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AMENDED NOTICE OF APPEAL.

In Chancery of New Jersey

Between JOHN J. NICHOLSON, *Complainant,* *and* FREDERICK FAIRHAND, *et als.*, *Defendants.*	*On Bill, &c.* *Amended Notice of Appeal.*

The complainant hereby appeals from the final decree made on the first and second counts or causes of action in the above-entitled cause, made by His Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, on the advice of the Honorable Alonzo Church, one of the Vice-Chancellors of this court on the 6th day of March, 1929, and from the whole and every part thereof, to the Court of Errors and Appeals in the last resort in all causes.

Dated April 25, 1929.

RIKER & RIKER,
Solicitors for and of Counsel with Complainant.

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

THEO. McC. MARSH,
Of Counsel with Complainant.

PETITION OF APPEAL.

New Jersey Court of Errors and Appeals

JOHN J. NICHOLSON, *Complainant-Appellant,* *vs.* FREDERICK FAIRHAND, *et als., Defendants-Appellees.*	*On Appeal from the Court of Chancery.* *Petition for Appeal.*

To the Honorable the Court of Errors and Appeals in the last resort in all causes.

The petition of John J. Nicholson, the appellant in the above-entitled cause, respectfully shows:

1. The 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 6th day of March, 1929, on the first and second counts or causes of action, in a certain cause in the said Court of Chancery, wherein the said John J. Nicholson was complainant and Frederick Fairhand, Isabella Fairhand, Public Service & Electric & Gas Company, a corporation, and Holland Company, a corporation, were defendants, in this respect, to wit: the said decree adjudges that the first and second causes of action as set forth in the bill of complaint of said complainant be dismissed.

2. Your petitioner appeals from the decree of the Chancellor, which decrees as aforesaid, upon the ground that the same is erroneous in that the complainant was entitled to maintain his said

first and second counts or causes of action and to a decree thereon adjudging that the agreement of sale made by and between the complainant and the defendant, Frederick Fairhand, and the deed made and executed by the said complainant to the said Frederick Fairhand, as set forth in said bill of complaint, should be rescinded, set aside and for nothing holden on the ground of fraud as alleged in said bill of complaint.

Petitioner, therefore, prays that the said decree of the said Chancellor may be reversed, set aside and for nothing holden, and that petitioner may have such other and further relief in the premises as to this Court shall seem proper.

RIKER & RIKER,
Solicitor for and of Counsel with Appellant.

THEO. McC. MARSH,
Of Counsel.

ANSWER TO PETITION OF APPEAL.

NEW JERSEY COURT OF ERRORS AND APPEALS.

JOHN J. NICHOLSON, *Complainant-Appellant,* *vs.* FREDERICK FAIRHAND, *et als., Defendants-Appellees.*	*On Appeal from the Court of Chancery.* *Answer to Petition of Appeal.*

The answer of the appellees, The Holland Company and Public Service Electric and Gas Company, corporations of the State of New Jersey, to the petition of appeal of John J. Nicholson, the above named appellant.

These appellees, not admitting the truth of all or any of the matters in the said petition of appeal contained, for answer thereto nevertheless admit that a final decree was on the sixth day of March, 1929, made and entered in the Court of Chancery of New Jersey in the above-entitled cause for the purposes in said petition mentioned and as therein set forth, but as to the substance and form of said decree, these appellees beg leave to refer thereto when the same shall be produced.

These appellees are advised and believe that the said decree is agreeable to equity and good conscience and pray that the same may be affirmed with costs to be taxed in favor of these appellees.

FRANK BERGEN,
Solicitor for Appellees.

WILLIAM H. SPEER and
LELAND TALIAFERRO,
Of Counsel with Appellees.

No answer to petition of appeal was filed by Frederick Fairhand.

BILL OF COMPLAINT.

IN CHANCERY OF NEW JERSEY.

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

The complainant, John J. Nicholson, of the City of New York, in the County and State of New York, respectfully shows that:

FIRST CAUSE OF ACTION.

1. The Public Service Gas and Electric Company is and was during all the times hereinafter mentioned, a corporation of the State of New Jersey, engaged in the business of manufacturing and selling electric power and current, of erecting poles and towers, and of constructing thereon wires and cables for the purpose of transmitting such electric power to its customers in the Borough of Chatham, in the County of Morris, and State of New Jersey, and adjacent municipalities in the said County of Morris and in the County of Union.

2. That the Holland Company is and was during all the times hereinafter mentioned a corporation of the State of New Jersey, engaged in the business of buying, selling, holding and maintaining real estate and in particular is a subsidiary or allied corporation of the Public Service Gas and Electric Company and created and/or used by said company for the purpose of acquiring and owning such lands and real estate as said Public Service Gas and Electric Company may require in the conduct of its business, as hereinabove set forth.

3. That some time prior to November, 1926, the Public Service Gas and Electric Company determined to erect and construct a high power electric transmission line in and through the Borough of Chatham and adjacent municipalities, and in conjunction with the Holland Company to secure the necessary lands and real estate on which to erect the necessary poles and towers and across and along which to run the necessary wires and cables, all of which was unknown to the complainant, except as hereinafter stated.

4. That in order to consummate such plans the Public Service Gas and Electric Company and the Holland Company, proceeded to secure from various owners certain tracts of land lying in the Borough of Chatham along the path on which it proposed to erect its said transmission lines; that in order to acquire said premises, and to conceal and disguise its said intention, the Public Service Gas and Electric Company and/or the Holland Company, caused its agents and servants to approach said property-owners and to falsely and fraudulently represent to such landowners that certain individuals desired to acquire their lands for the purpose of developing, improving and marketing the same as lots and for home sites, and said property-owners were thereby induced to sell their lands and premises, relying on said representations, to such individuals, whereupon the lands and premises or such parts thereof as were required by the Public Service Gas and Electric Company were forthwith conveyed to the Holland Company by said persons, all of which was unknown to the complainant during the time hereinafter mentioned.

5. That in July, 1926, the complainant was the owner in fee simple, of large tracts of land and

premises lying in the Borough of Chatham, in the County of Morris and State of New Jersey, more particularly described as follows:

FIRST TRACT: BEGINNING at an oak tree, a corner of land of William Sayre and Aaron Johnson; thence (1) on Johnson line South eighty-seven degrees West thirteen chains and seventy-six links to a corner of land of Asher W. Morehouse; thence (2) along his line North fifteen and one-half degrees West eight chains and forty-two links to his corner in the middle of the road that runs along the back side of Long Hill; thence (3) along the middle of said road North fifty-eight degrees East ten chains and thirty-four links on a line of land of Robert Colbert to his corner; thence (4) on his line North thirty-six degrees West thirty-four chains to the old tier line; thence (5) on the tier line (it being a line of Thomas Bond and Pierson Lum) twenty-six chains and sixty-five links to a corner of land of Francis Cordes; thence (6) on his line South three degrees East eleven chains and ninety-five links to his corner; thence (7) on his line South twenty-nine degrees thirty minutes East six chains and forty links to a line of the Hand lot; thence (8) on the line of the same North forty-six degrees East two chains and thirteen links to James Campbell's corner; thence (9) on his line South nine degrees East nine chains to his corner; thence (10) on his line South twenty-nine degrees East six chains and seventy-four links to a corner of lands of William Sayre; thence (11) on his line South fifty-eight and one-half degrees West eleven chains and eighteen links to his corner; thence (12) South three degrees East three chains and sixty-five links to the place of Beginning. Containing seventy-seven and ninety-

two one-hundredths acres of land, be the same more or less.

SECOND TRACT: BEGINS at a white oak tree for a corner of lands of David Morehouse and in a line of land of Aaron Johnson situate on the North side of Long Hill; and running thence (1) North fourteen degrees and forty minutes West on said David Morehouse's line eight chains and fourteen links to the road leading along the North side of Long Hill; thence (2) along the South side of said road South fifty-three and one-half degrees West seven chains and fifty-five links to the East end of a stone row under a fence of Aaron Johnson's; thence (3) along said Johnson's line South twenty-one and one-half degrees East three chains and eighty-nine links to his corner; thence (4) still on his line North eighty-eight degrees East six chains and seventy-five links to the place of Beginning. Containing three and ninety-two one-hundredths acres of land, be the same more or less.

The above two tracts being the same premises conveyed to the said John J. Nicholson by deed from Friedrich Wiebke and Clara Wiebke, his wife, dated February 13, 1908, and recorded in Book E 19 of Deeds for Morris County, on page 1, etc.

THIRD TRACT: BEGINNING at an iron pin standing in the line of land of one Nicholson, which pin is distant eleven hundred and two feet and fifty one-hundredths of a foot on a course North eighty-seven degrees three minutes West from what was formerly a black oak stump which stood on the side hill now the top of Long Hill and what was formerly a corner of David More-

house's land and being a corner of lands quit-claimed by Aaron Johnson to William Sayre on April 29, 1936, and which point is also the end of the seventh course in deed bearing date April 5, 1911 made by the said Charles A. Johnson to Bessie Aline Johnson Genung; from said point of beginning running thence (1) along line of lands conveyed April 5, 1911 by said Charles A. Johnson to the said Bessie Aline Johnson Genung South one degree thirty-seven minutes West six hundred and thirty feet and thirty-three one-hundredths of a foot to an iron pin in the line of lands of one Meyers; thence (2) along the line of lands of said Meyer (it being the present fence line) South seventy-two degrees thirty-six minutes West six hundred and thirty-seven feet to a stake in line of lands of said Charles A. Johnson; thence (3) along line of lands of said Johnson, V. F. Pelletreau and one Piker North three degrees eleven minutes East one thousand and three feet and sixty one-hundredths of a foot to the center line of Long Hill Road; thence (4) along the center line of said Long Hill Road North fifty-seven degrees thirty-two minutes East one hundred and eighty-nine feet and eight one-hundredths of a foot to land of said Nicholson; thence (5) along line of land of said Nicholson South seventeen degrees four minutes East two hundred and seventy-eight feet and thirty one-hundredths of a foot to an iron pin; thence (6) still along line of land of said Nicholson South eighty-seven degrees three minutes East three hundred and twenty-nine feet and thirty one-hundredths of a foot to the point or place of Beginning. EXCEPTING, HOWEVER, from the above the following described land and premises:

Beginning at a point in the center line of Long Hill Road at the dividing line between lands of Nicholson and land formerly of Charles A. Johnson, said point being the end of the fourth course in the third tract hereinabove described; thence (1) along line of land of said Nicholson South seventeen degrees four minutes East one hundred and eighty-one feet and fifty-two one-hundredths of a foot; thence (2) South fifty-seven degrees thirty-two minutes West one hundred and sixty-two feet and ten one-hundredths of a foot; thence (3) North eighty-eight degrees four minutes West eighty-four feet and seventy-seven one-hundredths of a foot; thence (4) North three degrees eleven minutes East one hundred and fifty-six feet and forty-two one-hundredths of a foot to the aforesaid center line of Long Hill Road; and thence (5) along the same North fifty-seven degrees thirty-two minutes East one hundred eighty-nine feet and eight one-hundredths of a foot to the point or place of Beginning. Said third tract being part of the same premises conveyed to the said John J. Nicholson by deed from Charles A. Johnson and Ethel Hickson Johnson, his wife, dated March 1, 1924, and recorded in Book X 28 of Deeds for Morris County, on pages 356, etc.

FOURTH TRACT: BEGINNING at what was formerly a Black Oak Stump which stood on the side hill now the top of Long Hill and what was formerly a corner of David Morehouse's land and being a corner of land quit-claimed by Aaron Johnson to William Sayre on April 29, 1836, said point being also a corner of lands now of one Scheidermann; from said point of beginning running thence (1) along said Scheidermann (formerly Sayre) South thirty-five degrees eigh-

teen minutes East six hundred and forty feet and sixty one-hundredths of a foot to the upper side of the River Road; thence (2) along the said line of said Road South sixty degrees sixteen minutes West seven hundred and thirty-seven feet and five one-hundredths of a foot to a point; thence (3) still along said side line of said Road South sixty-one degrees twenty-two minutes West three hundred and fifty-seven feet and twenty-seven one-hundredths of a foot to line of land of one Meyers; thence (4) along line of land of Meyers (it being the present fence line) North nineteen degrees fifty-four minutes West five hundred and twenty-eight feet and forty-seven one-hundredths of a foot to a corner; thence (5) still along said Meyers (it being the present fence line) North eighty-two degrees seven minutes West two hundred and twenty-three feet and fifty-two one-hundredths of a foot to another corner of said Meyers; thence (6) still along said Meyers (it being the present fence line) South seventy-two degrees thirty-six minutes West one hundred and thirty-nine feet and sixty-eight one-hundredths of a foot to an iron pin, same being in line of lands heretofore conveyed by the said Bessie Aline Johnson Genung and others to Charles A. Johnson; thence (7) along line of said lands heretofore conveyed by said Bessie Aline Johnson Genung to Charles A. Johnson North one degree thirty-seven minutes East six hundred and thirty feet and thirty-three one-hundredths of a foot to an iron pin in the line of lands of one Nicholson; thence (8) along said Nicholson land South eighty-seven degrees three minutes East eleven hundred and two feet and fifty one-hundredths of a foot to the point or place of Beginning. Being the same premises conveyed to

the said John J. Nicholson by deed from Bessie Aline Johnson Genung, widow, dated January 5, 1924, and recorded in Book W 28 of Deeds for Morris County, on pages 274 etc.

It is understood and agreed between the parties hereto (the deed by John J. Nicholson) that the right of way granted to the said John J. Nicholson in the aforementioned deed W 28 page 274 has been, and is hereby extinguished by the said John J. Nicholson the owner of both the servient and the dominant tenements to the end that no easement shall exist in favor of any present or subsequent owner of tract No. 4 above described over or through tract No. 3 above described, or any part thereof.

FIFTH TRACT: BEGINNING in the North side of the road passing along the foot of Long Hill and in the middle of the road leading from the Bridge to Aaron Johnson's; thence (1) in the middle of the last named road North nineteen degrees West four chains and ninety links to said Johnson's corner; thence (2) on his line North seventy-seven and a quarter degrees East one chain and fifty-one links; thence (3) on the same North one degree West seven chains and ninety-six links to Aaron Johnson's corner at the end of a stone fence; thence on his line (4) North sixty-six degrees and three-quarters of a degree East eleven chains and ninety links; thence (5) South eighty-eight and one-quarter degrees East three chains and thirty-four links; thence still on his line (6) South twenty-six and a half degrees East eight chains and twenty links to the North side of said first named road; thence (7) along the North side of the same South fifty-five and a half degrees West five chains and fifty links; thence (8) along the same South fifty-eight and

a quarter degrees West fourteen chains and fifty links to the place of BEGINNING. Containing seventeen acres and fifty-six one-hundredths of an acre of land more or less. EXCEPTING, HOWEVER, out of the above the following described premises:

Beginning at a point in the center line of River Road distant four hundred fifty-one feet and eighty-nine one-hundredths of a foot Easterly from the center line of the road leading from New Providence to Long Hill past the residence of the late Charles Johnson; thence (1) North nine degrees ten minutes West two hundred and thirty-three feet and eighty-six one-hundredths of a foot; thence (2) North sixty-one degrees seventeen minutes East one hundred and seven feet; thence (3) South twenty-three degrees thirty-eight minutes East two hundred and thirty-six feet to the aforementioned center line of River Road; thence (4) along the center line of River Road South sixty-six degrees twenty-two minutes West one hundred and sixty-five feet to the point and place of Beginning.

SIXTH TRACT: Being the upper or Western part of the Colwell Meadow, and BEGINS in the road at Johnson's Bridge at a corner of Samuel Durie's land on the bank of Passaic River; thence running (1) on his line in the road North thirty-one and a half degrees West about four chains and forty links to the beginning corner of the first lot herein described; thence (2) on its line on the North side of the road North fifty-eight and a quarter degrees East fourteen chains and fifty links; thence (3) on the same North fifty-five degrees and a half East five chains and fifty links to Aaron Johnson's corner; thence (4) on his line on the Northernmost side of the road

fifteen chains and sixty-five links on a course North fifty-three and three-quarters degrees East; thence (5) South thirty-nine and three-quarters degrees East nine chains and seventy-five links along a ditch to said River; thence (6) up the River the several courses thereof to the place of Beginning. Containing twenty-nine acres be the same more or less. Being part of the same premises conveyed to the said John J. Nicholson by deed from John D. Durie, widower, et als., dated April 14, 1924, and recorded in Book Z 28 of Deeds for Morris County, on pages 385 etc. The last lot above described being subject to the right and privilege reserved in deed from Jonathan C. Bonnel to Samuel Durie recorded in Book F 5 of deeds for Morris County, on pages 341, 342, 343 and 344, if any, and recited as follows: "Said last described lot is conveyed subject to the right of said Johnathan C. Bonnel, his heirs and assigns, owners or occupants of the mill site and premises next below said lot and now owned by said Bonnel, forever to flow the same by the present or any future dam of said mill site, which right is hereby reserved, it being understood that said right is limited to the flowing of said land to the extent to which said land has been flowed for the five years last past."

6. That in July, 1926, this complainant received an offer to purchase certain lots or tracts in such premises from one Rene F. Erkins, who represented to the complainant that he desired to acquire the same for the purpose of improving and developing the property for home sites, but the complainant then advised said Erkins that he declined to sell sections of said premises and would only sell said tract as an entirety. This

complainant is now informed, and believes and charges the fact to be, that said Rene F. Erkins was then and now is an agent or servant of the Public Service Gas and Electric Company and/or the Holland Company, and that said offer was made by him on behalf of said companies, and that the representations made by said Erkins as aforesaid were false and fraudulent, and intended solely for the purpose of acquiring a part or portion of his said premises for the said Public Service Gas and Electric Light and/or the Holland Company.

7. That subsequently, and in November, 1926, said Rene F. Erkins again approached the complainant and represented to him that he had secured a customer for the entire tract of land and premises of the said complainant, that said customer desired to acquire the premises for the purpose of improving and developing the same for home sites, and that he was financially able to consummate said development and well experienced in such work; that the purchaser would pay to complainant the sum of $139,000 for the entire tract of which $15,000.00 was to be paid in cash and $124,000.00 by executing to complainant a purchase money bond and mortgage for such amount, provided that complainant would exclude from the lands to be covered by said mortgage twenty acres of the said premises to be selected by the purchaser one week before the date fixed for the delivery of the deed; that said Erkins stated and represented to complainant that the purchaser would be enabled to first develop and sell the lands so excepted from the mortgage and thereby secure additional cash to pay to complainant on account of said bond and mortgage.

8. That subsequently said Erkins advised the complainant that the purchaser of said premises was Frederick Fairhand, and this complainant relying on the representations, as aforesaid, did on or about the 12th day of November, 1926, enter into a contract with him for the sale of said lands and premises for the sum of $139,000.00, which said contract incorporated the provisions referred to in the seventh paragraph hereof, and to which this complainant begs leave to refer should it be necessary so to do.

9. This complainant is now informed and believes and charges the fact to be that said Rene F. Erkins during the periods hereinabove stated in connection with the negotiations for said agreement of sale, represented the Public Service Gas and Electric Company and/or the Holland Company; that said representations as set forth in the seventh paragraph hereof were false and fraudulent and made for the purpose of inducing the complainant to enter into said contract; that Frederick Fairhand, the nominal purchaser named in said contract was a mere dummy, and an agent or servant of the said corporations, or one of them, and that the real parties in interest in the purchase of said premises were the Public Service Gas and Electric Company and/or the Holland Company.

10. That on or about the time fixed for the consummation of the sale, the said Rene F. Erkins delivered to complainant a description of the premises he desired excluded from the terms of said mortgage, and that complainant relying on the representations made as aforesaid, caused a deed of conveyance for the said premises and the purchase money bond and mortgage to secure

the sum of $124,000.00 to be prepared, excluding from the premises to be covered by said mortgage the twenty acres designated by said Erkins in the description submitted by him.

11. That on or about the 15th day of December, 1926, in accordance with the terms of said agreement of sale the complainant executed and delivered his deed of conveyance for said premises to Frederick Fairhand, and received the sum of $14,000.00, which sum, together with the sum of $1,000.00 received by him at the time of the execution of the said agreement of sale, constituted the payment required by the terms of said contract, and at the same time the said Frederick Fairhand made and executed to complainant his certain bond bearing date the 15th day of December, 1926, for the sum of $124,000.00 payable as follows: $10,000.00 December 15, 1927; $10,000.00 December 15, 1928; $10,000.00 December 15, 1929; $10,000.00 December 15, 1930 and the balance of $84,000.00 on December 15, 1931, with interest at six per cent. payable semi-annually; that for the better securing the same the said Frederick Fairhand executed a mortgage to the complainant bearing date said December 15, 1926, and covering the premises conveyed by complainant but excepting therefrom the twenty acres hereinbefore referred to, which said mortgage having been duly acknowledged, was recorded in the Clerk's Office of Morris County on December 17, 1926 in Book U-10, at page 553, and to which said deed, bond and mortgage this complainant begs leave to refer, should it be necessary so to do.

12. The complainant says that the said sale was consummated by him in reliance upon the

representations as aforesaid, and that he is informed, and believes and charges the fact to be, that said Frederick Fairhand never intended to develop or improve said lands, and that he had no financial ability and was a mere dummy, and an agent or servant of the said Public Service Gas and Electric Company and/or the said Holland Company and that the real grantee of said deed and the real party in interest in the execution of said bond and mortgage was said Public Service Gas and Electric Company and/or the Holland Company, and that the sole purpose of the transaction was to enable said companies to acquire lands upon which the high transmission line as aforesaid might be constructed.

13. That on or about February 1, 1927, and without making any pretense to develop said lands and premises, Frederick Fairhand and Isabella Fairhand, his wife, conveyed a part of the lands and premises conveyed to Frederick Fairhand by the complainant, and being the tract specifically exempted as hereinbefore stated from the terms of the purchase money mortgage, to the Holland Company, which said deed having been duly acknowledged was recorded on February 2, 1927 in Book I-30 of Deeds for Morris County, at page 554, and to which deed this complainant begs leave to refer should it be necessary so to do. The complainant had no knowledge of the execution and recording of the said deed until sometime in July, 1927.

14. That sometime in April and/or May, 1927, a pretense was made of improving said premises and of seling certain lots at auction, but the complainant is informed, and believes and

charges the fact to be, that not one lot was actually sold.

15. That shortly prior to June 15, 1927, on which day the first semi-annual payment of interest fell due on said bond and mortgage the complainant was notified by Frederick Fairhand that he would be unable to do anything with the property; that he could not pay the June, 1927, installment of interest or taxes, and thereupon he offered to reconvey to the complainant all the lands and premises conveyed to him, less the tract so conveyed to the Holland Company, as aforesaid, if the complainant would surrender and cancel the said bond and mortgage and release him from all further responsibility.

16. That upon receipt of the notice aforesaid, complainant commenced an investigation, and then ascertained for the first time that the tract of land not included in the terms of the said mortgage had been conveyed to the Holland Company, as aforesaid, and that it consisted of a tract of land approximately 200 feet wide which bisected the entire tract, and that the Public Service Gas and Electric Company proposed to erect along said tract, high power electric transmission lines, and said Public Service Gas and Electric Company has since commenced the erection of certain towers on said premises for the purpose of carrying the necessary wires and cables.

17. The complainant further says that the erection of said high power transmission lines and the transfer of the said lands and premises has seriously damaged and depreciated the value of the lands remaining subject to the lien of said mortgage, and that he would never have sold

the said tract of land for the purpose of enabling the Public Service Gas and Electric Company to acquire a strip through the same to erect thereon its said high power transmission lines, and was only induced to do so by the false and fraudulent representations made by and on behalf of said Public Service Gas and Electric Company and/or the Holland Company, as aforesaid.

18. The complainant has notified the said Frederick Fairhand and the Public Service Gas and Electric Company and the Holland Company that by reason of the said fraud, he has rescinded the contract, so as aforesaid entered into for the sale of said lands and premises, and the deed of conveyance executed and delivered in pursuance thereof, and has offered to return and hereby tenders himself ready and willing to return the sum of $15,000.00 received on account of the said purchase and to surrender and cancel the bond and mortgage for $124,000.00, so as aforesaid made and executed by Frederick Fairhand to the complainant, but that the said Frederick Fairhand, the Public Service Gas and Electric Company and the Holland Company have failed and neglected and refused to accept the complainant's said offer.

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

1. That Frederick Fairhand, Holland Company, a corporation of the State of New Jersey, and Public Service Gas and Electric Company, a corporation of the State of New Jersey, who are the defendants to the first cause of action of this suit, may answer this first cause of action

of said bill of complaint, without oath, and each statement therein made:

2. That the contract and agreement of sale made by and between complainant and Frederick Fairhand, bearing date November 12, 1926, be set aside and rescinded:

3. That the deed made and executed by the complainant conveying the premises hereinabove described, and bearing date December 15, 1926, be set aside and rescinded upon the complainant returning to Frederick Fairhand and/or the Holland Company and/or the Public Service Gas and Electric Company, as this court may direct, such sums of money as he has received on account of the purchase price, and cancelling and surrendering the bond and mortgage which he now holds, as hereinabove stated;

4. That the Holland Company may be directed to reconvey to the complainant that portion of the tract of land conveyed by the complainant to said Frederick Fairhand, and subsequently conveyed by said Frederick Fairhand to it:

5. That the Holland Company and Public Service Gas and Electric Company be restrained and enjoined from constructing or erecting on said premises, or any part thereof, any poles, wires, cables, or any other thing in connection with the establishment of a high power, or other, transmission line for carrying electric power and current across, along and over the premises hereinbefore described, or any part thereof:

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

SECOND CAUSE OF ACTION.

If this Court should determine that complainant is not entitled to the relief prayed for in said first cause of action, then complainant, by way of second cause of action, says:

1. That the complainant repeats the allegations of the first 17 paragraphs of the first cause of action, and makes them a part hereof as though fully set forth.

2. That Holland Company and/or Public Service Gas and Electric Company, acting by and through Frederick Fairhand as agent, and in the fraudulent manner hereinbefore stated, and without the knowledge thereof by the complainant, on December 15, 1926, being indebted to the complainant in the sum of $124,000.00, executed to him a bond of that date to secure said sum, payable as follows: $10,000.00 on the 15th day of December, 1927; $10,000.00 on the 15th day of December, 1928; $10,000.00 on the 15th day of December, 1929; $10,000.00 on the 15th day of December, 1930, and the balance of $84,000.00 on the 15th day of December, 1931, with interest at the rate of six percentum per annum, payable semi-annually from the date of the bond.

3. To secure payment of the bond said Holland Company and/or Public Service Gas and Electric Company, acting by and through their agent, Frederick Fairhand, as aforesaid, executed to the complainant a mortgage of even date with the bond; and thereby conveyed to him, in fee, the land hereinafter described, on the express condition that such conveyance should be void if payment should be made according to the terms

of the bond. Which mortgage, having been first duly acknowledged, and the certificate of acknowledgment duly endorsed thereon was recorded in the Clerk's Office of Morris County, in Book U-10 of Mortgages, pages 553 &c.

4. The mortgaged premises are described as follows:

All those certain tracts or parcels of land and premises, hereinafter particularly described, situate, lying and being in the Township of Chatham, in the County of Morris and State of New Jersey:

FIRST TRACT: BEGINNING at an oak tree, a corner of land of William Sayre and Aaron Johnson; thence (1) on Johnson line South eighty-seven degrees West thirteen chains and seventy-six links to a corner of land of Asher W. Morehouse; thence (2) along his line North fifteen and one-half degrees West eight chains and forty-two links to his corner in the middle of the road that runs along the back side of Long Hill; thence (3) along the middle of said road North fifty-eight degrees East ten chains and thirty-four links on a line of land of Robert Colbert to his corner; thence (4) on his line North thirty-six degrees West thirty-four chains to the old tier line; thence (5) on the tier line (it being a line of Thomas Bond and Pierson Lum) twenty-six chains and sixty-five links to a corner of land of Francis Cordes; thence (6) on his line South three degrees East eleven chains and ninety-five links to his corner; thence (7) on his line South twenty-nine degrees thirty minutes East six chains and forty links to a line of the Hand lot; thence (8) on the line of the same North forty-six degrees East two chains and thirteen links to

James Campbell's corner; thence (9) on his line South nine degrees East nine chains to his corner; thence (10) on his line South twenty-nine degrees East six chains and seventy-four links to a corner of lands of William Sayre; thence (11) on his line South fifty-eight and one-half degrees West eleven chains and eighteen links to his corner; thence (12) South three degrees East three chains and sixty-five links to the place of BEGINNING. Containing seventy-seven and ninety-two one-hundredths acres of land, be the same more or less.

SECOND TRACT: BEGINS at a white oak tree for a corner of lands of David Morehouse and in a line of land of Aaron Johnson situate on the North side of Long Hill; and running thence (1) North fourteen degrees and forty minutes West on said David Morehouse's line eight chains and fourteen links to the road leading along the North side of Long Hill; thence (2) along the South side of said road South fifty-three and one-half degrees West seven chains and fifty-five links to the East end of a stone row under a fence of Aaron Johnson's; thence (3) along said Johnson's line South twenty-one and one-half degrees East three chains and eighty-nine links to his corner; thence (4) still on his line North eighty-eight degrees East six chains and seventy-five links to the place of beginning. Containing three and ninety-two one-hundredths acres of land, be the same more or less.

THIRD TRACT: BEGINNING at an iron pin standing in the line of land of one Nicholson, which pin is distant eleven hundred and two feet and fifty one-hundredths of a foot on a

course North eighty-seven degrees three minutes West from what was formerly a black oak stump which stood on the side hill now the top of Long Hill and what was formerly a corner of David Morehouse's land and being a corner of lands quit-claimed by Aaron Johnson to William Sayre on April 29, 1836, and which point is also the end of the seventh course in deed bearing date April 5, 1911 made by the said Charles A. Johnson to Bessie Aline Johnson Genung; from said point of beginning running thence (1) along line of lands conveyed April 5, 1911 by said Charles A. Johnson to the said Bessie Aline Johnson Genung South one degree thirty-seven minutes West six hundred and thirty feet and thirty-three one-hundredths of a foot to an iron pin in the line of lands of one Meyers; thence (2) along the line of lands of said Meyer (it being the present fence line) South seventy-two degrees thirty-six minutes West six hundred and thirty-seven feet to a stake in line of lands of said Charles A. Johnson; thence (3) along line of lands of said Johnson, V. F. Pelletreau and one Piker North three degrees eleven minutes East one thousand and three feet and sixty one-hundredths of a foot to the center line of Long Hill Road; thence (4) along the center line of said Long Hill Road North fifty-seven degrees thirty-two minutes East one hundred and eighty-nine feet and eight one-hundredths of a foot to land of said Nicholson; thence (5) along line of land of said Nicholson South seventeen degrees four minutes East two hundred and seventy-eight feet and thirty one-hundredths of a foot to an iron pin; thence (6) still along line of land of said Nicholson South eighty-seven degrees three minutes East three hundred and twenty-

nine feet and thirty one-hundredths of a foot to the point or place of Beginning. EXCEPTING, HOWEVER, from the above the following described land and premises:

Beginning at a point in the center line of Long Hill Road at the dividing line between lands of Nicholson and land formerly of Charles A. Johnson, said point being the end of the fourth course in the third tract hereinabove described; thence (1) along line of land of said Nicholson South seventeen degrees four minutes East one hundred and eighty-one feet and fifty-two one-hundredths of a foot; thence (2) South fifty-seven degrees thirty-two minutes West one hundred and sixty-two feet and ten one-hundredths of a foot; thence (3) North eighty-eight degrees four minutes West eighty-four feet and seventy-seven one-hundredths of a foot; thence (4) North three degrees eleven minutes East one hundred and fifty-six feet and forty-two one-hundredths of a foot to the aforesaid center line of Long Hill Road; and thence (5) along the same North fifty-seven degrees thirty-two minutes East one hundred eighty-nine feet and eight one-hundredths of a foot to the point or place of Beginning.

