day of May, 1922, with the usual tax clause and other covenants therein set forth and on the margin of said bond were attached United States documentary stamps of the value of \$1.50 duly cancelled in accordance with the requirements of the United States law in that behalf and a copy of which said bond is hereto annexed marked "Exhibit B," and to which for greater certainty complainant hereto refers; and complainant did at the same time and place, tender to the defendant, Gustav A. Lehr, a certain mortgage bearing date the 31st day of May, 1922, made and executed by the complainant and Emma Friedlander, his wife, to secure the payment named in said bond last above mentioned, upon the lands and premises hereinabove described, a copy of which said mortgage is hereto annexed and made a part hereof and marked "Exhibit C," and to which for greater certainty complainant hereto refers; and complainant did also at the same time and place tender to the said Gustav A. Lehr, a certain deed of conveyance, drawn and ready for execution by the said defendants, Gustav A. Lehr and Bertha P. C. Lehr, his wife, bearing date the said 31st day of May, 1922, for said lands and premises to be made unto the complainant, a copy of which said deed is hereto annexed and made a part hereof and marked "Exhibit D." The said defendants, Gustav A. Lehr and Bertha P. C. Lehr, his wife, notwithstanding said tender of cash, bond and mortgage and of said deed to be executed as aforesaid by the said defendants, refused to comply with their said agreement as herein above mentioned and marked "Exhibit A" and refused to make the said conveyance, refused to accept the said cash and bond and mortgage although legally tendered by the said com-

plainant to the said defendants and refused to carry out their agreement and they still do refuse to carry out the said agreement of sale or any part thereof although thereby legally required so to do by the said agreement. The complainant now stands ready and willing and is able to perform his part of the said agreement and has always stood ready, willing and anxious to perform and carry out his part of the agreement.

10 7. That after the making of the said agreement marked "Exhibit A," made between the said Gustav A. Lehr and Bertha P. C. Lehr, his wife, to convey said lands and premises unto complainant, and notwithstanding the same, they, the said Gustav A. Lehr and Bertha P. C. Lehr, by deed of conveyance, conveyed or attempted to convey said lands and premises unto their daughter, Rose Schlichting, who resides at Wildwood, New Jersey, and complainant 20 charges that the said Rose Schlichting had full knowledge of the said agreement marked "Exhibit A," and with such knowledge prior to the taking of the title thereto complainant charges that said Rose Schlichting was not a purchaser and without notice of complainant's contract.

30 8. That the said deed made by the said Gustav A. Lehr and Bertha P. C. Lehr to the said Rose Schlichting was dated May 18th, 1922, acknowledged the same date before Herman C. Hamilton, a Master in the Court of Chancery of the State of New Jersey, and duly recorded in the office of the clerk of the County of Cape May on the 18th day of May, 1922, in Book No. 364 of deeds, page 232, &c., and to which complainant for greater certainty respectfully refers and may be produced if complainant shall be so required.

9. That the said Rose Schlichting on the said 18th day of May, 1922, made and executed unto the said Gustav A. Lehr a purchase money mortgage upon said premises to secure the payment of a part of the consideration money mentioned in the said deed to her from the said Gustav A. Lehr, bearing date the same day.

10. That the said mortgage made by the said Rose Schlichting to the said Gustav A. Lehr was dated 10 on the 18th day of May, 1922, acknowledged May 18th, 1922, before Thomas E. Hamilton, a notary public, and recorded in the office of the clerk of the County of Cape May on the 25th day of May, 1922, in Book No. 184 of mortgages, page 141, &c., and to which complainant for greater certainty respectfully refers and may be produced if complainant shall be so required.

11. That the said Rose Schlichting after the exe- 20 cution of the contract made between the said Gustav A. Lehr and Bertha P. C. Lehr, his wife, and complainant, marked "Exhibit A," and the making, execution and record of the deed from the said Gustav A. Lehr and Bertha P. C. Lehr, to the said Rose Schlichting, made, executed and delivered to her certain deed of conveyance to the said lands and premises unto one Thomas Delaney of the City of Wildwood, County of Cape May, and State of New Jersey, but complainant charges that the said 30 Thomas Delaney paid no consideration whatever for said conveyance and had full knowledge of the existence of said agreement marked "Exhibit A," and that said premises had prior thereto been sold and agreed to be conveyed unto complainant and that said conveyance was made subject to the rights of

complainant under the said contract of sale of the said Gustav A. Lehr and Bertha P. C. Lehr, his wife, to complainant marked "Exhibit A."

10 12. That the said deed of conveyance by the said Rose Schlichting to the said Thomas Delaney was dated the 23rd day of May, 1922, acknowledged on the 24th day of May, 1922, before James A. L. Harris, notary public, and recorded in the office of the clerk of Cape May County on the 25th day of May, 1922, in Book No. 365 of deeds, page 180, &c., and to which complainant for greater certainty respectfully refers and may be produced if complainant shall be so required.

13. That the said Thomas Delaney is a married man and that his wife's name is Maude Delaney and that they reside together at Wildwood, New Jersey.

20 14. That the said Thomas Delaney and Maude Delaney, his wife, by indenture of deed without date, but duly acknowledged on the 26th day of May, 1922, before John Bright, a notary public, made, executed and delivered their certain deed of conveyance of the said lands and premises unto the said Rose Schlichting, which said deed of conveyance was duly recorded in the office of the clerk of the County of Cape May on the 11th day of December, 1923 in Book No. 385 of deeds, page 292, and to which complainant for greater certainty respectfully refers and may be produced if complainant shall be so required.

30 15. That the said Thomas Delaney paid no consideration whatever for the said conveyance from the said Rose Schlichting nor did the said Rose

Schlichting pay any consideration whatever for the deed from Thomas Delaney, and Maude Delaney, his wife, but that the said deeds were a part of the attempt of the defendants, Gustav A. Lehr and Bertha P. C. Lehr, his wife, and the said Rose Schlichting to avoid the contract made between the said defendants, Gustav A. Lehr and Bertha P. C. Lehr, his wife, and complainant, marked "Exhibit A," and complainant charges that each of said defendants had full knowledge of the existence of said agreement or contract and that the said premises had prior thereto with such knowledge, been sold and agreed to be conveyed unto complainant and that said conveyances were all made subject to the rights of complainant under the said contract of sale of the said Gustav A. Lehr and Bertha P. C. Lehr, his wife, to complainant, marked "Exhibit A." 10

16. That the said Rose Schlichting has ever since the 18th day of May, 1922, and still does claim to be the owner of said lands and premises agreed to be conveyed unto the complainant under agreement marked "Exhibit A," notwithstanding the said deed by her made to the said Thomas Delaney and that she took the title to said lands and premises with full knowledge and understanding of the said agreement marked "Exhibit A," wherein and whereby the said Gustav A. Lehr and Bertha P. C. Lehr, his wife, had agreed to sell and convey the said lands and premises unto complainant and that complainant had made a payment prior thereto of \$500.00 to the said Gustav A. Lehr on account of the consideration for the conveyance thereof and that said agreement was at that time in full force and effect. 20 30

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

1. That Gustav A. Lehr and Bertha P. C. Lehr, his wife and Rose Schlichting, who are the defendants to this suit, may answer this bill of complaint and each statement therein made.

2. That the defendants, the said Gustav A. Lehr and Bertha P. C. Lehr, his wife, and Rose Schlichting may be compelled by the decree of this Honorable Court specifically to perform the said agreement with complainant and to make a good deed of conveyance to the complainant for the lands and premises herein described and that the said defendants, Gustav A. Lehr and Bertha P. C. Lehr, be decreed to carry out their agreement in every particular.

3. That the said deed made by the defendants, Gustav A. Lehr and Bertha P. C. Lehr, his wife, to the defendant, Rose Schlichting, and the mortgage made by the said Rose Schlichting to the said Gustav A. Lehr and also the deeds from said Rose Schlichting to Thomas Delaney and the deed from Thomas Delaney and Maude Delaney, his wife, to the said Rose Schlichting, all be declared to be invalid and be set aside and for nothing holden and that the said defendants, Gustav A. Lehr and Bertha P. C. Lehr, his wife, and Rose Schlichting be required to make, execute and deliver to complainant a good and sufficient deed in the law in the manner and for the consideration as is provided in the said contract or agreement marked "Exhibit A" upon compliance therewith on the part of complainant.

4. That the defendants, Gustav A. Lehr and Bertha P. C. Lehr, his wife, and Rose Schlichting may

be enjoined from conveying said premises or in any other manner encumbering the said lands and premises.

5. That a writ or writs of subpoena may issue commanding the said defendants, Gustav A. Lehr and Bertha P. C. Lehr, his wife, and Rose Schlichting, to answer this bill of complaint and to abide by such decree as this Court may make in the premises.

6. That complainant may have such further and other relief as the Court shall deem equitable and just.

WM. S. DARNELL,
*Solicitor of and Counsel
with Complainant.*

"EXHIBIT A."

ARTICLES OF AGREEMENT, made this Thirteenth day of April in the year of our Lord one thousand nine hundred and twenty-two (1922 BETWEEN Gustave A. Lehr and Bertha P. C. Lehr, his wife, both of the City of Egg Harbor, in the County of Atlantic and State of New Jersey, Parties of the first part, and David Friedlander, of the City of Camden, in the County of Camden and 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 six thousand dollars (\$6,000.00) to be paid and satisfied as hereinafter mentioned and also in consideration of the covenants and agreements hereinafter

mentioned, made and entered into by the said party of the second part, does agree to and with the said party of the second part, that they the said parties of the first part, will well and sufficiently convey to the said party of the second part, his Administrators, heirs and assigns, by Deed free from all encumbrance on or before the First day of June Anno Domini 1922 all that lot, tract, or parcel of land and premises hereinafter particularly described, situate,
 10 lying and being in the City of Wildwood in the County of Cape May and State of New Jersey, All that Certain Property designated and known as Number 229 East Oak Avenue, Wildwood, New Jersey, consisting of a lot forty feet by one hundred feet (40' x 100'), and cottage erected thereon, together with all furniture therein belonging to said property.

Inventory of furniture to be taken and attached hereto and made a part hereof.

20 All adjustments of taxes, interest, water rents, rents, insurance and all matters effecting said property to be made at time of settlement. This property is sold subject to the occupancy of the present tenant's lease, which expires May 12th 1922.

AND the said party of the second part, for himself, his heirs, executors and administrators, does covenant, promise and agree to and with the said parties of the first part, their Heirs, Executors, Administrators and assigns, that he the said party of the second part, will pay and satisfy or cause to be paid
 30 and satisfied unto the said parties of the first part, the said sum of six thousand dollars (\$6,000.00) as and for the purchase money of the foregoing described land and premises, in the following manner, that is to say:

Five Hundred Dollars (\$500.00) to be paid upon

the signing of this agreement, receipt of which is hereby acknowledged.

Two thousand five hundred Dollars (\$2,500.00) to be paid at time of settlement.

The balance of Three thousand Dollars (\$3,000.00) to be secured to be paid by a first mortgage (purchase money) upon said premises, within three years from the date thereof, together with interest thereon at the rate of six per cent (6%) per annum, payable semi-annually; said mortgage to be made and executed by the said party of the second part to the said parties of the first part on the day of settlement. 10

AND IT IS FURTHER AGREED, by the parties to these presents, that the said party of the second part, his Executors, heirs and assigns, may enter into and upon the said land and premises on the day of settlement and from thence take the rents, issues and profits to his and their use AND for the performance of all and singular the covenants and agreements aforesaid, the said parties do bind themselves and their respective heirs, executors and administrators, and they hereby agree to pay, upon failure to perform the same, the sum of Five hundred Dollars (\$500.00) which they hereby fix and settle as liquidated damages thereof. 20

IN WITNESS WHEREOF, the said parties have hereunto interchangeably set their hands and seals the day and year first above mentioned.

(Signed) Gustav A. Lehr 30

(Signed) Bertha P. C. Lehr

(Signed) David Friedlander

SIGNED, SEALED AND DELIVERED

in the presence of
 G. M. DARE

"EXHIBIT B."

BOND and WARRANT.

KNOW ALL MEN BY THESE PRESENTS, THAT I, David Friedlander, of the City of Camden, County of Camden and State of New Jersey (Hereinafter called the Obligor) am held and firmly bound unto Gustav Lehr of the City of Egg Harbor, County of Atlantic and State of New Jersey (hereinafter called the Obligee), in the sum of Six Thousand Dollars, lawful money of the United States of America, to be paid to said Obligee, his certain Attorney, Executors, Administrators or Assigns; to which payment well and truly to be made I do hereby bind and oblige myself, my Heirs, Executors and Administrators, firmly by these presents.

Sealed with my seal. Dated the 31st day of May in the year of our Lord one thousand nine hundred and Twenty Two.

THE CONDITION OF THIS OBLIGATION IS SUCH, That if the above bounden Obligor his Heirs, Executors or Administrators, or any of them, shall and do well and truly pay, or cause to be paid, unto the above-named Obligee his certain Attorney, Executors, Administrators or Assigns, the just sum of Three Thousand Dollars lawful money aforesaid at the expiration of one year from the date hereof together with interest thereon, payable semi-annually, at the rate of six per cent, per annum, without any fraud or further delay; and shall pay the taxes assessed upon the premises described in an accompanying indenture of mortgage for the first half of every year on or before the twentieth day of May therein, and for the second half of every year on or before the twentieth day of November

therein, and shall produce receipts for the taxes for each half of every year on or before the first day of June and the first day of December respectively therein, and shall also pay all other taxes, municipal assessments or charges in the nature thereof which may be laid or assessed upon the said premises immediately upon their assessment; then the above obligation to be void, or else to be and remain in full force and virtue; PROVIDED, however, and it is hereby expressly agreed, that no credit shall be claimed or allowed on the interest above provided because of any taxes paid upon said premises, and that if at any time default shall be made in the payment of interest as aforesaid, for the space of sixty days after any semiannual payment thereof shall fall due, or in the payment of any tax or charge as aforesaid, as hereinbefore provided, or in such production of tax receipts as aforesaid on or before the day aforesaid, then and in either such case the whole principal debt aforesaid shall, at the option of the Obligee therein named, his Executors, Administrators or Assigns, become due and payable immediately, and payment of said principal debt, and all interest thereon, shall be enforced and recovered at once, anything herein contained to the contrary notwithstanding.

David Friedlander (SEAL)

SEALED AND DELIVERED
IN THE PRESENCE OF

Wm. S. Darnell.

TO ANY ATTORNEY OF ANY COURT OF LAW
IN NEW JERSEY OR ELSEWHERE:

This is to authorize you to appear for me, David Friedlander in any Court of competent jurisdiction, in case of the breach of the condition of the above

Bond, and confess judgment for the penalty therein contained, as of the last or any subsequent term, with costs of suit and release of errors; and this shall be your sufficient warrant.

Witness my hand and seal this 31st day of May Anno Domini one thousand nine hundred and Twenty Two.

David Friedlander (SEAL)

SEALED AND DELIVERED
IN THE PRESENCE OF

10 Wm. S. Darnell.

—
“EXHIBIT C.”

MORTGAGE.

THIS INDENTURE, made the Thirty-first day of May in the year of our Lord one thousand nine hundred and Twenty Two (1922)

20 Between David Friedlander of the City of Camden, County of Camden and State of New Jersey and Emma Friedlander, his wife, of the first part, and Gustav Lehr of the City of Egg Harbor, County of Atlantic and State of New Jersey of the second part: WHEREAS, the said David Friedlander in and by his certain Obligation or writing obligatory, under his hand and seal duly executed, and bearing even date herewith, stands bound unto the said party of the second part, in the sum of Six Thousand Dol-
30 lars lawful money of the United States of America, conditioned for the payment of the just sum of Three Thousand Dollars like lawful money as aforesaid, at the expiration of one year from the date thereof together with interest thereon at and after the rate of six per centum per annum, payable semi-

annually in like lawful money as aforesaid, with any fraud or further delay; and should pay all taxes, assessments and charges in nature thereof that might be laid or levied upon the lands and premises hereinafter described immediately upon their assessment; and conditioned further, that said party of the first part should not apply for any deduction, by reason of this Mortgage, from the taxable value of the lands therein described and embraced; and should produce to the said party of the second part 10 his Executors, Administrators or Assigns, receipts for all taxes, assessments and charges in nature thereof laid or levied upon the said mortgaged premises within sixty days after the same should first become due and payable, and should and would keep the buildings erected and to be erected upon the said lands insured against loss or damage by fire in such safe and responsible stock (non-mutual) Fire Insurance Company or Companies as should be satisfactory to said party of the second part, and en- 20 dorse or assign and deliver all policies and certificates thereof to the said party of the second part as collateral security for the payment of the principal and interest aforesaid, the aggregate amount of which insurance shall not be less than Three Thousand Dollars.

AND PROVIDED FURTHER, however, and it was thereby expressly agreed, that if default should be made in the production in any year of the tax or any other receipts, as therein provided and cove- 30 nated as aforesaid, or in payment of said taxes, assessments and charges as therein agreed as aforesaid, or in keeping the buildings erected upon said lands insured and the policies and certificates thereof assigned or endorsed as aforesaid, or if at any time default should be made in payment of interest

as aforesaid for the space of sixty days after any semi-annual payment thereof should fall due, then and in every such case, whether it be the first or any subsequent default the whole principal debt aforesaid should, at the option of the said party of the second part, executors, Administrators or Assigns, become due and payable immediately, and payment of said principal debt, and all interest thereon, might be enforced and recovered at once, 10 anything therein contained to the contrary notwithstanding.

AND PROVIDED FURTHER, that in default of insurance or production of tax or any other receipts and payment of taxes, assessments and charges as aforesaid, the said party of the second part, his Executors, Administrators or Assigns, should have the option to effect such insurance, and pay such taxes, assessments and charges; and the premium or premiums paid for effecting such insurance and 20 the amount paid for such taxes, assessments and charges as aforesaid, should be added to the principal moneys thereby secured and payable on demand, with legal interest, in like money, as in and by the said recited obligation and condition thereof, relation thereunto being had, may more fully and at large appear.

NOW THIS INDENTURE WITNESSETH, that the said party of the first part, as well for and in consideration of the aforesaid debt or principal sum of Three Thousand Dollars, and for the better securing the payment thereof unto the said party of the second part, his Executors, Administrators or Assigns, in discharge of the said obligation above recited, as for and in consideration of the further sum of one dollar, in specie, well and truly paid to 30 the said party of the first part by the said party

of the second part, at and before the en sealing and delivery hereof, the receipt of which one dollar is hereby acknowledged, have granted, bargained, sold, aliened, enfeoffed, released and confirmed, and by these presents does grant, bargain, sell, alien, enfeoff, release and confirm, unto the said party of the second part, his Heirs and Assigns, that certain lot or parcel of land situate, lying and being in the City of Wildwood, in the County of Cape May in the State of New Jersey and known and designated as 10 Lot Number Sixteen (16) of Block Number Six (6) on a plan of lots of the Wildwood Beach Improvement Company made by E. S. Taylor and Son, Engineers, 1886 and duly filed in the Clerk's office of the County of Cape May aforesaid and is bounded and described as follows to wit; BEGINNING at a point on the northeasterly side of Oak Avenue at the distance of Two hundred and Eighty feet south-eastwardly from the intersection of the northeasterly side of said Oak Avenue with the southeasterly 20 side of Pacific Avenue and extending thence south-eastwardly along the northeasterly side of said Oak Avenue forty feet and at right angles, hereto between parallel lines in length or depth, north-eastwardly one hundred feet. CONTAINING four thousand square feet of land strict measure.

BEING the same premises which Gustav Lehr, Et ux by Indenture bearing even date herewith, granted and conveyed to David Friedlander In fee, and intended to be forthwith recorded. 30

TOGETHER with all and singular, the buildings, improvements, woods, ways, rights, liberties, privileges, hereditaments and appurtenances, whatsoever to the same belonging, or in anywise appertaining, and the reversion and reversions, remained and remainders, rents, issued and profits thereof:

TO HAVE AND TO HOLD the said hereditaments and premises above described and granted, or intended so to be, with the appurtenances, unto the said party of the second part, his Heirs and Assigns, to and for the only proper use, benefit and behoof of the said party of the second part, his Heirs and Assigns forever.