FOURTH TRACT: BEGINNING at what was formerly a Black Oak Stump which stood on the side hill now the top of Long Hill and what was formerly a corner of David Morehouse's land and being a corner of land quitclaimed by Aaron Johnson to William Sayre on April 29, 1836, said point being also a corner of lands now of one Scheiderman; from said point of beginning running thence (1) along said Scheidermann (formerly Sayre) South thirty-

five degrees eighteen minutes East six hundred and forty feet and sixty one-hundredths of a foot to the upper side of the River Road; thence (2) along the said line of said Road South sixty degrees sixteen minutes West seven hundred and thirty-seven feet and five one-hundredths of a foot to a point; thence (3) still along said side line of said Road South sixty-one degrees twenty-two minutes West three hundred and fifty-seven feet and twenty-seven one-hundredths of a foot to line of land of one Meyers; thence (4) along line of land of Meyers (it being the present fence line) North nineteen degrees fifty-four minutes West five hundred and twenty-eight feet and forty-seven one-hundredths of a foot to a corner; thence (5) still along said Meyers (it being the present fence line) North eighty-two degrees seven minutes West two hundred and twenty-three feet and fifty-two one-hundredths of a foot to another corner of said Meyers; thence (6) still along said Meyers (it being the present fence line) South seventy-two degrees thirty-six minutes West one hundred and thirty-nine feet and sixty-eight one-hundredths of a foot to an iron pin, same being in line of lands heretofore conveyed by the said Bessie Aline Johnson Genung and others to Charles A. Johnson; thence (7) along line of said lands heretofore conveyed by said Bessie Aline Johnson Genung to Charles A. Johnson North one degree thirty-seven minutes East six hundred and thirty feet and thirty-three one-hundredths of a foot to an iron pin in the line of lands of one Nicholson; thence (8) along said Nicholson land South eighty-seven degrees three minutes East eleven hundred and two feet and fifty one-hundredths of a foot to the point or place of Beginning.

FIFTH TRACT: BEGINNING in the North side of the road passing along the foot of Long Hill and in the middle of the road leading from the Bridge to Aaron Johnson's; thence (1) in the middle of the last named road North nineteen degrees West four chains and ninety links to said Johnson's corner; thence (2) on his line North seventy-seven and a quarter degrees East one chain and fifty-one links; thence (3) on the same North one degree West seven chains and ninety-six links to Aaron Johnson's corner at the end of a stone fence; thence on his line (4) north sixty-six degrees and three-quarters of a degree East eleven chains and ninety links; thence (5) South eighty-eight and one-quarter degrees East three chains and thirty-four links; thence still on his line (6) South twenty-six and a half degrees East eight chains and twenty links to the North side of said first named road; thence (7) along the North side of the same South fifty-five and a half degrees West five chains and fifty links; thence (8) along the same South fifty-eight and a quarter degrees West fourteen chains and fifty links to the place of Beginning. Containing seventeen acres and fifty-six one-hundredths of an acre of land more or less. EXCEPTING, HOWEVER, out of the above the following described premises: Beginning at a point in the center line of River Road distant four hundred fifty-one feet and eighty-nine one-hundredths of a foot Easterly from the center line of the road leading from New Providence to Long Hill past the residence of the late Charles Johnson; thence (1) North nine degrees ten minutes West two hundred and thirty-three feet and eighty-six one-hundredths of a foot; thence (2) North sixty-one degrees seventeen minutes

East one hundred and seven feet; thence (3) South twenty-three degrees thirty-eight minutes East two hundred and thirty-six feet to the aforementioned center line of River Road; thence (4) along the center line of River Road South sixty-six degrees twenty-two minutes West one hundred and sixty-five feet to the point and place of Beginning.

SIXTH TRACT: Being the upper or Western part of the Colwell Meadow, and Begins in the road at Johnson's Bridge at a corner of Samuel Durie's land on the bank of Passaic River; thence running (1) on his line in the road North thirty-one and a half degrees West about four chains and forty links to the beginning corner of the first lot herein described; thence (2) on its line on the North side of the road North fifty-eight and a quarter degrees East fourteen chains and fifty links; thence (3) on the same North fifty-five degrees and a half East five chains and fifty links to Aaron Johnson's corner; thence (4) on his line on the Northernmost side of the road fifteen chains and sixty-five links on a course North fifty-three and three-quarters degrees East; thence (5) South thirty-nine and three-quarters degrees East nine chains and seventy-five links along a ditch to said River; thence (6) up the River the several courses thereof to the place of Beginning. Containing twenty-nine acres be the same more or less. The last lot above described being subject to the right and privilege reserved in deed from Jonathan C. Bonnel to Samuel Durie recorded in Book F 5 of deeds for Morris County, on pages 341, 342, 343 and 344, if any, and recited as follows: "Said last described lot is conveyed subject to the right of said Jonathan C. Bonnel, his heirs and assigns, owners or occu-

pants of the mill site and premises next below said lot and now owned by said Bonnel, forever to flow the same by the present or any future dam of said mill site, which right is hereby reserved, it being understood that said right is limited to the flowing of said land to the extent to which said land has been flowed for the five years last past."

EXCEPTING, nevertheless, from the above described premises the following three tracts or parcels of land:

FIRST TRACT: BEGINNING at a point in the center line of Fairmount Avenue or Long Hill Road distant therein Southwesterly seven hundred and five feet and fifteen one-hundredths of a foot from the intersection of the same with the dividing line between the lands of the owner and lands of Charles E. Weyrich; thence (1) North ten degrees six minutes East seven hundred and eighty-six feet and ninety-two one-hundredths of a foot to a point; thence (2) South seventy-nine degrees fifty-four minutes East one hunderd and thirty-five feet and eighty-six one-hundredths of a foot to a point; thence (3) North four degrees one minute East seven hundred and eighty-eight feet and seventy one-hundredths of a foot to a point; thence (4) North eighty-four degrees thirty-six minutes West two hundred and twenty-eight feet and ninety-seven one-hundredths of a foot to a point; thence (5) South ten degrees six minutes West seventeen hundred and twenty-nine feet and seventy-nine one-hundredths of a foot to the center line of Fairmount Avenue, or Long Hill Road; thence (6) North fifty-five degrees thirty-five minutes East two hundred and twenty-seven feet and

thirty-two one-hundredths of a foot to an angle in the same; thence (7) still along said center line North forty-seven degrees fifty-seven minutes East twenty-two feet and sixty-eight one-hundredths of a foot to the point and place of Beginning. Containing 8.329 Acres.

SECOND TRACT: BEGINNING at a point in the center line of Fairmount Avenue, or Long Hill Road, distant therein Southwesterly seven hundred and five feet and fifteen one-hundredths of a foot from the intersection of the same with the dividing line between lands of the owner and lands of Charles E. Weyrich; thence (1) South ten degrees fifty-one minutes West eleven hundred and twenty-one feet and thirty-five one-hundredths of a foot to an angle; thence (2) South ten degrees six minutes West eleven hundred and nine feet and fifty one-hundredths of a foot to the center line of River Road; thence (3) South sixty-one degrees twenty-five minutes West and along the center line of said River Road two hundred feet to a point; thence (4) North ten degrees six minutes East ten hundred and eighty-eight feet and ninety-two one-hundredths of a foot; thence (5) North nine degrees fifty minutes East ten hundred and eighty-nine feet and sixty-one hundredths of a foot to the said center line of Fairmount Avenue, or Long Hill Road; thence (6) North fifty-five degrees thirty-five minutes East and along said center line of Fairmount Avenue, or Long Hill Road two hundred and twenty-seven feet and thirty-two one-hundredths of a foot to an angle in the same; thence (7) still along said center line North forty-seven degrees fifty-seven minutes East twenty-two feet and sixty-eight one-hundredths of a foot to the

point and place of Beginning. Containing 8.137 Acres.

THIRD TRACT: BEGINNING at a point in the center line of River Road, distant therein Northeasterly eleven hundred and thirty feet and fifty-five one-hundredths of a foot from the intersection of the same with the center line of Road leading from New Providence to Chatham; thence (1) South five degrees forty-eight minutes West four hundred and fifty-five feet and ninety one-hundredths of a foot to the high water line of Passaic River; thence (2) North fifty-two degrees thirty-one minutes East and along said high water mark of the Passaic River eleven feet and eighteen one-hundredths of a foot to a point; thence (3) North sixty-nine degrees fifty-three minutes East and still along said high water mark in Passaic River two hundred feet and twenty-five one-hundredths of a foot to a point; thence (4) North three degrees East four hundred and seventy-four feet and twenty one-hundredths of a foot to the center line of River Road; thence (5) South sixty-one degrees twenty-five minutes West two hundred feet to the point and place of Beginning. Containing an area of 1.904 Acres. Including all the party of the first part's (Frederick Fairhand) right, title and interest in and to the lands lying within the limits of the projection of courses one and four to the south of courses two and three (in the herein described third tract) to the center of the Passaic River.

BEING part of the same premises conveyed to the party of the first part hereto (Frederick Fairhand) by deed from John J. Nicholson, unmarried, bearing even date herewith (December 15th, 1926).

5. Said mortgage contained a clause that it was given to secure a part of the purchase price of said conveyance from John J. Nicholson to Frederick Fairhand.

6. Both bond and mortgage contained an agreement as follows:

> "Should any default be made in the payment of the said interest or any installment of principal, or of any part thereof, on any day whereon the same is made payable, as above expressed, or should any tax, assessment, under rent, or other municipal or governmental rate, charge, imposition or lien be hereafter imposed or acquired upon the premises described in this mortgage, and become due and payable, and should the said interest, or any installment of principal, remain unpaid and in arrear for the space of thirty days, or said tax, assessment, under rent or other municipal or governmental rate, charge, imposition or lien, or any or either of them remain unpaid and in arrear for the space of sixty days, then and from thenceforth, that is to say, after the lapse or expiration of either of the said periods, as the case may be, the aforesaid principal sum of $124,000.00, with all arrearage of interest thereon, shall, at the option of the said party of the second part, or his legal representatives, become and be due and payable immediately thereafter."

7. On June 15, 1927, one-half year's interest fell due on complainant's bond and mortgage, and remained unpaid for more than thirty days thereafter, and no part thereof has yet been paid. On June 1, 1927, one-half year's tax for

New Jersey State Library

the year 1927 became due to the Township of Chatham, and remained unpaid for more than sixty days thereafter, and no part thereof has yet been paid. Complainant has elected that the whole principal sum, with all unpaid interest shall be now due.

8. Said Holland Company, a corporation of the State of New Jersey and/or Public Service Gas and Electric Company, a corporation of the State of New Jersey, or one of them, has always been in possession of the mortgaged premises.

9. That the whole amount of principal, with interest thereon from December 15, 1926, is due upon complainant's bond and mortgage.

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

1. That Frederick Fairhand Holland Company, a corporation of the State of New Jersey and Public Service Gas and Electric Company, a corporation of the State of New Jersey, who are the defendants to this second cause of action of this suit, may answer the second cause of action of this bill of complaint (without oath), and each statement therein made:

2. That the Court may decree that Holland Company, a corporation and/or Public Service Gas and Electric Company, a corporation, are the real obligors of the bond and the real mortgagors of the mortgage hereinbefore set forth; and that the amount due to complainant thereon is due and payable by the Holland Company, a corporation and/or Public Service Gas and Electric Company, a corporation; and that the said instruments may be reformed accordingly.

3. That an account may be taken of the amount due on complainant's mortgage:

4. That the defendants, or one of them, may be decreed to pay complainant the amount so found due, with interests and costs, by a short day, to be appointed by this Court; and that in default of such payment, they, and each of them, be debarred and foreclosed of all equity of redemption in said lands: or

5. That a decree may be made for the sale of the mortgaged premises to raise, and pay to complainant, the amount so found due on his mortgage, with interest and costs:

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

THIRD CAUSE OF ACTION.

If this Court should determine that complainant is not entitled to the relief prayed for in either the first or second causes of action, then complainant, by way of third cause of action, says:

1. On December 15, 1926, Frederick Fairhand, being indebted to complainant in the sum of $124,000.00, executed to complainant a bond of that date to secure that sum, payable as follows: $10,000.00 on the 15th day of December, 1927; $10,000.00 on the 15th day of December, 1928; $10,000.00 on the 15th day of December, 1929; $10,000.00 on the 15th day of December, 1930, and the balance of $84,000.00 on the 15th day of December, 1931, with interest at the rate of six

per centum per annum, payable semi-annually from the date of the bond.

2. To secure payment of the bond said Frederick Fairhand executed to the complainant a mortgage of even date with the bond; and thereby conveyed to him, in fee, the land hereinafter described on the express condition that such conveyance should be void if payment should be made according to the terms of the bond. Which mortgage, having been first duly acknowledged and the certificate of acknowledgment duly endorsed thereon was recorded in the Clerk's Office of Morris County, in Book U-10 of Mortgages, pages 553 &c.

3. Complainant repeats the allegations set forth in paragraph 4 of the second cause of action.

4. Complainant repeats the allegations set forth in paragraph 5 of the second cause of action.

5. Complainant repeats the allegations set forth in paragraph 6 of the second cause of action.

6. Complainant repeats the allegations set forth in paragraph 7 of the second cause of action.

7. Said Frederick Fairhand is married, and his wife's name is Isabella Fairhand. Any claim or interest she may have, by way of inchoate right of dower, or otherwise, is subject to complainant's mortgage.

8. Said Frederick Fairhand and Isabella Fairhand, his wife, or one of them, has always been in possession of the mortgaged premises.

Bill of Complaint—Third Count.

9. Complainant repeats the allegations set forth in paragraph 9 of the second cause of action.

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

1. That Frederick Fairhand and Isabella Fairhand, his wife, who are the defendants to this third cause of action of this suit, may answer the third cause of action of this bill of complaint (without oath), and each statement therein made:

2. That an account may be taken of the amount due on complainant's mortgage:

3. That the defendants, or one of them, may be decreed to pay complainant the amount so found due, with interests and costs, by a short day, to be appointed by this Court; and that in default of such payment, they, and each of them, be debarred and foreclosed of all equity of redemption in said lands: or

4. That a decree may be made for the sale of the mortgaged premises to raise, and pay to complainant, the amount so found due on his mortgage, with interest and costs:

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

RIKER & RIKER,
Solicitors for Complainant.

THEO. McC. MARSH,
Of Counsel.

ANSWER OF PUBLIC SERVICE ELECTRIC AND GAS COMPANY AND THE HOLLAND COMPANY.

IN CHANCERY OF NEW JERSEY.

JOHN J. NICHOLSON, *Complainant,* *vs.* FREDERICK FAIRHAND, *et als., Defendants.*	*On Bill to Foreclose.* *Answer.*

The joint and several answer of Public Service Electric and Gas Company (miscalled Public Service Gas and Electric Company in the bill of complaint) and The Holland Company, corporations of the State of New Jersey, having their principal office at No. 80 Park Place, in the City of Newark, County of Essex, in said State, two of the defendants, to the bill of complaint of John J. Nicholson, complainant, respectfully show that:

FIRST CAUSE OF ACTION.

1. They admit the truth of paragraph 1.

2. They admit that the defendant, The Holland Company, is a corporation of the State of New Jersey, engaged in the business of buying, selling, holding and dealing in real estate; but deny that it is a subsidiary or allied corporation of Public Service Electric and Gas Company (miscalled Public Service Gas and Electric Company in said bill), created or used by it.

3. They admit that defendant, Public Service Electric and Gas Company, was securing necessary land, and erecting transmission lines, supported by poles and towers, in the prosecution of its business, before and at the time stated in paragraph 3.

4. These defendants admit that the lands were being secured for such purpose in the Borough of Chatham and elsewhere in said State, as stated in paragraph 4 of the bill, but deny all other matters and things stated and set out in the said paragraph 4 of said bill.

5. These defendants are informed and believe, and therefore admit upon such information and belief, that complainant was the owner of the lots and tracts of land described in the paragraph 5 of said bill.

6. These defendants expressly deny the matters and things stated and set out in paragraph 6 of said bill.

7. These defendants, further answering, deny the matters and things set out in paragraphs 7, 8, 9 and 10 of said bill.

8. These defendants are not informed as to the matters and things stated and set out in paragraph 11 of said bill, except from the information therein contained, which they believe to be true, and therefore admit the facts as stated therein upon such information and belief.

9. These defendants expressly deny the matters and things contained in paragraph 12 of said bill.

10. These defendants, further answering, state and show the truth to be that on the first day of

February, 1927, Frederick Fairhand and Isabella Fairhand, his wife, granted and conveyed to this defendant, The Holland Company, by deed bearing date that day and duly executed over their hands and seals, and acknowledged the same day, and recorded on the 2nd day of February, 1927, in the Clerk's Office of Morris County, in Book I-30 of Deeds, pages 554, &c., all the following described tract of land and premises, which, as is recited therein, was a part of the premises granted and conveyed by the complainant and his wife to the grantors in said deed named, that is to say:

All that tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the Township of Chatham, in the County of Morris and State of New Jersey:

BEGINNING at a point in the center line of River Road, distant therein eleven hundred and thirty and fifty-five one-hundredths feet (1130.55′) northeasterly from the intersection of the same with the center line of a road leading from New Providence to Chatham; thence south five (5) degrees forty-eight (48) minutes west four hundred and fifty-five and ninety one-hundredths (455.90′) to the highwater mark of the Passaic River; thence along the same north fifty-two (52) degrees thirty-one (31) minutes east eleven and eighteen one-hundredths feet (11.18′) to an angle; thence still along the same north sixty-nine (69) degrees fifty-three (53) minutes east two hundred and twenty-five one-hundredths feet (200.25′) to an angle; thence north three (3) degrees, no (00) minutes east four hundred and seventy-four and twenty one-hundredths feet (474.20′) to an angle situated in the center line of River Road; thence north

ten (10) degrees six (6) minutes east eleven hundred and nine and fifty one-hundredths feet (1109.50′) to an angle; thence north ten (10) degrees fifty-one (51) minutes east eleven hundred and twenty-one and thirty-five one-hundredths feet (1121.35′) to an angle situated in the center line of Fairmount Avenue or Long Hill Road; thence north ten (10) degrees six (6) minutes east seven hundred and eighty-six and ninety-two one-hundredths feet (786.92′) to a corner; thence south seventy-nine (79) degrees fifty-four (54) minutes east one hundred and thirty-five and eighty-six one-hundredths feet (135.86′) to a point; thence north four (4) degrees one (1) minute east seven hundred and eighty-eight and seventy one-hundredths feet (788.70′) to a corner; thence north eighty-four (84) degrees thirty-six (36) minutes west two hundred and twenty-eight and ninety-seven one-hundredths feet (228.97′) to a corner; thence south ten (10) degrees six (6) minutes west one thousand seven hundred and twenty-nine and seventy-nine one-hundredths feet (1729.79′) to an angle situated in the center line of Fairmount Avenue or Long Hill Road; thence south nine (9) degrees fifty (50) minutes west ten hundred and eighty-nine and sixty one-hundredths feet (1089.60′) to an angle; thence south ten (10) degrees six (6) minutes west ten hundred and eighty-eight and ninety-two one-hundredths feet (1088.92′) to the point and place of BEGINNING.

Excepting therefrom so much thereof as lies in the beds of River Road and Fairmount avenue or Long Hill Road.

This description in accordance with a survey made by John J. Kentz, Civil Engineer and Surveyor, Summit, New Jersey, January 10, 1927.

Being part of the premises conveyed to the party of the first part by Deed Book G 30, page 521, recorded December 17, 1926.

Excepting easement as in Deed Book F 5, page 341, which easement is as follows:

"Said last described lot is conveyed subject to the right of said Jonathan C. Bonnel, his heirs and assigns, owners or occupants of the Mill site and premises next below said lot and now owned by said Bonnel. Forever to flow the same by the present or any future dam of said Mill site, which right is hereby reserved.

"It being understood that said right is limited to the flowing of said land to the extent to which said land has been flowed for the 5 years last past."

Together with all the right, title and interest which the owners may have in and to the lands lying within the limits of River Road and Fairmount avenue or Long Hill Road and the Passaic River abutting the property herein conveyed.

11. These defendants aver the truth to be that defendant, Public Service Electric and Gas Company, had secured the services of the defendant, The Holland Company, to acquire lands and premises desired for it in and about its business, which the said defendant, The Holland Company, had theretofore and is now doing, and that the defendant, Public Service Electric and Gas Company, was desirous to obtain and is desirous of obtaining the hereinbefore described tract of land, which it expects to acquire from the defendant, The Holland Company, which bought and now owns the same.

12. This defendant, The Holland Company, severally answering, says that it desired to obtain, in order to furnish the same to the defendant, Public Service Electric and Gas Company, the tract of land hereinabove described, which has been granted to it as aforesaid by the said Frederick Fairhand and Isabella Fairhand, his wife, or a similar tract of land in the immediate neighborhood, but was informed that the then owner of the same, the complainant in this cause, refused to sell any part of his large holding without selling the whole of the same, and as these defendants could make no use of the whole of the same and it involved more than they or either of them were willing to buy, they did not undertake nor consider any attempts to negotiate with the complainant for the same or any part of the same; but the defendant, The Holland Company, was informed some time after the execution of an agreement for sale between the complainant and the said Frederick Fairhand for the whole tract of land of such fact; and were asked if they were interested in the purchase of a part thereof. That then they informed him that if he purchased the same and secured title thereto, the defendant, The Holland Company, would be glad to negotiate for a tract of land practically of the size and description which they afterwards purchased and acquired from him, as aforesaid. All of which was done in the way and manner herein set forth, without any knowledge, notice, information or belief that the complainant had, or claimed to have, or would claim to have, any such right or equity as he has set up and asserted in said bill, as against these defendants, or as against the defendant, Frederick Fairhand.

13. These defendants can neither admit nor deny the matters contained in paragraph 14 of said bill, not having sufficient information of the truth thereof, but are informed in such a way as they believe it to be true, that the said Frederick Fairhand as a matter of fact did a great deal of development on the property purchased, made maps and plans, grading of streets, and expended large sums of money for the same.

14. These defendants, further answering, state and show that they have no knowledge or information, except such as is contained in the said bill of complaint and insufficient to found a belief, of the matters and things set out in paragraph 15 thereof, and therefore are not able either to admit or deny the same.

15. These defendants, further answering, expressly deny the matters and things set out in paragraphs 16 and 17 of said bill.

16. These defendants, further answering, state and show the truth to be that neither by the said Frederick Fairhand nor any other person or persons named in the said bill of complaint, did they or either of them have any connection or negotiations with the complainant, or have any notice of any reserved rights, equity or claims that the complainant had or claimed to have in the said lands so as aforesaid conveyed to The Holland Company, nor did they or either of them, practice any concealment, subterfuge or other thing to deceive, misguide or mislead the complainant, or to induce him to make the sale to the said defendant, Frederick Fairhand, named in said bill, but on the contrary aver that all the actings and doings of these defendants in

and about the premises were open, clear and in good faith; that they made no negotiations with the said Frederick Fairhand until they had learned that he was the owner apparently in his own right in fee simple of all the lands formerly owned by the complainant and was willing, after negotiations which were then first opened with him, to sell and convey to the defendant, The Holland Company, the tract above described, which it desired to acquire, which he agreed to do free and clear of all encumbrance, upon the payment of the price, which was arrived at after considerable negotiation and dickerings; and that the said Frederick Fairhand in none of such transactions he had with complainant was in anywise representing these defendants, or either of them, or had any understanding with these defendants, or either of them, or any authority from them, or either of them, but the purchase, so far as these defendants know and as they verily believe, was altogether on his own account, with the object and purpose of making use of the said property for his own purposes; and in furtherance of such purpose he made sale to this defendant, The Holland Company, of the above-described portion thereof, which he did at an advantageous price to himself; and that the same was so sold and conveyed in fee simple, without any claim, equity, right or reservation in law or equity in favor of the complainant or anyone else, the same being free and clear of any lien, claim or incumbrance as disclosed by an examination of the records made by and for the defendant, The Holland Company.

17. These defendants aver and humbly submit that the complainant in and by his bill of com-

plaint for the first cause of action, shows no matter or thing which will entitle him to the relief prayed for or any other relief, and hope they may have the same benefit and advantage of this defense as if they had objected to the bill of complaint by proceedings under the rules of this Court accordingly.

SECOND CAUSE OF ACTION.

1. These defendants, further severally answering, say that they repeat the foregoing answer made by them to all the matters and things set out in the first seventeen paragraphs of the first cause of action in their foregoing answer repeated by reference in the second cause of action also as an answer to paragraph 1 of the second cause of action.

2. These defendants expressly deny the matters and things concerning them as stated and set out in paragraph 2 of said second cause of action; and are not informed as to the other matters and things therein stated, except as is contained in said bill, which is insufficient upon which to found a belief, and can neither admit nor deny the same.

3. These defendants, severally answering, expressly deny that in the making of the bond and the mortgage named in paragraph 3 of said bill Frederick Fairhand was the agent of them, or either of them, or that he did in anywise act for them, or either of them, or at the request or suggestion of them, or either of them, in any way or manner, or that he executed the same as such agent, if he did so execute a bond and mortgage, but whatever he did was for himself and on his own account, and whether he did execute such bond or mortgage, or not,

neither of these defendants know, but from the information contained in the said bill of complaint, believe he may have done so and are willing to admit the same from such information and belief, but aver that if he so did he did not in any way or manner stand, act for or represent these defendants or either of them, or by their request or procurement, but entirely for himself.

4. These defendants, further severally answering, say that they have no knowledge, information or belief concerning the matters contained in paragraphs 5, 6 and 7 of the second cause of action alleged in the said bill of complaint.

5. These defendants, further answering, expressly deny that they, or either of them, ever have been or are now in possession of the mortgaged premises, or any part thereof, and state and show the truth to be that all of the property in the possession of them, or either of them, is that mentioned and described in this answer, so as aforesaid conveyed to the defendant, The Holland Company.

6. These defendants aver and humbly submit that the complainant in and by his bill of complaint by the second cause of action, shows no matter or thing which will entitle him to the relief prayed for or any other relief, and hope they may have the same benefit and advantage of this defense as if they had objected to the bill of complaint by proceedings under the rules of this Court accordingly.

These defendants pray they may be hence dismissed, with costs.

FRANK BERGEN,
Solicitor for and of Counsel with
Answering Defendants.

ANSWER OF FREDERICK FAIRHAND AND ISABELLA FAIRHAND.

IN CHANCERY OF NEW JERSEY.

JOHN J. NICHOLSON, *Complainant,* *vs.* FREDERICK FAIRHAND, *et als., Defendants.*	*On Bill to Foreclose.* *Answer.*

The answer of the defendant, Frederick Fairhand, to the first and second causes of action in the bill of complaint of John J. Nicholson, complainant; and the answer of the defendants, Frederick Fairhand and Isabella Fairhand, to the third cause of action in said bill of complaint, respectfully show:

FIRST CAUSE OF ACTION.

1. This defendant, Frederick Fairhand, has no personal knowledge or information sufficient to form a belief as to the statements in paragraphs 1 to 4, inclusive.

2. This defendant admits paragraph 5.

3. This defendant has no knowledge or information sufficient to form a belief as to the statements in paragraph 6.

4. This defendant has not sufficient knowledge or information to form a belief as to the statements in paragraph 7 except to say that he was interested in purchasing a tract of land in the Borough of Chatham for the purpose of improv-

ing and developing the same for home sites and that the tract of land which he found particularly suitable to his requirements was owned by the complainant; that the purchase price which he had agreed to pay for said premises and the terms of payment and the provisions upon which payment thereof was to be made were as stated in said paragraph 7.

5. This defendant admits that on or about November 12, 1926, he entered into a contract with complainant for the sale of said lands for the sum of $139,000, which said contract incorporated the provisions referred to in the seventh paragraph of the bill, but says that he has not sufficient knowledge to form a belief as to whether said Erkins or one James E. Shea, through both of whom he made negotiations, first advised complainant that he was the purchaser of the premises.

6. This defendant has no knowledge or information sufficient to form a belief as to the statements in paragraph 9 that Rene F. Erkins represented the Public Service Gas & Electric Co. and/or the Holland Company; and expressly denies that he, Frederick Fairhand, was only the nominal purchaser named in said contract, and was as such a mere dummy and an agent or servant of the said corporations or either one of them; but to the contrary this defendant affirmatively says that he was the purchaser in his own right and for his own benefit as vendee in said contract.

7. This defendant, answering paragraph 10, says that he had prepared a description of the premises which he selected to be excepted from the premises to be covered by the said mortgage

and which selected premises he would be able to first develop or sell; either said Erkins or said Shea acting for him submitted this description to complainant.

8. This defendant admits paragraph 11.

9. This defendant expressly denies that he purchased the premises for any other purpose than to improve and develop them as a private and personal business enterprise and denies specifically, by way of answer to the charges in paragraph 12 that he was acting for or in any way connected with either of the said companies named therein in negotiating for and obtaining title to said lands.

10. That part of paragraph 13 which refers to the conveyance by this defendant, Frederick Fairhand and Isabella Fairhand, his wife, to the Holland Company, of part of the lands conveyed to Frederick Fairhand by the complainant is admitted; but, this defendant expressly denies the matters and things otherwise stated in said paragraph.

11. This defendant denies the matters as alleged in paragraph 14 and states the fact to be that he spent a large sum of money in planning and securing surveys and constructing roads through the said property, in advertising it and in otherwise improving and developing it for home sites. In furtherance of his enterprise, this defendant held a sale at auction on or about May 27, 28 and 30, 1927, at which sale a few scattered parcels were sold but as releases from the lien of the purchase money mortgage held by complainant could not be obtained for the particular parcels sold this defendant was unable to consummate the sales.

12. This defendant, further answering, says that owing to a serious illness to which he became subject on or about March 11, 1927, and from which he did not recover until on or about May 27, 1927, he was unable to conduct the improvement and development of the lands personally; that because of such inability he believes and affirms it has been detrimental to the successful conduct of the development of the lands.

13. This defendant admits paragraph 15 and further says that on or about June 29, 1927, this defendant offered to deliver a deed which he had prepared for the premises covered by the mortgage to the complainant without any actual money consideration moving to him but for the purposes of saving to the complainant the necessity of foreclosure of said mortgage and being released from the obligations under the bond for $124,000 and the mortgage securing the same as described in paragraph 11 of said bill.

14. This defendant admits the statement in paragraph 16 as to the conveyance by him to the Holland Company of the tract as designated; but he has no knowledge or information sufficient to form a belief as to the remaining statements in said paragraph.

15. This defendant denies paragraph 17.

16. This defendant, further answering, says that at no time in the course of and completion of the negotiations set forth in said bill, or in any other negotiations or transactions, has he acted for either the Public Service Gas & Electric Company, or the Holland Company but that he has always conducted and entered into the negotiations and transactions admitted by this

answer to be as alleged in said bill as an individual, independent, private and personal real estate operator, improver and developer; that this defendant denies that he practiced any fraud upon the complainant in the course of and completion of said negotiations but to the contrary states that all negotiations and transactions were conducted by him and entered into with complainant on a legal and regular business basis.

17. This defendant humbly submits that the complainant has not by the first cause of action shown that he is entitled to the relief prayed for therein and accordingly this defendant prays that the entire first cause of action in complainant's bill be hence dismissed, and that he be allowed his reasonable costs on his behalf most unjustly sustained.

SECOND CAUSE OF ACTION.

1. This defendant, repeats as his answer to paragraph 1 of the second cause of action his answer to each of the first 17 paragraphs of the first cause of action.

2. This defendant denies the matters, as alleged, in paragraphs 2 and 3 but admits that he, on his own behalf, executed to complainant on December 15, 1926, a bond of that date to secure his indebtedness to complainant in the sum of $124,000 payable as stated in said paragraph 2 and to secure payment of said bond, on his own behalf, executed the mortgage referred to in paragraph 3.

3. This defendant admits paragraphs 4, 5, 6 and 7.

4. This defendant denies paragraph 8.

5. This defendant admits paragraph 9.

6. This defendant humbly submits that the complainant has not by the second cause of action shown that he is entitled to the relief prayed for therein and accordingly this defendant prays that the entire second cause of action in the complainant's bill be hence dismissed, and that he be allowed his reasonable costs in his behalf most unjustly sustained.

THIRD CAUSE OF ACTION.

1. These defendants, Frederick Fairhand and Isabella Fairhand, his wife, admit all the allegations in the third cause of action of the bill.

MINTON & DAY,
Solicitors for and of Counsel with
Answering Defendants.

REPLICATION.

IN CHANCERY OF NEW JERSEY.

Between

JOHN J. NICHOLSON,
Complainant,

and

FREDERICK FAIRHAND, *et als.*,
Defendants.

Replication.

Complainant joins issue on the answer filed by the defendants, Public Service Electric & Gas Company and The Holland Company, corporations of the State of New Jersey, to the first and second causes of action.