PROVIDED ALWAYS, NEVERTHELESS, that if the said David Friedlander, his Heirs, Executors, Administrators and Assigns, do and shall well and truly pay, or cause to be paid, unto the said party of the second part, or to his certain Attorney or Attorneys Executors, Administrators or Assigns, the aforesaid debt or sum of Three Thousand Dollars on the day and time hereinbefore mentioned and appointed for the payment thereof, together with interest for the same, in like money in way and manner hereinbefore specified therefor, without any fraud or further delay, and without any deduction, defalcation or abatement to be made, for or in respect of any taxes, charges, or assessments whatsoever, together with the taxes, assessments and charges hereinabove mentioned; and shall produce to the said Obligee, his Executors, Administrators or Assigns, receipts for all taxes, assessments and charges laid or levied upon said premises within sixty days after the same shall first become due and payable, and shall have faithfully kept and performed the condition and agreement in said obligation contained and herein recited, as to insuring and keeping insured the said premises; that then and from thenceforth, as well this present Indenture and the estate hereby granted, as the said OBLIGATION above recited, shall cease, determine and become absolutely null and void, to all intents and purposes; anything hereinbefore contained to the contrary thereof in anywise notwithstanding.

AND the said David Friedlander for himself his Heirs, Executors and Administrators does covenant and grant to and with the said party of the second part, his Executors, Administrators and Assigns, that the said party of the first part, his Heirs and Assigns, shall not and will not apply for, or claim any deduction by reason of this Mortgage from the taxable value of said lands and premises; and that the said party of the second part his Executors, Administrators and Assigns, shall and may from time to time, and at all times after default shall be made in the performance of the provisos or conditions herein recited or contained, peaceably and quietly enter into, have, hold, use, occupy, possess and enjoy all and singular the above granted and bargained premises, with the appurtenances with out the let, suit, trouble, hindrance or denial of the said party of the first part, his Heirs or Assigns, or of any other person or persons whatsoever. IN WITNESS WHEREOF, the said party of the first parties hereunto set their hands and seals the day and year first above written.

David Friedlander (SEAL)
Emma Friedlander (SEAL)

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF
Wm. S. Darnell.

STATE OF NEW JERSEY }
CAMDEN COUNTY } SS

REMEMBERED, That on this 31st day of May in the year of our Lord one thousand nine hundred and twenty two before me a Master in Chancery of New Jersey personally appeared David Friedlander and Emma Friedlander who, I am satisfied are the grantors mentioned in the within Mortgage, and I having

first made known to them the contents thereof, they acknowledged that they signed, sealed and delivered the same as their voluntary act and deed. And the said Emma Friedlander being of full age, on a private examination apart from her said husband before me acknowledged that she signed, sealed and delivered the same as her voluntary act and deed, freely, without any fear, threats or compulsion of her said husband. All of which is hereby certified.

10 Wm. S. Darnell
Master in Chancery of N. J.

—
“EXHIBIT D.”

DEED.

20 THIS INDENTURE, made the Thirty First day of May in the year of our Lord one thousand nine hundred and Twenty Two BETWEEN Gustav A. Lehr of the City of Egg Harbor, in the County of Atlantic in the State of New Jersey and of the first part, and David Friedlander of the City of Camden, in the County of Camden and State of New Jersey of the second part:

30 WITNESSETH, That the said party of the first part, for and in consideration of the sum of Six Thousand Dollars lawful money of the United States of America, well and truly paid by the said party of the second part to the said party of the first part, at and before the en sealing and delivering of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, enfeoffed, released, conveyed and confirmed,

and by these presents do grant, bargain, sell, alien, enfeoff, release, convey and confirm, unto the said party of the second part, his heirs and assigns, ALL that certain lot or parcel of land situate, lying and being in the City of Wildwood in the County of Cape May in the State of New Jersey and known and designated as Lot number Sixteen (16) of block number Six (6) on a plan of lots of the Wildwood Beach Improvement Company, made by E. S. Taylor and Son, Engineers, 1886 and duly filed in the Clerk's Office of the County of Cape May, aforesaid and is bounded and described as follows, to wit, BEGINNING at a point on the northeasterly side of Oak Avenue at the distance of Two Hundred and eighty feet southeastwardly from the intersection of the northeasterly side of said Oak Avenue with the southeasterly side of Pacific Avenue and extending thence southeastwardly along the northeasterly side of said Oak Avenue forty feet and at right angles thereto between parallel lines in length or depth, 20 northeastwardly one hundred feet. CONTAINING four thousand (4000) square feet of land strict measure.

BEING the same premises which John F. Reardon, et ux, by Indenture dated October 29th 1914. Recorded January 8th, 1915 in the Clerk's office of Cape May County aforesaid in Deed Book number Pages 159 &c. Granted and conveyed to Gustav A. Lehr, in fee.

30 TOGETHER with all and singular, the buildings, improvements, woods, ways, rights, liberties, privileges, hereditaments and appurtenances, to the same belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and the profits thereof, and of every part and parcel thereof:

AND ALSO, all the estate, right, title, interest, property, possession, claim and demand whatsoever, both in law and equity, of the said party of the first part, of, in and to the said premises, with the appurtenances:

TO HAVE AND TO HOLD the said premises, with all and singular the appurtenances, unto the said party of the second part, his heirs and assigns, to the only proper use, benefit and behoof of the said party of the second part, his heirs and assigns forever.

AND the said Gustav A. Lehr and Bertha P. C. Lehr their heirs, executors and administrators, do by these presents covenant, grant and agree to and with the said party of the second part, his heirs and assigns, that they the said Gustav A. Lehr and Bertha P. C. Lehr their heirs, all and singular the hereditaments and premises herein above described and granted, or mentioned and intended to be so, with the appurtenances, unto the said party of the second part, his heirs and assigns, against them the said Gustav A. Lehr and Bertha P. C. Lehr their heirs, and against all and every other person or persons whomsoever lawfully claiming or to claim the same, or any part thereof, SHALL and WILL and by these presents WARRANT and forever DEFEND.

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

(SEAL)

(SEAL)

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

STATE OF NEW JERSEY }
COUNTY } SS.

BE IT REMEMBERED, that on this day of _____ in the year of our Lord one thousand nine hundred and Twenty Two before me personally appeared Gustav A. Lehr and Bertha P. C. Lehr who, I am satisfied are the grantor mentioned in the above deed or conveyance, and I having first made known to them the contents thereof they acknowledged that they signed, sealed and delivered the same as their voluntary act and deed. All of which is hereby certified.

ANSWER OF GUSTAV A. LEHR AND BERTHA
P. C. LEHR.

(Filed June 17, 1924.)

20

IN CHANCERY OF NEW JERSEY.

Between
DAVID FRIEDLANDER,
Complainant,
and
GUSTAV A. LEHR, et al.,
Defendants. } On Bill, &c.
Answer of Gustav A.
Lehr and Bertha P.
C. Lehr.

30

Gustav A. Lehr and Bertha P. C. Lehr of Egg Harbor City, New Jersey, jointly and severally answering the bill of complaint, say:

1. Paragraph 1 is admitted.
2. Paragraph 2 is admitted.
3. Paragraph 3 is denied.
4. They deny paragraph 4 in said bill and aver the truth to be than on the 13th day of April, 1922, they executed and delivered to said David Friedlander, the complainant, an agreement to sell to him for the sum of \$6,000 the premises described in the bill, payment to be made in the manner therein set forth, which among other things was that complainant was to pay \$500 upon the signing of the agreement. This amount was not paid at the time of the signing of the agreement, nor has it since been paid. On or about May 26, 1922, defendants notified G. M. Dare who was the agent for the complainant in the purchase of the premises, that because of the failure to pay said \$500 they (defendants) had rescinded the contract.
5. Defendants have no knowledge save by the bill of the payments by complainant to G. M. Dare of the sum of \$500 and they aver that if it was paid, said Dare did not pay it to defendants, and they deny that he, Dare, was their agent.
6. They deny paragraph 6 of the bill.
7. They admit the conveyance to Rose Schlichting, but deny that she had knowledge of the alleged agreement between complainant and these answering defendants.
8. They admit paragraph 8 of the bill.

9. They admit paragraph 9 of the bill.
10. They admit paragraph 10 of the bill.
11. They are without knowledge as to the averments in paragraph 11 save by the bill and pray the complainants may prove same.
12. They are without information touching the averments in paragraph 12 of the bill save by the bill and they pray proof thereof.
13. They make the same reply as to paragraph 13 of the bill.
14. They make the same reply as to paragraph 14 of the bill.
15. They make the same reply as to paragraph 15 of the bill except that they deny the alleged attempt on their part to avoid the alleged contract marked "Exhibit "A" to the bill in manner as alleged and aver that they voided the contract for the reason hereinabove stated.
16. They are without knowledge touching the averments in paragraph 16 of the bill.
Further answering the bill of complaint by way of a plea, defendants say that on or about the 8th day of June, 1922, the complainant, David Friedlander, filed his bill in this court in which he made these answering defendants defendants and the object of which bill was to compel specific performance of the agreement set forth in the present bill and marked Exhibit "A."

Defendants filed their answer to said bill denying complainant's right to specific performance for the same reason set forth in paragraph 4. Issue was joined in the cause and the same was referred to his Honor, Robert H. Ingersoll, one of the Vice-Chancellors of this court to hear the same on bill, answer, replication and proofs in open court and thereafter he filed his conclusions denying complainant's right to compel specific performance and thereafter a final decree was entered dated June 11, 1924, as of March 27, 1923, dismissing complainant's bill with costs; a copy of the bill, answer, replication and final decree are hereto and marked Exhibits "A," "B," "C" and "D" respectfully, and defendants appeal to the record of this court for proof thereof and ask to be dismissed with their costs.

20

COLE & COLE,
Solicitors for and
C. L. COLE,
Of Counsel with Defendants,
Gustav A. Lehr and Ber-
tha P. C. Lehr.

EXHIBIT "A."

IN CHANCERY OF NEW JERSEY

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

The complainant, David Friedlander of Westmont, Camden County, New Jersey, respectfully shows:

1. That defendant, Gustav A. Lehr, resides at Egg Harbor in the County of Atlantic and State of New

Jersey, The said Lehr is a married man and his wife's name is Bertha P. C. Lehr, who resides with her husband.

2. On or about the 4th day of April, 1922, defendant Gustav A. Lehr was seized of premises as follows:

All that certain lot or parcel of land situate, lying and being in the city of Wildwood, in the County of Cape May, in the State of New Jersey and known and designated as lot number sixteen (16) of block number six (6) on a plan of lots of the Wildwood Beach Improvement Company, made by E. S. Taylor and Son, Engineers, 1886 and duly filed in the Clerk's office of the County of Cape May, aforesaid and is bounded and described as follows, to wit:

BEGINNING at a point on the northeasterly side of Oak Avenue at the distance of two hundred and eighty feet southeastwardly from the intersection of the northeasterly side of said Oak Avenue with the southeasterly side of Pacific Avenue and extending thence southeastwardly along the northeasterly side of said Oak Avenue forty feet and at right angles thereto between parallel lines in length or depth northeastwardly one hundred feet, CONTAINING four thousand (4000) square feet of land strict measure.

3. The said Gustav A. Lehr being so thereof seized did on or about the said 4th day of April, make, execute and deliver to George M. Dare a certain agreement of agency wherein and whereby he did appoint said George M. Dare as his sole and lawful agent for the sale of the land and premises above described for the sum of \$6000.00.

4. On or about the 13th day of April, the said Gustav A. Lehr being so seized of the above de-

scribed premises, through his agent the said George M. Dare sold and agreed to convey the said premises unto the complainant the said David Friedlander, and did thereupon on the said 13th day of April, together with this wife, Bertha P. C. Lehr, make, execute, and deliver unto the said David Friedlander, their certain agreement in writing wherein and whereby they did, among other things, agree to grant and convey the said lands and premises

10 unto the complainant David Friedlander on or before the first day of June, 1922, upon the payment to them of the sum of \$6000.00 in the manner following; that is to say \$500.00 upon signing and execution of said agreement, the receipt of which was thereby acknowledged and \$2500.00 to be paid at the time of settlement with the balance of \$3000.00 to be secured to be paid by a first mortgage (purchase money mortgage) upon said premises within three

20 years from the date thereof together with interest thereon at the rate of six per cent per annum, payable semi-annually, said mortgage to be made and executed by complainant to the said defendants on the day of settlement, a copy of which said agreement is hereto annexed, and made a part hereof and marked Exhibit A," to which for greater certainty complainant hereby refers.

5. On said 13th day of April complainant paid to the said defendant Gustav A. Lehr, by and through his agent the said George M. Dare, the sum of

30 \$500.00 on account of the purchase price of the said lands and premises pursuant to the said agreement of sale above mentioned and marked "Exhibit A."

6. On the 31st day of May, 1922, complainant, pursuant to the said agreement tendered to the said Gustav A. Lehr, at his home in Egg Harbor, Atlan-

tic County, New Jersey, the sum of \$2500.00 in legal tender money of the United States of America and presented to him with the said cash, the bond of complainant in the sum of \$6,000.00 conditioned for the payment of \$3,000.00 at the expiration of one year from the date hereof, said bond being dated the 31st day of May, 1922, with the usual tax clause and other covenants therein set forth and on the margin of said bond were attached United States

10 Documentary stamps of value of \$1.50 duly cancelled in accordance with the requirements of the United States law in that behalf and a copy of which said bond is hereto annexed marked "Exhibit B," and to which for greater certainty complainant hereto refers; and complainant did at the same time and place, tender to the defendant a certain mortgage bearing date the 31st day of May, 1922, made and executed by the complainant and Emma Friedlander, his wife, to secure the payment named in

20 said bond last above mentioned, upon the lands and premises hereinabove described and a copy of which said mortgage is hereto annexed and made a part hereof and marked "Exhibit C." and to which for greater certainty complainant hereto refers and complainant did also at the same time and place tender to the said Gustav A. Lehr, a certain deed of conveyance, drawn and ready for execution, bearing date the said 31st day of May, 1922, for said lands and premises to be made unto the complainant and a copy of which said deed is hereto annexed and

30 made a part hereof and marked "Exhibit D." The said defendant Gustav A. Lehr, and Bertha P. C. Lehr, his wife, notwithstanding said tender of cash, bond and mortgage and of said deed to be executed as aforesaid by the said defendants refused to com-

ply with their said agreement as hereinabove mentioned and marked "Exhibit A" and refused to make the said conveyance, refused to accept the said cash and bond and mortgage although legally tendered by the said complainant to the said defendants and refused to carry out their agreement and they still do refuse to carry out the said agreement of sale or any part thereof although thereby legally required so to do by the said agreement. The complainant stands ready and willing and is able to perform his part of the agreement and has always stood ready and willing to carry out his part of the agreement and is now willing and ready to and anxious to perform his part of the agreement.

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

1. That Gustav A. Lehr and Bertha P. C. Lehr, his wife, who are the defendants to this suit, may answer this bill of complaint and each statement therein made.

2. That the defendant, the said Gustav A. Lehr, and Bertha P. C. Lehr, his wife, may be compelled by the decree of this honorable court specifically to perform the said agreement with complainant and to make a good deed of conveyance to the complainant for the lands and premises herein described and that the said defendants be decreed to carry out their agreement in every particular;

3. That the defendants may be enjoined from conveying said premises or in any other manner encumbering the said lands and premises;

4. That a Writ of subpoena may issue commanding the said defendants to answer this bill of complaint and to abide by such decree as this court may make in the premises.

Wm. S. Darnell
Sol'r of and counsel with Compl't

State of New Jersey }
County of Camden } SS

David Friedlander being duly sworn according to law on his oath says that he is the complainant in the above cause and that he has read the foregoing complaint and that the matters and things therein set forth, insofar as they pertain to his own acts, are true and insofar as they pertain to the acts of others, he believes them to be true.

David Friedlander. 10

Sworn and subscribed to before me this 7th day of June A. D. 1922

Mark F. Casselman
Attorney at Law of New Jersey
(Exhibit A. B. C. and D. Omitted.)

EXHIBIT "B."

20

IN CHANCERY OF NEW JERSEY.

Between
DAVID FRIEDLANDER,)
Complainant,) On Bill for Specific
and) Performance.
GUSTAV A. LEHR, et al.,) Answer.
Defendants.)

36

Gustav A. Lehr and Bertha P. C. Lehr, his wife, of Egg Harbor City, New Jersey, answering the bill of complaint, say:

1. They admit paragraph 1 of the complaint.
2. They admit paragraph 2 of the complaint.
3. They deny paragraph 3 of the bill of complaint.
4. They deny paragraph 4 of the bill and aver the truth to be that on the 13th day of April 1922, they executed and delivered to David Friedlander, the complainant, an agreement to sell to him for the sum of \$6,000 the premises described in the bill, payment to be made in the manner therein set forth, which among other things was that complainant was to pay \$500 upon the signing of the agreement. This amount was not paid at the time of the signing of the agreement, nor has it since been paid. On or about May 26, 1922, defendants notified G. M. Dare who was the agent for the complainant in the purchase of the premises, that because of the failure to pay said \$500 they (defendants) had rescinded the contract.
5. Defendants have no knowledge save by the bill of the alleged payments by complainant to C. M. Dare of the sum of \$500 and they aver that if it was paid said Dare did not pay it to defendants, and they deny that he, Dare, was their agent.
6. They deny paragraph 6 of the bill.
7. Further answering the bill of complaint, defendants say that after the rescission of said contract by them as averred they sold the property described in the bill to one Rose Schlichting of Wildwood, New Jersey.

C. L. Cole
Solicitor for Defendants.

30

EXHIBIT "C."

IN CHANCERY OF NEW JERSEY.

Between	} On Bill for Specific Performance. Replication.	10
DAVID FRIEDLANDER,		
Complainant,		
and		
GUSTAV A. LEHR, et al.,		
Defendants.		

The Replication of David Friedlander, the complainant, to the answer of defendants.

The Complainant joins issue on the Answer of the Defendants.

William S. Darnell
Solicitor for Complainant.

20

EXHIBIT "D."

IN CHANCERY OF NEW JERSEY

Between	} On Bill for Specific Performance. Final Decree.	30
DAVID FRIEDLANDER,		
Complainant,		
and		
GUSTAV A. LEHR, et al.,		
Defendants.		

This cause coming on to be heard on bill, answer, replication and proofs in open court in the presence of William S. Darnell, solicitor for complainant, and C. L. Cole, of Cole & Cole, solicitors for answer-

ing defendants, and the court having read and considered the pleadings and having heard and considered the proofs and argument of respective solicitors, and being of the opinion that the prayer of the bill should be denied, specific performance refused and the bill dismissed.

IT IS on this eleventh day of June 1924 as of March 27, 1923, on motion of Cole & Cole, solicitors of complainant,

10 ORDERED that the bill be and the same is dismissed, with costs.

PETITION.

(Filed March 3, 1925.)

IN CHANCERY OF NEW JERSEY.

20

Between DAVID FRIEDLANDER, Complainant, and GUSTAV A. LEHR, <i>et al.</i> , Defendants.	}	On Bill, &c. Petition.
--	---	---------------------------

30

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

The petition of David Friedlander respectfully shows that Gustav A. Lehr has departed this life, testate, and under the last will and testament of

the said Gustav A. Lehr, Charles Lehr was duly appointed executor of the estate of the said Gustav A. Lehr, and has taken upon himself the burthen of administering said estate; that the said Charles Lehr has consented to become substituted as a party defendant in the place and stead of the said Gustav A. Lehr in the above entitled cause.

Your petitioner, therefore, prays that your petitioner be permitted to amend the bill of complaint filed in the above entitled cause, by substituting the name of Charles Lehr, executor under the last will and testament of Gustav A. Lehr, deceased, in the place and stead of Gustav A. Lehr.

And your petitioner, therefore, prays, &c.

DAVID FRIEDLANDER,
Petitioner.

20

30

tav A. Lehr, deceased, as defendant, in the place and stead of Gustav A. Lehr.

E. R. WALKER,
C.

I hereby consent to foregoing order.

COLE & COLE,
Solicitors Charles Lehr.
Exr.

10

ORDER TO AMEND.

(Filed December 31, 1925.)

IN CHANCERY OF NEW JERSEY.

20

Between

DAVID FRIEDLANDER,
Complainant,
and
GUSTAV A. LEHR, *et al.,*
Defendants.

On Bill, &c.
Order to Amend

30

This matter being opened to the Court by William S. Darnell, of counsel with the complainant, and it appearing that the defendant, Gustav A. Lehr, has

died and that Charles Lehr has been duly appointed executor of the last will and testament of the said Gustav A. Lehr;

It is on this 31st day of December, A. D. one thousand nine hundred and twenty-five (1925) on motion as aforesaid.

Ordered, that the said complainant have leave to amend the said bill of complaint in this cause by substituting the said Charles Lehr, executor of the last will and testament of the said Gustav A. Lehr, deceased, as a defendant in this cause, in the place and lieu of Gustav A. Lehr, deceased.