RIKER & RIKER,
Solicitors for Complainant.

REPLICATION.

IN CHANCERY OF NEW JERSEY.

Between	*On Bill, &c.*
JOHN J. NICHOLSON, *Complainant,*	*Replication to Answer of Defendants, Frederick Fairhand and Isabella Fairhand, his wife.*
and	
FREDERICK FAIRHAND, *et als., Defendants.*	

The complainant, John J. Nicholson, joins issue on the answer of the defendants, Frederick Fairhand and Isabella Fairhand, his wife.

RIKER & RIKER,
Solicitors of the Complainant.

TESTIMONY.

IN CHANCERY OF NEW JERSEY.

May 14, 1928.

Between

JOHN J. NICHOLSON,
Complainant,

and

FREDERICK FAIRHAND, *et als.*,
Defendants.

Transcript of shorthand notes of testimony taken in the above-entitled cause before his Honor, Alonzo Church, Vice-Chancellor, at the Chancery Chambers, Newark, New Jersey, in the presence of Messrs. Riker & Riker, for complainant; Frank Bergen (by William H. Speer), for defendants, Fairhand, Public Service Electric & Gas Company and Holland Company. Minton & Day (by Mr. Roller), for Frederick Fairhand.

Mr. Riker: I offer in evidence interrogatories and answers of the Holland Company, Public Service Electric & Gas Company.

(Interrogatories marked Exhibits C. 1, C. 2, C. 3 and C. 4.)

JOHN J. NICHOLSON, sworn for complainant.

Direct examination by Mr. Riker.

Q Mr. Nicholson, where do you live? A Jersey City, New Jersey.

Q Were you the owner of a large tract of land in Chatham? A Yes, I was.

Q How long have you owned that? A Why, I owned about half of it for twenty years.

Q In the year 1926, were you approached concerning the sale of it? A Yes.

Q Who approached you? A Mr. Erkins.

Q What time of the year was it? A Well, it was along about June of 1926.

Q And what was the conversation? What did he say to you and you to him?

Mr. Speer: I object to that, your Honor please, until it is shown that Mr. Erkins was the agent of either Public Service Electric & Gas Company or of Holland Company to speak for either of those companies. There is no evidence in the case yet to that effect.

Mr. Riker: The interrogatory states that he was in the employ, I think, of the Holland Company—one of the two anyway.

Mr. Speer: Yes.

Mr. Riker: And he was in the employ at that time.

Mr. Speer: It also states what he was employed for.

Mr. Riker: I think it can be connected up later also.

The Court: I will allow it.

Q What was the conversation? A Well, they knew that I had this tract of property there.

Mr. Speer: I object and ask it be stricken out.

The Court: Yes.

Q What did he say to you? A He wanted to know if I wanted to sell twenty acres of it.

Q How many acres were there about, in all? A There were, at that time, about 168 or 169 acres.

Q And what did you tell him? A I told him, no; I didn't care to sell part of it. If I sold it at all I wanted to sell it as a whole.

Q Was that the end of the transaction at that time? A At that time. He then made a proposition that he probably could get around that and I would be just as well satisfied, that they would buy twenty acres at a time on a release proposition, providing I would release twenty acres as they required it, if they—they would pay cash for the first twenty acres, and then as every additional twenty acres was released they would also pay cash until the entire property was taken up.

Q When did he tell you this? A That was in June. I think June, 1926.

Q And did he come back later? A Well, I told him I would have to consider that and I would probably see—that I would see my attorney about it, so I conferred with my attorney and he said he—(interrupted).

The Court: No. Just confine yourself to this conversation at this time.

Q Tell us what you said to Mr. Erkins and he said to you at that time? A Well, at that time I did not care to sell on those terms.

Q Did you receive a letter from Mr. Erkins some time subsequent to that? A Yes; following that conversation up, he sent me a letter with a print, a blue print of that proposition for a development in which he outlined lots scheduled A, B, C, D and so forth.

Q I show you a letter dated July 8, 1926, and ask you if that is the letter? A That is the letter, yes.

Q Are those attached papers the papers that came with the letter? A That is the papers that came with the letter, yes, showing the lots in detail.

Mr. Riker: I offer that in evidence.

Mr. Speer: May I have it understood my objection extends to this line of testimony?

The Court: Yes; I understand that.

Mr. Speer: Of course, I object to it.

The Court: All this testimony is permitted on Mr. Riker's statement that he is going to connect it, that Mr. Erkins was the agent of one of these companies, because, if that be not proved, this evidence is of no value.

(Paper marked Exhibit C. 5.)

Q After you received that letter, did you see Mr. Erkins again? A I didn't see Mr. Erkins probably for three to four months.

Q And then where did you see him? A I saw him at my home.

Q Where? A In Chatham.

Q And what did he say to you and you to him? A Well, at first, Mr. Shea, the real estate agent at Chatham, telephoned me and wanted to know if I still had my acres.

The Court: No.

Q When you saw Mr. Erkins the second time in Chatham, who was present? A Mr. Shea, Mr. Erkins and myself.

Q And what did Mr. Erkins say to you? A Mr. Erkins wanted to know if I still had my property and that he was ready now to accept my proposition. I had made a proposition on that previous occasion. He asked me to name a price.

Q What was the proposition? A I offered the property at $140,000, the entire property.

Q What did he say as to that at this time? A At this time he said he saw his way clear to accept that proposition, if I was still willing to sell the property, and I told him that I had already sold a lot out of it, so then he changed the proposition from $140,000 to $139,000.

Q And what, if anything, did he say about what he was going to do with the property? A They were going to develop it, a real estate development, a high class development.

Q What use? A To build houses and lay out streets; and make a real development out of it, such as I had intended to do.

Q What, if anything, did he say about himself with reference to developing it—his experience? A Well, they had developed property on Long Island.

Q Did he indicate whether he was alone in the transaction? A No; only as I should infer from his conversation.

Mr. Speer: I object to inference on the witness-stand.

The Court: Yes. Only what he said.

Q As a result of this negotiation, was the contract signed? A As a result of this—yes, the contract was signed later.

Q Did Mr. Erkins submit to you the form of contract? A Yes.

Q I show you this form of contract dated November 8, 1926, between yourself and Frederick Fairhand. Is that the form of contract that was submitted? A That is the form of contract, yes.

Q Was that ever signed? A That contract was not signed.

Q Was a new contract prepared? A A new contract was prepared.

Q By whom? A By Mr. Pollard of Riker & Riker.

Q I show you an executed contract between yourself and Mr. Fairhand, dated November 12, 1926. Is that the executed contract? A Yes; that is the contract.

Mr. Riker: I offer each of those in evidence.

(Contract marked Exhibit D. 6.)

Q At the time that that contract was signed, where were you? A In the office of Riker & Riker, Mr. Robert Pollard's office.

Q Who was present? A Mr. Erkins, Mr. Fairhand, Mr. Shea, Mr. Robert Pollard and myself.

Q Who was Mr. Shea there for? A Mr. Shea was there just in company with Mr. Erkins.

Q What was the business of Mr. Shea? A He is a real estate broker.

Q Was he getting a commission? A He was getting a commission. He brought Erkins to me, originally.

Q Did you ever see Mr. Frederick Fairhand before that time? A I never saw him until the day the contract was signed; never heard of him until I saw his name on the contract.

Q What did Mr. Erkins say to you at that time concerning Mr. Fairhand? A That Mr. Fairhand was one of his associates and that they were going to develop this property and that he would take title.

Q Did you realize a deposit at that time? A I received a deposit of one thousand dollars, in hundred dollar bills.

Q Did Mr. Erkins or Mr. Fairhand, or both, say anything at that time, just before the contract was signed, concerning their intention to develop this property? A Yes, yes.

Q What did they say? A They said they were.

Q And which one said it? A Well, Mr. Fairhand, the day that the contract was signed. Mr. Erkins had, of course, repeated that numerous times beforehand.

Q To you? A To me, and even gave me a blue print of what they were going to do.

Q And did they speak of it at that time? A Yes.

Q And in Mr. Fairhand's presence? A Yes, sir; in the office of Riker & Riker.

Q After that, did the title close? Did you sign a deed and give it to Mr. Fairhand? A Yes, sir.

Q And you got back a purchase money mortgage, did you not? A A purchase money mortgage, yes.

Q For one hundred and twenty-four thousand dollars? A One hundred twenty-four thousand.

Q And at the time of closing title, where were you? A In Robert Pollard's office.

Q Did you receive the purchase price that was paid in cash? A Paid in cash. They paid $15,000 and—fifteen thousand and eighteen dol-

lars, the eighteen being for expenses, something of that kind, to their counsel—in one thousand dollar bills.

Q Fifteen or fourteen they paid— A I mean, they paid fourteen thousand in one thousand dollar bills.

Q Fourteen one thousand dollar bills? A One thousand dollar bills, yes.

Q Who gave that to you? A Mr. Fairhand.

Q Did he have it in his pocket? A He had it in his pocket, yes.

Q What did you do after this title closed? Before I ask you that: when did the title close? A It closed on the 15th of December.

Q What year? A 1926.

Q What did you do after that? A Well, I went down to the bank, first, and deposited that money.

Q I don't mean immediately during the next few months. A Oh. I went to California very shortly afterward.

Q And when did you come back? A I came back in April.

Q And did you come up to Chatham to see the property at that time? A Yes; after I returned.

Q And what did you find out up there? A Well, I found out they had practically done nothing—very little as to the development, that there were a few men working there on one or two streets, that they had just run furrows through and had not done a great deal excepting to lay the street out so you would know there was going to be a street there some time.

Q About that time did you hear of an intended auction sale that was to take place at that property? A Yes.

Q Where did you hear of it? A Well, I didn't hear of it until I returned from California in April.

Q Yes. A And that is the first I knew of it.

Q Who told you about it? A I don't just—
10 I don't know where I heard it.

Q Well, you got this map, didn't you? A I got that map. The day of the auction I went up there myself, the first day of the auction, before the auction started.

Q Who gave you this map? A Mr. Erkins.

Q And— A At the auction in the auctioneer's tent.

Mr. Riker: I offer that map in evidence.
20 (Map marked Exhibit C. 7.)

Q On this map it shows the layout of the property, doesn't it? A The layout of part of the property. They run the property just to the line of their right of way.

Q And does it show streets laid out there? A It shows—yes, the streets are practically all the same, excepting one portion here where they did not lay it out, this short section up here
30 (indicating).

Q How many of those streets were laid out at the time of the auction? A Well, I couldn't say as to that, as to the cross streets. I know the main streets, the main street over the hill there, was laid out, and also a street two streets up from Fairmount avenue.

Q When you say "laid out," what do you mean? A Well, they were just indicated through the property, probably taken a plow and tractor, but nothing in the way of grading done.
40

There was some grading done, that is, just taking some of the gravel from the gravel pit there on the road leading over to the hill, but the others, as I recall them, had done nothing but run a furrow, very probably, through it to indicate the road.

Q Was there anything done in the way of developing and laying out roads after that time? A After the auction?

Q Yes. A No; there was practically nothing, as I understand, as I recall, done, after the auction; they staked off some of the land.

Q You attended the first day of the auction? A I was there and waited for a half or three-quarters of an hour and no one came, so the auction had not started when I left, and I don't know whether it did afterwards or not, whether they had anybody for it.

Q Were you ever requested for any releases of any part of these premises from the lien of your mortgage? A Later on I received a letter from Mr. Pollard, saying he had had a letter from Mr. Erkins during my absence in that they wanted some changes made in the release clause. Mr. Pollard wrote me about that and I wrote him in answer that—

Q What? A (Continuing.) That I would leave the matter entirely in his hands to do as he thought best.

Q When did you receive that letter from Mr. Pollard, before or after the auction? A Oh, that was before the auction sale.

Q Any time after the auction sale, did you receive any request from anyone to release any part of the land? A Not after that.

Q Mr. Nicholson, you stated it was represented to you by Mr. Erkins that he and his

associate, Mr. Fairhand, intended to develop this property? A Yes, sir.

Q What effect, if any, did that have upon you and your entering this contract? A Why, it had every effect, because I wouldn't—had I known there was any idea before of that right of way going through there, I would have sold it, I wouldn't have sold it.

Q Subsequent to the auction sale, did you receive any communication from Frederick Fairhand? A Yes; I received—(interrupted).

Q I show you a letter dated June 11, 1927, and ask you if you received that letter? A Yes; I received that letter.

Mr. Riker: I offer that in evidence.

(Letter marked Exhibit C. 8.)

Q This letter—in substance, what does the letter state?

Mr. Speer: You have got the letter there, read it.

(Letter read.)

Q Did you answer that letter? A Mr. Pollard answered it. I was away when the letter was received, up in New York State, and Mr. Pollard answered the letter. On my return I got in touch with Mr. Fairhand. He had called me up and left word where I could reach him and he wanted to make an appointment and I made an appointment with him to meet me in New York.

Q Now, when did you first find out that the strip of approximately twenty acres through the center of this property had been conveyed by

Fairhand to the Holland Company? A That day, the day I had my interview with Mr. Fairhand.

Q When was that? A Well, that was in—it was just—I couldn't say the exact date, but it was—

Q Approximately? A —sometime after the auction.

Q Some time after the auction? A Yes.

Q The auction was in April? A May.

Q 1927? A Yes; the last of May. It was shortly after that.

Q The contract provided that there would be excepted from the purchase money mortgage a tract of land approximately twenty acres? A Yes.

Q Which should be conveyed to Mr. Fairhand free and clear? A Yes.

Q That that twenty acres, a description of it should be supplied to you by Mr. Fairhand one week before the date set for closing title? A Yes, sir.

Q Was that done? A That was done.

Q Did you see that description? A No; I did not.

Q Were you informed at that time as to the exact location of the twenty acres? A No; I was not. I asked Mr. Erkins, when he first spoke of that release, where he wanted to take the twenty acres. He said he was not sure, that he would send out a couple of draftsmen—or, rather surveyors, to take some lines before they would determine where they wanted to take that twenty acres.

Q What did he say, if anything, concerning the reason that he wanted those twenty acres excepted from the mortgage? A The idea was

that they did not want to put in any more money than they had to on their first payment because of the expense they would be put to in developing the property, in laying out the streets, having it surveyed, searching title and other things, that they did not want to put in any more money at first than they absolutely had to, that they were perfectly willing as additional acreage was required, to pay the cash for it and a credit against their contract.

Q I don't think you are quite answering my question. What was the reason that he gave, if he did give one, that he wanted this particular or any twenty acres excepted? A So as not to put any additional money into it, to give him that money for developing that twenty acres; they wanted to be conservative and go along slowly, develop twenty acres at a time.

Q Is it the fact that he wanted those twenty acres—(interrupted)

Mr. Speer: I object. I rather sense—(interrupted.)

The Court: Let him put the question, Judge.

Mr. Speer: Well, after a leading question is asked, it is kind of hopeless, the answer won't be what you expected. I object.

Mr. Riker: I think leading questions are within the discretion of the Court, to a certain extent. I think there is no dispute as to what happened in this regard. I will ask the question anyway.

The Court: All right.

Q Isn't it the fact that Mr. Erkins said to you that they wanted this twenty acres excepted

so that they would not have to get releases for it as they couldn't afford it after having paid so much money in development?

Mr. Speer: I object; leading question.

The Court: Objection sustained. That is undoubtedly leading.

Q You had a conversation with Mr. Frederick Fairhand in New York, at which time you stated that you first learned that the Holland Company had taken title to part of this property? A Yes.

Q Was anything said by you or Mr. Fairhand at that time as to the location of the twenty acres? A Yes. I asked Mr. Fairhand where this twenty acres was and he did not seem to have a very definite idea about it.

Q What did he say? A He said, "You can see the map. Mr. Shea has the map and Mr. Erkins has a map." And I asked him for Mr. Erkins' address at that time, which he gave me in the Public Service building at Newark. I called there two or three times, but failed to find Mr. Erkins in.

Q Did you find out from Mr. Fairhand, when you asked him at that time, where the location of that twenty acres was? A No, I did not, at that time, because when he told me, "The Holland Company," I didn't know who the Holland Company was. As a matter of fact, I thought they were some real estate company until I came to Newark and told Mr. Pollard what Mr. Fairhand said, and then he said, "They are a holding company of the Public Service." And even at that time I was not aware that they had bought that right of way through there, that that was for that intention—for that purpose.

Mr. Riker: That is all.

Cross examination by Mr. Speer.

Q I understood you to say, Mr. Nicholson, that you live in Jersey City at the present time? A Yes.

Q How long have you resided there? A Well, only a very short time.

Q Where? A At number 9 Gifford avenue.

Q That is an apartment house near Bergen on Gifford? A Corner of Bergen and Gifford, yes.

Q And how long do you say you have lived there? A I have lived there only a few months. I was a few months there last winter and I just got back here about two weeks ago and I have been there since. It is just more or less temporary. I own the apartment house.

Q Just perching there for a while? A Yes; that is all.

Q When you filed the bill, you were living in New York? A When I filed the bill—yes, I was in New York.

Q Now, this piece of land that is in controversy in this suit you have owned how long? A Well, I have owned part of it for twenty years and the balance of it probably four or five years.

Q You were quite anxious to dispose of it, were you not? A No; I was not. I made no special effort to sell it.

Q Didn't you have an agent by the name of Shea? A Shea, yes, but I had never given him my acreage to sell prior to—

Q Didn't he have a sign on your property "For Sale"? A Not at that time. Not until after.

Q Not at what time? A At the time this deal was made he had no signs on my property.

Q Well, prior to the time the deal was made? A Yes. He had no signs on my property.

Q Are you sure about that? A Yes, yes, because—

Q Had you put the property in his charge— A No, sir.

Q —for sale? A No, no, not at that time.

Q Well, when did you? A I didn't put it in his hands until he first called on me with Mr. Erkins.

Mr. Riker: When?

The Witness: I had put my house where I was living with him for sale, and of course, he knew that I had this acreage, but I had not even made a price on it to anybody prior to that time.

Q When was it that he called on you? A Well, it was probably in the early part of June, I think.

Q June, 1926? A 1926, yes.

Q And at that time Mr. Shea called on you with Mr. Erkins. A He brought Mr. Erkins over and introduced him to me, yes.

Q I see. For what purpose? A For to buy that acreage. They wanted to know whether I wanted to sell it. They wanted to buy twenty acres. That was Mr. Erkins' intention. He wanted to buy twenty acres at first.

Q Exactly. And Mr. Shea introduced Mr. Erkins to you? A Yes.

Q And Mr. Shea at that time was a real estate agent? A Yes, yes.

Q And did you understand that Mr. Shea was introducing Mr. Erkins to you so that you might sell this acreage to him? A Yes.

Q And did you understand from Mr. Shea that you were to pay him a commission upon the sale if the sale went through? A Afterwards—yes, yes, that was understood, although I made him—(interrupted.)

Q Just a minute. That was understood, was it? A Yes.

Q How was it understood? A Because I asked Mr. Shea what his commission was and he told me five per cent.

Q Five per cent. of the purchase price? A Of the purchase price.

Q And what did you say when he told you that his commission was five per cent. of the purchase price? A I told him that I wouldn't agree to pay the purchase price on the entire acreage if this party went through with it.

Q You didn't mean that. You don't mean that, do you?

The Court: You mean the entire commission.

Q You mean the entire commission, not the purchase price. A Yes. I mean that I would pay commission on the property as it was released.

Q In other words, you agreed to pay the entire commission on installments as made? A As they took over twenty acres, that was their intention to take twenty acres at a time.

Q So at that time you accepted Mr. Shea as your agent for the sale of this property. That is the fact, isn't it? A Yes, yes.

Q All right. Now, as I understand it, Mr. Erkins wanted to buy a portion of the tract? A Yes.

Q Twenty acres. And you did not want to sell— A No.

Q —any portion of it. You wanted to sell the whole acreage? A If I sold it I wanted to sell it all, yes.

Q Exactly. How long did this effort on the part of Mr. Erkins to buy the twenty acres, and your disposition not to sell any portion of it but the whole, continue? A A very short time, because, after that first conference, why, Mr. Shea then wrote this letter—rather, Mr. Erkins wrote this letter in which he outlined this proposition to take over the entire tract on the release proposition according to lots, buy so many lots and on such and such sections, as outlined on the map.

Q That you wouldn't do? A I wouldn't accept, no, after talking with my attorney.

Q Precisely. And by your attorney you mean Mr. Pollard? A Yes.

Q Now, after you had determined not to accept that proposition as outlined in Erkin's letter— A Yes.

Q —that negotiation fell through, didn't it? A That fell through, yes.

Q Didn't you get a letter about that time from Erkins telling you that he would not accept the proposition that you wanted? A No. No. I received no letter, to my knowledge, from Mr. Erkins, excepting the one you have here.

Q All right. A The only correspondence.

Q Very well. Now, how did the negotiation then come to an end? Did you and Erkins say to each other, "Well, that ends it; there will be

nothing more doing''? A Yes. That was the end of it, yes.

Q All right. Now, after those negotiations had fallen through— A Uh huh.

Q —and were completely out of the picture— A Yes.

Q —what was the next—who was the next person who called the matter of the sale of this acreage to your attention? A Mr. Shea.

Q That was your agent? A My agent, yes.

Q You had left the property then in his charge for sale? A No; I can't say that. I had it for sale. Mr. Shea called me up on the telephone and asked me if I still had my acreage. I said, ''Yes.'' He said, ''Do you want to sell it?'' I said, ''Yes; I would sell it.'' He said, ''I got a party here, I will bring him over,'' not saying who it was. When he came over it was Mr. Erkins.

Q I see. And— A And Erkins said inasmuch as the other proposition fell through that he was now prepared to—conditions had changed —he made some reference to that—conditions had been changed since the last visit and he was now in position to accept my offer, if I had not sold the property, and I told him, of course, I had not.

Q Now, at that time, had you met Mr. Fairhand? A Never saw or never heard of him.

Q When did you first meet him? A I first met him the day the contract was signed in Mr. Pollard's office.

Q Now, the contract was signed on what— (interrupted.) A On the—it was signed in November, I don't know just when.

Q The twelfth of November. That is right, isn't it? A November, yes.

Q And then you met Mr. Fairhand, did you? A Yes.

Q Where? A In Mr. Pollard's office.

Q And there were present at that meeting Shea— A Fairhand.

Q —Fairhand, Erkins— A And Erkins and Mr. Fairhand.

Q —Mr. Pollard and you? A Yes.

Q And you understood then that you were selling the property to Mr. Fairhand, did you not? A Well, I—yes.

Q You did. A In this way. I—Mr. Erkins introduced him to me as one of his associates and I always was of the impression that Mr. Shea and Erkins were in on this deal together. They had an organization. Mr. Erkins had spoken of his high-power organization, what they would do, different times referred to it. One time he spoke of sending out two of his surveyors.

Q And you understood—as I understood you a moment ago, you understood that Shea was in this deal with Erkins? A Well, that was just my personal impression. That was just my personal impression, that was all.

Q Did anyone say anything that led you to conclude any such thing, as that? A No, excepting a remark that came to me afterwards, I had really forgotten, because at that meeting Mr. Erkins remarked to Mr. Shea, he said, "Mr. Shea,"—called him "Judge"—he says, "You probably better take title to this." I didn't think much of it at the time, but the Judge said "No," made some offhand remark about it, spoken more or less jokingly about it, and he says, "As a matter of fact it don't make much difference who takes title." I didn't think anything about it until after this deal, and then, of course, the significance came back to me.

Q Was Fairhand there then? A No. Never saw Fairhand until the day the contract was signed.

Q When do you think Erkins said to Shea, "Judge, you better take title"? A At my house at the time we were negotiating this deal.

Q I see. Well, then, you got down to Pollard's office, and you understood then that Fairhand was going to buy the property, didn't you? A Yes, sir.

Q Who told you that? A Mr. Erkins introduced him as one of his associates. I naturally tied him up with Erkins' company. I presumed —while I didn't make definite inquiry as to Erkins' company, I assumed that he was a large operator, from what Mr. Shea said, and that Mr. Fairhand was evidently the monied man back of it because of his paying out the cash to me as he did.

Q So that you really relied at that time upon what Mr. Shea said to you— A No; Mr. Erkins.

Q —didn't you? A Mr. Erkins.

Q But I understood you to say just now that Shea said there was a company back of him? A Oh, no. Mr. Erkins. Mr. Erkins did all the talking at all times.

Q Didn't you say just now that Shea said that? A Yes, Shea had injected a remark here and there, but not as far as any negotiations were concerned. Mr. Erkins was the principal.

Q What was the remark that Mr. Shea injected? A Well, the remark that he made after Mr. Erkins had suggested his taking title? He said, "No—" as I recall it—"No, I don't see any reason for that now," or something to that effect. Of course, we had not closed the deal at that time.

Q I see. What was it that Shea said about the company that was back of him? A He said nothing; no, it was Mr. Erkins.

Q Are you sure? A Yes; absolutely; Mr. Erkins at all times. Mr. Shea had nothing whatever to say.

Mr. Speer: Mr. Stenographer, would you look back and see what it was Mr. Nicholson said Mr. Shea said about this?

(Testimony read as follows: "Did any one say anything that led you to conclude any such thing as that? Answer: No, excepting a remark that came to me afterwards, I had really forgotten, because at this meeting Mr. Erkins remarked to Mr. Shea, he said, "Mr. Shea—" called him "Judge," he said "You probably better take take title to this." I didn't think much of it at the time, but the Judge said "No"—made some offhand remark about it—spoken more or less jokingly about it and he said, "As a matter of fact, it don't make much difference who takes title." I didn't think anything about it until after this deal and then, of course, the significance came back to me. Question: Was Fairhand there then? Answer: No. Never saw Fairhand until the day the contract was signed. Question: When do you think Erkins said to Shea, "Judge, you better take title?" Answer In my house at the time we were negotiating this deal. Question: I see. Well, then, you got down to Pollard's office and you understood then that Fairhand was going to buy the property, didn't you? Answer: Yes, yes. Question: Who told you that? An-

swer: Mr. Erkins introduced him as one of his associates. I naturally tied him up with Erkins' company. I presumed—while I didn't make definite inquiry as to Erkins' company I assumed that he was a large operator from what Mr. Shea said and that Mr. Fairhand was evidently the monied man back of it."

Q Now, you went up to the property at the time of the auction sale, did you not? A Yes.

Q And you say that these roads are just a furrow run through with a plow? A Some of them.

Q Oh, some of them? A They have done a little more work on some than others. They put gravel on one because they used that getting up to their towers, and I suppose that was the principal reason of laying that out.

Q How many roads were there at that time on the premises? A Well, as I recall it at that time all I could see was what I saw from the road. I didn't go up over the property, but I could see where they were laid out, reaching up over the hills. The property is very high, runs 500 feet over sea level, and there are three roads as I recall, turned from the lower level on the street—one from River road and two from Fairmont avenue, those that I could see from the road. I didn't go up to see the rest of the property.

Q So that what you are testifying to now is merely the result of a passing glimpse? A At that time, yes.

Q At that time? A Yes; later on I went over the entire property.

Q When did you go over the entire property? A Well, I think it was after the auction; I

don't recall whether I was up over it before the auction, because I had gotten—(interrupted.)

Q Well, all right. I asked you when. You say it was after the auction? A Yes.

Q The auction was in— A The latter part of May.

Q About the 27th, 28th or 29th of May? A Yes.

Q 1926? A Yes—1927.

Q Now, what did you find there then with respect to these roads? A Well, I found this road from the River road down continued around up over the hill right up not quite to their towers.

Q All right. Now, this road that you say had been continued is how long over that property? A How long is it?

Q Yes. A Well, I should imagine it probably would be about seven or eight hundred feet.

Q And how much work had been done on that road? A Well, I couldn't say as to that, because I couldn't—I wasn't there, of course, while they were doing the work, but the road was graded with gravel from the bank there, it is a gravel soil, anyway.

Q You say it was graded? A Yes; it was leveled off.

Q Well, is that graded? A Yes, if you call it that. Of course, it was not a completed road. They put no gravel outside of what they got on the property. Nothing beyond plowing the furrows through and leveling it off and using the gravel that was on the property.

Q Didn't you testify in your direct examination, Mr. Nicholson, that the road was not graded? A Well, I don't know what you call "graded."

Q Well, if you don't know what "graded" is, why do you say it is graded? A I said it was leveled off and the gravel on the property used on it. It was not finished as you would find an ordinary road in a subdivision. It was a rough road.

Q Well, a road had been laid out, hadn't it? A Yes, sir.

Q About seven or eight hundred feet in length. Now, this one road we are talking about. A Yes.

Q That is right, isn't it? A Yes.

Q They had taken the trees off, hadn't they? A There were no trees on that particular piece of property.

Q Are you sure? A Yes; they took out some stumps on another road.

Q Well, didn't they take off trees from roads that they built there and blast the stumps out? A They blasted the stumps out of one road I know of. Now, they may have done it other places; I don't know; I can't say that definitely.

Q Your notion as to what they actually did there is not very accurate or very extensive, is it? A Well, because I didn't think they did very much that would be very much help to that property if it were to be continued as a subdivision.

Q It was your interest, I suppose, to consider that they had done the least possible amount of work, wasn't it? A It was not my interest at all, because if I had sold the property I would have no further interest in it.

Q You had sold it, hadn't you? A Yes; I had sold it.

Q Then you had no interest in it? A I had no great amount of interest in that, no, of course not.

Q Therefore you looked at it with rather casual eyes? A Yes.

Q So, when you try to tell us they had not laid these roads out or graded them or done much there, you are telling us a mere casual notion you had. A I have been over the property since, and others can testify to the present condition of the roads.

Q I am asking you. You are the witness, aren't you? A Yes.

Q I am asking you whether what you are telling us now is just a mere casual notion with respect to what work was done there. A No; I wouldn't say that. I am speaking of—(interrupted.)

Q Then tell us what was done. A On this particular road, I went over this long road, leading from the River road up from the hill, why that was what you would call leveled off and graded so it could be used, because they did use it.

Q Leveled and graded so that it could be used and it was used. A Yes.

Q Then it was a road, wasn't it? A Yes, sure.

Q And they had made it, hadn't they? A Yes.

Q And that was a piece of development of the property, wasn't it? A Yes, yes, yes, I would say that was so.

Q That was not a mere furrow run by the plow. A No; not that road.

Q That was a good road— A Well, I wouldn't say—

Q —as roads go over a new development. A Well, for the time being it would be a good road—

Q Yes. A —but it would not last very long, rains, and so forth.

Q Then it looked like a bona fide effort to develop the property there? A No, it didn't to me afterwards.

Q What was the matter with it? A Because I felt that that road was built simply for them, for their own use in reaching their line—the only way they could get up there. The property—(interrupted.)

Q Who is "they" you are talking about? Who are "they"? A Why the Public Service, because afterwards I found their wagons up there, when they started on their work in putting up these towers, and that road is used almost entirely for them to cart their material up to their towers.

Q Now, Mr. Nicholson, you want to be fair, don't you? A That is all I am here for.

Q And you want to tell the truth, don't you? A Yes.

Q Well, don't you know that that road you are talking about does not touch the right of way at all? A The right of way?

Q Yes. A The extension of it does. As I said, the—this road did not go up all the way, it did not go up all the way, it did not go all the way to the right of way.

Q Don't you know there was not a single, solitary road made up to the right of way on that property? A There is a path into it from this road.

Q Oh, a path? A Yes.

Q Don't you know there is not a single road that goes up to the right of way? A No road that is laid out from the others, no, there is just

a path that they used through the side of the woods, because the hill is all timber.

Q So you suspicioned it was a road built there for the use of Public Service, is that it? A I saw it being used.

Q Yes? A I saw it being used.

Q But you did not think it was put there, when you first saw it, for Public Service, did you? A No, because I did not know at that time.

Q No; you didn't know anything about Public Service. A I didn't know they were interested at that time.

Q And you don't know it now, do you? A Yes; I do.

Q Do you? A I feel pretty positive about it.

Q Yes, you feel positive? A Yes.

Q But you don't know it, do you? A Well, I know as much as I know anything.

Q As much as you know anything you have testified to; is that what you mean? A As much as I know anything from what I know about it.

Q Now, how far does this additional made and graded road that you have spoken about go, at the nearest point from the right of way? A Well, that would be more or less of a guess. It might be four or five hundred feet, probably, from the right of way.

Q And this path that you talked about that you say leads from this road to the right of way, what kind of a path is it? A It is just a wagon road; it would be indicated by the trucks going over it.