E. R. WALKER,
C.

This above order is hereby consented to
COLE & COLE,
Solicitor for Defendants. 20

30

ORDER.

(Filed September 23, 1925.)

IN CHANCERY OF NEW JERSEY.

10

Between DAVID FRIEDLANDER, <i>Complainant,</i> and GUSTAV A. LEHR, <i>et al.,</i> <i>Defendants.</i>	}	On Bill, &c. Order.
---	---	------------------------

20

This matter being opened to the Court by William S. Darnell, of counsel with the complainant, and it appearing that process of subpoena to appear and answer, has been duly issued and returned served upon the defendant, Rose Schlichting, and that she has not filed any plea, demurrer or answer to the complainant's bill within the time limited by law, or at any other time:

30 And it further appearing that the complainant has, for more than four months neglected to take a decree *pro confesso* against the defendant, Rose Schlichting, after he was entitled to such decree:

It is on this 28th day of September, in the year of our Lord one thousand nine hundred and twenty-five (1925) on motion of William S. Darnell, of coun-

sel with complainant, ordered that the said defendant, Rose Schlichting, file her answer to said bill within ten days after service upon her, or her solicitor, of a copy of this order, or that said bill be taken as confessed against her.

E. R. WALKER,
C.

ANSWER OF ROSE SCHLICHTING.

10

(Filed October 6, 1925.)

IN CHANCERY OF NEW JERSEY.

Between DAVID FRIEDLANDER, <i>Complainant,</i> and GUSTAV A. LEHR, <i>et al.,</i> <i>Defendants.</i>	}	On Bill, &c. Answer of Rose Schlichting.	20
---	---	--	----

Rose Schlichting, one of the defendants, of Egg Harbor City, New Jersey, answering the complaint, 30 says:

1. Defendant says that she has no information save by the bill of complaint touching the agreement referred to in the bill and the various transactions

thereafter alleged to have taken place between complainant and Gustav A. Lehr and wife, and she cannot, therefore, either admit or deny the same.

2. Concerning the allegations in paragraph 11 of the complaint, defendant says that the conveyance from her to Thomas Delaney of the premises described in the bill was in good faith, for a valuable consideration, and a genuine transaction without any knowledge on her part of any rights of the complainant against the said Lehr or her at the time she made said conveyance.

3. Defendant says that she has no interest whatever in the land described in the bill, having conveyed the same as stated in paragraph 11 of the bill.

COLE & COLE,
Solicitors for Rose Schlichting, Defendant.

20

30

REPLICATION.

(Filed October 19, 1925.)

IN CHANCERY OF NEW JERSEY.

Between

DAVID FRIEDLANDER,
Complainant,

and

GUSTAV A. LEHR, *et ux.,*
et al.,

Defendants.

Replication.
On Bill, &c.

10

20

The complainants join issue on the answers of the defendants.

WM. S. DARNELL,
Solicitor of Complainant.

30

dred.—“He was his general agent for the care of his real estate holdings and in the face that no actual payment was made by Friedlander he was bound to see that his agent made the payment to Lehr which he, Friedlander says he authorized Dare to make. While it is clear under other circumstances, Friedlander would be under no obligation to see to the application of the money paid on account of the consideration of an agreement of sale, his knowledge of the existing anomalous position of Dare put him upon guard and imposed upon him the duty”—
 10 then you go on and speak about the other circumstance of the party not being brought in. In that situation we have the decree. How could there be a more comprehensive decree than that? If they had reserved that and put it upon the ground that this third party wasn't here, perhaps they could revive this case, but upon the ground, having heard everything there was in the case, your Honor, said
 20 Errors and Appeals affirmed the decree. I can't imagine how this case can be re-tried.

Mr. Bourgeois: If your Honor please, you can't get clear of a contract so easily as that. A party can't get clear of a contract simply by transferring the property to somebody else and that person doesn't place it of record so it isn't known whether he is a party or not. What your Honor stated with regard to the agency was clearly obiter, because it
 30 was not necessary for that decision because your Honor could not have made a decree on that basis, final decree on that basis because of the fact that the parties who had the title to the property was not a party to the suit. Your Honor was obliged to dismiss that bill because the proper party was not a

party to the suit and when it went before the Court of Errors and Appeals they appreciated that situation and they decided upon that point, not upon the question of what was not necessary to the decision.

The Court: What was the Court of Errors' opinion?

Mr. Cole: Question was whether the decree shall
 10 be affirmed or reversed. The Court of Appeals saw fit to put upon another ground, decree could not stand.

Mr. Bourgeois: Could not have made any other decree. They were not entitled to have the decree enforced. What decree could you have made? He would say that in his opinion but wouldn't say it in the decree.

Mr. Cole: He would say it in the decree if he
 20 wanted to reserve the right or without prejudice to institute another bill.

Mr. Bourgeois: If your Honor please, if there is any question about it, we will discontinue this suit as to the Lehrs and let it stand against the daughter-in-law alone. I say the Lehrs are proper parties. They are not necessary parties to this
 30 suit.

The Court: Certainly so far as Gustav A. Lehr and Bertha C. Lehr are concerned, this matter is res adjudicata and cannot proceed against them.

Mr. Bourgeois: You may do so.

Mr. Cole: Please your Honor, they are the parties to this agreement. If they are dismissed there can't be a decree against them. How can this contract be brought in again?

The Court: I can't rule upon that at the present time. If complainants deem they have a case against these people they may proceed. I base that almost entirely upon the opinion of the Court of Errors
 10) sustaining my action in refusal to dismiss without prejudice against these parties and also to my refusal to permit the amendment after the case had been tried. This entire matter has been before me before, in fact, or another motion. It is dismissed then so far as the Lehr's are concerned.

GEORGE M. DARE, sworn for complainant.

20 Direct examination.

By Mr. Bourgeois:

Q. Mr. Dare, you live where?

A. Wildwood, New Jersey.

Q. What is your business?

A. Real estate.

Q. Were you in the real estate business in 1922
 in Wildwood?

30 A. Yes, sir.

Q. Do you know Gustav A. Lehr?

A. Yes, sir; I did.

Q. I show you a memorandum and ask you if that
 is his signature?

A. Yes, sir.

Q. Was that paper given to you?

A. Yes, sir.

Mr. Cole: I want to object to the offer of this paper, please your Honor, upon the broad ground that no evidence can be introduced in support of this bill upon the ground that already the question has been disposed of by the former adjudication, and may we now regard the file in the other case in evidence? I will put it in as part of my case, but I
 10) take it it is plainly here now. I ask you whether you consent to the entire file in the previous case, which we plead in our answer, be considered in evidence?

Mr. Bourgeois: I can't tell, if your Honor please. I don't know about that. I wasn't in the case before and I don't know whether there is any part of that answer or case that would not be relevant in regard to this woman or not. 20

Mr. Cole: Subject to relevancy then?

Mr. Bourgeois: Subject to relevancy, I have no objection to going in, but not yet.

Mr. Cole: Only thing is it affords some basis for my present objection. Otherwise probably would not until it was in.

Mr. Bourgeois: It is too deep for me. I don't
 understand it. 30

(Paper admitted and marked Exhibit C1.)

Q. Mr. Dare, tell me the circumstances which led up—I mean the negotiations or conversation, what-

ever it was with Mr. Lehr that led up to the making of this agreement of agency on April the fourth, 1922?

Mr. Cole: That is objected to on the ground it is in writing and speaks for itself. Mr. Lehr is dead.

The Court: I will permit it subject to being stricken later. I will permit it.

10 A. About six or seven months after that agreement was signed of agency I wrote Mr. Lehr a letter at Egg Harbor City asking about a certain property, if that property—

Mr. Cole: Then I ask for the letter. Certainly he can't testify to the contents of the letter. We haven't any notice to produce and we haven't it.

Q. Can't tell what was in the letter?

20 A. On that date Mr. Lehr came in my office and said, in reply to my letter of six months before, and he told me that he had concluded to sell that property and asked me to list it as sole agent and to sell it or rent it. I asked him what he wanted for it and he said "What do you think it is worth?" I told him and we arrived at a point that he put a price on it of sixty-five hundred dollars and asked me at that time if I would give his daughter-in-law, Mrs. Rose Schlichting, the preference of buying or renting that property.

30 Q. At the time he asked you that had he then signed this agreement of agency?

A. He did sign it, yes, sir; I was to give her first chance on the property.

Q. Now tell me what you did?

A. Then Mr. Lehr and I—you mean what he said to me?

Q. I want to know what you did and what was said.

A. He said to me that the property had not been paying him anything and that his daughter was living in it and he said he wanted to dispose of it, that he didn't get any rent sufficient to warrant him holding it and that he was tired of carrying that burden. After he had signed the agreement and we agreed upon a price of commission, Mr. Lehr and I walked over to this number, this particular prop- 10 erty, and as we entered he left me and went one side and advised his daughter, when I was one side, we separated, I going on the ocean side or the right-hand side of the room and he on the left, and Mrs. Schlichting said something to him. He said "I have made Mr. Dare the sole agent of this property." He didn't seem to want to have anything to say about it and then I told her that I had charge of the property and that I would either sell it or rent it to her. We were there quite some time and then we 20 went to the Brighton Hotel for dinner.

Q. Who?

A. Mr. Lehr and I, that was, we took dinner and he left me in the afternoon; that was about all that occurred that day.

Q. That is the fourth of April. Now after you had gotten the agreement of agency what did you do towards finding a purchaser?

A. I was first under obligation to go and see Mrs. Schlichting, which I did, told her that she had the 30 chance to either rent or buy this property in preference to anyone else. Being central property I talked it to a few people—

Mr. Cole: I object to all this conversation out of the presence of Mr. Lehr.

The Court: Yes.

Mr. Bourgeois: If your Honor please, this is in the presence of the defendant, talking to the defendant now.

The Court: The defendant? I will permit it.

Q. You are repeating about talking to Mrs.

10 Schlichting, go on and say what?

A. Well, I went and seen her about the property and she wanted to buy or rent it.

Q. If she wanted?

A. Yes, sir.

Q. What did she say?

A. Well, she—I asked Mr. Lehr—

Mr. Cole: What did she say?

20 Q. What did Mrs. Schlichting say?

A. On the buying or the rental?

Q. Yes.

A. Why she wanted me to, after she had decided that she couldn't buy, she wanted to lease it and I had told her the price that I wanted for rent of six hundred and fifty dollars, I believe the rental price was on it, and then about a few days afterwards she had me prepare a lease, I cut the price to six hundred dollars for her, I prepared the lease to rent it to her, which I now have.

30 Q. Did she sign the lease?

A. No, sir.

Q. All right; now then what, after you went and saw her, did you do in an effort to sell the property?

A. Well, was several people came in the office and I central property, I tried to sell it, I just can't recall

who offered it to, I first offered it to Mrs. Schlichting, I can't remember just who the man was, it seems I offered it to a man by the name of Aneer, I am not positive of that.

Q. Finally you made an offer to somebody who did accept it?

A. I did.

Q. To whom?

A. I made an offer to Mr. Friedlander, David Friedlander. 10

Q. When was it that your brought the matter to his attention with relation to the time of the date of the agreement?

A. Well, I couldn't say whether it was two or three days after, I think it was the following Sunday that I offered him this property at sixty-five hundred dollars.

Q. What was the result of that?

A. The result was we dickered on the price. He wanted it for less. 20

Mr. Cole: What was the result, the final result?

A. The result was that he offered me six thousand dollars.

Q. Now at that time had you had any previous conversation with Mr. Friedlander about this property?

A. Not to my knowledge, no, sir.

Q. Had he asked you to go and get this property from Mr. Lehr? 30

A. Did he ask me to go and get it?

Q. Yes.

A. He made me an offer.

Q. I don't mean that; I mean before Mr. Lehr gave you the agreement on April the fourth?

A. No, sir; he didn't ask me to go and get it.

Q. At the time you got the agreement from Mr. Lehr did you know or have any reason to believe that Mr. Friedlander would purchase that property?

A. Not any more than anyone else. It was a property I had for sale sixty-five hundred dollars. He might be a customer. I had sold him several properties.

Q. I didn't mean that. I meant whether there was any particular—

10 A. No, I would have sold it to anybody.

Q. Now after Mr. Friedlander made the offer of six thousand dollars what did you do about it?

A. After Mr. Friedlander made the offer of six thousand dollars I said "Give me a check for deposit and I will submit it. Money always means business" and I had by Mr. Lehr's thought—I thought there might be a possibility and I would take the deposit of five hundred dollars, which I told him, if he would make an offer and submit a check. He says "You have got a check on hand on that other property." I had a check on the property, I think it was at Wildwood Crest, I am sure Wildwood Crest, he said "Use that as deposit." I had other moneys on hand from rentals of Mr. Friedlander as well as I rented his houses. I never did sell but only for the rentals, and then I went to Camden, I think on the—

20 Q. What did you do with the check? Did you deposit it or what did you do with it?

30 A. The check had been in the safe for ten days or more, maybe. I deposited the check.

Q. Then you went to Camden?

A. I went to Camden.

Q. What did you do when you went to Camden?

A. I called Mr. Lehr up on the telephone and had a lengthy conversation.

Q. Why did you go to Camden?

A. I have a temporary office last ten years in Camden, number five Haddon Avenue where I have a desk.

Q. Were you at your office at the time you called him?

A. I was.

Q. What took place?

A. I talked with Mr. Lehr that night about half hour, at least, on the 'phone. I said "I have an offer for six thousand dollars your terms." Well, he said "I would be satisfied to take six thousand dollars provided Mrs. Lehr is satisfied and I will send her to you tomorrow and she will give you our answer." and I went to Wildwood the next morning, and I judge about nine or ten o'clock the next day Mrs. Lehr and her daughter-in-law—

Q. That is the defendant, Mrs. Schlichting?

A. Yes, came to my office.

Q. About what time in the morning you say?

A. I think it was around ten o'clock, might have been half-past nine, might have been half-past ten, around ten o'clock, they came to my office and they talked between themselves and they talked to me and they walked down the street and after walking down the street Mrs. Lehr came back and decided she said she had decided that she would sell.

Q. Was Mrs. Schlichting with her when she decided she would sell?

A. I just can't say whether she was in the office at that time or not.

Q. Now, after she decided to sell, what did you do?

A. Well, I said "If you say you will sell, I will prepare the articles of agreement and I will be over to see you. When are you going home?" She says

“Tomorrow morning.” I said “I am going to Camden tonight,” and I suppose a half an hour after she had decided to sell we had started to write the articles of agreement. This was on the twelfth and I was going to Egg Harbor City, where Mr. Lehr lived, on the thirteenth. I went to Camden in the afternoon of the twelfth and in the morning I went to Egg Harbor City where Mrs. Lehr was to come over in an automobile and meet me, which she did, we both met at the house, and Mr. Lehr signed the articles of agreement and Mrs. Lehr signed the articles of agreement.

Mr. Bourgeois: I offer this agreement in evidence.

(Agreement admitted and marked Exhibit C2.)

Q. After you got the agreement of sale executed what did you do with regard to Mr. Friedlander's signature?

A. I went to Mr. Friedlander in his Philadelphia office and got him to sign the agreement.

Q. When about was that?

A. It wasn't that day, Mr. Bourgeois. I had to go to Atlantic City.

Q. Did you then go back to Wildwood?

A. Yes, sir.

Q. Now after you had this agreement signed did you have a conversation again with Mrs. Schlichting?

A. Many conversations, yes, sir.

Q. In which this agreement, this signed agreement came up between you?

A. Yes, sir.

Q. Will you state to the Court just what it was she said and you said?

A. Well, in the first place she wanted to buy that property and she wondered what Mr. Friedlander would take for his agreement. She called me once on the 'phone from Egg Harbor City.

Q. Now when was that with relation to the signing of the agreement?

A. When was it?

Q. Yes.

A. It was after the signing of the agreement.

Q. Can you tell me how long after that, about?

A. Don't seem to me was over two or three days.

Q. She called you from Egg Harbor City; and what did she say to you then?

A. She asked me the lowest price—we had talked about price before and I couldn't tell her. She called me from Egg Harbor City. I then had the price and I told her what Mr. Friedlander would take for his agreement, which was seven thousand dollars.

Q. And what did she say?

A. Well, she didn't say anything whether she would buy or whether she wouldn't over the 'phone because she lived in Wildwood and then she came to my office when she came home.

Q. What did she say when she came to your office?

A. She said she would like to buy the property; she would like to buy the property if she was able to buy it.

Q. If she was or was able, which?

A. She would like to buy the property if she could raise the money, she would like to own it.

Q. What was the result of her statement to you that she would like to buy if she was able to raise the money?

A. She then came to the conclusion that she wouldn't buy it and she wanted to lease it and I

seen Mr. Friedlander then about what he wanted for it. Mr. Lehr had said six hundred and fifty. Mr. Friedlander says "Mr. Dare, she is a widow and she has lived there, give it to her for six hundred dollars" and then I went and told her that he would give it to her for six hundred dollars at the year's rent.

Q. And what did she say?

A. Well, she thought she was going to take it and agreed to give me three hundred dollars as a deposit
10 and to collect the summer rents, I don't remember how the other was to be, at the time, was to give me three hundred dollars deposit, I went to her house two or three times but she didn't give me the three hundred dollars; then I prepared the lease on the tenth day of May.

Q. Between whom?

A. Between David Friedlander and Mrs. Rose Schlichting.

Q. And what did you do with that?

A. I took that lease over to Mrs. Schlichting and
20 I took, I think I took Miss Grier as a witness, to witness it, I didn't have any witness and she didn't sign it and then on the fifteenth of May, four days later, she advised me that she wouldn't sign any lease, nor, she wouldn't either buy nor sign until Mr. Friedlander had settled for the property.

Q. Had settled for the property?

A. Had settled for the property.

Q. This was?

A. On the fifteenth day of May, this statement.
30

Q. Have you prepared the lease?

A. I have, yes, sir. There is three copies. I make three, here is the appointment I have.

Q. What is this?

A. I have an appointment here 1.30 P. M., appointment with Mrs. Schlichting.

Q. On what date?

A. May the fifteenth. Pardon me just a minute. I said May fifteenth. This note reads 1.30 P. M., I don't think that was the one had the appointment that day or May fifteenth was my last appointment.

Mr. Bourgeois: I want to offer in evidence one of the unsigned copies of this lease.

(Copy admitted and marked Exhibit C3.) 10

I also offer in evidence unsigned deposit slip for three hundred dollars in connection with the lease.

Mr. Cole: I object to it. I don't see how it can bind.

The Court: How is that admissible?

Mr. Bourgeois: If your Honor pleases, part of the
20 same transaction is all.

The Court: I will permit it.

(Deposit slip admitted and marked Exhibit C4.)

Q. Now during all this time who was in possession of the property?

A. Mrs. Schlichting.

Q. During the time—did you see her any other
30 time after the fifteenth of May?

A. Fifteenth of May?

Q. Yes, any time after that time after you went there with the lease and she didn't sign, did you see her after that time at all?

A. After that she gave me her final decision?

Q. I don't know; you took this lease there, you testified you took the lease there the fifteenth?

A. Yes, that is the last time I took it.

Q. What did she say about that? She told you she wouldn't until after the property was settled for?

A. Yes, that was the last statement.

Q. Is that the last time you saw her about it?

A. So far as I can remember it is.

Q. At that time or any other time did she say she was going to buy the property?

10 A. She had been in my office several times.

Q. Was going to buy it from Mr. Lehr, did she say anything about a conveyance?

A. That she was going to buy it of Mr. Lehr?

Q. Yes.

A. No, sir. As I recall her last statement was that she wouldn't either buy nor lease it until it had been settled for.

Q. Now after that time what did you do in connection with the purchase of the property? The settlement was to be on or about the first of June, as I recall.

A. Well, I wrote Mr. Lehr, Mr. Hildreth called on me for the papers.

Q. Who?

A. Mr. Hildreth, who was representing Mr. Friedlander to make settlement, called on me for the deeds and any searches that he might have. I wrote to Mr. Lehr a couple of letters asking if he would forward me the old deed and any searches he may have, and I got no reply and I telephoned him or attempted to on two occasions and I couldn't seem to reach him on the 'phone. I thought it was singular because he was a director of the company and had good service in his house and I talked with him and I couldn't get him. I said something, "I have got to do some-

thing" and then I turned, then on the twenty-fifth, I think twenty-fifth, I registered him a letter and drew him a check.