Q How many trucks did you— A Oh, I don't know.

Q —ever see go over it? A Eh?

Q Did you ever see any go over it? A Yes.

Q How many? A I just saw one. I saw one of the Public Service electric trucks up there that had some pumping machinery on it.

Q And that is all you ever saw on it? A Yes.

Q And from that ground work you infer that this road was laid out for Public Service? A I saw it up there, but I saw trucks going up from below when I have been on the lower level.

Q Exactly. We have talked about one road that is here. A Yes.

Q Were there any other roads that were made and graded? A Yes. From Fairmount avenue there were two roads going up toward the hill.

Q Yes? A Yes. They were laid out although not as good as this long road.

Q I see. A Yes.

Q And did you see any trucks of Public Service running up those roads? A No, no. I did not.

Q Well, what did you suspicion those roads were built for? A They were built for development, apparently.

Q They were built for development? A Yes.

Q And you admit that now, don't you? A Oh, yes, sure.

Q Well, then, I understand your testimony to be that they did develop this property? A To an extent.

Q Well, what extent? A Just as—to laying out that road, that is all, and putting some stakes on the lot.

Q Do you know how much Mr. Fairhand expended in the development of that property? A No, I do not.

Q Did you think it worth while to find out? A No.

Q Did you ask him? A No; I did not.

Q Did you ever get any information from anybody with respect to what he spent for it? A Only as to what he stated in his letter.

Q Well, you know what he stated in the letter, don't you? A Yes.

Q He said he spent—had thirty-two thousand dollars of equity in that property, didn't he? A Yes.

Q And that that was for the money that he had paid to you which amounted to fifteen thousand dollars and development? A Yes.

Q So that you knew, therefore, that he had seventeen thousand dollars more, if he told the truth— A If he told the truth, yes.

Q (Continuing.) Invested in that property for development? A Yes. Well, I would be— (interrupted).

Q Pardon me. Did you make any effort to ascertain whether he told the truth or not? A No; because if they had bought the property, as I say, I had no further interest; no reason why I should make inquiry about it.

Q Well, you started to bring a suit, didn't you? A Well, that was later.

Q Did you make any effort to find out whether he had spent seventeen thousand dollars or not? A No, I did not.

Q You never made any effort? A No, I did not.

Q Why not? A Why? Because the matter was then in the hands of my attorneys. If they

had asked me to do that, I would have done it. They may not have seen the importance of it.

Q So that your statement now on the stand, I take it, will be that you cannot say, within any reasonable measure of truth, what he spent on the property? A No; that would be difficult to say. I do not—although it was my own personal impression from what I have seen there that there was not a whole lot of money spent on it.

Q What effort did you make to find out with respect to his other plans for the sale of this property and its development? A I didn't make any.

Q So that your testimony now with respect to the lack of effort on his part for development is just pure inference and guesswork, isn't it? A No; I wouldn't say so. I was away for two or three months after this contract was signed. I was not in the city.

Q While you were away you did not learn anything, did you? A No; I did not.

Q And you have not learned anything since you have been back? A There was not much reason for me if I sold the property. There was not much reason to inquire.

Q Then you don't know, as a matter of fact, because a part of the time you were away and while you were home you did not try to find out what efforts he made to develop the property; isn't that so? A That is right.

Q That is the truth? A Yes.

Q Very good. Do you know that he advertised this auction sale in several papers? A In the local papers I understood he advertised. I didn't see it personally, but I understood he

advertised in the Newark News and I think the Summit paper.

Q And a Chatham paper? A And a Chatham paper, yes.

Q And any other papers? A Not that I know of.

Q Where did you get that understanding from? A Well, I think Mr.—I think they told me, as I recall, the day of the auction, Mr. Erkins, when he gave me this hearing.

Q Do you know whether they had surveys made of the property? A Yes.

Q They did have them, didn't they? A Yes.

Q And you know they paid for them? A No; I do not. I don't think they paid for them. The surveyor told me, the last time I talked to him about it, that he had never received his money.

Q Why did you go to him to talk about it? A Because he is the man that done all my work down in Chatham; he has done work different times and I had occasion to get the blue prints from other properties there from him and, speaking of that, he said he never got his money and I gave him Mr. Fairhand's address. Now, whether he has paid it since, I don't know.

Q Well, did you make any effort to find out whether he paid the bills to the newspapers for advertisements? A No, I did not.

Q Do you know whether he had plans made for the building of houses on this property? A Only what they told me this day of the auction.

Q Well, they told you they had, didn't they? A They told me—yes—

Q What? A That they were going to.

Q Yes. Did you make any effort to find out about it? A No; I didn't see any reason for it.

Q And this thing you have in front of you here, this advertisement— A Yes.

Q —you knew they had sent that out and given it wide circulation? A Yes. I didn't know to what extent they sent it out.

Q You didn't try to find out, though? A No.

Q You didn't know anything about it? A No.

Q Do you know they had plans made for those houses that appear up in the upper left-hand corner? A No; I didn't know that. I didn't know that.

Q Did you make any effort to find out about it? A Nothing; no.

Q So that, without any effort to find out whether they had gone to a large or a small expense, you concluded that the development was a sham and a blind and that they were crooks; is that it? A Well, they have made that admission themselves; it was just a mere gesture.

Q Who made that admission? A Well, the auctioneer, and I think there is a gentleman here who can testify to that.

Q The auctioneer made the admission? A Not to me, but to the other gentleman.

Q Who is the auctioneer? A Well, it is a company. I don't know which one of the firm. I didn't meet them. I heard immediately after that—(interrupted).

The Court: Don't tell what you heard. I do not think that is proper.

Q So that what you have done, as I understand it, Mr. Nicholson, is to build up a monumental suspicion upon statements that have been made to you, and unverified by you, that this is

a fraudulent transaction. That is the fact, isn't it? A Well, I wouldn't say that, no; mere statements here and there.

Q Well, give us some facts. I am asking you for them. What facts have you got— Facts, now, not statements—that have led you to the conclusion that this is a fraudulent transaction?

Mr. Riker: I object to the question.

The Court: I think that the question is perfectly proper and I will allow it.

(Question reads as follows: "Well, give us some facts. I am asking you for them. What facts have you got— Facts, now, not statements, that have led you to the conclusion that this is a fraudulent transaction?")

Q Can you answer that? A Well, there have been—there has not been any one instance of information that I have had. It has been from others—(interrupted).

Q I didn't ask you for information. Facts. You know what that means? A Yes, I do.

Q Now, come on with them. A Well, I would have to go back to the time I first learned that this was taken over by the Public Service, or, rather, by the Holland Company, and I learned who they were. I had no suspicion up to that time that the deal was not straight and regular. But, on informing my attorney of what Mr. Fairhand told me about having sold twenty acres to the Holland Company, he then told me what the Holland Company—(interrupted).

Q Never mind what he told you. I am asking you for facts, not what somebody told you. A Well—(witness pauses).

John J. Nicholson, cross.

Q Well, go on. Let us be fair with each other. The fact is that you haven't any facts, have you? A Yes, yes; I have.

Q Well, come on with them? A I have got just simply to—I don't want to make statements that are not entirely right and proper.

Q Indeed, I don't want you to. A There is a number of things, of course, that led up to my getting this information. I learned, of course, first that the Holland Company had taken title to the property.

The Court: That is a fact.

Q That is a fact? A That is a fact.

Q We don't object to that fact. That we admit. A And had given title, and, of course, I had more or less suspicion come to me afterwards.

Q I am not asking for suspicions; facts.

The Court: Can't you answer the Judge this way, Mr. Nicholson, saying the fact that the transfer was made to the Holland Company led you to file this bill?

The Witness: Yes. Because I had no intention of selling, of course, twenty acres to anybody.

Q And that is the only fact? A No, no.

Q That you have given? A No; other facts I got from different sources.

Q I am not asking what you heard.

The Court: Now, Judge Speer, undoubtedly there are other witnesses who will state other facts. This is the only fact he can give us.

Mr. Speer: That is all I am asking. I don't want any more than that.

Q Is that the only fact you can give me? A No, no; because after I learned of this at the Public Service, I then made inquiry of other people—

Q Don't tell us the inquiry. A Well, in order to strengthen my suspicion of my deal being not regular—(interrupted).

Q I don't want anything but facts. If you have facts, I want them; if not, I don't want you to tell me about talking with other people and what they told you. A Well, I would have to give that some thought, because I am not prepared to state that now without tracing back the different people from which I got information that led me—(interrupted).

Q I am not asking for information; I am asking for facts. A Well, I had no means of getting any definite fact that this was a fraudulent transaction excepting as I got it through other people who had been through the same thing.

Q I didn't ask you—(interrupted).

The Court: He has answered your question, now; he says he had no means of getting facts, except facts that he got from other people. Isn't that what you said, Mr. Nicholson?

The Witness: Yes.

Mr. Speer: If you will pardon me, he didn't say the facts he got; he said statements from other people.

The Court: Well, all right, statements—

The Witness: Statements.

The Court: —which he presumed to be facts.

Q Well, that is all you have? A At present, yes.

Mr. Speer: I think that is all at this time.

Re-direct examination by Mr. Riker.

Q Mr. Nicholson, didn't the fact that Mr. Erkins, alone and in the presence of Mr. Fairhand, represented to you that they were going to develop this property, and the fact that they had an auction sale, which I gather is admitted to have been a failure, and that no conveyances were made in accordance with that, and that then the purchaser from you, the man that owed the money, stated his inability to go on with the deal, weren't they also facts that influenced you to go ahead with your suit?

Mr. Speer: I object.

Mr. Roller: I object.

The Court: I will allow it.

Mr. Roller: I think the testimony of this witness has been that Mr. Fairhand was not present, and Mr. Riker has concluded Mr. Fairhand was present.

The Witness: I understood Mr. Fairhand was present at the closing.

Mr. Roller: At the closing.

Mr. Riker: I want to offer in evidence the original mortgage, which I neglected to do before.

(Mortgage marked Exhibit C. 9.)

John J. Nicholson, re-cross.

Q Mr. Nicholson, where is the bond which accompanied this mortgage? A That bond was burned up in my home; it was burned last October.

Q Was it in regular form? A Regular form. I had it in my file at home and my house was burned down.

Mr. Riker: I offer in evidence a certified copy of the deed from Mr. Nicholson to Frederick Fairhand and certified copy of deed from Frederick Fairhand to Holland Company.

(Papers marked Exhibits C. 10 and C. 11.)

Re-cross examination by Mr. Speer.

Q Mr. Nicholson, in the year 1925 you lived on this property, didn't you? A Not on that property, no.

Q Well, in the immediate neighborhood? A The immediate neighborhood, yes.

Q And in the year 1926 up to April you lived there, didn't you? A 1926, yes, I think—yes, about that time I was living there in the summer time.

Q Didn't you know that the Public Service was surveying through there for a right of way? A No, sir.

Q Never heard of it? A Never heard of it. I saw surveyors on my property.

Q Oh! A (Continuing.) Up on the hill, and I sent my man over to find out, if he could, who they were, and he came back and said they were Government surveyors, and I presumed it was one of those cases of the Government taking these topographical surveys.

Mr. Speer: All right. That is all I wanted to ask you.

ROBERT S. POLLARD, sworn for complainant.

Direct examination by Mr. Riker.

Q Mr. Pollard, did you prepare the contract that was finally executed between Mr. Fairhand and Mr. Nicholson? A I did.

Q And who was present at that time when that was done? A At the time the contract was executed there was present Mr. Nicholson, Mr. Erkins, Mr. Fairhand, Mr. Shea and myself.

Q What was said, if anything, by Mr. Erkins? A Mr. Erkins was the only man that said anything for the other side. There were numerous points which had to be settled, points of difference at the time the contract was executed. One of them was—the largest one was the question of this twenty acres which was to be reserved from the purchase money mortgage. I objected as strongly as I could to the reservation of any property from that mortgage, and it was held out to us at that time by Mr. Erkins that it was necessary then, absolutely necessary to have some property free of the mortgage, which they could dispose of without having to pay for releases, because of the fact that they had to put a great deal of expense on the property for developing purposes. I also objected to not having a definite description of that twenty acres at the time, and the answer to that was that they had just purchased—just come to an agreement on the property, they had not as yet had a chance to have their engineers and surveyors lay it out,

and he was not in a position to tell me the twenty acres at that time which would be most advantageous to him.

Q Was there anything said concerning Mr. Fairhand, in whose name the contract was being made? A There was.

Q Who said it? A Mr. Erkins.

Q And what was it? A At the time I recollect asking him who Mr. Fairhand was, asking Mr. Nicholson if he knew Mr. Fairhand. Mr. Erkins stated he was one of his associates, a man who had had experience in developing property on Long Island and who was going in with him on this transaction and he desired him to take the title; he said he was a man with wide experience on Long Island, but had never done any development in this State.

Q Was there anything said as to the financial responsibility of Mr. Fairhand? A Nothing direct, no.

Q Did Mr. Fairhand say anything himself? A Mr. Fairhand had practically nothing to say.

Q Did he pay the money? A He paid the money in cash, yes.

Q How much was the deposit? A There was a thousand dollar deposit paid.

Q Did you some time after that receive a description of the property to be excepted from the mortgage? A Yes; the agreement was that it should be delivered to our office not later than one week before the closing, and some messenger brought it over and brought over a description with a receipt, I believe exactly seven days before the date set for closing, and our office boy brought it in to me and I signed a receipt, signed a copy of it and attached it.

Q Is this the original description that was delivered to you and your copy of the receipt attached to it? A That is, yes.

Mr. Riker: I offer it.

(Paper marked Exhibit C. 12.)

Mr. Speer: I presume that it is, your Honor, subject to correction, my—(interrupted).

The Court: I will receive it.

Q Did you attend the closing of this title? A I did.

Q After you got that description, did you do anything to see whether the description was in accordance with the contract? A Yes. As I recollect it, that description of the portion to be reserved from the mortgage is divided into three tracts. It is purported to be prepared by John J. Kentz, a surveyor from Summit. There is a total of—acreage at the end of each tract, and I simply totalled those up and saw that they made a grand total of eighteen and a fraction acres, which accorded with that part of the tract. I also looked at each tract to assure myself that it contained not in excess of the amount of the allowed street frontage, which I believe was two hundred and fifty feet on any side of the then existing streets, which also accorded with the record terms of the tract; and, having assured myself that it did correspond in those respects, I drew the deed and drew the purchase money mortgage, and used that description as to the reserved parcel.

Q The mortgage was drawn up accordingly, was it? A The mortgage was drawn up using that description.

Q And the title closed? A And title closed.

Q Who was present? A At the closing of the title there was Mr. Nicholson, Mr. Erkins, Mr. Fairhand, Mr. Shea and Mr. Lawrence Day, an attorney of Morristown, and myself.

Q Who was Mr. Day representing? A Mr. Day represented Mr. Fairhand.

Q What was the amount of money to be paid in cash at the closing? A Very minor adjustments, I believe. The total to be paid in cash was $14,018 and some cents.

Q Was it paid in cash? A It was paid in cash, yes.

Q Who paid it? A Mr. Fairhand paid it.

Q Did you see the money? A I saw the money, yes; saw him turn it over, count it.

Q Do you remember the size of the bills? A There were fourteen one thousand dollar bills, and I don't remember how the eighteen dollars and some cents were made up.

Mr. Riker: I want at this time, your Honor, to call attention to the water mark in this paper, Exhibit C. 12, "Public Service Bond 24." That is in the paper on which this description is written.

Cross examination by Mr. Speer.

Q Mr. Pollard, you were engaged by Mr. Nicholson to look after this matter for him, were you? A Mr. Nicholson is an old client of my father's and he came to see father when he made this sale, and father asked me to prepare the contract and look after the settlement.

Q So that you did represent Mr. Nicholson— A I did.

Q In the transaction and had authority—A I did, yes.

Q —to act for him. Now, when this water marked piece of paper, which has been handled here by Mr. Riker, was given you, did you plot out the—(interrupted) A I did not, no, sir.

Q You did not plot it out? A No, sir.

Q Didn't there come with this description a blue print? A There did not, no sir.

Q Did you ever see this blue print that I am showing you now? A I have seen a similar blue print to that, yes.

Q When did you first see it? A I can't tell you when I first saw it, Judge.

Q Well, I mean, with respect to the time of this—the closing of the title? A I presume I saw that blue print after Mr. Nicholson returned from California for the first time to my recollection.

Q That was after the title had been closed? A Oh, yes.

Q Long after. You never saw it before? A No.

Mr. Speer: I will offer this for identification.

(Paper marked D. 1 for identification.)

Q Now, if I understand you, you were much interested on behalf of Mr. Nicholson, to see that this excepted piece would not be detrimental to the balance of the property, weren't you? A At that time I was interested to see that it complied with the terms of the contract. Mr. Nicholson made the deal.

Q Well, hadn't you prepared the contract yourself? A I had advised it.

Q Well, you knew its contents? A I knew its contents.

Q And you knew that it provided for the excision from the burden of the mortgage of twenty acres, did you not? A I did.

Q And you knew that the location of that twenty acres would be a matter of great importance to Mr. Nicholson, didn't you? A I did.

Q And there was some bargaining, wasn't there, at the start, with respect to having seven hundred fifty feet of frontage on a road excepted from the tract? A There was not, to my knowledge.

Q Nothing of that kind? A No, sir.

Q Are you sure of it? A I am certain.

Q All right. Now, it being an important matter to Mr. Nicholson as to where these twenty acres should be located, why didn't you plot it out and see what it would look like on the map? A There was no necessity of my plotting it out because it complied in all ways with the contract which he was bound to carry out.

Q Well, you knew that the three added together would be just one straight strip through the property, didn't you? A No; I did not at that time. I could not have told without plotting it out.

Q Well, why didn't you plot it out?

Mr. Riker: I think he has already answered that.

A It didn't seem necessary at the time. It didn't seem necessary because it complied with the terms of the agreement. It was not necessary to plot it out to ascertain that.

Q Well, when you saw the blue print later on, as you say, you could see that those pieces of

land added together—made a straight way through the property—didn't you? A Yes; I could.

Q And you could see the width of that way made through the property was too narrow for any other purpose than a right of way, couldn't you? A It looked very peculiar for development purposes, yes.

Q And it looked very peculiar for development purposes when you read the description itself, didn't it? A No. It would be very difficult to visualize it in your mind by reading the description without plotting it out; it would be almost impossible.

Q Well, didn't the description indicate the metes and bounds of the excepted property? A It did.

Q And didn't it show the narrow strip? A It had to be narrow, Judge. There was two hundred and fifty feet street frontage, limited to it; it had to be narrow.

Q Then it was at its widest point not over one hundred fifty feet, wasn't it? A I think it was wider than that, if my memory serves me right.

Q Well, how wide was it? A I should imagine about—I can't tell you how wide it was; I don't recollect. It was probably between two hundred and two hundred and fifty feet wide, because I remember the terms of the contract provided that we could not have more than two hundred and fifty feet frontage over any of the existing streets. My recollection is it was about two hundred feet wide, this excepted portion.

Q Well, don't you know— A No, I do not.

Q —Mr. Pollard, that that is not the fact? I am not challenging your honesty of purpose, but

don't you know that it is not the fact, that it is nowhere near that width? A No, I don't know.

Q And you don't know that it is not? A I don't know that it is not; that is correct.

Q I see. Well, now, if you had known that, it would have at once put you on suspicion, wouldn't it? A I did know at the time, undoubtedly; I read the description. That is some two years ago.

Q Did you have suspicion about it then? A I had no suspicion whatsoever at the time. I did not know the Public Service had anything in mind.

Q I am not talking about the Public Service, I am talking about the description. A Yes. Well—

Q I am asking you whether, having seen the narrowness of the tract and the course that it took through the property conveyed, it would not instantly have put you on suspicion that it was for a road or a right of way? A No, sir; no, sir; I wouldn't say so. He was limited in the contract to a width of two hundred fifty feet, and it is very easy to look back now, with the information we have at hand, and see suspicions all around everything, but at that time there was no such information at hand. You would not be made suspicious. It corresponded with the contract.

Q You have been living in a miasma of suspicion, have you, about this? At any rate—we will leave that out. What I want to know is whether you did not know that there is not a solitary portion of this excepted tract that is two hundred and fifty feet wide. A I do not know now the width of that tract. I should—it is somewheres in the neighborhood of two hundred feet wide.

Q And, for the greater portion of it, it is nowhere near two hundred feet, is it? A I would say that, for the greater portion of it, it is approximately two hundred feet wide.

Q But you wouldn't be sure of it? A I wouldn't, no.

Mr. Speer: All right; I think that is all.

Mr. Riker: I will offer in evidence a number of letters from Public Service Corporation of New Jersey, for the purpose of showing the use of this same paper with "Public Service Bond 24" on it; these letters are all addressed to my firm and I will prove them formally by Mr. Marsh, if Judge Speer objects.

The Court: Oh, no, I don't think the Judge will object to that.

Mr. Speer: If this is not to show any content—

Mr. Riker: No.

Mr. Speer: —of the paper, I have no objection whatever about the water mark. We are going to prove ourselves where the description came from, so they need not labor much over it.

Mr. Riker: They can be marked as one exhibit.

The Court: They will be received to show they have the same water mark on as the other.

(Papers marked Exhibit C. 12.)

ALFRED CORMIER, sworn for complainant.

Direct examination by Mr. Riker.

Q What is your business and where? A New Providence.

Q What is it? A Real estate.

Q Have you ever acted as real estate broker in connection with the purchase of any of these tracts in this locality? A Some, yes.

Q Have you worked with any representatives of the Public Service or the Holland Company? A With Mr. Erkins.

Q What is his full name?

Mr. Speer: I object, your Honor pleases, and ask that part of it be stricken out, that he is a representative of the Public Service.

The Court: Yes, that should be stricken out.

Q Did Mr. Erkins, in the transaction that you referred to, appear for Public Service or Holland Company?

Mr. Speer: I object to the question. That is a conclusion.

The Court: Yes. Objection sustained.

Q Did he say anything about his authority and whom he was acting for?

Mr. Speer: I object, your Honor pleases, because you cannot prove the fact of agency by the declaration of an agent.

The Court: I don't see how you are going to prove it that way, Mr. Riker.

Mr. Riker: It is already stated in the interrogatories, answers to the interrogatories, that he was employed by the company.

The Court: Very well. Then you do not have to add to it. You certainly cannot prove it in this way by this man, it seems to me. My admission that I am an agent of the Public Service does not prove it.

Mr. Riker: But it is some evidence of it.

The Court: I don't think so.

Q Mr. Cormier, were you present in the offices of the Public Service of the Holland Company in December, 1926? A I was.

Q Whereabouts? Outside of whose office? A It was on the sixth floor in the ante-room.

Q Who was there? A Mr. Fairhand.

Q His first name? A I am not positive of his first name; I think it is Frederick.

Q Who else was there? A Mr. Erkins.

Q Anyone else? A And myself.

Q Tell us what happened on that occasion? A Why, Mr. Erkins on this particular day—it was in the first part of December—handed over Mr. Fairhand some money.

Q Mr. Erkins handed Mr. Fairhand? A Yes, sir.

Q What was the money? A $14,000.

Q In what denominations? A $1,000 bills.

Q Did either Mr. Fairhand or Mr. Erkins say anything— A To me?

Q —at that time, that you heard? A Yes. Mr. Erkins told me that they were going that day to close the Nicholson deal.

Q Had they just come out of someone's office? A Why, I was sitting there with Mr. Fairhand, talking to him, when Mr. Erkins came in.

Q Where did he come from? A I don't know.

Q Just came in the door? A That is all.

Q He gave Mr. Fairhand the money; is that right? A That is right.

Mr. Riker: That is all.

Cross examination by Mr. Speer.

Q How did you come to be there, Mr. Cormier? A I had an appointment with Mr. Erkins that day.

Q In this matter? A No, sir.

Q And what office was that in? A In the Public Service Building on the sixth floor.

Q Well, what was the name on the door of the office? A I can't tell the number of the office; it is an office that they had not been in very long; it was just changing around at that time in that building from another building.

Q And what time of the day was this? A About ten o'clock in the morning.

Q And what time in December? A Beg pardon?

Q What day in December? A I can't tell the day; it was the first part of December.

Q Well, can you give us something, something nearer than that? The first part might mean almost anything. Was it the first day of December? A It was probably from the first to the fifteenth, anywheres along in there.

Q Well, I know, but can't you get any closer than that? A I couldn't recollect. I couldn't say the exact date.

Q Well, how do you know it was from the first to the fifteenth of December? A Well, I

had other dealings with Mr. Erkins at that time and I know it was in December.

Q Well, you know it was in December, but how do you know it was from the first to the fifteenth? A Through some other dealings that I had with him.

Q Well, what other dealings? A Well, I know that we had some dealings up in Tenafly with a party there around that time.

Q Well, around what time? A Around the first part of December, 1926.

Q At what time in December was the deal at Tenafly? A Between the first and the fifteenth of the month.

Q Well, how do you fix that in your mind? A Because I know this deal we had on hand at the time took place around the tenth or the twelfth. It was around that time; I don't know whether it was before or after.

Q Do you keep books? A I do.

Q Have you consulted your books to find out? A No; I have not.

Q And verify this thing and fix it in your memory? A I have not.

Q Would they fix it? A I think they would.

Q Would your books fix the precise date on which you were over at the Public Service office? A Probably not the exact date, no, sir.

Q Well, does it show anything about that transaction? A Not—no, not that transaction it doesn't.

Q Have you tried to refresh your memory about that transaction? A I have not.

Q Has anybody tried to refresh your memory about it for you? A No, sir.

Q Have you talked with anybody about these dates? A No, sir.

Q Not at all? A No, sir.

Q Not a soul? A No, sir.

Q Well, how does anybody know what you know about it, then? A Why, I was—I happened to tell someone that I knew something about it.

Q Whom did you tell? A Mr. Leshins.

Q Mr. Leshins? A Yes, sir.

Q Who in the world is he; is he here? A Yes, sir.

Q Well, where is he? Point him out. A Standing over there—or, sitting.

Q Oh. And how did you come to meet him? A Why, I called at his home here about two months ago.

Q Why? A About some questionnaire that he had left at different places, and I seen one of them, and I recognized the name, and I called there to see him.

Q Questionnaire about what? A Something about Public Service right of way.

Q About the Public Service right of way? A Yes, sir.

Q So this man, Leshins, that sits here, has been sending out questionnaires about Public Service right of way; is that it? A Yes, sir.

Q And you got one? A I saw one of them, and saw his name on it.

Q Well, how did you come to go there? A How did I come to go there?

Q Yes. A Well, I was wondering whether he was the same man I had met before at the Public Service or not.

Q Well, was he? A He was.

Q He was the same man? A The same man.

Q Well, what did you want to see him again for? A Just to make sure whether he was or not.

Q What difference did it make whether he was the same man or his uncle or his aunt? A I don't know as it made any difference.

Q Well, then, why did you go down? Oh, go on, tell us. Why did you go down? A I went there to see him. I happened to—

Q Why? A To find out if he was the one that was circulating these questionnaires around.

Q To find out whether you could make something out of it? A No.

Q Well, why, then? A Simply called to see him.

Q Well, why? Why did you want to see him? A Well, it seemed to me that I was surprised that if it was him that he was sending out circulars, because I was under the impression that he was still working for Public Service.

Q Well, supposing he had not been; what difference did it make to you? A Well, I don't know as it made any difference.

Q Well, then, why did you go down? Oh, come on, tell us. You must have had a reason for going down. Tell us. A I don't know as there was any particular reason for calling to see him.

Q Well, if there was not, then why did you go? A Because I happened to be in that neighborhood, and I just dropped in to see, to make sure, to see whether he was.

Q What were you doing in the neighborhood? A I was calling on some people there, some friends that I know.

Q What people? A People on Belmont avenue.

Q What people? A People by the name of Derby.

Q What number Belmont avenue? A Six hundred and some; I am not sure of the number. About one block away from Lushears place.

Q If you had not been calling on the people you would not have gone to Lushears place at all, would you? A No; probably not.

Q Then, why did you go anyway? A Why, simply because I had seen this name on this questionnaire.

Q Every time you get a questionnaire do you call on the fellow that puts it out? A No.

Q Well, then why did you call on this one? A Well, I can't give you any reason why I did.

Q Didn't you think it might be worth something to you? A No; I did not. I did not take it in that way.

Q Well, how did you take it? A Well, I just happened to be in that neighborhood. I simply stopped in there to see, that is all, whether it was his name that was on that questionnaire.

Q And after you had found it out, what were you going to do about it? A I didn't do anything about it.

Q Then why did you want to know? A Just curious to know.

Q Oh, just simply went in to satisfy your curiosity, and you were not going to do anything about it? A That is about the size of it.

Q Is that the fact? A Yes.

Q Now, when you got in did you find him home? A He was home.

Q And what did you say to him? A Why, I can't remember just what was said.

Q Oh, tell us as near as you can. I don't expect the exact words. A There was something brought up about the Nicholson case, I know that.

Q What did you say to him when you first went in there? A Why, I asked him—I told him I had one of them questionnaires with me and I told him there had been one left at Mr. Cogan's store and I had seen it there and I was wondering whether it was him that was sending out them questionnaires.

Q Did you have it with you? A I believe I had one with me.

Q Have you got one with you now? A No, sir.

Q Well, have you got it home? A I believe I have one home.

Q What was it? A Something about trying to get the wire put underground.

Q Get the wires put underground? A Something to that effect, yes.

Q Did you have any interest in having the wires put underground? A No; I did not myself.

Q Then why did you want to find out whether he was inquiring about putting wires underground? A Why, because there was a lot of people around in that neighborhood that I knew and that was the reason, I suppose, I was interested.

Q Well, what difference does it make to you? A Well, it did not directly make any difference to me.

Q Then why did you care to find out? A The same reason that I told you before, I suppose.

Q Curiosity? A Yes.

Q That is the only thing you have got, is it? A Yes, sir.

Q All right. Well, now, then, when you asked him whether he was the one that was putting them out, did he say "Yes"? A Yes; he said he was, yes.

Q Well, then, what did you say to him? A Well, I told him—I asked him if Mr. Nicholson had got one—that is how it came—if Mr. Nicholson had got one; he said, "No, at the present time Mr. Nicholson is not available, he is not around."

Q Oh, you asked Leshins— A Yes.

Q —if Nicholson had gotten a questionnaire, did you? You asked him that? A I told him that I would think—I should think he would have been interested in it.

Q Why did you tell him that? Did you have a grudge against the Public Service? A No.

Q Didn't you? Well, why did you want to have him get in touch with Nicholson? A I didn't know whether he knew Mr. Nicholson or not at that time.

Q Well, but why were you interested to have Leshins get in touch with Nicholson? A (Witness pauses.)

Q Can't you tell us that? A Well, no, I can't answer that. I don't—(interrupted).

Q You can't tell us that, eh? Were you ever employed by the Public Service? A Not by the Public Service.

Q Were you employed by any company that did work for Public Service? A No company, no.

Q Any person? A Mr. Erkins.

Q Oh, you had been employed by Mr. Erkins, have you? A I have not been employed by Erkins, no.

Q Well, what did you mean then? A Mr. Erkins gave me a lot of names of places to go and list for him.

Q Were you paid for it? A Paid? Yes, I was paid for it.

Q And were you eased out of that job? A No. No, there was only a certain number of them.

Q Well, did you have any enmity against Erkins? A No; I did not.

Q Did you have any against Mr. Saunders? A No, sir.

Q You did not? A No, sir.

Q Then why did you go down and tell Leshins about seeing Nicholson? A Simply because I thought probably Mr. Nicholson would be interested in having the wire put underground.

Q Did you think that Nicholson would be interested to pay you to put him wise to the fact that the wires might be put underground? A No, sir; I didn't think so.

Q Well, why were you acting against the man who, you say, gave you work to do, Mr. Erkins? Can you give us any reason for that? A No; I cannot.

Q Well, is there any reason for it? A There is no reason at all.

Q Well, then, why did you tell it to him? A Well, simply come on in talking to him, that is all; just asked him in an offhand way if Mr. Nicholson had got one.

Q Now, you went down there yourself purely out of curiosity? A Yes, sir.

Q And you yourself first brought to Mr. Leshins' attention the question as to whether he had seen Nicholson, didn't you? A Yes, sir.

Q Well, you were trying to injure somebody by telling him that, weren't you? A Well, I don't know as I was. I thought that if the wires were to be put under ground it would be a good thing.