Q. A letter and what?

A. I drew him a check for \$225 for the balance of the five hundred dollars deposit which I had received and which he authorized me to deduct or he agreed to pay, I will say. I don't know the word deduct, but he agreed to pay \$275 commission. I had five hundred dollars. Sent him my check for \$225 which is my custom, registered, and then requested him again to send me the papers as the attorney wanted to have further searches of the property and prepare for settlement.

Q. What happened then?

A. Well, he wrote me a letter and said—

Mr. Cole: Where is it?

Q. Have you got the letter?

A. You have it here, I think—stating he wouldn't sell the property.

Mr. Cole: Wait a moment.

Q. He wrote you a letter?

A. It is there.

Q. I show you a letter bearing date May twenty-sixth, 1922, signed by Gustav A. Lehr and ask you if that is the letter you refer to?

A. That is the letter, yes, sir. Before receiving that letter—

Mr. Cole: Pardon me. No question pending.

Mr. Bourgeois: I will offer that in evidence.

(Letter admitted and marked Exhibit C5.)

Q. Had Mr. Lehr ever made any demand upon you for payment to him of that deposit?

A. The only thing he did do—no, sir, no demand. He sent me the tax receipts and bills, I presume for me to pay.

Q. He what?

A. He sent me some tax receipts and all insurance
10 policy which is expiring on this property and which I renewed for him.

Q. Where are those tax receipts and insurance policy?

A. The insurance policy is about expiring.

Q. I show you a tax bill, general tax receipt, tax bill?

A. Tax bill, yes, sir.

Q. I show you tax bill for 1922 and ask you if that is what you refer to?

20 A. This is one of them, and also a notice of insurance.

Q. I hand you—

Mr. Bourgeois: I offer in evidence this tax notice to Mr. Gustav Lehr. There are two of them together one for—no, it is a duplicate, isn't it, for \$88.68.

(Tax bill admitted and marked Exhibit C6.)

30 Q. I also show you notice of insurance premium and ask you if that is the notice to which you refer?

A. This is the notice. I renewed that policy.

Q. Did you renew it for him?

A. I renewed it for Gustav A. Lehr because the title then was in his name.

(Insurance notice offered, admitted in evidence and marked Exhibit C7.)

A. Policy is in my office today.

Q. When did you get—you got this—when did you get these bills that he wanted you to pay with relation to the sending of the check on the twenty-fifth of May, before or after?

A. Before.

Q. Before?

A. Yes, sir.

Q. Now what was done after you received your check back again on the twenty-sixth?

A. Yes, sir.

Q. What was done with regard to the purchase after that, what did you do?

A. Well, I notified Mr. Friedlander.

Q. Then what was done?

A. Around the first of June I think it was, the thirty-first of May, I was asked to go to Egg Harbor City. 20

Q. By whom?

A. By Mr. Hildreth.

Q. What was the object of going to Egg Harbor City?

A. They wanted to make settlement for this property.

Q. Did you go?

A. I did.

Q. Who else went?

A. There was Mr. Hildreth Mr. Llewellyn Hil- 30 dreth, Mr. Max Friedlander, and a man by the name of Lewis Sauber.

Q. What did you do when you got there? See Mr. Lehr?

A. I did, yes, sir.

Q. What did you do?

A. Walked in, rang his bell, a young man came to the door I learned afterwards was his son and he said his father was in the back yard and he would call him for me. He came in the hall. I am speaking now of Mr. Lehr and I shook hands with him, handed him a cigar and told him that we were here for settlement of the property and he seemed very much pleased to see me, standing on the right side of the hall as we entered, left side of the hall a door
10 opened and Mrs. Lehr came in, she stated "Don't sign those papers, give a deed, give any deed, the property is sold, we ain't going to sell the property, the property is sold, get a lawyer, best you can get is five hundred dollars." She was very much upset.

Mr. Cole: She fixed the price, did she?

20 A. "Best you can get is five hundred dollars" liquidated damages I presume she referred to or something like that, I don't know, hands up in the air, I presume, "best you can get is five hundred dollars. Go get your lawyer." Well, she didn't stay long. She went back. And I said to Mr. Lehr, who calmed himself and put his hands down and he says "Mr. Dare, I am sorry that I can't sign that paper. I am sorry I can't sign the deed." I said "I guess you are" and I felt sorry for him.

30 Q. Now what did the other people do who were there?

A. Well, Mr. Hildreth, he offered Mr. Lehr the money, twenty-seven hundred twenty-five dollars legal tender, a mortgage and a deed first.

Q. How was this twenty-seven hundred twenty-five dollars made up? Where did it come from?

A. Came from twenty-five hundred of it came from Philadelphia or Camden.

Q. From Mr. Friedlander?

A. Mr. Friedlander and two hundred and twenty-five was my certified check.

Q. That was the \$225 that you had tendered him once before, is that the idea, money that you had in your hands over and above the—

A. No, \$225 in money, that is right.

Q. Then that \$225 came from you, was the balance
10 of the five hundred dollars, is that the idea?

A. He agreed to pay me two hundred and seventy-five if you will notice there.

Q. I understand, I just want to know how it was made up?

A. Yes, \$225 was the balance after my commission.

Q. When he was tendered the money what did he say?

A. "I can't sign it," to Mr. Hildreth. 20

Q. Then what did you do?

A. Mr. Hildreth then passed the money, deed and mortgage over to me and I handed it to him, "Mr. Dare, I can't take it," and he put his hands down.

Q. I show you what purports to be a new deed from Mr. Lehr to Friedlander bearing date the thirty-first day of May, 1922, and ask you if that is the deed that you have spoken of?

A. Yes, sir; I believe that is the deed.

(Deed offered, admitted in evidence and marked
Exhibit C8.) 30

Q. Now I show you a bond signed by Mr. Friedlander to Mr. Lehr bearing date thirty-first day of May, 1922, for six thousand dollars, penal sum, and ask you if that is the bond that was tendered to him?

A. Looks like it, I believe that is it. Yes, that is it.

(Bond offered, admitted in evidence and marked Exhibit C9.)

Q. I also show you a mortgage bearing the same date in the same amount signed by Mr. Friedlander and Mrs. Friedlander, his wife, Emma Friedlander, and ask you if that is the mortgage that was tendered?

10 A. Yes, sir, I believe this is it. I would say that is it, yes, sir.

(Mortgage offered, admitted in evidence and marked Exhibit C10.)

Cross-examination.

By Mr. Cole:

20 Q. Did you testify in a previous proceeding in this court in the case wherein Mr. Friedlander was complainant and Mr. and Mrs. Lehr were defendants?

A. Yes, sir.

Q. Was the testimony you gave at that time true?

A. I tried to give true testimony, yes, sir.

Q. That is the question, was the testimony you gave at that time true?

30 Mr. Bourgeois: I object, if your Honor please. That is not proper cross-examination. In other words that is impertinent to ask a man.

Mr. Cole: What I want to do, Mr. Bourgeois, is to save some time.

Mr. Bourgeois: If he wants to contradict him on

any part of that testimony let him put it to him so he will know.

The Court: Technically I will sustain the objection.

Mr. Cole: Aren't you willing?

Mr. Bourgeois: I am not willing, because sometime testimony goes in by mistake, to a question 10 whether it is true or not.

The Court: I will sustain the objection.

Mr. Cole: Will you consent we offer the testimony in the previous case and I won't ask anything?

Mr. Bourgeois: If your Honor please, I don't know a thing about that testimony. I don't know whether there is anything in there that he has testified to different today or not. If there is anything 20 different ought to be called to his attention so he can correct it. That is the only reason I have for not consenting to what he wants.

The Court: Sustain the objection.

Mr. Bourgeois: If I had tried the case before I wouldn't object but I didn't.

Q. Do you remember being asked at the previous 30 hearing of this case this question to which you gave this answer: "You reside where? A. Wildwood, New Jersey?"

A. I just can't remember saying that. I suppose I said it if it is there.

Q. Was that true, if you did say so?

A. Wildwood, New Jersey, yes.

Q. You remember being asked this question to which you gave this answer: "What is your business? A. Real estate and insurance?"

A. No, I can't remember asking it.

Q. Was it true if you did say it?

A. Yes, I was real estate and insurance, yes, sir.

Q. Do you remember being asked this question to which you gave this answer, "Do you know the complainant and defendant in this case? A. Yes, sir?"

10 A. Complainant and defendant? I knew them both, yes, sir.

Q. Did you give that answer?

A. I don't know whether I give it or not. If I didn't, I should have given it.

Q. It is true, isn't it?

A. Complainant and defendant; I knew them both.

Q. "Do you recall the execution on the part of Mr. Lehr of the agreement of agency for the sale of his premises as set forth in D1 just testified about,"

20 and you answer, "Yes, sir?"

A. Put that again, Mr. Cole.

Q. Do you recall being asked this question to which you gave this answer: "Do you recall the execution on the part of Mr. Lehr of the agreement of agency for the sale of his premises as set forth in D1 just testified about,"—that D1 is the agreement—and you answered, "Yes, sir?"

A. I remember the agreement of agency if that is what you mean.

30 Q. Do you remember whether you gave that answer or not?

A. I don't remember giving it, no, sir.

Q. That is all.

LLEWELLYN HILDRETH, sworn for complainant.

Direct examination.

By Mr. Bourgeois:

Q. Mr. Hildreth, you are an attorney at law?

A. I am.

Q. Are you the Mr. Hildreth referred to by the previous witness when he said that Mr. Hildreth was present when a tender was made? 10

A. Yes.

Q. Will you state to the Court just how that tender was made and what it was?

A. At my request Mr. Friedlander directed that I be handed legal tender and I was given five five hundred dollar gold notes, that, together with \$225 that was handed to me by Mr. Dare, I tendered to Mr. Lehr in his home at Egg Harbor. 20

Q. On what date?

A. The last day of May, thirty-first of May.

Q. And what did Mr. Lehr say when the tender was made to him?

A. He said, "No, I can't take it."

Q. Is that all that was said?

A. "The property has been sold."

Q. Were you there when Mrs. Lehr came into the room or in the hall that you were in?

A. Yes.

Q. Did she make any remarks? 30

A. Yes, she said, "Now, don't sign any papers. The property has already been sold once; you can't sell it again." Beside the tender of the money there was a blank deed and executed mortgage.

Q. And bond?

A. And bond handed to Mr. Lehr.

Q. What did he say about the bond and mortgage?

A. He wouldn't have anything to do with any of the papers.

Cross-examination.

By Mr. Cole:

10 Q. Do you remember testifying before Mr. Hildreth?

A. I have a brief recollection.

Q. Do you remember being asked these questions by counsel for the complainant, to which you gave these answers: "After the refusal on the part of Mr. Lehr to accept the money and sign the deed what, if anything did you do? A. I handed it to Mr. Dare?"

A. Yes.

20 Q. "Why did you hand it to Mr Dare? A. I thought Mr. Dare was Mr. Lehr's agent and if I gave the money to him it would be tendering to the principal." Remember that?

A. Yes.

Q. "And what did he then do? A. He tendered it to Mr. Lehr in my presence and also the other gentleman named." Remember that?

A. Yes, that is true.

Q. "Now was that refused? A. Yes." Is that correct?

30 A. Yes.

Q. "After that refusal what, if anything, took place? A. I turned and went out. I think I made the remark, 'Boys, there is nothing doing here. We might just as well go. We have done our part.'" Remember that?

A. Yes.

Q. "Then did you come back? A. No, they followed me out."

A. That is correct.

Q. Can you recall now why it was you didn't testify before about what Mrs. Lehr said?

A. I wasn't asked.

Q. You were asked what took place. Why didn't you tell about that?

A. I wasn't asked the question about what Mrs. Lehr— 10

Q. You didn't think the question, "After that refusal what, if anything, took place?" comprehended the conversation or the talk with Mrs. Lehr?

A. Not on the line on which I was being cross-questioned.

By Mr. Bourgeois:

Q. Did you ever have any conversation or overhear a conversation by Mrs. Schlichting about the title to this property, about the sale of it? 20

A. No, I think not.

MISS ANNA M. GREER, SWORN for complainant.

The Court: So there may be no confusion I will call Judge Cole's attention to the testimony of Mr. Hildreth on page sixty-nine.

Direct examination.

10 By Mr. Bourgeois:

Q. You are a stenographer?

A. Yes, sir.

Q. Were you in the employ of Mr. Dare during the summer of 1922?

A. Yes, sir.

Q. Did you have any knowledge of this real estate transaction between Mr. Lehr and Mr. Friedlander?

A. Yes, sir.

20 Q. Of the agency of Mr. Dare for the sale of the property?

A. Yes, sir.

Q. Tell the Court what you know about it.

A. Well, Mr. Lehr came to the office and, of course, talked with Mr. Dare about selling the property and after they had settled as to Mr. Dare's agency it was necessary to have an agreement of agency drawn and I drew that agreement of agency and it was signed and I witnessed that agreement after it had been signed.

30 Q. Do you know whether or not Mr. Dare made any effort to sell that property?

A. Yes, sir.

Q. What effort did he make?

A. Well, when an agreement of agency comes in it is filed on an active list and anyone who comes in for property, we, of course, put before them all the different ones, whatever they are interested in.

Q. Did you ever have any conversation or overhear any conversation on the part of Mrs. Schlichting relating to the property?

A. Mrs. Schlichting was in the office. The conversation with reference to the property took place in a rear office and, although she passed through and I knew her face, I wasn't present at the conversation.

Q. You didn't hear it?

A. No, sir.

Q. When was that with relation to the time that Mr. Dare became the agent for the sale of that property? 10

A. Why that was after Mr. Friedlander had purchased it.

Q. After he had made the agreement to purchase it?

A. Agreement to purchase, yes, sir.

Q. When was that with relation to the time when they attempted to complete the settlement on the thirty-first of May, was it before or after that time? 20

A. It was considerably before.

Q. Do you know anything about Mr. Dare having endeavored to lease this property to Mrs. Schlichting?

A. Yes; I was present in the home where Mr. Dare had an appointment one day to sign a lease.

Q. That is a lease between Mr. Friedlander and her?

A. Yes, I believe it was.

Q. Was it signed?

A. No; she didn't seem to be just sure of what she wanted to do at that time. 30

Cross-examination.

By Mr. Cole:

Q. Mr. Dare testified that Mrs. Schlichting was in possession of the property, as I recall, at the time this agreement was made; is that your understanding?

A. Yes, sir.

Q. And remained in possession?

10 A. Yes, sir.

Q. How long had she been in possession before the agreement was signed?

A. You mean the agreement of sale?

Q. Between Friedlander and Lehr.

A. She had been in there, as far as I know, when the agreement of agency was signed.

Q. Also at the time the agreement for sale was signed?

A. Yes, sir.

20

By Mr. Bourgeois:

Q. Is she still living in the property?

A. I don't know.

30

DAVID FRIEDLANDER, SWORN.

Direct examination.

By Mr. Bourgeois:

Q. Mr. Friedlander, I show you Exhibit C1, which is a mortgage from David Friedlander and Emma Friedlander, his wife, to Gustav Lehr, and ask you if that is your signature? 10

A. It is.

Q. Whose signature is that?

A. That is my wife's.

Q. Your wife's beneath?

A. Yes, sir.

Q. I show you the bond that accompanies it, C9, and ask you if that is your signature to the bond and warrant?

A. It is.

Q. Now, Mr. Friedlander, did you employ Mr. Dare to purchase this property for you? 20

A. No, sir.

Q. Did you know that he was going to get a power of agency from Mr. Lehr?

A. No, sir.

Q. Who first brought the matter to your attention?

A. Mr. Dare.

Q. When was that?

A. On Sunday when I came down to Wildwood.

Q. Which Sunday was that with relation to the day when the agreement was signed? 30

A. I believe the Sunday before the agreement was signed.

Q. Prior to that Sunday had you any knowledge that Mr. Dare was the agent for the sale of the Lehr property?

A. No, I did not.

Q. Did you ever have any conversation with Mrs. Schlichting about this purchase, about the property?

A. The Sunday after I signed the agreement I went in it with my sister, to Mrs. Schlichting's house, and when I came in Mrs. Schlichting asked me, told me, "I understand you bought the property?" I says, "Yes, ma'am." That is the only conversation I had.

10 Cross-examination.

By Mr. Cole:

Q. Did Mr. Dare notify you that Mr. Lehr refused to accept \$225 out of the \$500 payment you made?

A. The Sunday following the return of the check.

Q. He told you, did he?

A. He told me about it.

20 Q. What reason did he give you? What did he say Mr. Lehr said?

A. He didn't tell me any more except the check was returned, my certified check has been returned.

Q. Did he tell you that Mr. Lehr had said that he wanted the full \$500 and not \$225?

A. No, I don't recollect that he told me.

By the Court:

30 Q. When did you sign the agreement, after Mr. Lehr had signed?

A. Mr. Dare brought them to my office. I signed them in my office.

Q. Did you know whether or not Mr. Dare had paid the \$500 at that time?

A. I didn't know, sir.

Q. You didn't know whether he had paid the five hundred; he didn't tell you?

A. No.

Q. Did you at that time have any conversation with him in regard to the five hundred dollars?

A. I told him that, I told him the Sunday before, after signing the agreement, "To use the check for \$500 that I have given you on the purchase of the other property."

Q. Nothing was said at the time you signed it concerning the payment of the five hundred dollars? 10

A. No; he had that check.

GEORGE M. DARE, recalled.

Cross-examination.

By Mr. Cole:

20

Q. Mr. Dare, do you remember being asked this question on cross-examination in the previous case, to which you gave this answer: "Now on May twenty-fifth or twenty-sixth when you received this letter from Mr. Lehr returning your check for \$225 in which he said he had repudiated the transaction because he had not received the \$500, why didn't you then send him the \$500? A. I had an interest in that \$500, the \$275 and my custom is to deduct my commission." 30

A. Yes, I said that.

Q. And were you asked this question to which you gave this answer: "You insisted on retaining the \$275? A. The work was done." Remember that?

A. I did say it, yes, sir. That would be—

Q. "And you knew at the time that title had not yet passed and transaction had not been closed? A. Well, to be frank——" remember that?

A. May I say something, Mr. Cole?

Q. I say do you remember that question and answer?

A. To be frank——

Q. Do you remember that?

A. I am using your words now.

10 Q. No, I am using your words. I am reading from the book.

A. I know that I had the articles of agreement signed by both people.

Q. My question is do you remember being asked this question to which you gave this answer: "You knew at that time that the title had not yet passed and transaction had not yet been closed? A. Well, to be frank——" then there is a dash.

A. Probably you did n't let me——

20 The Court: You were interrupted, dash means you were interrupted.

A. That is probably that because I know what would follow that.

Q. "Just answer that, you knew at that time, didn't you? A. Yes, I knew that, yes, sir, but what I did know was that I had effected the sale, they both signed the agreement and I was entitled to my pay whether it ever went through or not."

30 A. That was my understanding that the custom made.

Q. Did you give that answer?

A. That is the answer I give, yes, sir.

Q. "Now, did you communicate to Mr. Friedlander the fact that you had sent the certified check for \$225

and had been returned to you for the reason stated in Mr. Lehr's letter? A. Yes, I told Mr. Friedlander that."

A. I told him my check had been returned.

Q. Mr. Dare, did you give that answer to the question I have just read at the previous hearing? I will read it to you again.

A. I wish you would.

Q. "Now, did you communicate to Mr. Friedlander the fact that you had sent the certified check for \$225 and had been returned to you for the reason stated in Mr. Lehr's letter? A. Yes, I told Mr. Friedlander that." 10

A. I guess I said yes to it but I didn't tell him all of that. I told him my check had been returned.

Q. I am asking you whether you gave that answer at the previous trial?

A. I believe I did it but sometimes questions are put to you different and you can't tell the truth about it.

Q. Were you asked this question to which you gave the following answer: "When did you tell him that? A. I can't remember the date, but Mr. Friedlander comes in my office two or three times a week sometimes." Is that correct at that time? 20

A. Yes, sir; that is true.

Q. And were you asked this question: "You have a great deal of business for him, don't you? A. Have a great deal of business, yes, sir, I do."

A. I do.

Q. "In which he pays you a commission for work you do for him? A. For work I do for him he pays me a commission." 30

A. Renting his houses.

Q. You answered that before, didn't you?

A. Yes, I did, and that is all true.

Q. "What did he say to you when you told him that Lehr had repudiated this contract because he had not received the five hundred dollars?" and your answer was, "What did he say to me?" and then the question is "Yes, A. Well, I just can't remember what he said. He made—" then there is a dash—you recall having said that?

A. That is there but I never told him about the five hundred; I told him the check was refused, my
10 check was refused, \$225.

Q. Were you asked this question to which you gave the following answer: "Did he tell you that you had better send the five hundred dollars? A. No, sir."