Q Well, but it didn't interest you, you said. A Well, it interested me in a way, because I live around in that neighborhood.

Q How far from the place? A Oh, probably a couple of thousand feet.

Q Couple of thousand feet? A Just about.

Q That is nearly half a mile. A About that.

Q Why would it interest you, then, to have the wires underground a half a mile from you? A I realized it does not improve the property any.

Q What, a half a mile away from it? Now, you know that is not the reason, don't you? A It is the reason.

Q That is the only reason you mentioned Nicholson so to protect your own property that was two thousand feet away; is that it? A My property and property I was handling for the American House and Farm Association, the tract of land which the wires run through.

Q Well, then, as I understand you now, Mr. Cormier, you handled property there that would be benefited by having these wires underground? A Yes, sir.

Q Well, then, you did not go down to see Mr. Leshins just out of curiosity, did you, did you? A Well, not exactly, no.

Q No. So that your previous answer was not true, was it? A (Witness pauses.)

Q Was it? A Well, it was true as near as I could think at that time.

Q Well, do you mean to say that you had in your mind to protect the property that you represented, when you went down to see Leshins, and that is what you went for and that you came here this morning and forgot it? Do you mean to tell us that? Do you? A (Witness pauses.)

Q Oh, come on, answer. Tell us. A Well, I suppose so.

Q You suppose so. You did forget it, did you? A Yes, sir.

Q Eh? A Yes, sir; I did.

Q And I just reminded you of it now by the question. You had plumb forgotten that you went down there to protect the property, hadn't you? Hadn't you? A I had.

Q Yes. And you honestly thought that all you went down there for was curiosity. That is right, isn't it? A That is right.

Q And you really would not have gone there if it had not been that you were visiting friends on Belmont avenue; is that so? A That is true.

Q Now, which is true? You have told us three of them. Why did you go down? A Well, I happened to be visiting friends on Belmont avenue, that was the reason I called there.

Q Well, that is the best story you can give us, is it now? A Yes.

Q Yes. Now, you asked Mr. Leshins whether he had seen Nicholson, didn't you? A No. I asked Mr. Leshins if Mr. Nicholson had received one.

Q A questionnaire? A Yes.

Q And what did he say? A Mr. Leshins said, "No," that Mr. Nicholson was out of town.

Q I see. And what did you say? A I didn't say anything that I can remember.

Q You didn't say another word to him, you went home? A Not in regard to Nicholson, I don't—yes, I did say something to him after that.

Q Well, what did you say? A I told him about that I happened to be in the office when the money was paid over to Mr. Fairhand, and then, after I told him that, he told me that the

case had not been closed. I was under the impression that the case had been all settled.

Q What case? A With the Public Service and Nichols—and Mr. Nicholson.

Q Well, you have not told us yet that you said a word to Mr. Leshins about the Nicholson case. All you said to Leshins was, "Have you sent Nicholson a questionnaire?" Had you talked with Leshins before that about the Nicholson case? A Before that? No, sir.

Q Yes. A Before that one time?

Q Yes. A No, sir.

Q How did you know that Leshins was interested in the Nicholson case—this case? A Well, he told me himself. Mr. Nicholson told me.

Q Mr. Nicholson told you? A Mr. Leshins, rather.

Q When? A That night.

Q What did he say? A He told me that the case was going to be—was going to come up again.

Q What case? A This case between the Public Service and Mr. Nicholson.

Q Well, what had you said to make him say that? A I told him that I had seen the money paid over to Mr. Fairhand by Mr. Erkins.

Q Well, how did you come to tell Leshins that you had seen money paid over to Mr. Fairhand by Erkins? A Because I had seen it.

Q Well, why did you tell it to Leshins? A I told Mr. Leshins.

Q Well, why? A Why, I don't know why I told him, but I just happened in talking I told him about it.

Q I see. You know, of course, don't you, that Mr. Saunders paid you commissions on some sales that Public Service had been— A Yes.

Q —the purchasers? A Yes.

Q You know that, don't you? And have you been seeking for more business from Mr. Saunders? A Have I been seeking for more business from Mr. Saunders?

Q Yes, more sales. A No, sir.

Q Didn't you go into Mr. Saunders and ask him whether you could work on the new line to Lambertville? A Yes; in the fall of 1926 that is.

Q You did. And didn't you recently go in to Mr. Saunders and ask him whether you could work on the new line to Lambertville? A No, sir, I did not.

Q Didn't you have a property for a person named Monn? A I did.

Q And didn't you want Saunders to deal with that property through you? A Yes, sir; I went and spoke to Mr. Saunders about it.

Q And he wouldn't do it, would he? A He wouldn't do it.

Q And that made you sore, didn't it? A I don't know as it did.

Q Well, didn't it? A No.

Q And didn't Mr. Saunders reprimand you for trying to get options on the place where the line was going through? A Yes, he did.

Q And didn't you get mad and sore about that? A I didn't get sore.

Q You did not? A No, sir.

Q It didn't make any impression on you? A No, sir.

Q When you lost the work you wanted to get from Saunders and you were reprimanded by Saunders, you were not angry at all, were you? A Oh, no, I was not angry with Mr. Saunders, no.

Q Well, why did you want Leshins to know that you saw this money passed over? A Why did I want him to know?

Q Yes, why did you want him to know? A I don't know why. I just happened to tell him in talking to him—I just happened to tell him.

Q Well, why did you tell him? A I don't know why I told him.

Q What did you expect to get out of it? A Nothing.

Q Whom did you expect would suffer by reason of the matter you told him? A It didn't—it didn't come into my mind who would suffer at the time.

Q Well, did it come into your mind that anybody would? A I don't believe it did.

Q Well, did you think you wanted to be useful to Mr. Nicholson in this case? A Why, I didn't—I was sorry that I told Mr. Leshins, after I found out that the case had not been disposed of.

Q Well, if you thought the case had been disposed of, then why did you tell him? A Well, I had told him before that before I knew it.

Q Oh, when was that? When was that? A That same—that night—that same night.

Q Well, if you had told him before that and were sorry, why in the world did you tell him again? A I told him before he told me that the case had not been settled with.

Q Well, why did you tell him then?

The Court: What he means is he told him before he understood the case was still unsettled.

Mr. Speer: Yes, I understand that.

Q What I want to get at is why you told him, if you thought the case hadn't been settled, that

you had seen the money passed over? A I don't know why I told him.

Q There was not any reason in the world for it, was there? A No; not that I know of.

Q Well, why did you talk about the Nicholson case at all? A Well, it just came up on account of this questionnaire.

Q You have not yet told us why you told him about Nicholson on account of the questionnaire, have you? You didn't represent Nicholson, did you? A I did not.

Q Well, then, why were you anxious to have Nicholson informed? A Because I thought he would be interested in having the wires put underground, if it be done.

Q And did you think he would be interested in paying you for your service in bringing the matter to pass? A No; I did not.

Q I see. All right. Then you told Leshins about seeing this money passed, didn't you? A Yes.

Q Did you tell him then when it was that it was passed? A No; I did not tell him when it was.

Q Why not? A Because he did not ask me when.

Q It was also because you did not know. Wasn't that the other reason? A I knew it was in December, but I did not remember the date.

Q Well, why didn't you tell him so then? A Why didn't I tell him?

Q That it was in December? A Because he didn't ask me when it was.

Q Well, when did he ask you when it was? A He hasn't asked me when it was.

Q Well, who did ask you when it was? A He asked me if I knew when it was about the—

Q Oh, he did? A Mr. ——— and I told him I did, but I didn't tell him when.

Q Now, as I understand you, Leshins asked you if you knew when it was. A Yes.

Q And you did not tell him when; is that right? A I did not tell him when it was; I don't believe I did, no.

Q Well, why didn't you, when he asked you? A I didn't say—I don't think he asked me—I didn't think he said he wanted to know.

Q My dear man, just one minute ago you told us that he told you when asked—Mr. Riker the testimony was, "if you knew when it was." Well, he asked if you knew when it was. Did you tell him whether you did or not? A If I knew when it was?

Q Yes. You say you did. A No.

Q Did he ask you then? A No.

Q So what you want us to believe is, Leshins said, "Do you know when it was?" A Yes.

Q And you said, "Yes." A Yes, sir.

Q Then he did not ask you when it was; is that right? A Yes, sir.

Q All right. What was said after that by you and Leshins? A Nothing that I can remember.

Q Well, didn't you have any more talk at all? A Not in regard to—no, not in regard to the Nicholson property.

Q Did you ever have any talk with Leshins since then in regard—(interrupted). A Since that—since this time?

Q Yes. A Yes; once.

Q When? A About three or four weeks ago.

Q Where? A In Newark.

Q Where? A I met him on Clinton street in Newark.

Q All right. A Corner of Clinton and Market street.

Q By appointment? A By appointment.

Q By appointment. And where did you go from there? A I went with him to some office in—on Clinton street.

Q How did you make the appointment? A Why, he wrote me—Mr. Leshine wrote me a letter that he wanted to see me.

Q Well, did you answer it? A No; he told me to meet him at ten o'clock on this certain day and I met him.

Q Well, whose office did you go to? A Why, it is on Clinton street. I don't remember the name of the office.

Q Well, was it a doctor's office or a lawyer's office or what? A A lawyer's office.

Q A lawyer's office. A In that bank building.

Q In a bank building? A Yes.

Q Well, whom did you see there? A Why, Mr.—I believe, Mr. Marsh.

Q Mr. Marsh? A Mr. Marsh.

Q Who is Mr. Marsh?

Mr. Marsh: Right here.

Mr. Speer: Oh, you, Mr. Marsh?

Mr. Marsh: Yes.

Mr. Speer: I beg your pardon.

Q That is the man you were talking to? A Yes, that is the man.

Q So Leshins took you to Marsh, did he? A Yes.

Q Well, what occurred there? What was done there? A At Mr. Marsh's office?

Q Yes. A Mr. Leshins introduced me to Mr. Marsh and I told him just what I had seen, what had passed in the ante-room of the Public Service in December.

Q And you told him the date, did you? A I told him.

Q These bills, how many bills were there? A There were fourteen.

Q Did you count them? A Mr. Erkins counted them in front of me, yes.

Q Mr. Erkins counted them in front of you and you counted the fourteen, did you? A Yes; counted fourteen $1,000 bills.

Q And to whom were they given? A To Mr. Fairhand.

Q Had you ever met Fairhand before? A I have.

Q You had? A I have.

Q Where? A At—Mr. Erkins called with him at my home in the fall of 1926.

Q What date? A I couldn't give you the date.

Q Why not? Didn't you have any other business relations—(interrupted). A I don't keep dates of when people call to see me.

Q Well, was it in October, November, December? A It may have been in November.

Q It may have been in December? A It was not in December; it was November, I believe.

Q All right. A I remember the month.

Re-direct examination by Mr. Riker.

Q Mr. Cormier, in answer to a question of Judge Speer, you said that Mr. Erkins at one time gave you a list of names. What for? A To call and see if I could not list the properties.

Q Where were the properties? A In New Providence Township and Borough.

Q Where were they with reference to this transmission line? A They was right on—in the transmission line.

Q And what were you to do? A I was to call on the people and list the property.

Q Did you do it? A Yes, sir.

Q What was the result? A Well, I closed some cases for him—twelve or fifteen.

Q Did they agree to sell the property, some of them? A Yes, sir.

Q To whom? A Why, to different ones.

Q Well, who were the different ones? A Why, there were some contracts taken under the name of Mr. Stock and Mr. Saunders.

Q Who is Mr. Saunders? A This gentleman right here.

Q What is his business connection? A I believe he is connected with the Public Service.

Mr. Speer: I object, your Honor pleases, what his business connection is.

Q By whom is he employed, do you know? A By the Public Service.

Q Who are these other gentlemen employed by that you mentioned? A By the Public Service.

Q What were their names, Mr. Stock? A Stock is one of them.

Q What were the others? A Mr. Saunders.

Q Yes. Anybody else that you can remember? A Not that I can remember of, no.

Q And did you get real estate commissions on any of these sales? A I did.

Q Did you get the entire commission? A I did.

Q In every case? A Every case.

Q Did anybody work with you in bringing about these sales? A Mr. Erkins worked with me and I closed two or three direct with Mr. Saunders.

Re-cross examination by Mr. Speer.

Q You know, of course, do you not, Mr. Cormier, that the object of taking the titles in the names of these people was so as to prevent the general public from knowing that Public Service wanted the property; wasn't that the idea?

The Court: Now, that calls for a conclusion.

Mr. Speer: Very well; I will strike it out, or, have it stricken out, with your Honor's permission.

The Court: We will take a five-minute recess.

(After short recess.)

The Court: I said to Judge Speer that his question called for a conclusion, but I want to also say that my experience with the Essex County Park Commission leads me to put very little importance on the fact that a public body would take property in the name of an individual, because I realize that that sometimes is necessary to avoid excessive demands on the part of property owners for land taken for public use.

ALBERT H. BIERMAN, sworn for complainant.

Direct examination by Mr. Riker.

Q What is your business? A Lawyer.

Q In whose office? A John L. Hughes.

Q Is there in your office a matter in which you represent some Chatham association which owns property out in Chatham, the location of this transmission line? A There is.

Q In that file have you certain letters or photostatic copies of letters? A I have two letters which were taken from the files.

Q What is the first letter you have? A One letter is written to Mr. L. Robinoff.

Mr. Speer: Before he starts to read the contents, I suppose I have a right to see it, if he reads it in the record?

Mr. Riker: I am not going to offer the contents at all, Judge. I am going to offer it to show the fact—the stationery it is written on, the person who signed it, and the manner in which he is designated.

Mr. Speer: Designated by whom?

Mr. Riker: In the letter.

The Court: Let Judge Speer see the letter.

Mr. Speer: As I understand it, Mr. Riker —I just want to save time, if I can.

Mr. Riker: There it is.

Mr. Speer: As I understand it, your purpose is to show that Mr. Erkins designates himself as holding a certain office?

Mr. Riker: Yes.

Mr. Speer: And—

Mr. Riker: And that it is written on the Holland Company stationery, from the office of the Holland Company.

Mr. Speer: I see. I object to the letter for the same reason I objected to the other evidence of the same general character. Mr. Erkins cannot give himself an office by clothing himself with authority by a statement in a letter or otherwise. I object to the letter.

Mr. Riker: I would like to mark it for identification.

The Court: Very well.

(Letter marked C. 13 for identification.)

JOHN J. KENTZ, sworn for complainant.

Direct examination by Mr. Riker.

Q Mr. Kentz, what is your business? A Civil engineer and surveyor.

Q Whereabouts? A Summit, New Jersey.

Q Were you ever asked to do any work by Mr. Erkins or by Mr. Fairhand? A Yes, sir.

Q By which one? A Mr. Fairhand.

Q When? A In the fall of 1926.

Q Can you place the month? A It was the early part of November.

Q And what was the request? A The request was to make a survey. First it was an outline survey of the entire property and then to make some—(interrupted).

Q What property? A Of the Nicholson property—former Nicholson property, and make one for a subdivision.

John J. Kentz, cross.

Q Did you do that? A Yes, I did.

Q Have you got a copy of your work? A Yes, sir.

Q Will you produce it? A (Witness does as requested.) This is a survey that was made in November, 1926.

Mr. Riker: I offer that in evidence.

Mr. Speer: I have no objection.

The Court: It will be received.

(Map marked Exhibit C. 14.)

Q And did you later prepare any other work? A Yes.

Q And what was that A That was the lot development covering quite a portion of the same property as shown on this map, dated March, 1927. That was the time the map was completed.

Q Does this second map show the entire property? A No, sir; a portion of it.

Q What portion? A It shows the westerly portion of the larger tract, and, of course, the survey of November showed over the property to the north of this here Fairmont avenue.

Mr. Riker: I offer it.

(Map marked Exhibit C. 15.)

Cross examination by Mr. Speer.

Q Mr. Kentz, might I ask you: You say Mr. Fairhand ordered these, did he? A Yes, he did.

Q And what was the bill for them? A Well, there was two surveys, the original one and this lot development—

Q I understand. A —and it amounted to $1,460.

Q All right. Did Fairhand pay anything? A He paid a portion of it.

Q All right. What was that? A He paid three hundred dollars; he still owes the balance.

Q He paid that himself and he still owes you the balance? A Yes, sir.

Mr. Speer: All right; that is all.

The Court: That is all.

HARRY HATTON, sworn for complainant.

Direct examination by Mr. Riker.

Q Mr. Hatton, where do you live? A Chatham, New Jersey.

Q What is your business? A I am a butcher and grocer.

Q Did you own certain real estate in Chatham in the neighborhood of this transmission line in 1926? A Yes, sir.

Q Did someone come to see you and offer to buy it? A Yes, sir.

Q Who? A Mr. James E. Shea and Mr. Rene F. Erkins.

Q And did you enter into a contract for the sale of this property? A I did.

Q To whom? A To Rene F. Erkins.

Q I show you a contract dated April 6, 1926, and ask you if that is the contract. A That is the contract, sir.

Mr. Riker: I offer that in evidence.

(Contract marked Exhibit C. 16.)

Robert H. Steele, direct.

Q This contract describes two-three tracts as part of the property described in there—been conveyed by you? A Yes.

Q In pursuance to this contract? A In pursuance to this contract, yes.

Q And who was the grantee? A The grantee in the contract?

Q To whom did you convey the property? A The Holland company.

Q Where is your property located that was conveyed to the Holland company with reference to—(interrupted.)

Q Located on Main street, Chatham, running from Main street to the old right of way of the Lackawanna Railroad, in the neighborhood of Division avenue.

Q Do you know where the transmission line of the Public Service is? A Yes, sir, it crosses right over the ground that I sold.

Q Pursuant to that contract? A Yes, sir.

Mr. Speer: That is all, Mr. Hatton.

ROBERT H. STEELE, sworn for complainant.

Direct examination by Mr. Riker.

Q Mr. Steele, what is your business? A I am a realtor.

Q Where? A Summit, New Jersey.

Q And have you had transactions involving real estate through a considerable radius there? A Well, principally New Providence Borough.

Q Does that include Chatham? A No, sir.

Q Do you know anything about values in Chatham? A I have sold in Chatham Township, yes.

Q For how long have you been in business? A About three years.

Q How long have you lived in that neighborhood? A Fifteen years.

Q Have you gone over the property that was formerly owned by Mr. Nicholson? A I have, sir.

Q When? A Last Monday.

Q What did you find the condition to be with reference to development? A Well, there has been an attempted so-called development.

Q Well, what was done? A Well, there is some rough plowed streets, some sign posts knocked down, evidently attempted lot plotting.

Q Are you familiar with the line of the Public Service transmission right of way? A No; I wouldn't say so. I have seen it; I have passed under it. Everywhere you go you pass under it.

Mr. Riker: This is a blue print of the premises in the Township of Chatham, prepared by John J. Kentz, under date of January 10, 1927, which I would like to offer in evidence, and which shows, as I understand it, the Public Service right of way through the property as finally determied.

Mr. Speer: This is a survey made for the Fidelity Union Trust. I have no objection to that going in. And it does show the right of way across it.

Mr. Riker: I offer that in evidence.

(Blue print marked Exhibit S. 16A.)

Q Now, Mr. Steele, looking at this outline of the right of way, do you recognize there the property that was formerly Mr. Nicholson's property? A Yes, sir.

Mr. Riker: I think this other map will show it better. It has already been marked for identification by Judge Speer.

Mr. Speer: All right.

Mr. Riker: It shows the property, I think, better.

The Witness: This is it.

Q Which part of this is the part which was put up at auction sale? A This—well, I didn't see anything actually put up at auction. I was there. The auctioneer told me it was.

Mr. Speer: No, no, no.

The Court: No.

Q Wait a minute. You have examined this property? A Yes, sir.

Q What is the effect, in your opinion, of the placing of this transmission line through there, on the value of the property? A It ruined it, in my opinion.

Q To what extent? A Oh, at least fifty per cent.

Q And what, in your opinion, would the value of the entire property have been, or what was the value prior to this line going through? A Taking the whole 167 acres?

Q Leaving out—yes, taking the whole 167 acres. A A thousand dollars an acre.

Q And what, in your opinion, was its value after? A Well, I would like to find a purchaser at five hundred dollars an acre.

Robert H. Steele, direct.

Q By that, I assume you think it is worth not more than five hundred dollars an acre? A Not as it is.

Q Do you know Mr. Gerth? A Yes, I do.

Q It is shown on the map here, on this exhibit—advertisement for the auction sale—that Gerth Company are the auctioneers, I take it, the agents of the owner who is selling. Did Mr. Gerth say anything to you about that auction sale?

Mr. Speer: I object, your Honor pleases. (Argument.)

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

Q You stated that, in your opinion, the property would be depreciated at least fifty per cent. I believe that was the effect of your testimony. What are your reasons for saying that? A Well, there are several reasons for that. In the first place, the sale of acreage, the price is a good deal dependent upon the amount of frontage that you have upon well defined roads, such as Fairmont avenue and River road. Now, the power line cuts through Fairmont avenue there diagonally, so that one portion here it prevents their running streets, coming out advantageously and from the other portion, coming advantageously. The middle section, the section so-called between the River road and Fairmont avenue is the high, beautiful part of the property, where you get the marvelous view, and the easterly portion there you are unable to cut streets up because of the height. You can come all right in the westerly direction; there is a gradual grade where there is a road. Down on the lower section the fact—well, throughout, the

fact that people object to the power line, the persons that think the children will be playing there—most people come out in the country because of their children—the fear of the mere presence of a power line drives them away. It doesn't take very much to spoil a real estate sale. One little thing will kick it over. The power line is a bugaboo to people. This line is about three miles out from Chatham and a little further from Summit; and it should be cut up in twenty acres or one piece for a man desiring a beautiful home with a view, and the fact that the power line goes through there, it is unsightly and it is something that creates an impression that the prospective buyers fear.

Q Have you, since the Public Service line has been put through there, attempted to sell this property? A Yes; I have had at least a dozen purchasers of acreage out there.

Q Have you succeeded in selling it? A No. They all said they would not be interested because—(interrupted.)

Mr. Speer: I object and ask it be stricken out.

The Court: He can say he has had purchasers there.

Mr. Speer: I mean the part where "they all said."

The Court: No.

Cross examination by Mr. Speer.

Q Mr. Steele, what experience have you had in selling property where power lines were running across it—the tract? A No experience.

Q None at all? A No, sir.

Q And what are you basing this opinion that you give on, if you have had no experience with it? A My experience in selling land; the things that prospective customers object to; my experience in talking with other brokers or other operators who have land, who thought that they could sell land after they had put the right of way through, and have been unable to.

Q And how many of those have you talked to? A Three.

Q Three? A Yes, sir.

Q So that is the extent of your experience? A Yes.

Q And upon which you base your expert testimony here? A Yes, sir.

Q Now, of course, you know that power lines run along public streets, don't you? A Yes.

Q And where children are not kept off the streets because the power line ran—(interrupted)

The Court: Well, now, do not—(interrupted)

Mr. Speer: That is probably argumentative I withdraw it.

Q What property have you ever sold in the neighborhood of this property? A The estate known as Buxton, which is on the junction—it has been referred to here as Fairmont avenue. It is really the Long Hill Road and Fairmont avenue and Southern boulevard.

Q When did you sell that? A I sold it in April.

Q What year? A Really March of this year.

Q This year? A Yes.

Q What experience have you had in selling in 1927 in May or within a radius of three or

four months either way? A I had presumably sold about three hundred acres of land.

Q Where? A Mostly New Providence Borough.

Q Well, that is not in Chatham, is it? A No, sir.

Q No; and is the land the same over in New Providence? A Yes; it is an adjacent hillside over there.

Q I see. And has exactly the same favorable and unfavorable circumstances to it? A I would say so, yes.

Q Well, what did you get for that? A Why, I averaged about a thousand an acre over there.

Q There they have transportation, haven't they? A (Witness pauses.)

Q Haven't they? A You mean by "transportation" buses?

Q The buses, surely. A They run about three times a day.

Q I am not asking how many times a day they run; I am asking if they have transportation? A How do you define "transportation"?

Q Are you trying to argue with me? Have they transportation? A No, sir.

Q They have not? A No, sir.

Q No buses running? A You asked me for transportation.

Q No buses running? A I am trying to tell you.

The Court: Do buses run?

The Witness: Yes, sir.

The Court: How often?

The Witness: About three times a day.

Q And where do they run to and from? A Mountain avenue down to—from the corner of

South street and Mountain avenue into Summit station.

Q I see. And this land that you sold was on the line through which this thing that you do not call transportation runs? A Yes, sir.

Q It was? A Yes, sir.

Q Right on the road? A Well, adjacent to —practically on the road.

Q Practically on the road? A Yes.

Q Well, now, was there any other piece of land than that one that you sold at or about that time? A Well, these were in several parcels there.

Q I see. You say you averaged a thousand dollars an acre? A Yes, sir.

Q What did you get for the pieces of property? A Well, I got anywhere from fifteen hundred dollars an acre to seven hundred and fifty dollars an acre.

Q What made the difference? A Well, main road frontages.

Q Well, there was a considerable amount of road frontage up there, wasn't there, on that that you sold? A No, no.

Q Wasn't there? A A thousand foot was the most on any before I sold.

Q And how many feet did you sell? A Well, I sold as acreage.

Q I see. Now, what kind of a transmission line have you in mind as being the kind that injures property? A A high voltage line.

Q Well, what kind of a line had you in mind with respect to this property? How much voltage? A I understand that has to 33,000 volts going through there.

Q Oh, that is what you understood? A Yes.

Q Who told you that? A I think Fred Hart, the manager of the New Jersey Central Plant in Summit.

Q Oh, I see, some man you talked with? A Yes, sir.

Q You were trying to find out what it was in order to enable you to testify? A No, sir.

Q How did you come to ask him? A What is that?

Q How did you come to ask him? A I bought a piece for the Jersey Central Power line and we were talking about the different voltages.

Q And did you buy it in the name of the Jersey Central? A What is that?

Q Did you buy it in the name of the Jersey Central? A No, sir.

Q You did not? A No, sir.

Q Bought it in somebody else's name? A Yes, sir.

Q Why? A What is that?

Q Why? A Because the price would be higher if I bought for the Central.

Q Then it is common practice in real estate to buy property where companies of that kind are involved? A Not unless you state it is for business. You want on residential purposes.

Q But that is the practice, isn't it? A Yes, sir.

Q Now, do you know how they construct this power line? A Steel towers.

Q Yes. A Sunk in cement block footings.

Q Do you know how far the towers are apart? A No, I wouldn't—to look at it with the naked eye, I couldn't say exactly how far.

Q Do you know how high the cables are? A I know they are quite high. I couldn't tell you exactly in feet.

Q Well, then, you know, secondly, that you could put roads under them without any obstruction whatever? A Yes, sir.

Q Don't you? A No, sir.

Q And, if I were to tell you that those towers were anywhere from eight hundred to twelve hundred feet apart, you would not be prepared to dispute it, would you? A I certainly would not.

Q So there would be about—if that is true, four towers on this whole piece of property of Mr. Nicholson? A That is correct.

Q And the wires would be no interference so far as facility of use would be concerned with the property? A Yes, they wouldn't—I mean, you are perfectly right.

Q They would not? A I got a little twisted here.

Q Exactly. Now, then, on what basis did you say the property would be practically ruined by having towers on there— A Because a piece of land like that, to cut it up into small residences, in my opinion, you couldn't sell it that way. It should be cut up in large estates, perhaps one, perhaps three large estates. If I was going to take care of that, that would be the way I would handle it.

Q So, then, in reality, the objection is not so much to the power line as it is the inability to cut the property up in sections for sale? A It is the objection of the purchaser. It doesn't take much to upset a real estate transaction, and the average person it takes very little to kick over a deal.

Q Where did you get the notion that it is fifty per cent. depreciated? A That is just my opinion.

Q It is a guess, isn't it?

The Court: Oh, no.

The Witness: What is that? Oh, no, no. It was not suggested to me.

The Court: That is not— Wait a minute. That is enough. It is his opinion. He is a real estate expert and entitled to give his opinion.

Q Well, you never have sold any, have you? A For power purposes?

Q Yes. A No, sir.

Q Then you never have attempted to sell any after the line was there, have you? A No, sir—yes, sir; I have—excuse me—I have attempted to sell this property.

Q This property? A Yes, sir.

Q Now, then, when did you get first control of it for sale? A I never had control of it. I simply took purchasers out there with the hopes that I could work out a deal if I could get somebody to make an offer on it.

Q Let me ask you something: Did Mr. Nicholson employ you to do that? A No, sir.

Q What? A No, sir.

Q You knew he owned it, didn't you? A Yes, sir.

Q How were you going to sell it? A What is that?

Q How were you going to sell it? A The only way I could sell it was to get—to tell them that Mr. Nicholson may have to take the property over and to get them to make an offer for the property if he should take it over.

Q You knew Mr. Fairhand owned it, didn't you? A From the papers I presumed that he did.

Q Yes. You never asked him whether you might sell it for him? A No, sir.

Q And never made any effort to sell it for him? A No, sir.

Q So you complicated the notion of a line—high power line there with the idea that if perhaps Mr. Nicholson had to take it back that perhaps you would have it in the market for sale and that is the way you offered it to him, wasn't it? A Yes, sir.

Q And that is what you mean when you say you tried to sell it and could not do it? A Yes, sir.

Q Well, any other property than that that you tried to sell there a power line has gone through? A No, sir.

Q So you have had no experience whatever with that, have you? A No, sir.

Q Well, that is all. Oh, by the way, just one thing more. One other topic. Have you had experience in developing property by putting roads through it and staking it out? A Well, clients of mine.

Q Yes. For clients of yours? A I have never actually done it, but I have been interested in my client's success in doing it.

Q Yes. You paid the bills? A No, sir.

Q And have you any knowledge of what it cost to develop property of that kind? A I have a little knowledge because I owned it myself.

Q All right. What did it cost to develop this property as far as you saw it developed? A You mean with the surveyors?

Q Everything. A Everything?

Q Yes. A Everything. Five thousand would have been a very high price.

Q Suppose you were told it cost seventeen thousand dollars, would you dispute that? A I certainly would.

Q Did you hear the testimony of the surveyor here, who made the map for Mr. Fairhand? A I am sorry; I was out to the telephone.

Q Oh, you were not here? A No; I was out to the telephone.

Q What would it cost to have maps made? A For property like that?

Q Yes. A He gave me a price—he gave me a price on surveying fifty acres, a thousand dollars.

Q Well, he testified that it cost fourteen hundred dollars to make those maps— A That is about—

Q —alone. A —it. Uh huh.

Q Now, then, did you hear Mr. Nicholson's testimony? A Yes, sir.

Q Did you hear him say that there were eight hundred feet of road in one place? A Yes, sir.

Q Developed. A Yes, sir.

Q That is was graded, that it was graveled; did you hear him say that? A I heard him say that, yes.

Q All right. What does that cost? A Fifty cents a foot for rough grading.

Q Fifty cents a running or square foot? A Fifty cents a running foot.

Q A running foot? A Yes.

Q All right. That would be four thousand dollars, wouldn't it? A Eight hundred feet?

Q Four hundred dollars, wouldn't it? A Yes, sir.

Q And that is all it cost, is it? A That is the figure I have for rough grading from three contractors.

Q Did you look at the other streets that were run through there? A Yes.

Q What would it cost to fix those up? A I don't know the exact frontages but you have got—fifty cents is a fair average price for rough grading of that kind.

Q All right. Now, then, do you know what it cost to advertise this property for sale? A I can't answer, because Mr. Gerth is the only one that I have any knowledge of it from.

Q Do you know what it cost for these advertisements to be put out? A I can't answer it because—

Mr. Speer: All right; that is all then.

Re-direct examination by Mr. Riker.

Q Do you know what the cost—(interrupted)

The Court: All he knows is what Mr. Gerth told him.

Mr. Riker: I think Judge Speer has inquired into it. I am entitled to inquire about it, then, am I not?

The Court: All right.

Q What did it cost? A I don't know. The only thing I know is Mr. Gerth told me—(interrupted)

Mr. Speer: I object to it. What Mr. Gerth may have told him is not his knowledge.

The Witness: That is the only knowledge I have, sir, of the situation.

Q Did you attend the auction sale? A Yes, sir; I did.

Q And will you describe it? A What is that?