A. No, he didn't tell me that either.

Q. "Did you suggest that you had better send the five hundred dollars? A. No, sir, he had all I was going to give him."

A. I felt that way, Mr. Cole.

Q. Did you answer that in the other case?

A. Yes, sir; I answered it in just that way. If I
20 was wrong that was different. I understood when that sale was effected, a man has made an agreement and signed it. the money was mine—

Q. Do you think there is any question pending now?

A. There isn't?

Q. There isn't any. You have answered all up to date.

30

Mr. Bourgeois: If your Honor please, I want to offer in evidence a certified copy of deed from Gustav Adolph Lehr and Bertha P. C. Lehr, his wife, to Rose Schlichting, bearing date the eighteenth day of May, 1922, for the property in question, recorded on the eighteenth of May, 1922, 11 A. M., in the clerk's

office of Cape May County, New Jersey, in book 364 of deeds, page 232.

(Certified copy admitted and marked Exhibit C11.)

Also a mortgage made by Rose Schlichting to Gustav A. Lehr bearing date the eighteenth day of May, 1922, recorded on the twenty-fifth of May, 1922, in the clerk's office of Cape May County, in book 184 of mortgages at page 141. 10

(Mortgage admitted and marked Exhibit C12.)

Also a deed from Rose Schlichting to Thomas Delaney bearing date the twenty-third day of May, 1922, recorded on the twenty-fifth of May, 1922, in book 365 of deeds, page 180, in the Cape May County clerk's office.

(Deed admitted and marked Exhibit C13.)

20

Also a deed from Thomas Delaney made the blank day of May in the year nineteen hundred and blank and May, his wife, to Rose Schlichting for the same property which deed was recorded on the eleventh day of December, 1923, in book 385 of deeds, page 292.

(Deed admitted and marked Exhibit C14.)

Mr. Bourgeois: If your Honor please, that puts
a new phase on this case that I had overlooked. This
mortgage being of record they are proper parties to
this suit and I ask that they be reinstated as proper
parties. Of course, Mr. Lehr is dead, isn't he? 30

Mr. Cole: I will object. He is dead.

Mr. Bourgeois: You can't put him in. We will have to have another bill filed is all, but it seems foolish. It seems foolish to have to have another suit just to get clear of this mortgage.

Mr. Cole: It seemed foolish to you before to having me put in the evidence in the other case.

Mr. Bourgeois: Why don't you—

10 Mr. Cole: No, I am not consenting to anything. Do you want to amend the bill?

Mr. Bourgeois: Have to have the other party in.

Mr. Cole: I object. Subject to that I want to introduce the file, please your Honor, of this Court in the previous case of David Friedlander, complainant, and Gustav A. Lehr and Bertha P. C. Lehr, defendants.

20 Mr. Bourgeois: Then we will have the record amended. If we have, I have no objection to that going in because I know what you want to do with it, but I don't want that going in unless we reinstate the case as it was and then substitute the present administrator in place of Gustav Lehr.

Mr. Cole: Mr. Bourgeois, I am offering the file to support my plea. I don't see how you can object to it. The Court will finally settle it.

Mr. Bourgeois: The file is not relevant for that.

The Court: Let's take one at a time. I understand Mr. Bourgeois has a motion, although he has

not dismissed as to Charles Lehr, executor, in place of Gustav Lehr, dismissed as to Gustav Lehr and his wife, the widow, now he desires to reinstate. Is that objected to?

Mr. Cole: Objected to.

The Court: I will permit it.

Mr. Bourgeois: Now, Judge, won't you substitute, so we will get through with this thing some- 10
time, substitute the administrator for the deceased man?

Mr. Darnell: Already been substituted.

Mr. Cole: He is here.

The Court: Order to amend has been made. Order to substitute has been made.

20

Mr. Cole: Now I will offer the file as previously stated.

Mr. Bourgeois: I have no objection to that.

Mr. Cole: And I now, that the file is in, move to strike all the testimony that is offered here in support of this agreement and support of the effort to obtain a decree, upon the ground that the decree in the former case is *res adjudicata*.

30

The Court: I will refuse the motion at this time.

TESTIMONY CLOSED.

EXHIBIT C1.
6/17/26 L.

Gustave Lehr 6 mos.
AGREEMENT OF AGENCY

Wildwood, N. J.

April 4th, 1922.

10 This is to certify that I have authorized G. M. Dare to act as my sole lawful agent for the sale of my property situated on #229 E. Oak Avenue, Wildwood, N. J. and in the event of a sale by him or through his influence; I promise to pay to the said G. M. Dare the usual commission of five per cent (5%) on the amount of \$5000. & 2½% on the balance of purchase price.

Purchase price \$6,500.00.

20 Description lot, 40' x 100', house containing 13 rooms & bath, unfurnished with exception of a few articles of furniture belonging to property, arcola heating system.

Mortgages and Incumbrances \$2500. mortgage existing thereon.

Mrs. Slichting, the tenant, has legal notice, as lease expires 5/14/22.

Will take ½ on mortgage, @ 6%, payable within 3 yrs. & interest payable semi-annually.

(Owners) Gustav A. Lehr.

30 Witness:
Anna M. Greer.

EXHIBIT C2.
6/17/26 L.

ARTICLES OF AGREEMENT, Made This Thirteenth day of April in the year of our Lord one thousand nine hundred and twenty-two (1922).

BETWEEN Gustave A. Lehr and Bertha P. C. Lehr, his wife, both of the City of Egg Harbor, in the County of Atlantic and State of New Jersey, Parties of the first part, and David Friedlander, of the City of Camden, in the County of Camden and 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 Six thousand Dollars (\$6,000.00) to be paid and satisfied as hereinafter mentioned and also in consideration of the covenants and agreements hereinafter mentioned, made and entered into by the said party of the second part, does agree to and with the said party of the second part, that they the said parties of the first part, will well and sufficiently convey to the said party of the second part, his Administrators, heirs and assigns, by Deed free from all incumbrance on or before the First day of June Anno Domini 1922 all that lot, tract, or parcel of land and premises hereinafter particularly described, situate, lying and being in the City of Wildwood in the county of Cape May and State of New Jersey. All That Certain Property designated and known as Number 229 East Oak Avenue, Wildwood, New Jersey, consisting of a lot forty feet by one hundred feet (40' x 100'), and cottage erected thereon, together with all furniture therein belonging to said property.

Inventory of furniture to be taken and attached hereto and made a part hereof.

All adjustments of taxes, interest, water rents, rents, insurance and all matters affecting said property to be made at time of settlement.

This property is sold subject to the occupancy of the present tenant's lease, which expires May 12th 1922. AND IT IS FURTHER AGREED, by the parties to these presents, that the said party of the second part, his Executors, heirs and assigns, may enter into and upon the said land and premises on the day of settlement and from thence take the rents, issues and profits to his and their use.

10 AND for the performance of all and singular the covenants and agreements aforesaid, the said parties do bind themselves and their respective heirs, executors and administrators, and they hereby agree to pay, upon failure to perform the same, the sum of Five hundred Dollars (\$500.00) which they hereby fix and settle as liquidated damages thereof.

20 IN WITNESS WHEREOF, the said parties have hereunto interchangeably set their hands and seals the day and year first above mentioned

Gustav A. Lehr,
Bertha P. C. Lehr,
David Friedlander.

Signed, Sealed and Delivered
in the presence of
G. M. Dare

G. M. Dare
AGREEMENT
FOR SALE OF LAND

30

Between
Gustave A. Lehr
Etux.
and
David Friedlander
Dated April 13th 1922.

EXHIBIT C3.
6/17/26 L.

THIS INDENTURE, Made the Tenth day of May A. D. 1922.

BETWEEN David Friedlander of the City of Philadelphia in the County of Philadelphia and State of Pennsylvania, Party of the first part, and Rose Schlichting of the City of Wildwood in the County of Cape May and State of New Jersey, Party of the second part. 10

WITNESSETH, that the said party of the first part hath let, and by these presents doth grant, demise and to farm let unto the said party of the second part All That Certain Property situate and known as No. 229 East Oak Avenue, Wildwood, Cape May County, New Jersey, with the appurtenances, for the term of Four Months from the Fifteenth day of May nineteen hundred and twenty-two to September 15th 1922 at the rent or sum of Six hundred Dollars (\$600.00) to be paid as follows: 20

Three hundred Dollars (\$300.00) to be paid upon the signing of this lease.
Three hundred Dollars (\$300.00), the balance, to be paid on or before July 1st 1922.

PROVIDED, that if any rents shall be due and unpaid, or if default shall be made in any of the covenants, conditions and rules herein contained, then it shall be lawful for the said party of the first part, at his option, without notice and without any demand for said rent, or for the performance of said covenants, conditions and rules and regulations, to declare this lease null and void and said term ended, and to re-enter the said premises and remove all persons therefrom, or to proceed by action for the 30

recovery of the possession thereof, or otherwise however.

AND the said party of the second part doth hereby covenant and agree to and with the said party of the first part to pay the said rent in the proportions and upon the conditions aforesaid; and not to assign this lease, and further agrees to observe the following, which are hereby agreed to be not only covenants, but also rules and regulations governing said premises, viz: not to underlet said premises, or any part thereof, nor permit any person or persons to occupy the same, or any part thereof, nor use or permit any part thereof to be used for any other purpose than a boarding or rooming house, nor make or suffer to be made any alterations therein, without the written consent of the said party of the first part; and also, at the expiration of said term, to yield up and surrender possession thereof, with the appurtenances, in as good state and condition as the same now are, or may be put into by the said party of the first part, reasonable wear and tear thereof and accidents happening by fire or other casualties excepted.

AND IT IS FURTHER AGREED, that the acceptance of rent by the party of the first part, after knowledge of any breach by the party of the second part of said covenants, conditions, rules and regulations, or of any of them, or suffering said party of the second part to remain in possession thereafter, shall not operate as a waiver by said party of the first part of said covenants, conditions, rules and regulations, or of any of them, or of any breach thereof.

It is understood and agreed by and between the parties to these presents that any repairs to said mentioned property shall be made at the expense of the said party of the second part and paid for by her.

AND the said party of the first part doth covenant that the said party of the second part, on paying the said yearly rent, and performing the covenants aforesaid, shall and may, peaceably and quietly, have, hold and enjoy the said demised premises for the term aforesaid.

IN WITNESS WHEREOF, the said parties have interchangeably set their hands and seals hereto the day and year first above written.

Signed, Sealed and Delivered, 10
in the presence of

LEASE
Between
David Friedlander
and
Rose Schlichting
Dated May 10th 1922.

EXHIBIT C4. 20
6/17/26 L.

Wildwood, New Jersey,
May 11th 1922.

Received from Mrs. Rose Schlichting the sum of Three hundred Dollars, as a deposit on account of the rental price of Six hundred Dollars, for cottage situate and known as No. 229 East Oak Avenue, Wildwood, New Jersey, from May 15th 1922 to September 15th 1922. Balance of rental money, Three hundred Dollars, to be paid on or before July 1st 1922. This deposit received subject to the approval of the owner and to be returned if not accepted.
\$300.00 30

Agent.

EXHIBIT C5.
6/17/26 L.

Egg Harbor City, N. J., May 26th, 1922.

Mr. G. M. Dare,
3606 Pacific avenue,
Wildwood, N. J.

Dear Sir:—

10 I have your letter of the 25th enclosing check for \$225.00 on account of your purchase of property in Wildwood.

You bought this property more than six weeks ago and paid no deposit although you said you would pay me \$500.00 down.

Not having heard from you in all that time, and having received no deposit I have decided not to sell this property any more.

20 Your check of \$225.00 does not cover the deposit promised at the time and I do not want to deal in that way.

Very truly yours,
Gustav A. Lehr

I hereby return your check.

EXHIBIT C6.
6/17/26 L.

30

TAX NOTICE—1922

CITY OF WILDWOOD, NEW JERSEY
FIRST WARD

DELINQUENT—First half June 1st, 1922.

Second half December 1st, 1922.

Interest at the rate of 7 per centum per annum to be added after said dates.

Discount of 1/2 of 1 per centum per month allowed on all payments made 30 days prior to due date.

Mr. Gustav Lehr

Block	Lot Numbers	Lot Value	Value of Build-ings	Value of Personal Property	Net Valua-tion	Total Tax For 1922	Amount Due Jan. 1, 1922
6	16	1800	1800	200	3800	177.35	88.68

Discount if paid before November 2, 1922

Interest if paid after December 1, 1922

AMOUNT DUE IN PAYMENT 10

Postage must be enclosed for return of
Receipted Tax Bill

Bring This Bill With You
Or Send With Remittance

TAX NOTICE—1922

CITY OF WILDWOOD, NEW JERSEY
FIRST WARD

DELINQUENT—First half June 1st, 1922.

Second half December 1st, 1922.

Interest at the rate of 7 per centum per annum to be added after said dates. 20

Discount of 1/2 of 1 per centum per month allowed on all payments made 30 days prior to due date.

Mr. Gustav Lehr
Egg Harbor City
New Jersey.

Block	Lot Numbers	Lot Value	Value of Build-ings	Value of Personal Property	Net Valua-tion	Total Tax For 1922	Amount Due Dec. 1, 1922
6	16	1800	1800	200	3800	177.35	88.68

Discount if paid before May 2, 1922

Interest if paid after June 1, 1922

AMOUNT DUE IN PAYMENT 30

Be sure to read reverse side for rates, etc.
Postage must be enclosed for return of
Receipted Tax Bill

Bring This Bill With You
Or Send With Remittance

EXHIBIT C7.

6/17/26 L.

JAMES A. L. HARRIS

Notary Public

Wildwood Title and Trust Building

Keystone Phone 92

Bell Phone 460

10	Insurance	} any time } anywhere } of any kind	for sale for rent	} Real Estate		

Wildwood, N. J. May 5, 1922

Mr. Gustav A. Lehr,
Egg Harbor City,
New Jersey.

Dear Sir:

On April 13 I wrote you concerning your expiring insurance Policy and have received no reply, therefore, I am again writing to remind you that

20 Your Policy No. 10560 in the Northern Assurance Company for \$1200.00 will expire on the Thirteenth day of May, 1922, at noon on Building at 229 E. Oak Ave.

If you desire renewal please sign application below and return.

Respectfully yours,

James A. L. Harris.

Please renew the above for \$.....
for the term of.....

30

EXHIBIT C8.

6/17/26 L.

THIS INDENTURE, MADE THE Thirty First day of May in the year of our Lord one thousand nine hundred and Twenty Two.

BETWEEN Gustav A. Lehr of the City of Egg Harbor, in the County of Atlantic in the State of New Jersey of the first part, and David Friedlander of the City of Camden, in the County of Camden and State of New Jersey of the second part: 10

WITNESSETH, That the said party of the first part, for and in consideration of the sum of Six Thousand Dollars lawful money of the United States of America, well and truly paid by the said party of the second part to the said party of the first part, at and before the ensealing and delivering of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, enfeoffed, released, conveyed and confirmed, and by these presents do grant, bargain, sell, alien enfeoff, release, convey and confirm, unto the said party of the second part, his heirs and assigns, ALL that certain lot or parcel of land situate, lying and being in the City of Wildwood in the County of Cape May in the State of New Jersey and known and designated as Lot number sixteen (16) of block number six (6) on a plan of lots of the Wildwood Beach Improvement Company, made by E. S. Taylor and Son, Engineers, 1886 and duly filed in the Clerk's Office of the County of Cape May, aforesaid and is bounded and described as follows, to wit, Beginning at a point on the Northeasterly side of Oak Avenue at the distance of Two Hundred and eighty feet, southeastwardly from the intersection of the northeasterly 20 30

side of said Oak Avenue with the southeasterly side of Pacific Avenue and extending thence southeastwardly, along the northeasterly side of said Oak Avenue forty feet and at right angles thereto between parallel lines in length or depth, northeastwardly one hundred feet, containing four thousand (4000) square feet of land strict measure.

Being the same premises which John F. Reardon et ux, by Indenture dated October 29th 1914, Recorded
10 January 8th 1915 in the Clerk's Office of Cape May County aforesaid in Deed Book Number Pages 159 &c. granted and conveyed to Gustav A. Lehr in fee.

TOGETHER with all and singular, the buildings, improvements, woods, ways, rights, liberties, privileges, hereditaments and appurtenances, to the same belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and the profits thereof, and of every
20 part and parcel thereof;

AND ALSO, all the estate, right, title, interest, property, possession, claim and demand whatsoever, both in law and equity, of the said party of the first part, of, in and to the said premises, with the appurtenances:

TO HAVE AND TO HOLD the said premises, with all and singular the appurtenances, unto the said party of the second part, his heirs and assigns, to the only proper use, benefit and behoof of the said party of the second part, his heirs and assigns forever.
30

AND the said Gustav A. Lehr and Bertha P. C. Lehr their heirs, executors and administrators, DO by these presents covenant, grant and agree to and with the said party of the second part, his heirs and assigns, that they the said Gustav A. Lehr and Bertha

P. C. Lehr their heirs, all and singular the hereditaments and premises herein above described and granted, or mentioned and intended to be so, with the appurtenances, unto the said party of the second part, his heirs and assigns, against them the said Gustav A. Lehr and Bertha P. C. Lehr their heirs, and against all and every other person or persons whomsoever lawfully claiming or to claim the same, or any part thereof,

SHALL and WILL and by these presents WAR- 10
RANT and forever DEFEND.

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

Signed, Sealed and Delivered (Seal)
in the presence of (Seal)

COUNTY, }
STATE OF NEW JERSEY, } SS.

BE IT REMEMBERED, that on this day of 20
in the year of our Lord one thousand nine hundred and Twenty Two before me, personally appeared Gustav A. Lehr and Bertha P. C. Lehr who, I am satisfied are the grantor mentioned in the above deed or conveyance, and I having first made known to them the contents thereof they acknowledged that they signed, sealed and delivered the same as their voluntary act and deed. All of which is hereby certified.

DEED.

Gustav A. Lehr
et ux

To
David Friedlander

30

EXHIBIT C9.
6/17/26 L.

KNOW ALL MEN BY THESE PRESENTS,
THAT I, David Friedlander, of the City of Cam-
den County of Camden and State of New Jersey
(hereinafter called the Obligor) am held and firmly
bound unto Gustav Lehr of the City of Egg Harbor,
10 County of Atlantic and State of New Jersey (herein-
after called the Obligee), in the sum of Six Thousand
Dollars lawful money of the United States of Amer-
ica, to be paid to the said Obligee his certain Attor-
ney, Executors, Administrators or Assigns; to which
payment well and truly to be made I do hereby bind
and oblige myself my Heirs, Executors and Adminis-
trators, firmly by these presents.

Sealed with my Seal. Dated the 31st day of May
in the year of our Lord one thousand nine hundred
and Twenty Two.

20 THE CONDITION OF THIS OBLIGATION IS
SUCH, That if the above bounden Obligor his Heirs,
Executors or Administrators, or any of them, shall
and do well and truly pay, or cause to be paid, unto
the above-named Obligee his certain Attorney, Exe-
cutors, Administrators or Assigns, the just sum of
Three Thousand Dollars lawful money aforesaid at
the expiration of one year from th date hereof to-
gether with interest thereon, payable semi-annually,
30 at the rate of six per cent. per annum, without any
fraud or further delay; and shall pay the taxes as-
sessed upon the premises described in an accompany-
ing indenture of mortgage for the first half of every
year on or before the twentieth day of May therein,
and for the second half of every year on or before the
twentieth day of November therein, and shall pro-

duce receipts for the taxes for each half of every
year on or before the first day of June and the first
day of December respectively therein, and shall also
pay all other taxes, municipal assessments or charges
in the nature thereof which may be laid or assessed
upon the said premises immediately upon their as-
sessment; then the above obligation to be void, or
else to be and remain in full force and virtue; PRO-
VIDED, however, and it is hereby expressly agreed,
that no credit shall be claimed or allowed on the in- 10
terest above provided because of any taxes paid upon
said premises, and that if at any time default shall be
made in the payment of interest as aforesaid, for the
space of sixty days after any semi-annual payment
thereof shall fall due, or in the payment of any tax
or charge as aforesaid, as hereinbefore provided, or
in such production of tax receipts as aforesaid on or
before the day aforesaid, then and in either such case
the whole principal debt aforesaid shall, at the option
of the Obligee therein named, his Executors, Admin- 20
istrators or Assigns, become due and payable imme-
diately, and payment of said principal debt, and all
interest thereon, shall be enforced and recovered at
once, anything herein contained to the contrary not-
withstanding.

David Friedlander (Seal)

Sealed and Delivered

in the presence of

Wm. S. Darnell

Documentary Stamp, \$1.50.

To any Attorney of any Court of Law in New Jersey 30
or elsewhere:

This is to authorize you to appear for me, David
Friedlander in any Court of competent jurisdiction,
in case of the breach of the condition of the above
Bond, and confess judgment for the penalty therein

contained, as of the last or any subsequent term, with costs of suit and release of errors; and this shall be your sufficient warrant.

Witness my hand and seal this 31st day of May Anno Domini one thousand nine hundred and Twenty Two.

David Friedlander (Seal)

Sealed and Delivered
in the presence of

10 Wm. S. Darnell

BOND AND WARRANT

David Friedlander

To

Gustav Lehr

Dated May 31st 1922

EXHIBIT C10.

20

6/17/26 L.

THIS INDENTURE, MADE THE Thirty First day of May in the year of our Lord one thousand nine hundred and Twenty Two (1922).

BETWEEN David Friedlander of the City of Camden, County of Camden and State of New Jersey and Emma Friedlander his wife of the first part, and Gustav Lehr of the City of Egg Harbor, County of Atlantic and State of New Jersey of the second part:

30 WHEREAS, the said David Friedlander in and by his certain Obligation or writing obligatory, under his hand and seal duly executed, and bearing even date herewith, stands bound unto the said party of the second part, in the sum of Six Thousand Dollars lawful money of the United States of America, conditioned for the payment of the just sum of Three

Thousand Dollars like lawful money as aforesaid, at the expiration of one year from the date thereof together with interest thereon at and after the rate of six per centum per annum, payable semi-annually in like lawful money as aforesaid, without any fraud or further delay; and should pay all taxes, assessments and charges in nature thereof that might be laid or levied upon the lands and premises hereinafter described immediately upon their assessment; and condition further, that said party of the first 10 part should not apply for any deduction, by reason of this Mortgage, from the taxable value of the lands therein described and embraced; and should produce to the said part of the second part his Executors, Administrators or Assigns, receipts for all taxes, assessments and charges in nature thereof laid or levied upon said mortgaged premises within sixty days after the same should first become due and payable, and should and would keep the buildings erected and to be erected upon the said lands insured against loss 20 or damage by fire in such safe and responsible stock (non-mutual) Fire Insurance Company or Companies as should be satisfactory to said party of the second part, and endorse or assign and deliver all policies and certificates thereof to the said party of the second part as collateral security for the payment of the principal and interest aforesaid, the aggregate amount of which insurance shall not be less than Three Thousand Dollars.

AND PROVIDED FURTHER, however, and it 30 was thereby expressly agreed, that if default should be made in the production in any year of the tax or any other receipts, as therein provided and covenanted as aforesaid, or in payment of said taxes, assessments and charges as therein agreed as aforesaid, or in keeping the buildings erected upon said

lands insured and the policies and certificates thereof assigned or endorsed as aforesaid, or if at any time default should be made in payment of interest as aforesaid for the space of sixty days after any semi-annual payment thereof should fall due, then and in every such case, whether it be the first or any subsequent default the whole principal debt aforesaid should, at the option of the said party of the second part, Executors, Administrators or Assigns, become
10 due and payable immediately, and payment of said principal debt, and all interest thereon, might be enforced and recovered at once, anything therein contained to the contrary notwithstanding.

AND PROVIDED FURTHER, that in default of insurance or production of tax or any other receipts and payment of taxes, assessments and charges as aforesaid, the said party of the second part, his Executors, Administrators, or Assigns, should have the option to effect such insurance, and pay
20 such taxes, assessments and charges; and the premium or premiums paid for effecting such insurance and the amount paid for such taxes, assessments and charges as aforesaid, should be added to the principal moneys thereby secured and payable on demand, with legal, interest, in like money, as in and by the said recited obligation and condition thereof, relation thereunto being had, may more fully and at large appear.

NOW THIS INDENTURE WITNESSETH, that
30 the said party of the first part, as well for and in consideration of the aforesaid debt or principal sum of Three Thousand dollars, and for the better securing the payment thereof unto the said party of the second part, his Executors, Administrators or Assigns, in discharge of the said obligation above recited, as for and in consideration of the further sum

of one dollar, in specie, well and truly paid to the said party of the first part by the said party of the second part, at and before the ensealing and delivery hereof, the receipt of which one dollar is hereby acknowledged, have granted, bargained, sold, aliened, enfeoffed, released and confirmed, and by these presents does grant, bargain, sell, alien enfeoff, release and confirm, unto the said party of the second part, his Heirs and Assigns, that certain lot or parcel of
10 land situate, lying and being in the City of Wildwood, in the County of Cape May in the State of New Jersey and known and designated as Lot Number Sixteen (16) of Block Number Six (6) on a plan of lots of the Wildwood Beach Improvement Company made by E. S. Taylor and Son, Engineers, 1886 and duly filed in the Clerk's Office of the County of Cape May aforesaid and is bounded and described as follows, to wit, Beginning at a point on the northeasterly side of Oak Avenue at the distance of Two hundred and
20 Eighty feet southeastwardly from the intersection of the northeasterly side of said Oak Avenue with the southeasterly side of Pacific Avenue and extending thence southeastwardly along the northeasterly side of said Oak Avenue forty feet and at right angles thereto between parallel lines in length or depth, northeastwardly one hundred feet, containing four thousand square feet of land strict measure.

Being the same premises which Gustave Lehr et ux by Indenture bearing even date herewith, granted and conveyed to David Friedlander in fee, and intended to be forthwith recorded.
30

TOGETHER with all and singular, the buildings, improvements, woods, ways, rights, liberties, privileges, hereditaments and appurtenances whatsoever to the same belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof:

TO HAVE AND TO HOLD the said hereditaments and premises above described and granted, or intended so to be, with the appurtenances, unto the said party of the second part, his Heirs and Assigns, to and for the only proper use, benefit and behoof of the said party of the second part, his Heirs and Assigns forever.

10 PROVIDED ALWAYS, NEVERTHELESS, that if the said David Friedlander his Heirs, Executors, Administrators and Assigns, do and shall well and truly pay, or cause to be paid, unto the said party of the second part, or to his certain Attorney or Attorneys, Executors, Administrators or Assigns, the aforesaid debt or sum of Three Thousand Dollars on the day and time hereinbefore mentioned and appointed for the payment thereof, together with interest for the same, in like money in way and manner hereinbefore specified therefor, without any fraud or further delay, and without any deduction, defalcation or abatement to be made, for or in respect of any taxes, charges or assessments whatsoever, together with the taxes assessments and charges hereinabove mentioned; and shall produce to the said Obligee, his Executors, Administrators or Assigns, receipts for all taxes, assessments and charges laid or levied upon said premises within sixty days after the same shall first become due and payable, and shall have faithfully kept and performed the condition and agreement in said obligation contained and herein recited, as to insuring and keeping insured the said premises; that then and from thenceforth, as well 20 this present Indenture and the estate hereby granted, as the said OBLIGATION above recited, shall cease, determine and become absolutely null and void, to all intents and purposes; anything hereinbefore contained to the contrary thereof in anywise notwithstanding 30

AND the said David Friedlander himself for his Heirs, Executors and Administrators does covenant and grant to and with the said party of the second part, his Executors, Administrators and Assigns, that the said party of the first part, his Heirs and Assigns, shall not and will not apply for, or claim any deduction by reason of this Mortgage from the taxable value of said lands and premises; and that the said party of the second part his Executors, Administrators and Assigns, shall and may from time to time, and at all times after default shall be made in the performance of the provisos or conditions herein recited or contained, peaceably and quietly enter into, have hold, use, occupy, possess and enjoy all and singular the above granted and bargained premises, with the appurtenances, without the let, suit, trouble, hindrance or denial of the said party of the first party, his Heirs or Assigns, or of any other person or persons whatsoever. 10

IN WITNESS WHEREOF, the said party of the first parties hereunto set their hands and seals the day and year first above written. 20

David Friedlander (Seal)
Emma Friedlander (Seal)

Signed, Sealed and Delivered
in the presence of
Wm. S. Darnell

STATE OF NEW JERSEY, }
CAMDEN COUNTY, } ss.

REMEMBERED, That on this 31st day of May in the year of our Lord one thousand nine hundred and Twenty Two before me a Master in Chancery of New Jersey personally appeared David Friedlander and Emma Friedlander who, I am satisfied are the grantors mentioned in the within Mortgage, and I having first made known to them the contents 30

thereof, they acknowledged that they signed, sealed and delivered the same as Their voluntary act and deed. And the said Emma Friedlander being of full age, on a private examination apart from her said husband before me acknowledged that she signed, sealed and delivered the same as her voluntary act and deed, freely, without any fear, threats or compulsion of her said husband. All of which is hereby certified.

10

Wm. S. Darnell,
Master in Chancery of N. J.
MORTGAGE
David Friedlander
Et ux
To
Gustav Lehr
Dated May 31 1922 \$3000

20

EXHIBIT C11.
6/17/26 L.

THIS INDENTURE, Made the eighteenth day of May in the year of our Lord one thousand nine hundred and twenty-two. Between GUSTAV ADOLPH LEHR and BERTHA P. C. LEHR, his wife, of the City of Egg Harbor City, in the County of Atlantic and State of New Jersey, parties of the first part, and ROSE SCHLICHTING, of the City of Wild-
30 wood, in the County of Cape May and State of New Jersey, party of the second part: WITNESSETH, that the said party of the first part, for and in consideration of the sum of Six Thousand Dollars, lawful money of the United States of America, well and truly paid by the said party of the second part to the said party of the first part, at and before the en- sealing and delivering of these presents, the receipt

whereof is hereby acknowledged, have granted, bar- gained, sold, aliened, enfeoffed, released, conveyed and confirmed, and by these presents do grant, bar- gain, sell, alien enfeoff, release, convey and confirm, unto the said party of the second part, her heirs and assigns, ALL that certain tract or parcel of land and premises situate lying and being in the City of Wild- wood, in the County of Cape May and State of New Jersey, known and designated as Lot. No. 16, in Block No. 6, on a plan of lots of the Wildwood Beach
10 Improvement Company made by E. S. Taylor and Sons, Engineers, 1886, and duly filed in the Clerks Office of Cape May—*aforsaid* and is bounded and described as follows; BEGINNING At a point on the Northeasterly side of Oak Avenue at the distance of two hundred and eighty feet Southwesterly from the intersection of the Northeasterly side of said Oak Avenue forty feet and at right angles thereto between parallel lines in length or depth Northeast-
20 erly one hundred feet, containing four thousand square feet of land strict measure and being the same premises which John F. Reardon and Bridget Rear- don granted and conveyed to the said Gustav A. Lehr, by deed dated October 29th, 1914. Recorded in the Office of the Clerk of Cape May County in Book No. 307 of deeds on pages 159 etc.

TOGETHER with all and singular the buildings, improvements, woods, ways, rights, liberties, privi- leges, hereditaments and appurtenances, to the same belonging or in any wise appertaining, and the re- version and reversions, remainder and remainders,
30 rents, issues and the profits thereof, and of every part and parcel thereof; And Also all the estate, right, title, interest, property, possession, claim and demand whatsoever, both in law and equity of the said party of the first part, of in and to the said premises with the appurtenances, TO HAVE AND

TO HOLD the said premises with all and singular the appurtenances, unto the said party of the second part, her heirs and assigns, to the only proper use, benefit and behoof of the said party of the second part, her heirs and assigns forever. And the said parties of the first part, for themselves, their heirs, executors, and administrators do by these presents covenant, grant and agree to and with the said party of the second part, her heirs and assigns, that they

10 the said parties of the first part, their heirs, all and singular the hereditaments and premises herein above described and granted, or mentioned and intended to be so, with the appurtenances, unto the said party of the second part, her heirs and assigns, against them the said parties of the first part and their heirs, and against all and every other person or persons whosoever lawfully claiming or to claim the same or any part thereof, shall and will warrant and forever defend. IN WITNESS WHEREOF,

20 the said parties of the first part to these presents have hereunto set their hands and seals dated the day and year first above written.

Gustav A. Lehr (L. S.)

Bertha P. C. Lehr (L. S.)

Signed, Sealed and Delivered

In the presence of

H. L. Hamilton

30 State of New Jersey, Atlantic County, ss. Be It Remembered, that on this Eighteenth day of May in the year of our Lord one thousand nine hundred and twenty-two, before me, the subscriber, A — personally appeared Gustav Adolph Lehr and Bertha P. C. Lehr, who, I am satisfied are the grantors mentioned in the above deed or conveyance, and I having first made known to them the contents thereof they acknowledged that they signed, sealed and delivered

the same as their voluntary act and deed. All of which is hereby certified.

Herman L. Hamilton, M. C. C. of N. J.

\$6.00 U. S. Int. Rev. Stamps.

Received and Recorded this deed May 18th, A. D. 1922 at 11 A. M.

A. C. Hildreth, Clerk.

STATE OF NEW JERSEY

COUNTY OF CAPE MAY

I, A. C. HILDRETH, County Clerk, and Clerk of 10 the Courts of Oyer and Terminer, Quarter Sessions, Common Pleas, and Circuit Court, in and for the County of Cape May, DO HEREBY CERTIFY that the foregoing is a true and correct copy of

Deed

GUSTAV A. LEHR, Et Ux.

to

ROSE SCHLICHTING

as recorded, on the 18th day of May A. D. 1922, in the Clerk's Office of the County of Cape May, in Book 20 364 of Deeds at page 232.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of (Seal) said Court, at Cape May Court House, this Twenty-sixth day of May A. D. nineteen hundred and twenty-six.

A. C. Hildreth,
Clerk.

CERTIFIED COPY

of

Deed

30

GUSTAV A. LEHR, ET UX.

to

ROSE SCHLICHTING
CAPE MAY COUNTY CLERK'S
OFFICE

Cape May Court House, N. J.

5-17-26—200

EXHIBIT C12.

6/17/26 L.

THIS INDENTURE, Made the Eighteenth day of May in the year of our Lord one thousand nine hundred and twenty-two. Between ROSE SCHLICHTING, Single woman, of the City of Wildwood, in the County of Cape May and State of New Jersey, party of the first part, and GUSTAV A. LEHR, of the city of Egg Harbor City, in the County of Atlantic and State of New Jersey, party of the second part, WHEREAS, the said Rose Schlichting, in and by a certain obligation or writing obligatory, under her hand and seal duly executed, and bearing even date herewith, stands bound unto the said party of the second part in the sum of Seven thousand Dollars lawful money of the United States of America, conditioned for the payment, in lawful money as aforesaid, of the just sum of Three thousand Five Hundred Dollars to be paid in three years from the date hereof or sooner at her option, together with interest thereon payable semi-annually at the rate of six per cent. per annum, and shall pay the taxes assessed upon the premises hereinafter described for the first half of every year on or before the twentieth day of May therein, and for the second half of every year on or before the twentieth day of November therein, and shall produce receipts for taxes for each half of every year on or before the first day of June and the first day of December respectively therein, and shall also pay all other taxes, municipal assessments or charges in the nature thereof which may be laid or assessed upon the said premises immediately upon their assessment: Provided However, and it was thereby expressly

agreed, that no credit should be claimed or allowed on the interest above provided because of any taxes paid upon said premises, and that if at any time default should be made in payment of interest as aforesaid for the space of thirty days after any semi-annual payment thereof shall fall due, or in the payment of any tax or charge as aforesaid, or in such production of tax receipts as aforesaid, on or before the days aforesaid, then and in either such case the whole principal debt as aforesaid should, at the option of the obligee therein named, his executors, administrators or assigns, become due and payable immediately, and payment of said principal debt, and all interest thereon, should be enforced and recovered at once, anything therein contained to the contrary notwithstanding, as in and by the said recited obligation, and the condition thereof, relation to the same being had, may more fully and at large appear. NOW THIS INDENTURE WITNESSETH, that the said party of the first part, as well for and in consideration of the aforesaid debt or sum of Three thousand five hundred Dollars and for the better securing the payment thereof unto the said party of the second part, his executors, administrators and assigns, in discharge of the said obligation above recited, as for and in consideration of the further sum of One Dollar in specie well and truly paid to the said party of the first part by the said party of the second part, at and before the ensealing and delivery hereof, the receipt of which one dollar is hereby acknowledged, hath granted, bargained, sold, released and confirmed and by these presents doth grant, bargain, sell, release and confirm, unto the said party of the second part, his heirs and assigns, ALL that certain tract or parcel of land and premises situate lying and being in the City of Wild-

wood, in the County of Cape May and State of New Jersey, bounded and described as follows: BEGINNING at a point on the Northeasterly side of Oak Avenue at a distance of two hundred and eighty feet Southwesterly from the intersection of the Northwesterly side of said Oak Avenue forty feet and at right angles thereto between parallel lines in length or depth Northeasterly one hundred feet. Containing four thousand square feet of land strict measure

10 and known and designated on the plan of lots of the Wildwood Beach Improvement Company made by E. S. Taylor and Son, Engineers, 1886, and duly filed in the Office of the Clerk of said Cape May County as lot No. 16, in Block No. 6. and being the same premises which the said Gustav A. Lehr and Bertha P. C. Lehr, his wife, granted and conveyed to the said Rose Schlichting by deed of even date herewith and forthwith to be recorded reference thereunto being had will more fully and at large appear.

20 This Mortgage is subject to a certain other mortgage for the sum of Two thousand five hundred Dollars made by the said Gustav A. Lehr and Bertha P. C. Lehr, to Rosie Mueller reference thereunto being had will more fully and at large appear. TOGETHER with all and singular the buildings, improvements, woods, ways, rights, liberties, privileges, hereditaments and appurtenances, to the same belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders,

30 rents, issues and profits thereof: TO HAVE AND TO HOLD the said hereditaments and premises above granted, or intended so to be, with the appurtenances, unto the said party of the second part, his heirs and assigns forever. Provided always nevertheless, that if the said Rose Schlichting, her heirs, executors, administrators or assigns, do and shall

well and truly pay or cause to be paid unto the said party of the second part, or to his certain Attorney or Attorneys, heirs, executors, administrators or assigns, the aforesaid debt or sum of Three thousand five hundred Dollars, on the day and time hereinbefore mentioned and appointed for the payment thereof, Together with interest for the same, in like money, and pay all taxes and charges and produce tax receipts, in way and manner hereinbefore specified therefor, without any fraud or further delay, 10 and without any deduction, defalcation or abatement to be made for or in respect of any taxes, charges or assessments whatever; that then and from thenceforth, as well this present indenture, and the estate hereby granted, as the said obligation above recited, shall cease, determine and become absolutely null and void to all intents and purposes, anything hereinbefore contained to the contrary thereof in anywise notwithstanding. And the said party of the first part, for herself, her heirs, executors, and administrators doth covenant and grant to and with 20 the said party of the second part, his heirs and assigns, that the said party of the first part, her heirs and assigns, shall not nor will apply for, or claim any deduction by reason of this mortgage, from the taxable value of the said lands and premises and that the said party of the second part, his heirs and assigns, shall and may from time to time, and at all times after default shall be made in the performance of the proviso or condition herein contained peaceably and quietly enter into, have, hold, 30 use, occupy, possess and enjoy all and singular the above granted and bargained premises, with the appurtenances, without the let, suit, trouble, hindrance or denial of the said party of the first part, her heirs or assigns, or of any other person or persons what-

soever. And it is also further agreed, by and between the parties to these presents that the said party of the first part shall and will keep the buildings erected and to be erected upon the lands above conveyed insured against loss or damage by fire, in some safe and responsible insurance company or companies to an amount not less than Three thousand five hundred Dollars, and assign the policy and certificate thereof to the said party of the second

10 part as collateral security for the payment of the principal and interest aforesaid, and in default thereof it shall be lawful for the said party of the second part to effect such insurance, and the premium and premiums paid for effecting the same shall be a lien on the said mortgaged premises, added to the amount of the said bond and obligation, and secured by these presents and payable on demand with legal interest. IN WITNESS WHEREOF, the said party of the first part hath hereunto set her

20 hand and seal the day and year first above written.
Rose Schlichting (L. S.)

Signed, sealed and delivered
in the presence of
Thos. E. Hamilton

State of New Jersey, Atlantic County, ss. Be It Remembered, that on this eighteenth day of May in the year of our Lord one thousand nine hundred and twenty-two, before me, the subscriber, A Notary Public of New Jersey, personally appeared Rose

30 Schlichting, who, I am satisfied is the grantor mentioned in the above deed or conveyance, and I having first made known to her the contents thereof, she acknowledged that she signed, sealed and delivered the same as her voluntary act and deed. All of which is hereby certified.