Q Will you describe what happened? A Why, I went on the second—went up the second day with a client of mine and we drove up there and there was nobody there practically except the auctioneer and his "come-on" men, and I knew Mr. Gerth from up in Connecticut, so I stopped and had a talk with him, and they said they were not going to hold any auction.

Mr. Speer: I object, your Honor pleases, to what Mr. Gerth said.

The Witness: That is all I can tell you. I went up. The tent was there. The auctioneer was there.

Mr. Speer: Don't go rambling on. I object to the question.

The Court: I am going to let him answer that.

Mr. Speer: All right, sir.

The Court: I want to know what happened there.

The Witness: Can I go on?

The Court: Yes; go on.

The Witness: I drove up with a man by the name of Thompson, who was a client of mine and was interested and wanted to know what was going on out there, so we drove out and Mr. Gerth came over and started talking to us and we asked him if he knew

whether the auction was going on and he said the auction was not going on, that there was nobody there, that the thing was a flivver, it was just a sham, it was never intended to be an auction, that they hadn't spent any money in advertising, that they had shown his man a piece of property nearer town, and he made arrangements and when he got there he found it was out there, and he found it was three miles out from town and he had been shown a tract a mile from town, his representative had, that he had been given five hundred for staying there the second day, and that the property was just a sham and Mr. Nicholson was going to have the property thrown back on his hands and he was sorry he was ever connected with it.

Q You stated, in your opinion, the property was depreciated in value; this was based on a belief of yours that the transmission line would have a certain voltage, which you named. Would it make any particular difference in your opinion if that was substantially larger or smaller than the voltage you named? A Well, it is—the average person does not know what 33 volts is from 33,000 volts. It doesn't make any difference as long as it is a high-power electric line.

Re-cross examination by Mr. Speer.

Mr. Speer: I suppose that evidence being permitted about what Mr. Gerth said, I would not foreclose myself by examining about it?

The Court: No, you can cross examine, Judge, if you want to.

Q Won't you tell us again what Mr. Gerth said? A Just my conversation with Mr. Gerth? You don't mean to say who I drove out with?

The Court: No. What did Mr. Gerth say?

The Witness: Mr. Gerth said to me—we asked him what time the auction was going on, because we were interested, and he said it was not going on, that there was nobody there, that Shea had lost all interest in it and had not spent any time there, that there had been no money spent on advertising, that his representative had been shown a tract of land within a mile of town, another tract of land, not this tract of land; when he got there and found it was three miles from town, that he was not interested and that there had not been enough money spend for the advertising to make it a success; it was simply a gesture on the part of the dummy who was holding the property; that the property—when this was through, the property would be thrown back on Mr. Nicholson's hands, and that they had given him five hundred dollars to stay there a second day to make it look all right.

Q That is all he said? A Well, he talked about up in Connecticut and we had—

The Court: Oh, no, no, no. About this sale.

The Witness: That is all he said about the sale at that time. That is in substance.

We might have talked some other things, but that is the substance of our conversation.

Q Well, now, as I understand it, he said the sale was a flivver? A He didn't say—he said that it was—I can't use his exact words, but he said it was a gesture, that he—(interrupted)

Q Well, did he say "a gesture"? A Yes, he said that it—they didn't mean to sell any lots—because we were interested in seeing what the lots were going to sell for—and he said, "Don't waste your time; they don't mean to sell any lots."

Q Well, you had not been there the first day, had you? A No; I had not been there the first day.

Q Did he say that the sale was a "flivver"? A Yes, sir.

Q You don't know whether they tried to sell any lots the first day or not, do you? A Only what he told me.

Q Did he say they had tried to sell any the first day? A Yes, sir.

Q What did he say had happened? A They did not sell any.

Q They did not sell any? A No, except—

Q Why not? A Because there was nobody there.

Q Nobody to buy, is that it? A No, they had not spent any money on advertising.

Q Didn't you know, though, they had advertised? A Well, except a little piece of advertising in the Summit paper; that is all I knew about it.

Q How did you happen to be there? A Because a client of mine came in who was inter-

ested in buying land and lots at auction and selling, and so forth, and drove me out in his car.

Q And did he tell you how he knew there was a sale there? A Yes, sir.

Q What did he say? A He saw it in the Summit paper.

Q He saw it in the Summit paper. So they had advertisements in the Summit paper? A Yes; surely.

Q Did you know they had advertised it in a Chatham paper? A I didn't know they had advertised it in a Chatham paper; no, sir.

Q Did you know they had advertised it in the "Newark News"? A No, sir.

Q Did you know they had put these dodgers (?) out all through New Jersey? A Yes; they left one in my office.

Q You knew that, didn't you? A I told you they left one in my office.

Q Then there was advertising, wasn't there? A Yes, I didn't say there was no advertising, Judge.

Q You said that Gerth said there was not any advertising. A I said Gerth said they had not spent enough in advertising to put it across.

Q You got the impression at that time that Gerth was excusing his inability to sell the property? A No; I did not. My impression was it had been misrepresented to him, the whole thing, and that he was sorry he ever got into it.

Q I see. Though he really did not ascertain anything about what sort of a thing it was he described to you until he had tried to sell the land and could not do it. A No; he let a representative make the arrangements for the sale and he said that the land that had been

shown his representative to sell had been shown to him within a mile of the station, whereas this was three miles out.

Q I see. He was pretty mad about it, wasn't he? A Oh, no, he didn't get mad. He got his; he should worry.

Q He got his? A Sure; he got five hundred for staying the second day; why should he worry?

Q Well, don't you know that he stayed two more days after that? A No; I do not.

Q You do not? A No, sir.

Mr. Speer: All right. That is all.

NOON RECESS.

AFTER RECESS.

ROBERT J. MURPHY, sworn for complainant.

Direct examination by Mr. Riker.

Q What is your business, Mr. Murphy? A I am a relator.

Q Where? A Summit, New Jersey.

Q For how long? A Thirteen years.

Q Have you had any experience in buying and selling property in Chatham? A No; my experience has been limited pretty much to Union County in the vicinity of Summit.

Q Do you know values in Chatham? A I think so.

Q Do you know the effect upon a tract of vacant real estate of the placing of a high-power transmission line through the middle of it? A

Well, it is largely a matter of opinion, I suppose, but to me it would be very depreciating to the property.

Q Have you examined the property formerly of Mr. Nicholson in Chatham? A Yes, sir.

Q How many acres, approximately, does it consist of? A About 167, I believe.

Q Has that a transmission line through it now? A Yes, sir.

Q When did you examine it? A Last Wednesday.

Q Did you have an opinion, and have you such opinion now, as to the present value of this acreage? A I would say that the property has been depreciated to the extent of about fifty per cent. of its original value before the line came there.

Q And what was its value, in your opinion, before the line came there? A I would say about eight hundred dollars an acre.

Q Did you see the improvement on the property in the way of roads? A I saw where some streets had been laid out, plowed up.

Q What was the nature of the streets? A Well, just dirt roads.

Q Graded and graveled? A Some grading, some graveling.

Q How many lineal feet of road would you say was graded with gravel? A I would be guessing on that, sir; I don't just know; quite a number.

Q How many streets? A Three, I think.

Mr. Riker: That is all.

Robert J. Murphy, cross.

Cross examination by Mr. Speer.

Q Mr. Murphy, have you had an experience personally in dealing with properties that are crossed by an electric line? A No, sir.

Q You have not either in Chatham or Summit or elsewhere? A Nowhere.

Q And I suppose a great deal of the depreciation, if any takes place due to the presence of a line of that kind, would be affected by the character of the line, the manner of the construction, the height above the ground and all various things that enter into a problem of that kind, would it not? A Well, the unsightliness of the line would enter very much into it; the possibility of danger would enter into it, in my opinion.

Q Well, what is the possibility of danger? A There may not be any, but I think the average person thinks of what might happen in a heavy sleet storm or through something that caused the wires to break.

Q Have you ever heard of a high-power tension line of the kind calculated to be put there that broke in a sleet storm? A I never heard that they did or did not.

Q Well, then— A I don't know—

Q —it is just a speculation on your part that people might think that such a thing might occur? A I think the appearance of that line and the possibility of danger would be detrimental to the best interests of the property.

Q But you never have had any experience with selling property where that condition has been present? A No, sir.

Q So that you cannot test out your theory by the facts, can you? A No, sir.

Q Now, why do you say it has depreciated fifty per cent? Why not forty-five or fifty-five? A Well, I said that in a general way, meant it to apply in a general way. This line goes over the highest part of the property. The property is so situated that I do not think it is ready for small house development—small plot development, and, if a residence were built there to take in the acreage an estate proposition, the most suitable place for that residence would be on the high point of the property and this line crosses just there.

Q However, if it were developed for small plots, this would have a correspondingly less effect on the value of the plot, would it not? A It would, but I don't think the sale of small lots would be a ready one.

Q And that is largely based on the fact that you understood there was a sale attempted and it had not been successful? A No; I can say it has positively nothing to do about it. I didn't know anything about the auction sale. Learned more about it here today than I ever knew.

Q Then you really have no ground for saying that at a sale of that kind it might not be sold for small plot use? A My answer to that is based on the fact that it is far away from any central, congested village or town where a man occupying a small house could get employment.

Q Would the fact of transportation have something to do with it, if he could be transported easily to a place where his work was going on? A Yes, positively.

Q So a transportation line at a property of that kind does beneficially, appreciably affect

the value? A Yes, but there is no transportation line passes that property.

Q Yes, but it would affect the value of the property where there was one? A Yes.

Q What would you say would be the percentage of that effect of a transportation line of that kind on value? A I would be guessing on it.

Q Well, it would be an opinion just the same as you gave the value of the property in its present condition. A The value would be enhanced by transportation.

Q What per cent? A I wouldn't attempt to fix the percentage.

Q So it is not really fair to compare a piece of land where there is transportation located as this piece is with one where there is not such transportation; that is a fact, isn't it? A Where transportation is possible this property would be worth something more.

Q And I say it is not fair to compare those two kinds of property, because those kinds of transportation make a difference. A Everything else being equal, yes.

Mr. Riker: I want to offer these letters in evidence to show a readiness on the part of the complainant to return the property; these letters are tendering the property back to the purchaser. I offer them in evidence, four of them.

(Four letters marked Exhibits C. 17, C. 18, C. 19 and C. 20.)

Mr. Riker: I want to read this interrogatory. The question is: Was Rene F. Erkins employed by the Public Service Gas & Electric Company during 1926? If so, in what

capacity; what were his powers and duties? The answer is: Yes; the same man under Harry L. Saunders, engineer of the right of way; had no power. His duties were to investigate prices of real estate that were in the line of the right of way as well as surrounding lands for comparison, get the names of and interview owners and learn anything of interest in the acquisition of the right of way and make a report thereof from time to time to the said engineer. He was employed in December, 1925, which employment ended December 31, 1927.

DOMINICK FORNIRO, sworn for complainant.

Direct examination by Mr. Riker.

Q Did you own property in Chatham in the line of the Public Service transmission line? A Yes, sir.

Q Did anybody— A That is, New Providence.

Q Did anyone attempt to buy that from you recently? A Yes, sir.

Q Who? A Wait a minute—what is the name there?

Q You tell me what the name is. A Erman.

Q Can you spell it?

The Court: Is he here?

The Witness: No; he is not here.

The Court: What is his name? Erkins?

The Witness: Erkins, that is right.

Q Did you make a contract to sell that property? A I made a contract with him to build a house—not contract—you know, he asked me about lot; he says, "How many lot you have?" I told him I got fifty lot. He says, "When you started to sell the lot?" I said, "The first chance I got to sell I start them." He says, "What you want for front lot?" I said, "I got five front lot; I want to keep that." So he says, "How about the back part of that?" I said, "Seven hundred fifty." He said to me, "Who is your lawyer?" That was Rathbun in Morristown, so he says, "Who is your lawyer?" I said, "Mr. Rathbun." When we closed the deal you want to keep them up. He says, "No," he don't. I said, "When I buy the place the map was down already." I saw some people from Summit—I don't know the name. That is the map is right here. So he says, "No; I going to get a map for you."

The Court: I cannot understand a word he says.

Q Did Mr. Erkins say anything to you as to what he was going to do with the property? A He says, no, he want to build a house, and he says, "Listen, Dominick, you sell the lot; I got a party from Newark, he want to build a nice home," he says, "What is the price?" I says, "The back part is seven hundred fifty dollars, and the front part," I says, "I no sell at all." So he says, "Try to sell the middle part first," he says, "for a low price," he says, "The street open here as soon as the people begin to build three or four house in," he said, "Now, what you lose on those lots you sell now—you make on the other lot."

Q Did you sign a contract to sell that property? A For lot for build. He told me to build; he never said to me there was—(interrupted)

The Court: Did you sign a contract?

Q Did you sign a contract? A Yes; I signed a contract.

Q With whom? A With—(interrupted)

Q Who signed the contract on the other side? Did Mr. Erkins sign the contract? A Mr. Erkins signed.

Mr. Speer: I object to that. If the contract was signed, let us see the contract.

The Court: Where is the contract?

Mr. Riker: I have never seen the contract, your Honor; I can't tell you.

Mr. Speer: I don't know anything about it.

The Court: Have you got the contract?

The Witness: I got one here, the last lot I sell, that is the last one.

Q That contract you produce is with Harry K. Ford? A He say that was a purchaser from Newark, he wants to build a nice home.

Q Was the man that witnessed that contract —the man that signed over here, do you know who that is? A No.

Q Can you read that? A No; I can't read that.

Mr. Riker: It says "Rene Erkins," I think.

Q Did Rene Erkins negotiate that contract? A Yes; the last lot, and got fourteen before this.

Mr. Riker: I offer that in evidence.

The Witness: And got one put all together.

Mr. Speer: I object to it, your Honor. It seems to me that is what we call *res inter alios acta.* I dont see it has anything to do with this case.

The Court: I will admit it for what it is worth.

(Paper marked Exhibit C. 21.)

The Court: I am not getting very much out of this witness. I think you better get some American witnesses.

BOYD J. BARTHOLOMEW, sworn for complainant.

Direct examination by Mr. Riker.

Q Mr. Bartholomew, were you the owner of land in Chatham in the line of transmission of Public Service? A In New Providence.

Q In New Providence. Did someone approach you to purchase that? A In the early spring of 1926, I should say, Mr. Erkins and Judge Shea, as he called him, approached me and said they expected to develop the entire of New Providence and Chatham, I guess, develop the whole country.

Q And was that the result of a contract being entered into for the sale of the property?

A It did not. I told them I was not interested in selling.

Q Have you sold that yet? A Not at that time.

Q Have you sold them the property? A Not the property; only the right of way.

Q To whom did you sell the right of way? A I think I sold it to Mr. Saunders, and it was transferred—

Q Is that the gentleman sitting here? Mr. Saunders is the gentleman who negotiated that sale with you? A The negotiation was done entirely through Judge Tiffany in Hoboken.

Q Judge who? A Judge Raymond Tiffany in Hoboken.

Mr. Speer: There is nothing in this; Judge Tiffany is his lawyer. Mr. Tiffany and Mr. Saunders negotiated the purchase of the right of way; we admit that.

Q Did anyone else appear in this negotiation on the other side? A Mr. Erkins came to me several times during the year 1926 and 1927.

Q Concerning the purchase of this right of way? A Concerning the purchase of rights of way through the property.

Cross examination by Mr. Speer.

Q And nothing ever came of any of that talk with Erkins and finally you negotiated through Judge Tiffany with Mr. Saunders and sold the right of way; is that it? A Judge Tiffany did the proceedings with Mr. Saunders.

Re-direct examination by Mr. Riker.

Q Who did Judge Tiffany represent? A He represented myself and Mrs. Bartholomew.

ISAAC EISENSCHER, sworn for complainant.

Direct examination by Mr. Riker.

Q Mr. Eisencher, were you the owner of property in the neighborhood of Chatham or New Providence through which the transmission line runs? A Yes, sir.

Q Someone offered you to buy that from him? A No. I was the secretary of an organization, cooperative organization that owned a tract of land there, and I was instrumental in selling the land that belonged to that—or, rather, I signed the deed for the association as secretary.

Q What association is that? A Chatham Colony Association, Inc.

Q Who was the deed to? A The deed was made out to Rene Erkins, Charles Erkins, and a third party by the name of Willian—Mr. Saunders will probably know—I can't recollect the name.

Mr. Speer: I suppose we are really entitled to the deed. I don't want to object all the time.

Q Who negotiated the— A Erkins was the man negotiating—

The Court: With you? Did he negotiate with you?

The Witness: Yes, sir.

Isaac Eisencher, cross.

Cross examination by Mr. Speer.

Q Negotiate? You mean, he found out what you wanted for the property and so on; is that it? A Well, not only that; he, at first, came in his own name.

Q Yes? A And in the name of his father; he claimed his brother-in-law—

Q Yes? A —and now afterwards we find out it was not to him.

Q Never mind what you found out. Just tell us what he told you. That is what we are after. A Well, that is what he told me at the time.

Q And he wanted to buy the property; is that it? A Yes, sir.

Q And asked you what you wanted for it? A Yes, sir.

Q And got the facts about it, did he? A Yes.

Q How large it was, and so on? A Yes, sir.

Q Well, did he buy it? A Yes, sir.

Q He bought it. Well, who settled the deal? A It is a long drawn affair. If you want me to go into details, I may be able to.

Q I mean, who finally made the bargain with you? A Erkins all the way through.

Q Erkins all the way through? A Yes. You see, there is not any one parcel there in question; there is a number of parcels here.

Q And you say you made the bids to Erkins, didn't you? A Yes, sir, as secretary; and then there were other parcels that I did not sell, but I was also conducting negotiations with Erkins and other parties on account of those additional parcels.

Q As far as you knew, you thought he was the purchaser; is that it? A In a certain number of parcels, yes.

Mr. Speer: Yes. All right. That is all.

Re-direct examination by Mr. Riker.

Q What did you think in the other parcels? A On the other parcels we knew already that it is not Erkins. We were not conducting any negotiations with Erkins as such. He was a representative of the Public Service.

Q How did you know that? A He told us so.

Mr. Riker: That is all.

BENJAMIN SHEIB, sworn for complainant.

Direct examination by Mr. Riker.

Q Mr. Sheib, were you the owner of real estate in the transmission line of the Public Service through Chatham and New Providence? A No.

Q Were you connected with any organization that was the owner? A Well, the same organization, the Chatham Colony organization.

Q Were you familiar with any negotiations for the sale of any property or rights of way over it? A Well, I was not any officer at the time and all I know, as far as the first sale, is that—what was reported at the meeting by the secretary and by the president at the time.

Q Did you ever personally see any representative of the buyer or the buyer himself? A Well, not the buyers of the property, but I seen —I see Mr. Erkins and Mr. Fairhand.

Q Where did you see them? A At various places, at home and at the office.

Q When? A That was all during the year 1927, the early part of 1927.

Q And what was the object of discussion at those meetings? A The subject of discussion at those meetings was the buying of further plots. They had made the sale as previously said, but they wanted further offers.

Q Who were they buying them for? A For the Public Service.

Q Did they succeed in buying them? A A contract was filed and signed only about a month ago.

Q And who was the purchaser in the contract? A The Public Service and the Holland Company. The contract was signed by the Public Service and the Chatham—(interrupted).

Q Who was present when the contract was signed? A The signing of this contract? Well, it was negotiated. It was passed by an attorney. I don't know who was present at the time Public Service signed. I was present at the other time the signatures were given, the Colony and the other individual owners of the land there.

Mr. Riker: That is all.

Cross examination by Mr. Speer.

Q You knew that the Public Service was buying your property, didn't you? A During the beginning of 1927 we knew.

Q And you were satisfied to sell it to them? A Well, that is a hard question to answer. We were not, but we thought it was the best thing we could do. They had the right of condemnation and naturally we felt "what is the use of going to condemnation"? We felt we might as well settle by agreement.

AUGUSTINE P. COGAN, sworn for complainant.

Direct examination by Mr. Riker.

Q Mr. Cogan, did you own real estate in Chatham or New Providence in the Public Service transmission line? A Yes.

Q Did someone negotiate for the purchase of that from you? A Yes.

Q Who? A Mr. Erkins.

Q When? A Well, he first came to me, I think it was in May.

Q What year? A 1926. He asked me if I knew anyone around here who had plots for sale; he had clients who wanted them. He wanted to know—he wanted to know if Mr. Batholomew would sell his property. I introduced him to Mr. Cormier.

Q Go ahead. A Then he wanted to know if we would sell our ground. We have six acres on the corner of Union and Springfield avenue, two leading highways. I said, no, we wouldn't sell. Wouldn't we sell the portion in front? I said, no, we would sell it all in bulk, if we sold any. So I told him there was no use talking and so he came back again to consider it—and didn't give him any satisfaction. He came back again,

I think in August. He got Mr. Shea, a real estate broker to come along to sell it—brought him by there, all cut out in lots, twenty-five foot lots. I think there were sixty-four lots in it, and the proposition they made was that—to sell six lots every month, and if they did not sell six lots every month, the deal fell through. The contract fell through. They only sold six lots and sold it to Mr. Saunders, the real estate operator or developer from East Orange. I never saw Mr. Saunders until I saw him today. So Mr. Erkins put through the contract.

Cross examination by Mr. Speer.

Q Did you buy a piece of property through Mr. Cormier on the Lambertville line? A Yes, I believe I did.

Q You bought it so you could hold Public Service up for the price you wanted for it, didn't you? A No; I did not.

Q Well, why did you buy it? A Well, I bought, as I buy any other property, for speculation. Why did I buy that corner where I am? I wanted to get the corner if I could.

Q Mr. Cormier was a witness here this morning? A Yes.

Q He advised you to buy that piece of property on the line, didn't he? A No; he didn't exactly advise me.

Q Who did advise you? A He was talking about the property and showed me this card and this man had the property for sale nearly a year, since last April.

Q And you bought it for two thousand dollars, didn't you? A No.

Q How much did you pay? A Somewhere between two and three thousand.

Q And the minute you bought it, your asking price to Public Service was six thousand dollars, wasn't it? A No.

Q What was it?

Mr. Riker: I object. It is immaterial in this question, whether he asked one hundred thousand for it. He had a right to.

(Discussion.)

The Court: I will sustain the objection.

The Witness: Let me say too—

The Court: No, don't say anything.

Mr. Speer: I think that is all.

Mr. Riker: For the purpose of showing the plans of the Public Service I will ask to have produced and will offer in evidence the blueprint showing the original sketch of this proposed line and the changes from time to time up until the final plans. They are under subpoenae.

(Plan marked Exhibit C. 22.)

Mr. Riker: And continuation also offered.

(Paper marked Exhibit C. 23.)

Mr. Riker: I also offer these in evidence, the first one being drawing No. 1650-R, dated April 20, 1927.

(Drawing marked Exhibit C. 24.)

Mr. Riker: And the second one numbered 1649-R, dated April 18, 1927.

(Paper marked Exhibit C. 25.)

HAROLD P. LESHINS, sworn for complainant.

Direct examination by Mr. Riker.

Q Mr. Leshins, are you an attorney? A That is right.

Q Were you ever employed by the Holland Company or Public Service Electric & Gas Company? A I was.

Q Which one? A Public Service Electric & Gas Company and the Holland Company combined.

Q What was the period of your employment? A May 1, 1926, until December 1, 1927.

Q What were your duties? A I was classified as a title closer, and my duties were to close titles and to keep accurate record of all proceedings in connection with every title that was contemplated being bought on the rights of way. I also assisted the various buyers and worked in conjunction with them in negotiating for the purchase of these lines, not by my own authority, but at the instructions of my superior, Saunders, Harry L. Saunders.

Q And where are these lines? A At the time I came to work for the company they were working on the A. M. line, the Metuchen line.

Q And at one time or other did you come around to the Chatham line? A Yes.

Q When was that? A About in May or June. I was preparing applications for title searchers. Those applications were made to the Fidelity Union Title Mortgage & Guaranty Company, and when I got to the Nicholson property I was instructed by Saunders not to make any application and not to handle that title. Each line was outlined—every right of way was out-

lined on the blueprint, and they had the names of the alleged owners, together with a title which we—which the company gave them for convenience, and this particular number on the A. M. line I was instructed to leave it alone, that Saunders himself was handling that, and so I did. I made all other applications alongside of that, with the exception, as I recall it, of the Nicholson, in this locality.

Q You mentioned your work in connection with buyers. Who were the buyers? A Edward F. Coffee was one buyer; Rene F. Erkins was recognized as chief buyer.

Mr. Speer: I object to that, your Honor pleases, unless he states what he means by "Recognized."

Q Recognized by whom? A By every employee in the office with whom Erkins came in contact.

The Court: Well, let it go at that. That doesn't—

Mr. Speer: That doesn't tell any more than the other did.

The Court: No.

The Witness: By—well, Saunders held him out as his main man, that any matters which were to be taken up, which Saunders did not want to bother with, Erkins was to be consulted.

Q Were you in the office or ante-room outside the office somewhere in the Public Service building, in December, 1926? A Yes; just prior to the time when the employees' offices were re-

moved to the Military Park building, I had an office adjoining Saunders', and at that time I was waiting to see Saunders for some reason and Frederick Fairhand was there and Erkins was there and Cormier. Erkins was in the room with Saunders closeted, and just Fairhand was sitting there, and I came in—into the ante-room there, and a general discussion was taken up regarding the Nicholson title, and Fairhand made some remark about the Nicholson title and I tried to ignore it, because of my position with the company.

Q What did he say? A He wanted to know whether I, as an attorney, could say anything to him about the Nicholson title, because he was going to take title to the Nicholson property, he wanted to know—oh, in his way, how that would work to him, or what detriment that might be to him—could I, as an attorney, advise him.

Q What did you say to him? A Well, I avoided the subject and nothing further was said about that, and just shortly after that Saunders and Erkins came out of Saunders' room and they exchanged greetings. Saunders and Fairhand shook hands, and some more discussion was raised about the Nicholson property, I don't know the exact words, and Erkins remarked something about, "Let us go and get through with the Nicholson title." And that was all I knew of it at that time. I proceeded to wait in Saunders' room to see him.

Q Shortly before that time, did you deliver to the office of Riker & Riker a description of the tract of land to be excepted from the mortgage? A In December I did deliver some instrument.

Q I show you Exhibit C. 12, and ask you if that is it? A It apparently is, yes.

Q Where did you get that from? A In—from Saun—from Erkins.

Q Where abouts? A It was handed to me in the office up in—up in my office up in the Public Service building.

Q Do you see a water mark on that paper? A Yes. That is what helped me to identify it, in addition to the type. It is very like the typewriter that my stenographer used when I was employed there.

Q Are you familiar with the other stationery used by the Public Service Corporation and subsidiary corporations? A Those that are used in the Holland Company I am only familiar.

Q Do they bear this water mark? A All Holland Company stationery did.

Q Do you recall any discussion between you and any of the officers or officials of the Public Service or Holland Company concerning this water mark? A Yes. Discussion was had with Erkins in sending out letters in the names of various dummies, the question was raised as to whether they might not know who had sent those letters, and by my having discovered there was a Public Service water mark on there, I called the attention of Erkins to that and after that they tried to eliminate using these sheets that bear the water mark, and when they sent letters in the names of dummies they used plain sheets, sheets that bore no water mark.

Q Now, going back again to the occasion in the ante-room of the Public Service when Mr. Fairhand asked your advice as an attorney, did he say anything to you about his interest in this transaction? A No. There was not a

lengthy discussion. I had only been there a minute or so when Saunders came out of his room, as I recall it.

Q Did he say anything at that time, concerning whether he was buying it for himself or not? A I cannot recall except that he—he made an insinuation that he was—(interrupted).

The Court: No.

Q No; what did he say? A I don't recall the exact words.

Q Some time later did you receive any instructions from any one in the Public Service concerning this Nicholson property or any part of it? A Yes.

Q What was it and from whom? A In this year, in February, Erkins came to see me.

Q Oh, no, before that. When you were still in the employ of the Public Service or Holland Company? A Well, then, along about the middle of December I had learned that the Nicholson property had been acquired by Fairhand. I learned that through Erkins and subsequent to that, about February, I believe it was, I was instructed by Saunders to go up to Erkins' home in East Orange and close title from Fairhand to the Holland Company for the right of way.

Q When was that? A That was in February, as I recollect.

Q 1927? A 1927, correct. Very bitter cold morning, as I remember it.

Q What occurred and who was present? A At that time, Frederick Fairhand was there, his wife, the mother-in-law, Mrs. Margaret Wilson, Rene F. Erkins and his wife and myself. I was

instructed by Saunders not to take along the representative of the Fidelity, which had been my custom—custom of the company in closing title. I was instructed that morning to have the deed prepared in our office, contrary to the usual custom of having the grantor prepare the deed and—(interrupted).

Q Did you prepare it? A As I recall, my stenographer prepared it. He was—that was his job when I instructed him to—and I went up there and closed the title in a very short time, and I brought along a check with me, I think in the amount of twenty-seven thousand dollars. That check was taken—was made to the order of Frederick Fairhand and was immediately endorsed by him and turned over to Mrs. Margaret Wilson, the mother-in-law of Fairhand.

Q Whose check was it? A It was the Public Service voucher, I believe, to the best of my recollection, in the Nicholson matter. Erkins handed me a twenty dollar bill and that ended the transaction there.

Q Was there any relationship between Frederick Fairhand and Rene Erkins? A I was introduced to Mrs.—to Fairhand and Erkins?

Q Fairhand and Erkins? A Yes; brothers-in law. I was introduced to them.

Mr. Riker: Have you got the twenty-seven thousand dollar check?

(Check produced by Mr. Speer.)

Q I show you a check produced by Judge Speer, dated January 29, 1927, drawn by the Holland Company to the order of Fidelity Union Title Mortgage & Guaranty Company, $27,000. Is that the check you refer to? A That apparently

is the check, to the best of my recollection. $27,000 is the only thing I can recognize it by, and—(interrupted).

Q What was the custom of the Holland Company in purchases of this sort, to use their own checks in settlement? A No; as a rule—they had an account with the Fidelity and they used to deposit approximately the exact amount, or as near the exact amount as they could determine beforehand, with the Fidelity, and then get the Fidelity's check to pay for the various parcels.

Q Is it possible that in this case it was a Fidelity check that you took with you? A Yes; it is very likely. This refreshes my memory to the extent that it must have been.

Mr. Riker: I offer that for identification.

Mr. Speer: You can put it in evidence, if you want to.

Mr. Riker: All right.

(Check marked Exhibit C. 26.)

The Court: Is that the one he took up?

The Witness: Yes, sir.

Q Didn't you testify Mr. Frederick Fairhand endorsed the check? A From the appearance of the transaction, it looks as though he were endorsing it. What he actually did at the moment is hard to remember now. I am very positive that Mrs. Wilson was there.

The Court: What does the check show?

The Witness: The check does not disclose anything, except Fidelity.

The Court: Let me see it. This is a check from the Holland Company to the Fidelity, apparently, and there is not any

indication that it went to Mr. Fairhand at all.

(Discussion.)

Q At this closing of title with Fairhand, this East Orange man, what was said by Fairhand or Erkins, if anything, to you about this transaction? A At that time, there was very little said, just closed the transaction. Nothing—(interrupted).

Q When did you see Mr. Erkins or Mr. Fairhand after that? A The early part of February of this year Erkins came to see me.

Q Where? A At my home.

Q Was he in the employ of the Public Service at that time? A He alleged that he was not, he told me that he was not.

Q And what happened? A He engaged me as associate attorney to represent him in two condemnation hearings, the Willig and Colbert cases in New Providence Township, and at that time he called my attention to the Nicholson case and wanted to know did I recall the Nicholson case, and I said, yes, I did, and he said, "Do you realize that you can be a lot of assistance to the attorneys in handling this Nicholson case?" And I said I realized that. He said, "From the facts you know of the case we should be able to build up a pretty good case for them. I said I realized a good deal about it, but it would take considerable corroboration to prove the fact that I knew, the facts as they existed, and it was then that he suggested that he would testify for me and that Fairhand would testify for me, if I could get Mr. Nicholson to retain me. As a matter of fact, at the time I had no intention of testifying here. I was to act as an associate

attorney and tried to become associated with the firm of Riker & Riker to present this case to the court, and at that time he gave me a retainer and asked me if it was all right for him to circulate a lot of questionnaires, petitions. He had already hired an attorney in New York, he said, but for the convenience of the matter he wanted a New Jersey attorney and, being a personal friend of mine, he selected me, and he did have some questionnaires printed and circulated, and that was on that same evening when this discussion took place about the Nicholson title. Several days thereafter, in connection with these other two matters, the Willig and Colbert cases, he again insisted that I had a very good case and that he was ready to take me over to his brother-in-law, Fairhand, and talk the case over. And he convinced me that both his testimony and Fairhand's could be offered, which I could use in connection with the Riker firm presenting to the Court. That was perfectly agreeable to me, and so we made an appointment and we went to New York—went to Long Island where this brother-in-law of his, Fairhand, was tending bar. That is, at Hollis, Long Island, and when we got over there we exchanged the usual greetings, and—

The Court: The usual greetings that are exchanged in the bar room, do you mean?