Thos. E. Hamilton, (Offl. Seal)
Notary Public.

Received and recorded this Mortgage May 25, A. D. 1922 at 2 P. M.

A. C. Hildreth, Clerk.

STATE OF NEW JERSEY
COUNTY OF CAPE MAY

I, A. C. HILDRETH, County Clerk, and Clerk of the Courts of Oyer and Terminer, Quarter Sessions, Common Pleas, and Circuit Court, in and for the County of Cape May, DO HEREBY CERTIFY that the foregoing is a true and correct copy of

Mortgage
ROSE SCHLICHTING

To

GUSTAV A. LEHR

as recorded on the Twenty-fifth day of May A. D. 1922, in the Clerk's Office of the County of Cape May, in Book 184 of Mortgages at page 141.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of

(Seal) said Court, at Cape May Court House, this 26th day of May A. D. nineteen hundred and twenty-six.

A. C. Hildreth,
Clerk.

CERTIFIED COPY
of

Mortgage
ROSE SCHLICHTING
TO

GUSTAV A. LEHR
CAPE MAY COUNTY CLERK'S
OFFICE

Cape May Court House, N. J.
5-17-26—200

EXHIBIT C13.
6/17/26 L.

THIS INDENTURE, Made the twenty-third day of May in the year of our Lord one thousand nine hundred and twenty-two, Between ROSE SCHLICHTING, widow, of the City of Wildwood, in the County of Cape May and State of New Jersey, party of the first part, and THOMAS DE-LANEY, of the same place, party of the second part; WITNESSETH, that the said party of the first part, for and in consideration of the sum of One Dollar and other valuable considerations, lawful money of the United States of America, well and truly paid by the said party of the second part to the said party of the first part, at and before the ensembling and delivering of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold aliened, enfeoffed, released, conveyed and confirmed and by these presents does grant, bargain, sell, alien, enfeoff, release, convey and confirm, unto the said party of the second part, his heirs and assigns, ALL that certain tract or parcel of land and premises lying and being in the City of Wildwood, in the County of Cape May and State of New Jersey, known and designated on the Map or Plan of the Wildwood Beach Improvement Company, a copy of which is duly filed in the office of the Clerk of the County of Cape May, as Lot No. 16, in Block No. 6. Being the same premises which Gustave A. Lehr and Bertha C. Lehr, his wife granted and conveyed to the said Rose Schlichting by deed dated May 17, 1922, and recorded in the Office of the Clerk of said Cape May County, reference thereunto being had will

more fully and at large appear. TOGETHER with all and singular the buildings, improvements, woods, ways, rights, liberties, privileges, hereditaments and appurtenances, to the same belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and the profits thereof, and of every part and parcel thereof; And Also all the estate, right, title, interest, property, possession, claim and demand whatsoever, both in law and equity, of the said party of the first part, of, in and to the said premises, with the appurtenances; TO HAVE AND TO HOLD the said premises, with all and singular the appurtenances, unto the said party of the second part, his heirs and assigns, to the only proper use, benefit and behoof of the said party of the second part, his heirs and assigns forever. And the said party of the first part, for herself, her heirs, executors and administrators, doth by these presents covenant, grant and agree to and with the said party of the second part, his heirs and assigns, that she the said party of the first part, her heirs, all and singular the hereditaments and premises herein above described and granted, or mentioned and intended to be so, with the appurtenances, unto the said party of the second part, his heirs and assigns, against her, the said party of the first part, her heirs, and against all and every other person or persons whomsoever lawfully claiming or to claim the same, or any part thereof, Shall and Will Warrant and Forever Defend. IN WITNESS WHEREOF, the said party of the first part to these presents has hereunto set her hand and seal dated the day and year first above written.

Signed, Sealed and Delivered

In the Presence of Rose Schlichting (Seal)
James A. L. Harris

State of New Jersey, Cape May County, ss. Be It Remembered, that on this Twenty-fourth day of May in the year of our Lord one thousand nine hundred and twenty-two, before me, the subscriber, A Notary Public of the State of New Jersey, in the County of Cape May, personally appeared Rose Schlichting, who, I am satisfied is the grantor mentioned in the above deed or conveyance, and I having first made known to her the contents thereof she acknowledged that she signed, sealed and delivered the same as her voluntary act and deed. All of which is hereby certified.

10

James A. L. Harris, Notary Public of N. J.
 Commission Expires Nov. 25, 1924. (Off'l seal)
 \$6.00 U. S. Int. Rev. Stamps.
 Received and Recorded this Deed May 25th, A. D. 1922 at 9 A. M.

A. C Hildreth, Clerk

20

STATE OF NEW JERSEY
 COUNTY OF CAPE MAY

I, A. C. HILDRETH, County Clerk, and Clerk of the Courts of Oyer and Terminer, Quarter Sessions, Common Pleas, and Circuit Court, in and for the County of Cape May, DO HEREBY CERTIFY that the foregoing is a true and correct copy of

DEED
 ROSE SCHLICHTING

30

to
 THOMAS DELANEY
 as recorded, on the 25th day of May A. D. 1922, in the Clerk's Office of the County of Cape May, in Book 365 of Deeds at page 180.
 IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court, at Cape

May Court House, this 26th day of May A. D. nineteen hundred and twenty six.

A. C. Hildreth
 Clerk.

(Seal)

CERTIFIED COPY
 OF
 Deed
 ROSE SCHLICHTING
 to
 THOMAS DELANEY
 CAPE MAY COUNTY CLERK'S
 OFFICE
 Cape May Court House, N. J.
 5-17-26—200

10

EXHIBIT C14.
 6/17/26 L.

20

THIS INDENTURE, Made the ——— day of ——— in the year of our Lord one thousand nine hundred and ———. Between THOMAS DELANEY and MAUDE DELANEY, his wife, of the City of Wildwood, in the County of Cape May, and the State of New Jersey, parties of the first part, and ROSE SCHLICHTING, of the same place party of the second part: WITNESSETH, that the said party of the first part, for and in consideration of the sum of One Dollar and other valuable considerations, lawful money of the United States of America, well and truly paid by the said party of the second part to the said party of the first part, at and before the ensembling and delivering of these presents, the receipt whereof is hereby acknowledged, has

30

granted, bargained, sold aliened, enfeoffed, released, conveyed and confirmed and by these presents do grant, bargain, sell, alien, enfeoff, release, convey and confirm, unto the said party of the second part, her heirs and assigns, ALL that certain tract or parcel of land and premises lying and being in the City of Wildwood, in the County of Cape May and State of New Jersey, known and designated on the plan or map of the Wildwood Beach Improvement Company, a copy of which is duly filed in the

10 Office of the Clerk of Cape May County, as Lot No. 16, in Block No. 6, bounded and described as follows: —TOGETHER with all and singular, the buildings, improvements, woods, ways, rights, liberties, privileges, hereditaments and appurtenances to the same belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and the profits thereof, and of every part and parcel thereof: And Also, all the estate,

20 right, title, interest, property, possession, claim and demand whatsoever, both in law and equity, of the said party of the first part, of, in and to the said premises, with the appurtenances: TO HAVE AND TO HOLD the said premises, with all and singular the appurtenances, unto the said party of the second part, her heirs and assigns, to the only proper use, benefit and behoof of the said party of the second part, her heirs and assigns forever. And the said parties of the first part, for themselves, their heirs, executors and administrators do by these presents

30 covenant, grant and agree to and with the said party of the second part, her heirs and assigns, that they the said party of the first part, their heirs, all and singular the hereditaments and premises herein above described and granted, or mentioned and intended to be so, with the appurtenances, unto

the said party of the second part, her heirs and assigns, against them the said parties of the first part, their heirs, and against all and every other person or persons whomsoever lawfully claiming or to claim the same, or any part thereof, by, from, through or under them, either or any of them, Shall and Will Warrant and forever Defend. IN WITNESS WHEREOF, the said parties of the first part to these presents have hereunto set their hands and seals dated the day and year first above written.

Signed, Sealed and Delivered Thomas Delaney— 10
In the presence of Maude Delaney —
John Bright

State of New Jersey, Cape May County, ss. Be It Remembered, that on this twenty-sixth day of May in the year of our Lord one thousand nine hundred and twenty-two, before me, a Notary Public in and for said County and State, personally appeared 20
Thomas Delaney and Maude Delaney, his wife, who, I am satisfied are the grantors mentioned in the above deed or conveyance, and I having first made known to them the contents thereof they acknowledged that they signed, sealed and delivered the same as their voluntary act and deed. All of which is hereby certified.

John Bright, Notary Public of N. J.

\$6.00 U. S. Int. Rev. Stamps.

Received and Recorded this Deed December 11, A. 30
D. 1923 at 9 A. M.

(Name of Grantors written over erasure in original.)

A. C. Hildreth, Clerk.

STATE OF NEW JERSEY
COUNTY OF CAPE MAY

I, A. C. HILDRETH, County Clerk, and Clerk of the Courts of Oyer and Terminer, Quarter Sessions, Common Pleas, and Circuit Court, in and for the County of Cape May, DO HEREBY CERTIFY that the foregoing is a true and correct copy of

DEED

THOMAS DELANEY, ET UX.

10

to

ROSE SCHLICHTING

as recorded, on the 11th day of December A. D. 1923, in the Clerk's Office of the County of Cape May, in Book 385 of Deeds at page 292.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court, at Cape May Court House, this 26th day of May A. D. nineteen hundred and twenty six.

A. C. Hildreth
Clerk.

20 (Seal)

CERTIFIED COPY
OF
Deed

THOMAS DELANEY, ET UX.

to

ROSE SCHLICHTING
CAPE MAY COUNTY CLERK'S
OFFICE

30

Cape May Court House, N. J.
5-17-26—200

CONCLUSIONS.

(Filed August 23, 1926.)

IN CHANCERY OF NEW JERSEY.

Between

DAVID FRIEDLANDER,

Complainant,

and

GUSTAV A. LEHR, et al.,

Defendants.

On Bill for Specific
Performance.

On Motion to Dis-
miss.

Conclusions.

10

MR. WILLIAM S. DARNELL for the complainant. 20
MESSRS. BOURGEOIS & COULOMB, on brief.
MESSRS. COLE & COLE, for the defendants.

INGERSOLL, V. C.

A bill was heretofore filed praying for a decree of specific performance against Gustav A. Lehr and Bertha P. C. Lehr, his wife, of an unrecorded contract in writing for the sale of real estate, which real estate, after the signing of the agreement, but prior to the signing of the bill, had been conveyed by the vendors to third parties, who although complainant learned of the conveyance before filing his bill, were not made parties, and charged with such circumstances as would justify a decree against him.

30

The case was heard and conclusions filed advising

a dismissal of the bill. Before the decree for dismissal had been actually entered, application after notice was made for permission to amend the bill by bringing in the omitted party defendants, and in the event of that application being denied, for permission to suffer a voluntary dismissal of the bill. Both of these applications were denied. Upon appeal, it was held that these applications were properly denied and the defendants were entitled to a decree in accordance with the decision in their favor.

10 *Friedlander v. Lehr*, 3 N. J. Adv. Rep. 929; 129 Atl. 241.

The complainants now file a bill alleging the contract as before, and charging that said Gustave A. Lehr and Bertha P. C. Lehr, his wife, after the making of said contract, and on May 18th, 1922, conveyed said premises to their daughter, Rose Schlichting, who on the same day executed a purchase money mortgage upon said property to Gustave A. Lehr to secure the payment of a part of the consideration, which mortgage was duly recorded; that said Schlichting on May 23rd, 1922, conveyed said premises to one Thomas Delaney, which deed was duly recorded on May 25th, 1922. Afterwards Delaney and wife reconveyed to Schlichting. After due averments, Rose Schlichting was made a party defendant.

20

At the hearing, application for a dismissal of the bill upon the grounds that the matter was *res judicata* was made. This was held under advisement, and the final hearing was held.

30

The testimony was very similar to that given at the hearing of the previous case.

Gustav A. Lehr was in April, 1922, the owner of certain premises in Wildwood, New Jersey. One, G. M. Dare, is a real estate agent in that city.

On April 4th, 1922, Lehr authorized the said Dare to act as his sole agent for the sale of the property for the sum of \$6,500, agreeing to pay a commission for such sale of 5 per cent on \$5,000 and 2½ per cent on balance of purchase price.

Negotiations were entered into, which finally resulted in the execution by Lehr and his wife on April 13th, 1922, of an agreement to convey said premises to one David Friedlander for the sum of \$6,000. The consideration to be paid \$500 upon the signing of the agreement, \$2,500 cash at the time of settlement on or before June 1st, 1922, and the balance to be secured by a purchase money mortgage of \$3,000.

10

This agreement was given to Dare to secure the signature of Friedlander, and the payment of \$500.

Friedlander was a client of Dare's and he, Dare, had in his safe a check of Friedlander's which had been given him to pay upon the purchase of another property, and which Friedlander authorized Dare to use to make the payment called for by the agreement.

20

Dare made no payment to Lehr of the \$500 until on May 25th, 1922, he mailed Lehr a "certified check for \$225, representing the \$500 * * * less commission."

On May 25th, 1922, Lehr returned the check and wrote as follows:

"You bought this property more than six weeks ago and paid no deposit, although you said you would pay me \$500 down.

30

Not having heard from you in all that time, and having received no deposit I have decided not to sell this property any more."

Friedlander, by his attorney and with Dare on May 31st, 1922, tendered to Lehr \$2,725, and a mort-

gage for \$3,000 and presented a deed for signature, which Lehr refused. Dare made the same tender, which was also refused.

The testimony leaves no doubt that Dare was acting as Friedlander's agent during the entire negotiations. Under these facts, and that no actual payment was made by Friedlander, he was bound to see that his agent made the payment to Lehr, which he, Friedlander, says he authorized Dare to make.

10 While it is clear that under other circumstances Friedlander would be under no obligation to see to the application of money paid on account of the consideration of an agreement of sale, his knowledge of the existing anomalous position of Dare, put him upon guard and imposed upon him that duty.

I am satisfied that the facts as proven do not entitle the complainant to a decree for specific performance of the contract.

20 Therefore, it is unnecessary to determine the question raised upon the motion to dismiss.

Submitted: August 18th, 1926.

Determined: August 18th, 1926.

30

FINAL DECREE.

(Filed August 17, 1926.)

IN CHANCERY OF NEW JERSEY.

10

Between DAVID FRIEDLANDER, <i>Complainant,</i> and GUSTAV A. LEHR, <i>et al.,</i> <i>Defendants.</i>	}	On Bill, &c. Final Decree.
---	---	-------------------------------

20

This cause having been heard in the presence of William S. Darnell, solicitor for complainant, and George A. Bourgeois, of counsel, and C. L. Cole, of counsel with answering defendants, on bill, answer, replication and proofs in open court, and the Court having considered the same together with the argument of respective counsel, and being of the opinion that the complainant is not entitled to a decree for specific performance or any other relief, and that the bill should be dismissed;

30

It is on this 27th day of August, 1926, on motion of Cole & Cole, solicitors of answering defendants, ordered that the bill of complaint be, and the same is, dismissed, with costs, with allowance of one hun-

dred dollars as counsel fee to be taxed as a part of the costs and collected in the manner provided by statute and rules.

E. R. WALKER,
C.

Respectfully advised.

R. H. INGERSOLL,
V. C.

10

20

30

NEW JERSEY COURT OF ERRORS AND
APPEALS.

Between
DAVID FRIEDLANDER,
Complainant-Appellant,
and
GUSTAV A. LEHR, BERTHA P. C. LEHR and ROSE
SCHLICHTING,
Defendants-Respondents.

ON APPEAL FROM CHANCERY.

BRIEF OF APPELLANT.

STATEMENT.

This is an appeal from a final decree of the Court of Chancery advised by Vice-Chancellor Ingersoll dismissing a bill for specific performance of an unrecorded agreement for the sale of real estate made and executed by the defendants, Gustav A. Lehr and Bertha P. C. Lehr, his wife, to the complainant, David Friedlander.

A former bill for specific performance of this agreement was filed against the defendants, Gustav A. Lehr and Bertha P. C. Lehr alone. It appeared at

the hearing of this former suit that, subsequent to the making of the agreement, but prior to the filing of that bill, the defendants, Gustav A. Lehr and Bertha P. C. Lehr, had conveyed the property in question to a third person, to wit: Rose Schlichting, who was not made a party to that suit. It was held that under these circumstances a decree of specific performance would have been futile, and the bill was therefore dismissed. An appeal was taken and the decree was affirmed upon the sole ground that specific performance should not be decreed because of the fact that the title to the real estate in question was in a stranger to the contract of sale, who was not made a party defendant. The former suit is reported in *Friedlander v. Lehr* (98 N. J. Eq., p. 359).

The present bill was filed against Gustav A. Lehr and Bertha P. C. Lehr, and Rose Schlichting, who was also made a party defendant. The bill alleges that the defendant, Gustav A. Lehr, was seized of the property in question, which was a certain lot of land in the City of Wildwood, and that on or about April 4th, 1922, he made and executed a certain agreement of agency whereby he appointed one, G. M. Dare, as his sole agent for the sale of the land in question for the sum of \$6,500.00; that the said Gustav A. Lehr, through his agent, Dare, on or about April 13th, 1922, sold and agreed to convey to the complainant, David Friedlander, the property in question, and that Gustav A. Lehr and Bertha, his wife, entered into a certain agreement in writing with the complainant, Friedlander, for the sale and conveyance of the said property; by the terms of which Friedlander was to pay the sum of \$6,000.00. The bill then alleges that on April 13th, 1922, the complainant paid to Lehr through his agent, Dare, a deposit of \$500.00 on account of the purchase price,

and that on May 31st, 1922, he tendered to Gustav A. Lehr the sum of \$2500 in cash, together with a bond and mortgage for \$3000, and also a deed of conveyance to be executed by Gustav A. Lehr and Bertha P. C. Lehr, his wife, in accordance with the terms of the agreement, but that the defendants, Gustav A. Lehr and Bertha, his wife, refused to make the said conveyance and refused to accept the cash, and the bond and the mortgage.

The bill then alleges that, after the making of the agreement between Lehr and Friedlander, on April 13th, 1922, Lehr and his wife on May 18th, 1922, executed a deed of conveyance of the property in question to Rose Schlichting, which deed was duly recorded in the office of the clerk of Cape May County on May 18th, 1922, and that Rose Schlichting gave back a purchase money mortgage to secure the payment of part of the consideration money, which mortgage was also duly recorded on May 25th, 1922. It is then alleged that Rose Schlichting by deed dated May 23rd, 1922, and recorded May 25th, 1922, conveyed the property in question to one Thomas Delaney, and that Delaney and his wife subsequently reconveyed the property to Rose Schlichting by deed in which the date was left blank, but acknowledged May 26th, 1922, and recorded December 11th, 1923; both of the deeds being duly recorded by the clerk of Cape May County. The bill charges that Rose Schlichting had full knowledge of the agreement between Friedlander and Lehr at the time that the property was conveyed to her. The prayer is that the defendants may be compelled specifically to perform the agreement with complainant and to make a good deed of conveyance of the premises in question. The defendants by their answer alleged that complainant failed to pay the \$500.00 deposit as required

by the agreement and raised the question of *res judicata*, and at the hearing the same point was brought up, the claim being made that, in view of the decision in the former suit, the present suit was *res judicata*. The Vice-Chancellor reserved decision upon this point, and proceeded with the taking of testimony. Subsequently the Vice-Chancellor filed conclusions finding that the complainants were not entitled to a decree of specific performance upon the ground that Dare was acting not as Lehr's agent, but as Friedlander's agent, and that Friedlander was bound to see that the agent, Dare, actually made to Lehr a payment of the \$500.00 deposit, which was made by Friedlander to Dare. The Vice-Chancellor found it unnecessary to decide the question as to *res judicata*.

FACTS.

The testimony shows that Lehr appointed Dare his sole agent for the sale of the property in question. That in five (5) days after Lehr had signed the agreement of sale, and while that agreement was in full force and effect, he and his wife conveyed the property to Mrs. Schlichting, his daughter, and that Mrs. Schlichting, his daughter, seven (7) days thereafter conveyed the property to Delaney, and that Delaney on the next day reconveyed the property to Mrs. Schlichting, to wit: May 26th, 1922, but that Mrs. Schlichting withheld this deed from record until December 11th, 1923, during which time the property appeared to be out of the possession of Mrs. Schlichting and in the hands of a third party and during the time this property appeared to be in Delaney, but

was in fact in Mrs. Schlichting by said unrecorded deed and unknown to Friedlander. The first suit was prosecuted in the Court of Chancery, and thence in the Court of Errors and Appeals.

After the decision in the Court of Errors and Appeals the deed from Delaney back to Mrs. Schlichting was recorded and thereupon a bill was filed making the original parties to the contract, and Mrs. Schlichting as party defendant.

At no time was the agency of Mr. Dare revoked and at no time was there any claim made by Mr. Lehr in his life time or by anyone representing him after his death claiming that Mr. Dare was not Mr. Lehr's agent, and there is no testimony in the cause to support the finding of the Vice-Chancellor that Mr. Dare was in fact the agent of Mr. Friedlander in this transaction and not the agent of Mr. Lehr.

ARGUMENT.

THERE WAS NO TESTIMONY TO SUPPORT THE FINDING THAT DARE WAS ACTING AS FRIEDLANDER'S AGENT.

The vital part of the Vice-Chancellor's decision is to be found on p. 132 of the State of the Case, and is as follows:

"The testimony leaves no doubt that Dare was acting as Friedlander's agent during the entire negotiations. Under these facts, and that no actual payment was made by Friedlander, he was bound to see that his agent made the payment to Lehr, which he, Friedlander, says he authorized Dare to make.

While it is clear that under other circumstances Friedlander would be under no obligation to see to the application of money paid on account of the consideration of an agreement of sale, his knowledge of the existing anomalous position of Dare, put him upon guard and imposed upon him that duty."

It is submitted that there was no testimony produced at the hearing upon which this finding could be based. As has already been stated, Gustav Lehr on April 4th, 1922, appointed Dare to act as his sole agent for the sale of the property which is the subject of this suit, and promised to pay Dare a commission of five per cent (5%) on the amount of \$5,000.00, and two and one-half (2½%) on the balance of the purchase price. He also named the amount of the purchase price and the terms upon which the settlement was to be had (Exhibit C1, p. 92). Dare testified that after this agreement of agency was given to him he immediately set about endeavoring to find a purchaser for the property. He first went to the defendant, Rose Schlichting, and told her that she had the chance either to rent or buy this property in preference to anyone else. (Case, p. 59.) After some negotiation, Mrs. Schlichting decided neither to buy nor to rent the property, and Dare then went to several other people, none of whom were interested, and finally went to the complainant, Friedlander, who made an offer of \$6,000.00 for the property. (Case, pp. 61 and 62.) This offer was subsequently accepted by Mr. and Mrs. Lehr (Case, p. 63), and a written agreement of sale was immediately executed by Mr. and Mrs. Lehr and Friedlander. (Exhibit C2, p. 93.) At the time Friedlander made the offer of \$6,000.00 Dare asked him for a deposit of \$500.00,

and Friedlander told Dare to use the check for \$500.00 which Dare had previously collected for rentals on property owned by Friedlander. Dare's testimony on this point is found on p. 62.

"Q. Now, after Mr. Friedlander made the offer of six thousand dollars what did you do about it?"

A. After Mr. Friedlander made the offer of six thousand dollars I said, 'Give me a check for deposit and I will submit it. Money always means business,' and I had by Mr. Lehr's thought—I thought there might be a possibility and I would take the deposit of five hundred dollars, which I told him, if he would make an offer and submit a check. He says, 'You have got a check on hand on that other property.' I had a check on the property, I think it was at Wildwood Crest, I am sure Wildwood Crest, he said, 'Use that as deposit.' I had other moneys on hand from rentals of Mr. Friedlander as well as I rented his houses. I never did sell but only for the rentals, and then I went to Camden, I think on the—

Q. What did you do with the check? Did you deposit it or what did you do with it?"

A. The check had been in the safe for ten days or more, maybe. I deposited the check."

This was on April 13th, 1922. On May 25th, Dare sent to Gustav Lehr a check for \$225.00 representing the balance of the \$500.00 deposit less the amount of Dare's commission (p. 69). In response to this Gustav Lehr on May 26th wrote Dare a letter returning the check and stating as follows (Exhibit C5, p. 98):

"You bought this property more than six weeks ago and paid no deposit although you said you would pay me \$500.00 down.

Not having heard from you in all that time, and having received no deposit, I have decided not to sell this property any more.

Your check of \$225.00 does not cover the deposit promised at the time and I do not want to deal in that way."

On the last day of May, Friedlander went to Gustav Lehr's house with his attorney and made a tender of the balance of the cash, and also of a bond and mortgage, and of a deed to be executed by Gustav Lehr and his wife. Lehr refused to accept the tender and also refused to sign the deed (pp. 71, 72, 73, 74, 77, 78, 79).

There is not a scintilla of evidence in the case to show that Dare was acting as agent of anyone but Gustav Lehr. On the contrary all the testimony shows that Dare was Lehr's agent. Dare himself testified as follows, p. 62:

"Q. At the time you got the agreement from Mr. Lehr did you know or have any reason to believe that Mr. Friedlander would purchase that property?

A. Not any more than anyone else. It was a property I had for sale, sixty-five hundred dollars. He might be a customer. I had sold him several properties.

Q. I didn't mean that. I meant whether there was any particular—

A. No, I would have sold it to anybody."

He also testified that at the request of Gustav Lehr he renewed the insurance on the property, and this was done between the time when the deposit was paid to him by Friedlander, and the time that the final settlement was to take place (Case, pp. 70 & 71), thus

showing that Lehr still regarded Dare as his agent at that time. Friedlander's testimony on this point is direct and positive and is as follows, p. 83:

"Q. Now, Mr. Friedlander, did you employ Mr. Dare to purchase this property for you?

A. No, sir.

Q. Did you know that he was going to get a power of agency from Mr. Lehr?

A. No, sir."

No testimony whatsoever was produced by the defendants to contradict this.

It is an established rule that tender or payment may be made to an agent of the vendor designated to receive it. See *Hand v. Jacobus* (25 N. J. Eq., p. 154), in which case Chancellor Runyon held that a principal who has executed a contract for the sale of lands and has authorized an agent to receive an installment of purchase money under the contract, and has given the purchaser to understand that the balance was to be paid to such agent cannot repudiate the agency and refuse to execute the deed because the agent to whom the purchaser has paid the whole of the purchase money is unable to pay it over to the principal. In the present case it is clear that it was perfectly proper for Friedlander to pay the \$500.00 deposit to Dare, who was the designated agent of Gustav Lehr, and the fact that Dare subsequently got into a dispute with Lehr as to how much of that \$500.00 deposit should be paid over to him, Lehr, and how much should be retained by Dare for his commission did not justify Gustav Lehr in refusing to go through with the sale.

It is possible that the Vice-Chancellor reached the conclusion that Dare was the agent of Friedlander by reason of the fact that Dare testified that he

rented houses for Mr. Friedlander and collected the rents (p. 62), and concluded that because Dare did act as Friedlander's agent for the collection of these rentals on previous occasions the presumption was that he was also acting as Friedlander's agent on this occasion. It is submitted, however, that there is no basis for any such presumption. In 2 C. J., p. 838, note 60a, the rule is stated that when an agent represents a principal in several transactions each must be considered separate, and although in some the agent may have acted for both parties, the principal may be bound by others in which he had not so acted. Citing *Sunderland v. Kilbourn*, 3 Mackey (D. C.), 506.

As above stated, there is absolutely no evidence that Dare was acting as the agent of Friedlander, and there was positive evidence that he was not so acting. The test as to whether or not the findings of the Vice-Chancellor should be disturbed is whether these findings are clearly against the preponderance of the testimony. See *Mackie v. Cain* (92 N. J. Eq., p. 631). Applying this test to the finding that Dare was acting as Friedlander's agent, the clear preponderance of the evidence is against any such finding and, therefore, this finding cannot be supported.

II.

THE DOCTRINE OF *RES JUDICATA* DOES NOT APPLY IN THIS CASE.

It was contended by the defendant at the hearing that inasmuch as a final decree had been filed dismissing the bill in the former case, the effect of this was to make the present suit *res judicata*.

As has already been pointed out, the bill in the former suit was filed against Gustav A. Lehr, and Bertha Lehr alone for specific performance of the contract for the sale of the property in question. After the signing of the agreement, but before the filing of that bill the Lehrs had conveyed the property to Rose Schlichting, and Rose Schlichting was not made a party to that suit. In sustaining the decree filed in this former suit the Court of Errors made their decision upon the sole ground that the decree would be futile because of the fact that title to the real estate in question was in a stranger to the contract of sale, who was not made a party defendant. See *Friedlander v. Lehr* (98 N. J. Eq., p. 359).

In the present suit the bill was filed against the defendant, Rose Schlichting, and Gustav A. Lehr and Bertha Lehr were made parties because they held a purchase money mortgage on the property. The question is whether under these circumstances the present suit is *res judicata*.

The doctrine of *res judicata* has been frequently discussed in the courts in the State. In the case of *Mershon v. Williams* (63 N. J. L., p. 398), the Court said:

“A matter is not to be regarded *res adjudicata*, unless there be identity of the thing sued for, of the cause of action, of the persons and parties, the quality of the persons for and against whom the claim is made, and the judgment in the former action be so in point as to control the issue in the pending one.”

In the case of *Henninger v. Heald* (51 Eq., 74), it was held that the dismissal of a bill is no bar to a subsequent suit for the same cause of action where it does not appear that the former suit was between

the same parties and that it was tried upon the merits.

In the case of *East Jersey Water Company v. The City of Newark, et al.* (96 N. J. Eq. 231), a motion was made to strike out bills of complaint brought by the East Jersey Water Company against the City of Newark and others involving a contract made by Newark to supply water to the town of Kearny, and another contract to supply water to the town of Nutley. It was contended that the provisions of one of the clauses of the contract had been adjudicated, and, therefore, the matter was *res judicata*. The Court said:

“The doctrine of *res adjudicata* is that the parties must be the same in both cases. In the cases before me, there is an additional party in each case, to wit, the town of Kearny and the town of Nutley; neither of these municipalities is party to the suit mentioned in the argument. The doctrine of *res adjudicata* was thoroughly discussed in a case to which counsel have not called my attention, but which, perhaps, is the leading case on that point in this State. I refer to *Sbarbero v. Miller*, 72 N. J. Eq. 248, the opinion by Vice-Chancellor Garrison, which was unanimously sustained by the Court of Errors and Appeals in a *per curiam* decision adopting the Vice-Chancellor’s reasoning.”

In the case of *Sbarbero v. Miller* (72 N. J. Eq. 248), a bill was filed by a lunatic by his guardian to set aside a lease which had been assigned by the lunatic to one, who in turn assigned it to the defendant. One of the grounds of defense was that the defendant had formerly brought a suit in ejectment upon the lease, but in this former suit the lunatic was not a party.

In this ejectment suit the jury found that on the day of making the assignment the lunatic was mentally incapable of understanding the nature and effect of the transaction, but that the defendant at that time did not know the same. The contention in the present suit was that the judgment in the ejectment suit conclusively established that the lunatic was mentally incapable. Vice-Chancellor Garrison held that the said judgment was not conclusive, citing many cases.

In *Black on Judgments* (Vol. 2, Sec. 617), the rule is stated as follows:

“If a particular point was not in issue in the suit either in the technical sense of an issue framed by the pleadings or in the sense of being a decisive question in the case and the one actually litigated and determining the result, it is not conclusively established by the judgment therein for the purpose of a subsequent suit upon a different cause of action, although it may be expressly or tacitly involved in the judgment * * * So where mortgagors sue for the cancellation of a mortgage on their homestead, alleging lack of proper execution, the judgment will not estop them from urging as a defense to a suit subsequently brought for foreclosure of the mortgage such questions as a partial want of consideration, partial payments or a right to require that other securities should first be exhausted. Again, where in a patent infringement suit the defendant did not deny the validity of the patent but claim a license under it to sell the patented article, and the existence of such license was the only issue litigated, it was held that a decision in favor of the complainant did not estop defendant from questioning the validity of the patent in a subsequent suit.”

In the case of *Hughes v. United States* (4 Wall. 232, 18 L. Ed. 303), a bill was filed in equity to set aside a patent. Prior to the filing of the bill two judgments had been recovered against the defendants, the first in an ejectment suit by defendant against one Sewell, and the other in a suit brought against him by Sewell and one Hudson. In the ejectment suit judgment passed against the plaintiff in that action, defendant in that suit, on the ground that the Court could not go behind the patent and inquire into the equity of the parties. This was affirmed in the Supreme Court. The second was a suit brought by Sewell and Hudson against the defendant having for its object the vacation of the patent. The petition was dismissed for want of jurisdiction, and the absence of proper parties, and dismissed generally on the ground that it was defective, uncertain and insufficient in the statement of the cause of action.

Mr. Justice Fields in disposing of the claim that those suits constituted the present suit *res adjudicata* said:

“It requires no argument to show that judgments like these are no bar to the present suit. In order that a judgment may constitute a bar to another suit, it must be rendered in a proceeding between the same parties or their privies, and the point of controversy must be the same in both cases and must be determined on its merits. If the first suit was dismissed for defect of pleadings or parties or a misconception of the form of proceedings or want of jurisdiction, or was disposed of on any ground that did not go to the merits of the action, the judgment rendered will prove no bar to another suit.”

In the first suit the bill was dismissed for want of

proper parties and the title of the Lehrs alone was litigated. In the present suit the title of Rose Schlichting and the purchase money mortgage of the Lehrs is litigated.

It is therefore submitted, that the first suit is not *res judicata* of this case because the parties were different in the two actions and because the parties in the first action were sued in a different capacity, and for a different purpose than they are in the present suit.

III.

THE DEFENDANT, ROSE SCHLICHTING, HAD NOTICE OF THE AGREEMENT OF SALE TO THE COMPLAINANT AT THE TIME OF THE CONVEYANCE TO HER, AND THEREFORE STANDS IN THE SAME POSITION AS THE VENDOR HIMSELF.

It is clear from the testimony that at the time that the property was conveyed by Gustav Lehr and his wife to the defendant, Rose Schlichting, she had notice of the agreement of sale of the property to Friedlander. Dare testified that after the agreement had been signed he had many conversations with Rose Schlichting with regard to the purchase of the agreement from Friedlander and then with regard to renting the property from Friedlander. (Cases, pp. 64, 65 & 66.) Mrs. Schlichting finally told Dare that she would do nothing until the property had been settled for. (Case, p. 68.)

It is clear that under these circumstances in taking title to the property from Gustav Lehr, Rose Schlichting took with notice of the agreement, and,

therefore, stood in the place of the vendor, and is liable to the same equity. See *Hoagland v. Latour-ette* (1 Green's Ch. 254). In equity upon an agreement for sale of land the vendor is regarded as a trustee for the purchaser of the estate sold, and the purchaser a trustee of the purchase money for the vendor. The purchaser became the equitable owner of the lands and may come into the Court of Equity, and compel the execution of the title, see *Crawford v. Barthoff* (Saxton 469); *Huffman v. Hummer* (2 C. Green 263, 267); *King v. Ruckman* (6 C. Green 599); *Saldutti v. Flynn* (72 N. J. Eq. 157).

Under the rule in these cases, Mrs. Schlichting having purchased with notice of the agreement must be regarded in equity as standing in the place of Gustav Lehr, and should be compelled to convey the property to the complainant.

It is respectfully submitted that for the above reasons the final decree in this case should be set aside and reversed.

WM. S. DARNELL,
GEORGE A. BOURGEOIS,
*Solicitors for and of Counsel
with Appellant.*

MacCrellish & Quigley Co., Printers, Trenton, N. J.

NEW JERSEY
Court of Errors and Appeals

BETWEEN

DAVID FRIEDLANDER,
Complainant-Appellant,

and

GUSTAV A. LEHR ET AL.,
Defendants-Respondents.

BRIEF OF RESPONDENT.

STATEMENT.

The statement and narration of facts in the brief of appellant will sufficiently inform the Court as to the issues involved and we need not attempt to supplement.

ARGUMENT.

I.

The Previous Case is Res Adjudicata.

The file in the previous case was offered in evidence (p. 91) but has not been printed. However, we think the printing unnecessary. The essential facts touching the previous case are set up by way of a plea in the

pending case (p. 31). It will appear that the complainant here was the complainant there and that in both cases he sought the specific performance of a contract with defendants Lehr and wife. The additional defendant in the instant case is in privity with Lehr and his wife having, according to the averments of the present bill, taken title through them. The answer in the previous case (paragraph 5) sets up the defense that C. M. Dare was not defendant's agent. Issue was joined on the answer and the final decree denies specific performances and dismisses the bill. The replication does not deny the averments in the answer by way of a plea and therefore the averments must be accepted as true. It thus indubitably appears that the parties to the instant bill in legal contemplation are the same as the parties to the previous bill; that the prayer was for the specific performance of the same contract and that it was the opinion of the Court that the prayer of the bill should be denied, specific performance refused and the bill dismissed. These facts bring the case squarely within the principle of *res adjudicata*. The quotation in appellant's brief (p. 11) from *Mer-shon v. Williams* is, we think, pertinent and conclusive.

"A matter is not to be regarded *res adjudicata*, unless there be identity of the thing sued for, of the cause of action, of the persons and parties, the quality of the persons for and against whom the claim is made, and the judgment in the former action be so in point as to control the issue in the pending one."

All the elements stated exist in the present case. The quotation from *Hughes v. United States*, on page 14 of appellant's brief, is against his contention. The quotation is:

"It requires no argument to show that judgments like these are no bar to the present suit. In order that a judgment may constitute a bar to another suit, it must be rendered in a proceeding between the same parties or their privies, and the point of

controversy must be the same in both cases and must be determined on its merits. If the first suit was dismissed for defect of pleadings or parties or a misconception of the form of proceedings or want of jurisdiction, or was disposed of on any ground that did not go to the merits of the action, the judgment rendered will prove no bar to another suit."

Counsel for appellant in his discussion of the question has assumed that the decree in the first suit dismissed the bill upon a technical ground. This is not true in fact. It was dismissed upon its merits. The conclusion of the Vice-Chancellor in the previous case decides as a fact that the defendants were justified in refusing to perform because they had not received the \$500 down money which complainant paid to Dare, whom the Vice-Chancellor finds was complainants' agent. He says:

"The testimony leaves no doubt that Dare was acting as Friedlander's agent during the entire negotiations. He was his general agent for the care of his real estate holdings and under the facts that no actual payment was made by Friedlander, he was bound to see that his agent made the payment to Lehr, which he, Friedlander, says he authorized Dare to make.

While it is clear that under other circumstances, Friedlander would be under no obligation to see to the application of money paid on account of the consideration of an agreement of sale, his knowledge of the existing anomalous position of Dare, put him upon guard and imposed upon him that duty."

Since there is no intimation in the decree that the dismissal was upon technical grounds or for lack of parties, and since there was no reservation of right to a file a new bill, it is obvious that the attempt of the present bill is to re-try what has already been tried and disposed of and unfavorably to the complainant. Failure of complainant to deny the averments in the plea of *res adjudicata* amounted to an admission of the facts pleaded

and of itself is sufficient to conclude him. However, it is a fact that an appeal was taken from the decree of dismissal and this court affirmed the decree dealing only with the question of lack of sufficient parties. The decree of affirmance was general and without any right reserved to file a new bill. The fact that this court dealt only with one phase of the case does not preclude defendants from pleading the former decree involved. *In re Walsh Est.* 80, *Eq.* 565; *Knickerbocker v. Clabby*, 94 *L.* 173.

II.

Dare Was Complainant's Agent.

In the previous case, the Vice-Chancellor found that Dare was complainant's agent. This was an issue in the case and was decided favorably to the defendants. Such finding is *res adjudicata* here. See *Perth Amboy, &c., v. Crawford*, 135 *Atl.* 89.

But aside from the fact of *res adjudicata* there was testimony in the instant case to justify the Vice-Chancellor in renewing his finding in the previous case. A comparison of the testimony of Dare in the previous case and his testimony in this will show an effort to so shade as to avoid a finding that he was Friedlander's agent, but his cross-examination touching his previous testimony will show that if his previous testimony be accepted as true he was complainant's agent. The Vice-Chancellor undoubtedly accepted his testimony in the previous case as being true, which he had a right to do.

Counsel apparently concedes that if Dare was complainant's agent that defendant Lehr was justified in refusing to perform for the reason that he had not been paid the down money.

The decree should be affirmed.

Respectfully submitted,

COLE & COLE,
Solicitors for Respondents;
C. L. COLE,
Of Counsel.

INDEX

	Page.
Bill of Complaint	1
Notice of Motion to Dismiss	7
Memorandum of Vice-Chancellor	9
Decree of Dismissal	11
Notice of Appeal	12
Petition of Appeal	13