The Witness: And Erkins said to Fairhand, he said, "Fred, I have just been telling Harold that he can help Nicholson win his case, and that you and I will be glad to testify for him." And Fred said, "Yes, we will testify for him." And I questioned him as to what he knew about the case and Fair-

hand just set back there and nodded, or assented or grunted his approval, whereas Erkins did all of the talking and raised these various points about having put over a nice deal on Nicholson and that they were making some money on it and that all Fairhand was interested in making some money on the deal, had no intention of going through with the transaction at all. We discussed it from every angle and Fairhand and Erkins agreed that they would come and testify for me when I would want him to. We left that alone for a while and I continued my services with the other two matters. Then in the intervening time Erkins again approached me and suggested— Oh, then it came to a point where I told Erkins that it would be absolutely necessary for him to give me his testimony in the form of an affidavit and he said that he would. Just about at that time, or a couple of days before that or after, he told me to go and see if I could locate Nicholson, which I attempted to do and I found that Nicholson was not available. I reported back to Erkins and Erkins said, "Well, the next thing you can do is to see Riker & Riker, and," he said, "in the meantime I have considered the facts, and I believe that we ought to get paid for our trouble; we are not going to go over there and waste time and put ourselves out a whole lot unless we get paid for this thing," and I said, "Well, that is a matter which I cannot promise you. I do not think the firm of Riker & Riker will pay for any testimony." "Well," he said, "they don't have to pay us for the testimony, but they do have

to pay us for our time we are going to spend over there," he said, "A lot of people are going to testify for you, I can say several witnesses, and some of these people will be in danger of losing their jobs, and," he said, "it will be Nicholson's expense, if he will pay these people to come over and testify for him," and I said, "All right, I will consult Riker & Riker," and I went to the firm of Riker & Riker and was introduced to Mr. Marsh and I related the facts to him and I said that I was an attorney, wanted to associate with them to help them in preparing this case for trial, and that I could produce certain witnesses, not at that time expected to testify, and Mr. Marsh said, yes; he will consult Nicholson or get in touch with Nicholson and put the proposition up to him. Then Nicholson—no, not Nicholson—Erkins kept putting me off. I made a definite proposition to Erkins that he would have to put all of his testimony in the form of an affidavit, that the firm of Riker & Riker were taking me at my word that I had this evidence and that unless Fairhand and Erkins would put their testimony in the form of an affidavit I would not go on with the matter. An appointment was made for Erkins to come over here to Newark, at which time he was supposed to submit all his testimony in the form of an affidavit; and the appointed time Erkins did not call up that evening; his wife called at my home and said he was very sick and could not come over, so she said he would be in touch with me a few days after that. Well, I waited and he didn't show up, so I went

back to Long Island and found him in his office actively engaged and he said that he didn't think he would care to come over here to New Jersey, that he was afraid that criminal charges or some conspiracy charge might be preferred against him, that he preferred to stay where he is, and I said, "Well, what about Fairhand?" "Well," he says, "Fairhand feels the same way about it," that they would rather not come over because criminal charges might be raised against them, so I suggested that we go over to New York and have depositions taken over there. He said, well, he will consider that and he said, "Why don't somebody from the Riker office come over here, so that I don't have to come into the New Jersey jurisdiction?" So one day Mr. Pollard and Mr. Marsh and myself went over to Long Island to his office and we met him there and he persisted that he would not come over to New Jersey, nor would he make any statement, that he was afraid he would involve himself in some criminal liability charge or some criminal conspiracy charge, but that he—he said that he would—he addressed me. He said, "Harold, you know enough about this case, go on and testify yourself and don't have to get me up there, but I will be glad to do all that I can to help you." That is about all that I recall of my dealings with Erkins.

Q Did you see Frederick Fairhand at any time subsequent to the closing of title? A Yes; I saw him at Hollis at this saloon of his where he was.

Q Did he say anything about whether or not he put any money into this deal? A Yes. We discussed it thoroughly.

Q And what did he say? A He said, "I have no interest in this matter. I have no money to put into this thing and I had no interest in this thing; I have no interest in New Jersey. All I was interested in was in making some money out of the deal."

Q Did he make any statement as to his former occupation? A Yes. I questioned him and he said he was a police officer in Brooklyn and some part of Long Island. He looked like one. I questioned him about the auction sale and he said, "Why, that was a farce." He said, "That was a fast one we pulled," and he said—Erkins butted in at that time, and he said, "Well, if the thing had gone through we would have made some money on it," and Fairhand made some statement to the effect that, yes, he was always ready to make some money if he could. We discussed almost every phase of the situation.

Mr. Riker: All right; that is all.

Cross examination by Mr. Speer.

Q Mr. Leshins, when did you enter the employ of Public Service? A May 1, 1926.

Q And when did you cease there? A I handed in my resignation on—I have a copy of it—on November the 15th, effective as of November the 30th, I believe.

Q Don't you know, as a matter of fact, that you were discharged? A Absolutely not, sir.

Q Do you mean to say that you were not? A Absolutely not discharged. I have a card of commendation from my superiors.

Q Have you got it with you? A Yes, sir.

Q Let's us see. A And instructing—or, commending me upon my good services and said that I was entitled to an increase. "It gives great pleasure to inform—"

The Court: Wait a minute. Show it to counsel.

Q Do you remember a year before you quit service with the company— A I remember practically every period of time I worked with them.

Q Yes. And you remember that this case in an envelope with an increase of pay? Do you remember that? A That is probably how I got it.

Q Yes. That is how you got it? A Absolutely so.

Q And that was about a year before the termination of your service, wasn't it? A I don't recall just when it was. I did get an increase and with the increase came this card.

Q Came this card? A Absolutely.

Q And you call this man your superior? A My boss. He employed me.

Q Who, Mr. Von Elmsworth? A No; Saunders. This card says that the recommendation of my immediate superior, who was Saunders.

Q With the increase in salary? A That is right. And commented on my good work.

Q You know that this is the card that went with every increase of salary, don't you? A I do not; no, sir.

Q The printed card with the printed name on it? A This is the one I got.

(Card marked Exhibit D. 2.)

Q You have got what you say is a letter? A A copy.

Q Have you got the original? A The original was sent to Saunders. It is addressed to Saunders.

Q So I understand. A Written by my stenographer at the time I was employed.

Q Yes. I understand that. Now, what interest had you in this Nicholson case? A In its inception? At what point?

Q In the inception? A None whatsoever. In fact, I was told to stay out of the Nicholson case, when it first came up.

Q And you know the reason for that, don't you? A I do know now.

Q What is the reason? A That Saunders and Erkins were handling it.

Q Well, didn't—don't you know that the line across the Nicholson property was not determined until November? Don't you know that? A I don't know that; no, sir.

Q Do you know that it was not? A I do not, sir.

Q Do you know—(interrupted)? A At the time that we made applications for searches, none of these things were definitely made—preliminary applications for title searches, so that if we needed the parcel we could have a title search ready immediately upon the signing of a contract.

Q Don't you know that the right of way across the Nicholson property was never defi-

nitely determined upon until November, 1926? A I don't know that.

Q You don't know that it was not, though, do you? A No, sir.

Q Now, you say you learned why you had to stay out of it. When did you learn that? A I have—during—during my employment there, there were several of these underhanded transactions which I have—(interrupted).

Q Several what? A Several transactions of this nature.

Q No; just give us the word again? A These transactions.

The Court: He said "underhanded."

The Witness: Underhanded transactions—

Q There were several of them, were there? A Yes, sir.

Q And this was one of them, was it? A Yes.

Q And that was why you were supposed to keep out of it, was it? A That is right.

Q Now, where did you get that knowledge? A From my association with the department there.

Q With whom? A The department there.

Q Well, what members of the department? A Harry Saunders, Rene F. Erkins. Those were my main two—(interrupted)

Q Those were the two. Now, what did they do that showed you that this was an underhanded transaction?

The Court: What did they say?

Mr. Speer: I beg your pardon?

The Court: What did they say?

Q What did they say or do, either one or both? A The first thing Saunders told me to stay out of this he was going to handle it.

The Court: Did he say it was an underhanded transaction?

The Witness: No.

The Court: What made you think it was an underhanded transaction?

The Witness: Because all other transactions I was handling myself. I was given full authority to go through with all transactions that were bought in the ordinary course.

The Court: Then you want me to understand that any transactions that were not conducted by you were underhanded?

The Witness: No. No, sir.

The Court: That seems to be the inference.

The Witness: No. The various developments of this title and two or three others led me to believe that these things were not going straight.

Q Well, what were they? Tell us what things were they? A Well, using fictitious names and buying property for—as representing different uses. At one time I was sent out with Erkins and was instrumental in securing a piece of property by representing to the prospective seller that I was a wealthy New York attorney, that I was seeking a country home where I could raise some chickens.

Q All right. Now who told you to say that? A Erkins.

Q Erkins told you to say it? A I didn't say it. Erkins said it for me. I was just there.

Q Oh, he said it for you? A That is right.

Q And you were a part of that deal, were you? A Yes, sir.

Q And you stood by and let it go across, did you? A Yes, sir.

Q Just because Erkins said, "We will do that"? A Because it was my job. I was instructed by Saunders to take orders from him and his immediate assistants.

Q And you were perfectly willing to be a part of a transaction of misrepresenting this thing to the intending seller of the property, were you? A I had to, to hold my job.

Q Oh, is that what you got the commendation for on the card? A For working for the company, certainly.

Q In that way? A Certainly. I did exactly as I was told, under instructions.

Q Well, now, what other one did you do this thing? A In the Chatham Colony Association I was asked by Saunders to go to New York with Erkins in the summer of 1926, I believe it was, and also represent that I wanted to purchase a certain plot up in Chatham.

Q From whom? A I wouldn't—I don't recall the name of that party. He lived in New York. I don't recall the name of the party.

Q Well, did you go over and make a representation? A With Erkins. Erkins again held me out—"This is a prospective purchaser," and made some statements about it.

Q And you stood for it? A Oh, yes.

Q And did the thing go across? A Yes.

Q Did you purchase the property? A That is right.

New Jersey State Library

Q Eh? A That is right.

Q Did you take the deed? A No—well, I may have. I believe I did, because, as I recall, I did take some titles in my name.

Q Well, did you take that one? A I don't recall if I took that one.

Q Where was this place? Give us the address so we can locate it. A I don't know the address; it was in New York.

Q Well, you mean New York State or New York City? A New York City. Somewheres in an uptown street.

Q Yes. Anywhere, I suppose, from First street to— A I don't know.

Q 221st? A I don't know.

Q Well, where was it? A I can't tell you.

Q Can you give us an idea? A No, sir.

Q Was it in an office? A I visited hundreds of places for the company and I cannot recall all the places I visited.

Q Well, the man sold his property, didn't he, to the company? A That is right.

Q Eh? A That is right.

Q Well, did he sell it to the company or— A Yes.

Q —did you take title? A I don't recall whether it was taken in my name and subsequently transferred by bargain and sale deed or whether it was taken directly in Erkins' name or one of the dummy's names.

Q Well, all right, give us another opportunity to find out where you meant? A That is two of them.

Q The first one, you have not told us who that was yet. A Which one do you consider the first one?

Q The first one you said you went somewhere and represented you wanted some big country place. A That was up around New Providence.

Q And with whom? A Erkins.

Q Yes, but with whom was the negotiation? A You see, there are so many that it is hard to remember.

Q Oh, yes.

The Court: Just answer the question.

The Witness: I don't know the name, sir.

Q Well, where was it in New Providence? A New Providence.

Q Is that a metropolitan district or is that a country area? A No; that was on the right of way area.

Q And you say Erkins represented you as a very wealthy man? A That is right.

Q As a man who wanted a summer home? A That is right.

Q And you bought it? A I believe I did.

Q Did you take the title in your own name? A I believe I did, sir.

Q What was the name of the man? A That is hard to remember; I don't recall.

Q Where was the location of the property? A In New Providence on the right of way.

Q Where, where? A In New Providence on the right of way. I can't place it now.

The Court: What year or month was it.

The Witness: In the summer of 1926.

Q Well, all right. Now, tell us another one. A I can't think of any more.

Q Well, in all of these—(interrupted) A I—

Q There were undoubtedly one or two more. A I have handled hundreds of deals.

Q Don't say "hundreds." Were there or were there not? A Yes, there were.

Q Where were they and who were they? A On the same location, on the line, but I cannot recall the exact names or places.

Q Or persons? A Or persons.

Q Or dates. A Absolutely.

Q Or location of the properties. A Yes, sir; on the line, on the right of way line.

Q Oh, sure. And the right of way is thirty-three miles long, isn't it? A That is right; it may be somewheres in that neighborhood.

Q So we can locate it charmingly from your description, can't we? A Well—

Q Now, you talked about a woman by the name of Margaret Wilson, who you said is the mother-in-law of whom? A Fairhand.

Q How do you know that? A I was introduced to her as such.

Q By whom? A Erkins.

Q By Erkins. Well, do you know she is the mother-in-law of Fairhand? A I do not, except from the introduction I received.

Q You don't know anything more except this man, whom you have pointed out to us as one who never tells the truth, apparently, introduced you to a lady and said "This is Fairhand's mother-in-law." A I was introduced to her as Mrs.—(interrupted)

Q That is all you know about it? A That is all.

Q All right. Now, you said that Fairhand was Erkins' brother-in-law, didn't you? A That is right.

Q How do you know that? A I was introduced to him as such.

Q By whom? A Erkins.

Q And that is all you know about that, isn't it? A That is right.

Q You don't know whether he is a brother-in-law or whether he ever met him before, do you? A Subsequently I did find out that he was a brother-in-law.

Q Oh, did you? How did you find out? Tell us the fact. A They are through various facts: "I will tell brother-in-law about this," or "I will ask brother-in-law about this."

Q Who said this? A Erkins.

Q So still all you know whether he is a brother-in-law is from what Erkins said. That is all, isn't it? A And from the answers that Fairhand—(interrupted).

Q Well, what answers did Fairhand make? A Well, at the time one question raised was about the development of the property and I asked Fairhand just what his—what he did in the developing of it and he said, "Well, ask brother-in-law, he will tell you more about it than I can. I wasn't very active." He said, he took care of the affairs and he ran the whole thing, so he referred to him as his brother-in-law.

Q Won't you answer my question: What did Fairhand say that made you believe he was a brother-in-law of Erkins? A He said, "Ask my brother-in-law" and Erkins being right there, pointing to him, I did talk to Erkins.

Q Now, a minute ago you said that Fairhand was a barkeep, didn't you, or a bar tender? A He was tending bar when I met him.

Q Yes. What do you mean by a "bar"; was it a soda water fountain? A No; there was a

saloon; there was a few tables in the front as you came in and then they had a door which was operated through a little knot hole and the bar in the back.

Q Do you mean it was a speak-easy, is that it? A That is right.

Q That is the fact, isn't it? A Certainly.

Q Did you have any drinks in there? A Yes, sir.

Q Liquor? A No; sir.

Q Well, then, how do you know it was a speak-easy? A Because they had—

The Court: Because everybody else had?

The Witness: They had this knot hole and any time somebody knocked on the door, Fairhand would go and look through the key hole—through that little knot hole and see who was there.

Q I see. And what pass word did you have to get in? A The place was open when we got there.

Q Oh, they were not looking through the knot hole? A No, sir.

Q You just walked square into the bar room? A No, sir.

Q Where did you go? A We walked in the front of the place which had two or three little tables with table cloths on them, and we sat at a table.

Q So you never got in the back of the recess where the knot hole was? A Oh, yes, I did.

Q How did you get in there? A We walked back there. Erkins took some beer and I took some sarsaparilla.

Q Near beer or quite a distance? A I didn't taste it so I don't know.

Q You said Fairhand was a bar tender and he looked like one. What did you mean by that? A He was a healthy, strapping big fellow.

Q Well, a butcher looks like that too, don't they? A Well, a butcher and bar tender look alike.

Q And also, incidentally, a real estate salesman looks very much like that. A No, sir.

Q You are a big strapping fellow and healthy looking, aren't you? A Yes; but I wasn't a real estate salesman.

Q You were, weren't you? A No; I was a title closer for the Holland company.

Q Then a title closer represents a butcher and a bar tender? A That is a matter of opinion.

Q Were you just trying to depreciate Mr. Fairhand when you said he was a bar tender and he looks like it? A I meant what I said, that he looked like one.

Q Bar tenders haven't any special look, have they, which differentiate them from millions of other people in the negihborhood, have they? A In my opinion, yes.

Q Well, what are the differentiating circumstances? A Big enough and healthy enough to throw out anybody they don't like in the place.

Q You are thinking of a bouncer, aren't you? A No, sir.

The Court: I think you have pursued that far enough.

Q What did Mrs. Wilson have to do with this matter? A Nothing, as far as I could see.

Q Why do you lug her in? A Because her name was there. As I recall it, the check was handed to her. Now, I may be wrong, but, to the best of my recollection, that check was handed to her.

Q Which check? A The check I brought up and had given to Fairhand.

Q What check did you bring up and give to Fairhand? A I brought up a check for the balance of the purchase price from Fairhand to the Holland Company.

Q By whom was the check drawn? A As I recall it, it was drawn by the Public Service Electric, but I find I am mistaken, that it was drawn from the Fidelity—or by the Holland Company.

Q Well, is this the check that you brought up, this one on the desk in front of the Vice-Chancellor? A I don't think so. It is hardly—because, as I recall the transactions, we used to get a sum of money and deposit it with the Fidelity and then the Fidelity would give us a check to pay out for these parcels. Now, I can't—

Q Now, if that is the practice, then will you kindly tell us how you draw the inference that the check which you took up was the check of the Public Service Electric & Gas Company? A Well, in odd cases we would take a check, a draft from the Electric & Gas Company and charge it to Holland Company.

Q Well, did you do it in this case? A It is hard to recall, sir.

Q The fact is you don't know whether you did or not? A I do not.

Q And you don't know whether the check was drawn to the order of Fairhand or whether

Q —about Mr. Fairhand and the other gentleman there saying that they were glad the Nicholson matter was closed up.

The Court: I think that calls for a conclusion.

Mr. Speer: Very likely it does, your Honor, I will withdraw it. I think it is an objectionable question.

Q Now, what was it, again, if you will tell us, that Mr. Fairhand said to you on that occasion? A He wanted to know that I, as an attorney—did I think there was anything that he would come to harm by putting himself in with this transaction. He used words which indicated that.

Q No, no. Tell us what words he used. I don't want your conclusion? A Well, the exact words are hard to recall.

Q Well, but— A The thought was—

Q I don't care about the thought. I want the words.

The Court: As near as you can—(interrupted).

The Witness: As near as I can recollect them, he wanted to know whether he would be harmed, either civilly or criminally by taking title to this property. That was the gist of his conversation.

Q Well, did you tell him how he would be harmed either civilly or criminally by taking title to the property? A I told him I couldn't talk to him on the subject because I was employed by the company and didn't care to dis-

cuss anything about the matter. I dismissed the whole thing there. We had nothing further to say. Just one question and one answer.

Q Very good, Mr. Leshins. Then, the fact is, that, outside of his asking your opinion as an attorney whether he would be civilly or criminally harmed by taking title to the property, nothing was said by you or him— A At that time.

Q —at that time? A That is right.

Q About his having title to the property? A That is right.

Q Isn't that the fact? A That is right.

Q Now, on that occasion, what, if anything else, occurred which you have characterized as suspicious, that is anything—(interrupted). A At this particular time?

Q Yes, yes. A Nothing further that I—

Q Nothing further? A No.

Q So that we can dismiss the fifteenth of December, then, out of this picture, can't we except as the testimony has been given? A I don't—(interrupted).

Mr. Riker: I don't think that is—(interrupted).

The Court: You need not answer that question.

Mr. Speer: That is not a good question. We will leave that out.

Q Then nothing else was said about anybody connected with the transaction on that day that appeared to you with respect to that transaction to be suspicious, was there? A That is right.

Q That is right? A That is right.

Q Very good. Now, when next did you see Fairhand? A The next I saw him in February, when I closed title from Fairhand to the Holland Company at Erkins' home in East Orange.

Q From Fairhand to the Holland Company? A Fairhand to the Holland Company; that is right.

Q And you went up there to close the title, did you? A That is right.

Q And you found whom there? A I found Fairhand and his wife and Erkins and his wife and this Mrs. Wilson, that I mentioned, and I came in. Those are the persons present at the closing.

Q Do you know whether or not Mrs. Wilson is a capitalist from Long Island who has money to invest?

Mr. Riker: I object to the question.

Mr. Speer: I am only asking if he knows.

Mr. Riker: There is no foundation laid for such a question.

The Court: I will sustain the objection.

Q What occurred there at that time? A I brought up a deed which was signed by Fairhand and his wife, acknowledged by Erkins—I didn't want to take the acknowledgement—Erkins took the acknowledgement. I passed the check over—I think I took a title affidavit from their hands, to the best of my recollection, which I think I acknowledged; and just a few pleasant remarks were made and Erkins gave me twenty dollars and I left.

Q Gave you what? A Twenty dollars.

Q Your fee, was it? A I don't know what it was for. He just handed me twenty dollars, so I took it.

Q Didn't you have a title officer with you from the Fidelity? A No.

Q Sure? A Yes.

Q Hadn't you been ordered not to close any title without having a title officer from the Fidelity? A That is right, except on special instances.

Q Won't you tell us what there was or what anybody said to you to make you believe this was a special instance? A Well, when I was told by Saunders not take one, I didn't take one. I considered this special instance one.

Q You have not told us that until now.

The Court: Oh, yes, he has.

Q You do tell us then now that Mr. Saunders told you on that occasion not to take a title officer with you? A That is right.

Q Did he tell you why? A No.

Q Did you ask him why? A No. You couldn't ask him any questions.

Q Now, how did you come first to get into this suit? A Exactly as I related it.

Q Well, relate it. A Relate it over? In February—

The Court: Well, don't tell us all that over. Well—yes, you must, if he wants it.

The Witness: In February Erkins came to see me and told me he wanted me to represent him in an association with some New York lessee that he had, that he was interested in two condemnation suits, Colbert and Willig, in New Providence Township, and wanted to know if I would represent him, and I said, "Gladly," and he gave me a retainer and promised to pay more later on,

and he had a lot of questionnaires printed, which he used for this other case and during the discussion of the various incidents he called my attention to the Nicholson case, wanted to know did I recall it or remember it and I said, "Yes, very well." He again said, "Well, now, don't you think that with your special knowledge of this case that you could help out the firm of Riker & Riker in handling the case in presenting it to the Court of Chancery?" I said, "Yes, I can, if I could get corroborative proof." And I said I didn't think that I could go on the stand and testify. He said, "No, I will testify and so will Fairhand." I said, "Well, if you will, that will be fine, yes, I would be glad to interest myself in this case, because I know a lot about it." And we discussed the case at length, spent a couple of hours talking it over and then—(interrupted)

Q Who was with Erkins at that time? A There was a party there whom I would not like to bring in unless I have to.

Q Well, mention his name. What is the fear about that? A Because he had nothing to do with it, except he came with that Mr. Coffee and he immediately stepped out and he had nothing else—(interrupted).

Q All right, if he was there and stepped out, that is all right. A He was there and stepped out.

Q That was after Coffee had left the company? A No.

Q After you had left the company? A After I—yes, this was fifth February. I was out since December.

Q Had you seen either Mr. Nicholson or Riker & Riker at that time? A No; absolutely not. I didn't know them—anything about interesting myself in this case. This is the first time it was proposed to me.

Q Why did you want to interest yourself in the case? A Well, as an attorney I thought I could earn a fee.

Q In other words, you were just looking for business with—(interrupted). A Riker & Riker, associate attorney.

Q Now, when did you first see them? A I saw them towards the latter part or middle of February of this year.

Q And offered your services, did you? A Yes, yes. I told them the facts as I know them.

Q And you were retained as associate counsel? A That is right.

Q And you are such now? A That is right.

Q All right. A With the exception that I at that time had no intention of testifying. I was to examine my own witnesses, which were Fairhand, Erkins, Cormier and one or two others that he promised to get for me. I was not to testify. I was to be associated with Riker & Riker in handling this case.

Q All right. Now, did you make any contract at any time, either directly with Mr. Nicholson or through Riker & Riker for Mr. Nicholson, for payment of your services? A Absolutely, sir.

Q And what was that contract? A At that time I—well, I have the contract with me.

Q Well, all right.

The Court: I don't see what that has to do with it.

Mr. Speer: I want to show his interest in the case. He has some interest in the result.

The Witness: Very short contract. Shall I read it to you?

Mr. Speer: Yes.

The Witness: "I hereby employ Mr. Harold Leshins as associate counsel to Riker & Riker, general counsel, in connection with my case against Frederick Fairhand and others, and agree to pay him such reasonable fee as he may be entitled to for his services and investigating the facts involved therein and for his assistance in the preparation of the title thereof. It is understood that all such services shall be subject to the direction of Riker & Riker." And it is signed John J. Nicholson and it is witnessed by Thomas L. Marsh, I believe.

Q And its date is what? A There is no date.

Q Well, when was it executed? A It was executed some time last week.

Q Last week? A Yes, sir.

Q Have you had any contract with them prior to that time? A No definite contract. There were terms and a tentative proposition was made which involves quite some explanation. Erkins said that—that was after all the matters had been discussed Erkins thought that this—(interrupted).

Mr. Riker: Just a minute. If the contract never actually came into being and effect, I do not think that is important.

The Court: I think you have shown enough to show interest. He had a con-

tract for a reasonable remuneration, and let it go at that. It does not say "if he wins." It simply says if he testifies he is to be paid for it.

Q Was there any understanding, Mr. Leshins, about the character or extent of that compensation and what it was dependent on? A There is nothing in there except that I am to give my services and be paid for them.

Q Well, in the arrangement, the tentative arrangement that was made prior to this was anything said—

Mr. Riker: I object to that. The contract speaks for itself.

The Court: Objection sustained.

Q Did you have any talk with either Mr. Nicholson or Riker & Riker as to what was meant by "reasonable compensation"? A Whatever compensation that I was entitled to. After all the work had been taken account of.

Q And the result had been considered? A No; no results were mentioned.

Q That was not mentioned. Very good. Was ever the sum of ten thousand dollars discussed between you and Mr. Nicholson as a fee for your services? A There were all sorts of sums discussed by Erkins. Erkins was the man who thought he could make some money and he made all sorts of tentative suggestions. One time he thought he ought to get twenty thousand and another time he thought he ought to get fifteen thousand and another ten thousand and one time he said his services were worth five thousand. He kept juggling figures that way.

Q That is for his assistance? A For the work and effort and time that would be required to come over here from Long Island, he said, and he didn't know how many days it would take, and various other conditions to take into consideration. He thought any of those figures was a reasonable sum which he was entitled to receive.

Q All right. Now, did you ever show to Mr. Erkins a contract between you and Mr. Nicholson in which it was agreed that you should be paid ten thousand dollars for your services in the suit? A There was a tentative offer—no definite contract offered.

Q Well, did you ever— A We had—

Q —indicate to him— A —there was one instrument drawn up which indicated—

Mr. Riker: Just a minute. I object again. This is all the negotiation, leaving out the contract that was made. I don't think it is material. He is talking about compensation somebody else expected to get.

The Court: Objection sustained.

Mr. Speer: I am laying the foundation, your Honor please, for the contradiction of this witness with respect to this contract, and I purpose showing later that there was a contract existant, not this one, but another one existant between Mr. Nicholson and this man for the sum of ten thousand dollars for his services and he purposed assigning or made a propostion he would assign that contract to Mr. Erkins in consideration of Mr. Erkins coming here to testify for Mr. Nicholson in this case. And it was only to lay the foundation for that evidence that I exam-

ined Mr. Leshins with respect to that other contract, but my information is—I never saw it, but my information is that such a contract existed and that it was in favor of this man. Now, I don't want to go and tell what it is, but that is enough to tell your Honor the import of it.

(Discussion.)

The Court: Is Erkins going to testify in this case?

Mr. Riker. Not for us.

Mr. Speer: I am going to call Mr. Erkins, yes.

The Court: Can you get him here?

Mr. Speer: I can get him here, yes, sir.

The Court: If you can get him here, I will listen to it. I understood Mr. Riker to say, when I sustained the objection, Mr. Erkins was not in the case.

Q Now, if you will answer that question? A What was it, please?

(Question and answers read as follows: "All right. Now, did you ever show to Mr. Erkins a contract between you and Mr. Nicholson in which it was agreed that you should be paid ten thousand dollars for your services in this suit? Answer: There was a tentative offer—no defnite contract offered. Question: Well, did you ever— Answer: We had— Question: —indicate to him— Answer: —there was one instrument drawn up which indicated—").

A Yes, sir; Erkins did make a proposition that he was entitled to receive any number of—oh, in

sums just as I mentioned, from twenty thousand dollars down and he was ready.

Q That is, after the entire thing crystalized, it came to a condition where he would come over here and testify if he was paid for his time and all his efforts, and he insisted that I receive a contract for ten thousand dollars from Nicholson, and that, if I had that contract and could show it to him, that then he would come here, provided he would be paid a reasonable sum out of that, and I put the proposition up to Mr. Marsh; I kept nothing from him; I told him that Erkins and Fairhand would not come over here unless they are well paid for their time and if they will come over here and testify as to the facts as they have told them to me, that that is the corroboration of our case and I think that is worth the money to pay them to come over here and tell us what they know of the case, and it was on that arrangement that I secured a ten thousand dollar contract from Mr. Nicholson. Subsequently I could not get Mr. Nicholson—Mr. Fairhand or Mr. Erkins to come over, so that thing was cancelled—out of existence. As a matter of fact, it was with the express condition that it was given to me that Fairhand and Nicholson were going to come and tell what they knew of the story, but they never came and the contract was cancelled.

Q Now, let me ask you another question. A Yes.

Q Did you agree with Mr. Erkins that if he and Mr. Fairhand would come over here that you would assign to Mr. Erkins that contract for ten thousand dollars and secure your compensation for your services otherwise from Mr. Nicholson? A Mr. Erkins—

Q Well, did you do that? A Not that I know.

Q Tell us when it was. A Erkins suggested that the only way that he could be sure of getting any money or being paid for his time and services were that if I would have this contract assigned to him.

Q And did you agree to do that if he would come? A That was not definite.

Q Well, was it tentatively agreed upon? A There was nothing definite done, because I told him we would have no further dickering on price or money unless he would give me that testimony in the form of an affidavit, that I could not rely any more on his mere say-so's, that I would want to see something concrete in the form of an affidavit before I could rely on him.

Q Didn't you get that contract so you could show it to him and you would assign it to him for his services? A That was not the intention. The intention was to have it so if he would come over and give us this testimony in affidavit form then we would discuss—as a matter of fact, nothing definite was discussed as to how he would pay—or how much he would be paid. He said, "I should have a contract for ten thousand dollars."

Q Why did you cancel the contract? A Because he did not give me the testimony in reliable form, in the form of an affidavit so we could depend on it.

Q Then the only object of the contract was to pay for getting him over here? A His services and time.

Mr. Speer: Yes, his services. That is all I desire to ask.

THIRD DAY.

Transcript of shorthand notes of testimony taken in the above-entitled cause before his Honor, Alonzo Church, Vice-Chancellor, at the Chancery Chambers, Newark, New Jersey, in the presence of Riker & Riker (by Irving Riker) for complainant; Frank Bergen (by William H. Speer and Leland Taliaferro) for Public Service Electric & Gas Company and Holland Company; Vincent & Day (by Mr. Roller) for Frederick Fairhand.

THOMAS C. SANDERSON, sworn for the defendant.

Direct examination by Mr. Taliaferro.

Q Mr. Sanderson, what is your business? A Real estate broker.

Q How many years experience have you had in that work? A About six.

Q Have you ever done any work for the Public Service Electric & Gas Company in purchasing rights of way? A I have.

Q Could you give us any of those names of any of those purchases which you have made? A The Armitage Realty Company, Stanley Pigeon, Benjamin Pfitzmayer.

Q Where were those pieces of property located? A North Caldwell, New Jersey.

Q Was that on the so-called Athenia-Metuchen right of way of the Public Service Electric & Gas Company? A Yes.

Q Were these tracts large or small tracts? A Large tracts.

Q And did you purchase merely the right of way of each large tract? A Yes.

Q And as an average what value did you pay or see that was paid—what acreage value for these rights of way?

Mr. Taliaferro: Cross that out, please.

Q What was the value which you paid for these plots compared with the acreage value of the whole plot?

Mr. Riker: I object to the question. It is in North Caldwell. I don't see it has any relation to this case.

The Court: I will allow it.

A It ran from twenty-five to seventy-five per cent. more than the acreage price.

Q You were authorized, then, to see that no more than those percentages above the acreage value was paid when there was severance and you bought just the right of way which you needed? A Yes.

Q Are you familiar with the so-called Nicholson property in Chatham? A I have seen it.

Q Have you made an examination of that property with the idea of appraising the value of the property? A No.

Q Have you made an examination of the property with the idea of determining what the value of the improvements placed on that property were? A No.

Q It has been testified in this case, previously, that the value of the right of way was $139,000—the value of the whole Nicholson tract was $139,000 and that the amount which Public Service paid for its right of way through there was $830 an acre. Change that. Say, $1,633 an acre. From your examination of that property would

you say that $1,633 an acre was a fair market value for that property?

Mr. Riker: I object to the question. There has been no testimony as to what Public Service paid for such property as they acquired at all. The only evidence is the contract in which the entire acreage was sold, which was $139,000.

Mr. Speer: Your Honor please, from the testimony—you see, this is one of the difficulties which arises from calling the defendant's witness in complainant's case. We will prove later on that the amount paid by us for the right of way was $1,633 an acre. The testimony already from Mr. Nicholson bears—(interrupted).

The Court: All right. I will let it in. Of course, you must connect it up.

Mr. Speer: Yes, of course; if we do not, we consent it be stricken out.

The Court: Let the witness answer.

Mr. Taliaferro: Will you repeat the question, please?

(Question read as follows: "It has been testified in this case, previously, that the value of the right of way was $139,000—the value of the whole Nicholson tract was $139,000, and that the amount which Public Service paid for its right of way through there was $830 an acre. Change that. Say, $1,633 an acre. From your examination of that property would you say that $1,633 an acre was a fair market value for that property?")

Mr. Riker: I object on the further ground that this witness has not been qualified to

testify to this property. He said he did not examine that with the idea of appraising it.

The Court: That is what he said. I do not think this testimony is of any value. It is just an opinion without proper foundation, it seems to me.

Mr. Speer: I think your Honor is right about it.

The Court: I will sustain the objection.

Q How many pieces of property did you purchase for rights of way for the Public Service Electric & Gas Company? A Why, possibly, from eight to fifteen parcels.

Q And those which you enumerated for us were some of those parcels which you purchased? A Yes.

Q And you testified, did you not, that you paid anywhere from fifty to seventy-five per cent. more than the acreage value, when you were purchasing the right of way, because of the severance from the property? A Yes; twenty-five to seventy-five per cent.

Q Twenty-five to seventy-five per cent. more? A (Witness nods yes.)

Q Now, having in mind that $139,000 was paid for this piece of property, which would give an acreage value of $830 an acre—

The Court: No—is it eight hundred thirty?

Mr. Taliaferro: Yes, that is the figure for that.

(Continuing.)—which would give it an acreage value of $830, would you say that the price which Public Service paid of $1,633 an

acre for the land which it took for its right of way, was a fair market value for the acreage for its right of way?

Mr. Riker: I object to that question on the same ground.

The Court: I will allow it.

The Witness: Well, your Honor, if I may answer, assuming that the price of this property—

Q That is what I am doing— A —was $835 per acre—

Q That is what I am assuming?

The Court: Yes.

A —and the price paid was sixteen hundred and thirty some odd dollars an acre, that is in proportion to what I paid for similar tracts which I purchased.

Q On the same right of way? A The same right of way.

Cross examination by Mr. Riker.

Q Were all these purchases by you private contracts between the owners and the person that you represented? A Between the owner and either the Holland Company or Public Service.

Q None of those purchases were by way of condemnation, were they? A No, sir.

Q In your opinion why was it necessary to pay from twenty-five to seventy-five per cent. more than the acreage value? A On account of dividing the property.

Thomas C. Sanderson, re-direct.

Q Because it depreciated the remainder of the property? A Yes, sir.

Mr. Riker: That is all.

Mr. Taliaferro: I would like to ask another question, if your Honor please.

Re-direct examination by Mr. Taliaferro.

Q In making your purchases did you represent to the seller exactly what the property which you were purchasing was to be used for in all cases? A Yes.

Mr. Taliaferro: That is all.

Mr. Riker: That is all.

The Court: That is all, sir.

Mr. Riker: There seems to be some mistake on the record as to certain of the exhibits. I would like to straighten it out now if I may.

The Court: All right.

Mr. Riker: The original contract between Nicholson and Fairhand was actually signed and offered in evidence, but was not marked or given any number. I think it should go in as Exhibit C. 6-A.

(Exhibit marked Exhibit C. 12-A.)

Mr. Riker: And there are two exhibits, both marked C. 12. I would suggest the second one, being the letterheads of the Public Service, bearing the water mark, be marked C. 12-A.

(Exhibit marked Exhibit C-12-A.)

Mr. Riker: The same thing is true of two exhibits being marked Exhibit C. 16. The second one should be 16-A.

(Exhibit C. 16-A.)

Mr. Riker: I find also that this letter from our office to the Holland Company, tendering the property back should be marked in evidence.

(Contract marked Exhibit C. 27.)

Mr. Taliaferro: On page 135 of the testimony as written by the stenographer, Mr. Riker was examining directly Benjamin Shieb, one of the witneses. In answer to this question I believe he made an improper answer. The question was, "Did you ever personally see any representative of the buyer or the buyer himself?" And the answer the stenographer has, "Well, not the buyers of the property, but I seen—I see Mr. Erkins and Mr. Fairhand." The last name should be Mr. Saunders. Otherwise the inference would be given that Mr. Fairhand was going around with Mr. Erkins representing Public Service and attempting to get information about rights of way, and I would like to have that name corrected from Fairhand to Saunders.

Mr. Riker: The difficulty is I don't know that is the fact.

The Court: I don't, either. I don't think we can change it.

Mr. Speer: That was the fact, though.

Mr. Taliaferro: Is Mr. Shieb here today?

Mr. Riker: No.

GEORGE A. MANNING, sworn for the complainant.

Direct examination by Mr. Riker.

Q Mr. Manning, are you related to Mr. Nicholson in any manner? A Yes.

Q What? A Cousin.

Q Were you ever present at any conversation between Mr. Nicholson and Mr. Fairhand? A I was.

Q When and where? A I don't remember the day. It was in New York and in Mr. Nicholson's apartment.

Q About when? A It was in the summer of 1927.

Q The summer of 1927. What conversation did you hear, if any, concerning this Chatham property?

Mr. Speer: Your Honor pleases, on behalf of Public Service Company I wish to object to this. There is no evidence in the case whatever that Mr. Fairhand was an agent or a representative of Public Service Company. Mr. Fairhand's lawyer is here representing him in the account of the bill of complaint for the foreclosure of the mortgage and the answer of Mr. Fairhand is that he sees no reason why the foreclosure should not go forward. My objection is based on the notion that Mr. Fairhand—anything Mr. Fairhand said certainly cannot be held binding upon the Public Service Company.

Mr. Riker: Of course, the theory of our case is that Mr. Fairhand was an agent of

the Public Service and what he did—and they are therefore bound by his representations. The contention of Public Service is that they do buy through dummies, that they are justified in doing so and that we do not dispute. However, they say in this particular case, "We didn't do so." Now, there is evidence in this case that the money Mr. Fairhand bought this property with from Mr. Nicholson was received by him in the office of Public Service from Mr. Erkins whom he said paid it. There is also the circumstance of the twenty acres which was excluded from the lien of the mortgage and conveyed free and clear, the description of it was on the paper bearing the water mark used by Public Service, that it was delivered to the attorney for Mr. Nicholson by Mr. Leshins, who was then in the employ of the Public Service Electric & Gas Company or the Holland Company or both. Now, I think that is evidence of the fact that Mr. Fairhand was acting for the Public Service, that they made up the description of this strip of twenty acres which was to be excepted, and which, curiously enough, is exactly the line of their right of way which Mr. Fairhand could not possibly have known himself.

Mr. Speer: I think—

The Court: I will allow it.

The Witness: What was the question?

(Question read as follows: "Summer of 1927. What conversation did you hear, if any, concerning this Chatham property?")

Q Mr. Nicholson had a communication from Mr. Fairhand in which he stated—

Mr. Speer: I object, your Honor please.

The Court: Oh, no. Tell us what was said. What did Mr. Nicholson say to Mr. Fairhand?

The Witness: Mr. Fairhand said he wished to return the property to Mr. Nicholson and Mr. Nicholson apparently was agreeable to that proposition.

Q Yes. A And he said, "If you return the property in tact," he says, "I will consider it," and, well, Mr. Fairhand said, "Well," he said, "part of that has been sold" and Mr. Nicholson said, "Well, I didn't understand that." He said, "What part was sold?" "Well," Mr. Fairhand said, "I don't know." He said, "I am not familiar with it." He said, "I don't know what part of it was sold."

Q Did he say where Mr. Nicholson could find out what part was sold? A He said Mr. Nicholson could find out from Mr. Erkins, and asked where Mr. Erkins could be found and he told him in Newark, I think at the Holland Company.

Mr. Riker: That is all.

Mr. Taliaferro: That is all.

The Court: That is all, sir.

ROBERT S. POLLARD, recalled.

Direct examination by Mr. Riker.

Q Have you recently located the property which Mr. Nicholson conveyed to Mr. Fairhand? A I have.

Robert S. Pollard, recalled, direct.

Q Did you take any pictures of the property? A I did.

Q I show you a picture and ask you whether you took that picture and whether that is part of the property? A Yes. That picture represents the road running up over the hill from River Road. I did take the picture.

Q Does that show one of the roads that are laid out on this property? A Yes.

Q Does it show its present condition? A It shows its condition at the time I took this picture, which was a week ago Sunday.

Mr. Riker: I offer that in evidence.

Mr. Speer: No objection.

The Court: Put them all in.

Mr. Speer: If Mr. Pollard says he took them, I consent to your putting them all in.

Q Is that true of all these pictures? A Yes.

Mr. Speer: All taken at the same time?

The Witness: Yes.

Mr. Speer: All right; put them in.

The Court: Do you want them all marked as one exhibit?

Mr. Riker: I think so. There are ten of them.

The Court: Do you want to refer to each one or do you—

Mr. Riker: No, I don't think so. I will refer to them as a group.

Mr. Speer: We consent they go in.

The Court: Then let them go in in bulk.

(Pictures marked Exhibit C. 28.)

Alfred W. Cormier, recalled, direct—cross.

Q Mr. Pollard, do you remember what time of the day on December 15, 1926, title to the Nicholson property was closed in your office? A To the best of my recollection, it was in the morning, as I recall it. We finished the closing by noon time.

Cross examination by Mr. Speer.

Q Why do you say "to the best of my recollection"? Have you any doubt about it? A I have, yes.

Mr. Speer: All right, that is all.

Mr. Riker: I want to call Mr. Cormier on this last question also.

The Court: All right.

ALFRED W. CORMIER, recalled.

Direct examination by Mr. Riker.

Q Mr. Cormier, you testified that in about the middle of December, 1926, you were present in the Public Service Building and heard a certain conversation between Mr. Erkins and Mr. Fairhand and saw certain thousand dollar bills change hands. Do you remember that? A Yes, sir.

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

Mr. Riker: That is all.

Cross examination by Mr. Speer.

Q What date was that? A It was in December.

Q Yes, but what date? A I couldn't say the date, I don't remember.

Q You can't remember the date? A The exact date—

Q (Continuing.) Or month, but you have a distinct recollection of the hour in the day, have you? A Yes, sir.

Q How do you come to recall that? A Because I had an appointment that morning nine o'clock with Mr. Erkins and I waited there about an hour for him.

Q Now, what morning did you have that appointment? A I don't remember the date.

Q Well, how did you recall that you had that appointment for that hour that day? A Because I had made the appointment with Mr. Erkins a few days before.

Q Did you have a memorandum of it? A I did not.

Q Have you any memorandum of it now? A I have not.

Q Well, how did you refresh your memory on that thing? A Because I remember that it was—I had an appointment with him.

Q Did you have an appointment with anybody else on that day? A Yes, we did.

Q Who? A Someone in Tenafly.

Q Who? A A Mrs. Clark.

Q What time was the date with her? A I don't remember the day of that—

Q Ah. Don't remember the day of the month or hour of the day; is that right? A We was to go there that date.

Q Yes. What time in the day? A I don't remember.

Q What time of the day did you go? A We didn't go.

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Alfred W. Cormier, recalled, cross.

Q Why didn't you go? A Because Mr. Erkins had something else to do—he couldn't come that day.

Q What else did he have to do? A He had to go to Nicholson's.

Q What time? A I don't know.

Q Did you have any other date on that date? A I don't remember.

Q Or the day before? A I don't remember.

Q Or the day before that? A I don't remember.

Q Or the day after that? A I don't remember.

Q Well, how in the world do you remember this particular one with such particularity? A (Witness pauses.)

Q The fact is, Mr. Cormier, that you do not remember it particularly, do you? A I do remember it.

Q Well, who refreshed your mind, anybody? A No, sir.

Q Nobody. Did you talk to anybody about it? A No, sir.

Q How did your counsel know that you knew it? A That I knew— I didn't get that quite right.

Q How did the counsel know that you knew this date so he could call you and ask you about it, if you had not talked with anybody about it? A About the date?

Q Yes. And the time of the day? A My counsel did—the lawyer did ask me what time.

Q Oh, I see. And you talked with them about it, didn't you? A He asked me if I remember the time of the day it was and—

Q Yes. And you talked with Mr. Pollard about it, too, didn't you? A Mr. Who?

Alfred W. Cormier, recalled, cross.

Q Mr. Pollard, the man who was just on the stand before you. A No, sir.

Q Whom did you talk to about it? A Mr. Riker, I believe it was.

Q Did you talk about it to Mr. Leshins? A No, sir; not to Mr. Leshins.

Q You did not? A No, sir.

Q And when did you talk about it? A Why, about the time of the—of the day it was?

Q Yes. A Why, this morning.

Q This morning? A Yes, sir.

Q And just give us that conversation, won't you? A Mr. Riker asked me this morning if I remembered the time of the day it was when I was in the office there on that day.

Q And what did you say? A Ten o'clock in the morning.

Q And you remembered that distinctly, did you, right then without any remembering on your part? A Yes, sir; I did.

Q And you had not talked to another soul about it? A No, sir.

Q And you don't remember another thing that happened on that day with respect to the time of the day it happened, do you? A I remember it was ten o'clock, that I had an appointment that morning with Mr. Erkins at nine o'clock.

Q How do you remember you had a date at nine o'clock that morning with Mr. Erkins? A Because I had made an appointment with Mr. Erkins a few days before that.

Q How is it you don't remember the time of day that you had to meet Mrs. Clark at Tenafly? A Well, there was no special hour. They did go and meet her. We were supposed to go there any time during that day.

Harold P. Lishins, recalled, re-direct.

Q Can you remember a date at the time of any other appointment in that month that you had with anybody? A Well, offhand, no, I can't remember.

Q You cannot? A No, sir.

Mr. Speer: That is all.

Mr. Riker: I want to recall Mr. Leshins with regard to the same question.

HAROLD P. LESHINS, recalled.

Re-direct examination by Mr. Riker.

Q Mr. Leshins, do you recall the engagement on December 15, 1926, in the Public Service Building when you were present and Mr. Erkins and Mr. Fairhand and Mr. Cormier were present and there was some talk about closing the Nicholson deal? A Yes; I recall that.

Q What time of the day was it? A It was in the morning.

Q How do you remember that? A I had to come in to see Saunders in the morning, because it was my duty—any matters that I had to take up with Saunders were to be taken up in the morning before the day got under way and generally we got through with all our conversation or instructions by ten o'clock in the morning, or so, a few minutes before or a few minutes after. That particular morning I couldn't see him when I got in there because he was closeted with somebody and I had to wait in the ante-room.

Q When did I first ask you about the time of day? A This morning.

Harold P. Lishins, recalled, re-direct.

Q Did I make any suggestion to you as to what time you should say? A No, not at all. You merely asked me if I recalled or knew when it was.

Mr. Riker: I have under subpoenae the Fidelity Union Title & Mortgage—I don't think they are here—with regard to this $27,000 check.

The Witness: Yes. Mr. McAvoy is here.

A Voice: Yes. Has it been produced?

Mr. Speer: We have no objection to the check.

Q Mr. Leshins, I show you two checks of the Fidelity Union Title & Mortgage Guaranty Company to the order of Frederick Fairhand, one for $25,000 and the other for $2,000 dated January 31, 1927, both of them endorsed by Frederick Fairhand, Isabella Fairhand; the $25,000 check also endorsed "Pay to the order of Mary J. Wilson," and the $2,000 check also endorsed "Rene F. Erkins." Are they the two checks that were delivered by you to Mr. Fairhand upon the closing of title? A Those are the checks.

Q Do you recall them? A Yes, I do now.

Mr. Riker: I offer those in evidence.

The Witness: There is one endorsed by Rene F. Erkins, too.

Q What is the business of the Holland Company? A The Holland Company is a subsidiary holding company for Public Service.

Q Holding what? A Holding—realty holding company.

Mr. Riker: That is all.

Harold P. Leshins, recalled, re-cross.

Re-cross examination by Mr. Speer.

Q Mr. Leshins, you identified, when you were on the stand before, another check as the one that was delivered at that time, did you not? A Yes, sir.

Q You were mistaken then, weren't you? A I qualified my identification at that time.

Q I say, you were mistaken then, were you not? A No; at that time I qualified my identification of the check.

Q I say, you were mistaken at that time, were you not? A In the first instance.

Q Yes. Now, you also told us, did you not, that that check had been endorsed by Margaret Wilson. Didn't you say so? A I may have said Margaret Wilson, yes, sir.

Q You were mistaken about that, weren't you? A Not about the name Wilson—the first name.

Q No, no, but Margaret Wilson; you were mistaken about that, weren't you? A Yes.

Q What day was this when you were over in the morning at Mr. Saunders' office? A December fifteenth.

Q How do you recall that with distinction? A I had occasion to refresh my memory.

Q From what? A Various incidents, various notations and with my discussion of the case with Mr. Erkins.

Q And where are the notations? A They are in my office.

Q So that what you are telling us now as your recollection is a recollection refreshed from notations which are in your office and from conversations with Mr. Erkins, is that right? A And from actual occurrences.

Alfred W. Cormier, recalled, re-cross.

Q Yes. And not with unaided recollection. That is the fact, isn't it? A That is right.

Q Now, where was your office at this time? A At this time? Now?

Q Yes. Not this minute, but the time of this transaction? A Oh, in the Public Service Building.

Q That is 80 Park Place? A 80 Park Place, that is right.

Q So that your office at that time was next— A To Saunders'.

Q —to the office of Mr. Saunders, wasn't it? A That is right.

Q You were there every day, weren't you? A That is right.

Q So that there was not any particular thing about this day that differentiated it from other days, was there? A No.

Mr. Speer: That is all.

ALFRED W. CORMIER, recalled.

Re-cross examination by Mr. Speer.

Q Mr. Cormier, I understood you to say that you recollected this meeting, about which you have testified this morning, because you had a specific appointment with Mr. Erkins for nine o'clock— A Yes, sir.

Q —that morning? A Yes, sir.

Q Did you have any other appointments on other days at about that time with Mr. Erkins? A I probably had, yes.

Q Well, what were they? A Well, that I don't remember. I can't remember everybody—

Alfred W. Cormier, recalled, re-cross.

Q You can't remember a one of them, can you? Can you? A Well, I could remember lots of them—

Q Well, remember them and tell them. A —but I couldn't give you the exact date of those appointments.

Q Well, an approximate date. A Why, offhand I couldn't tell you.

Q You couldn't tell us one, could you? A The date during that month?

Q Yes, sir. A (Witness pauses.)

Q Not one, can you? A No, I couldn't, not that he—(interrupted).

Q All right. And weren't you down there during that month three or four times a week? A I might have been, yes.

Q Well, you were, weren't you? A (Witness pauses.) Three or four—

Q Oh, no, no. You were or you weren't. If you remember, tell us. If you do not, say you do not. A I was there quite often. I don't remember how many times a week I was there.

Q Well, it was as much as three times a week, wasn't it? A Sometimes Mr. Erkins used to call me up and ask me to call there to see him on some business and I used to call.

Q And it was as much as three times a week during that period? A Probably.

Q And during all that period and going as often as that you cannot tell us one time that you were there except this particular day when you say you had the date for ten o'clock; isn't that right? A Well, I can't—no, I can't remember of any other—

Mr. Speer: Very good. That is all.

Rene F. Erkins, direct.

Re-direct examination by Mr. Riker.

Q Was there any particular feature of the occurrences of that day that makes you remember it? A Why, I remember—the reason I remember was that Mr.—Mr.—(Witness pauses). This man, I can't remember the name right now —Fairhand. Mr. Fairhand was there that morning, that particular morning.

Re-cross examination by Mr. Speer.

Q Who was there on any other particular morning? A Why, no one, only the office help around.

Q Who were they? A Why, Mr. Leshins and the men, the salesmen.

Q All right. What time in the day was that that Mr. Leshins was there on other occasions? A What time of the day?

Q Yes. A Well, Mr. Leshins was in there most any time, most every time.

Q Most every time every day that you were there? A Yes, sir; he was there most of the time.

Q Exactly, both morning and afternoon, that is right, isn't it? A Sometimes; yes, sir.

The Court: Do you rest?

Mr. Riker: Yes, sir.

RENE F. ERKINS, sworn for defendant.

Direct examination by Mr. Taliaferro.

Q Mr. Erkins, what is your business? A Architect, engineer and realtor.

Q Were you ever employed by the Public Service Electric & Gas Company? A I was.

Q When did you leave their employ? A January the first, 1928.

Q What have you done since that time? A I conduct an office in Flushing, Long Island, New York, as a realtor.

Q When you were employed by the Public Service Electric & Gas Company, what were your duties? A To take a list of names that were furnished and interview the listed owners of these properties and attempt to ascertain from them just about what they were holding their land at, whether or not it was for sale, so that I could, in turn, return that information to the office as to the attitude of the people so that it could be taken under advisement by the proper people.

Q In July, 1926, what neighborhood were you working in? A What was that again? I couldn't hear.

Q In July, 1926, what neighborhood were you working in? A Up around Chatham.

Q Was Public Service Electric & Gas Company purchasing rights of way in that neighborhood at that time? A Up in Chatham they were in the lower end, yes.

Q What transmission line was that that they were purchasing for; what was the name of the line? A Athenia Metuchen line.

Q Do you recall approaching Mr. Nicholson relative to making inquiry as to what he would ask for a right of way across his property in Chatham? A No; I don't recall approaching him on what he would ask for a right of way, because it was not ascertained at the time that we wanted a right of way through there. I did

speak to him and ask him about what he was holding his property at and he said it was not for sale and that he was going to improve it by bungalow sites, and a lot of other things, and I reported that in.

Q When was this? A Oh, some time in May or June, some time like that, 1926, I believe.

Q What was the next occasion on which the Nicholson property came to your attention? A Well, Mr. Shea, a broker up in Chatham, was handling that thing for Mr. Nicholson and he used to egg us on from time to time, that if we did need anything up around there that he was going to sell it, and a lot of things like that, and give me these reports, and I do recall having seen Mr. Nicholson some time during the—subsequently to my first meeting with him I had—I admit I probably saw him about three or four times and one of those times, why, he told me something about going to cut it up, some outfit in Newark was going to cut it up and divide it up in streets, and a lot of things like that, so I reported these things in, and finally sent him a letter and informed him that I was no longer interested in the property.

Mr. Riker: I object, unless he produces the letter. Perhaps it is in evidence already.

The Court: Well, he cannot.

The Witness: I am saying I sent a letter.

Mr. Speer: He informed him.

The Witness: I said I sent a letter and informed him myself.

The Court: Well, of course, he wouldn't have the letter if he sent it to Mr. Nicholson. Mr. Nicholson will have to produce it, if you want it produced.

The Witness: Anyway, I informed Mr. Nicholson definitely that I did not want to be bothered about it—

Mr. Riker: Just a minute. Is this the letter you are speaking about that you informed him?

The Witness: No. I was speaking to him at a subsequent occasion, I said.

The Court: You told him you did not want the property; is that it?

The Witness: Well, I never did want the property. I just didn't want him to be bothering me about telling me they were going to sell it, and that sort of stuff. I wanted to inform him I didn't want the property at all. I was not interested in it and I had no further interest in the property because—(interrupted)

Q After that occasion, what was the next time that the Nicholson property came to your attention? A Why, finally, Mr. Shea told me that Mr. Fairhand—(interrupted)

Mr. Riker: I object to what Mr. Shea told him.

The Court: Yes. That is right. What has Mr. Shea got to do with it?

Mr. Speer: I think the testimony so far is that Mr. Shea was his agent, representing him in the sale of the property. Nicholson swore to that himself.

(Discussion.)

Mr. Speer: We will withdraw that.

The Witness: Pardon me, Judge. You asked me when was the next time I heard

about it, and I am saying the next time I heard it was when I was to Shea's office.

Mr. Speer: When did you go to Shea's office?

The Witness: I went to Shea's office and he introduced me to Fairhand and told me this man had agreed to purchase the property.

Mr. Speer: Don't tell us what Mr. Shea said.

The Witness: I don't say he said anything. I said he introduced me to the gentleman and said, "This man is going to buy the property."

Mr. Riker: I move it be stricken out.

The Court: I will let it stand. It is quicker to let him say it.

The Witness: (Continuing.) That they were going down to sign the contract for it.

The Court: Now, who said this?

The Witness: Why, while I was there I met them and they told me they were going down.

The Court: Which one said this?

The Witness: Mr. Fairhand told me he was going down to purchase—to sign a contract for the property.

The Court: Very well. Now, tell us what Mr. Fairhand said and leave out Mr. Shea, if you can.

The Witness: I see. Mr. Fairhand told me that he was going to acquire the property and asked me whether or not I would be interested, after having been introduced to him as a relator—asked me if I would be

interested in assisting in the disposition of the lots, and so forth, after development was completed, and, being slightly interested in what was going to happen to it, I said to him that I would possibly consider it, and he then said, "Well, why don't you—you have been up to see the property?" I said, "Well, I have seen it, yes." He said, "Why don't you accompany us down here—and at the closing—and then we will come back up here and see if we can't work out some kind of a proposition." And he informed me then that Mr. Shea was going to cooperate with him in the disposition of the property in lots, and, being interested, I accompanied him down there, and, after the consummation of the contract with Mr. Nicholson, I turned back with him up to the property at Chatham.

Mr. Roller: The witness just said the development had been completed. I think he meant the purchase.

The Witness: No. I meant what I said. Mr. Fairhand advised me he was going to develop the property and asked me if I was interested in assisting him to dispose of the lots after the development he had in mind was completed.

Q Did your interest in this property depend upon your knowledge that Public Service Electric & Gas Company might need it for their right of way? A My interest in it depended on the fact that my position consisted of acquiring information relative to the property in that location, and that is why I was interested.

Q In reference to your other interests in the property, you said you were a relator: did you write to your superior, Mr. Saunders, asking if you could give any particular time or attention to this property outside of your regular working hours? A I believe I did. After the property was developed and after Mr. Fairhand got sick, I did, yes.

Q After Mr. Fairhand had purchased the property, did you find out whether or not Public Service Electric & Gas Company could purchase a right of way through there, through that piece of property? A Some short time subsequent to the time that Mr. Fairhand acquired the property, I did advise him that we were interested in a right of way through there, tentatively, and he asked me what we wanted and I told him we didn't know. He didn't seem to want to sell it, and finally asked me for a concrete proposition on it. Of course, I told him I was in no position to make him a concrete proposition on it, because that was not my job, but that if he had any offers or anything he wanted to make on it, or negotiations, he could take it up with Mr. Saunders. He then informed me if I would inform Mr. Saunders that if they would furnish him with a survey of what they wanted, or what was tentatively in their minds, he would take the thing in consideration, after consulting his counsel, Mr. Day.

Q Did he make any offer of a price for the sale of this property that might be needed by Public Service for a right of way? A Well, I recall that he did, after he saw some tentative sketches, tell me to advise the company that he wanted $50,000 for it—and, of course, that was not accepted by the company—reconsidered and he finally offered it for $30,000.

Q Was the sale of the property which was to be used for the right of way estimated at the price of thirty thousand dollars? A It was.

Q During this time, your negotiation with Mr. Fairhand, did Mr. Fairhand, to your knowledge, have any connection with or represent or act as agent for the Public Service Electric & Gas Company? A Absolutely not.

Q Do you recall the date on which the deed from Mr. Fairhand to the Public Service Electric & Gas Company was signed? A Well, the date would not be to my particular knowledge, but I believe it was some time in February.

Q Of what year? A 1927.

Q Do you recall where the title closing took place? A Absolutely.

Q (Continuing.) To this particular property? A Absolutely.

Q Where was that? A In my office.

Q Where was that? A Up in my home in East Orange, 96 Arsdale Terrace, East Orange.

Q Why was the closing held up there? A The closing was held up there due to the fact that—first, that a Mrs. Mary Jane Wilson, who was an old client of mine, who made a business of loaning money, and which I generally placed for her, had agreed to finance the building of the contemplated dwellings that Mr. Fairhand had anticipated putting on the premises, and I negotiated the loaning of this money by Mrs. Wilson to Fairhand for this specific purpose, and she is quite an elderly woman and a very high type, and did not want to be down at the title company sitting around there; inasmuch as she was going to advance this money on it, why, she was going to be there and discuss some of the elements with us, and Mr. Fairhand also had his

wife up there with him and they came up to my house.

Q Did you receive special authorization to close this particular title in that fashion from Mr. Saunders? A No; it was at Mr. Fairhand's request and insistence that it was closed there. Nobody had anything to say about it except Mr. Fairhand. He said he thought it convenient for him to have it closed there.

Q Who represented the company on that occasion? A Mr. Leshins.

Q Is Mary Jane Wilson any relation of yours? A Absolutely not.

Q How did it happen—

Mr. Taliaferro: I will qualify the question. Strike it out, please.

Q It has been shown by the checks which were read to you from the Fidelity Union Title & Mortgage Guaranty Company that one check was in the sum of $2,000 and that one of the endorsements on the back of that check was your name. How does it happen that you signed that check or endorsed it, or did you cash it? A Well, I did not—I was sitting over there when the check was introduced, but I recall the specific instance without even seeing the check. Mr. Fairhand, after the closing, went downtown with me and he needed some ready cash for some things that he had under way, and I took him over and identified him over at the Fidelity so that he could get the money, and, of course, the teller over there, for a $2,000 check, asked me if I would not put my name on it. I had an account in the bank and they asked me to endorse it and the money was delivered to him by the teller after I endorsed the check.

Q It has been testified by Mr. Cormier or one of the previous witnesses in your presence this morning, that he was present in the office of Public Service Electric & Gas Company some time in the middle of December, 1926, and that on the particular occasion that he had in mind you and Mr. Erkins passed to Mr. Fairhand cash in the amount of $14,000 in one thousand dollar bills, do you recall that occasion? A Absolutely not.

Q Did anything of that nature ever happen? A Absolutely not.

Q In the office of Public Service Electric & Gas Company? A No office. I never gave anybody $14,000 any time, any place. I—

The Court: No. Just answer questions. Do not volunteer.

Q Why were you present at the closing between Mr. Nicholson and Mr. Fairhand when Mr. Fairhand purchased the property? A Why, I was present there to definitely ascertain that the title had passed to Fairhand and inasmuch as we had a contract which was made on the 15th of December with Mr. Fairhand—that is, we had a contract made with him to convey us the right of way, but it only gave him a thousand dollars inasmuch as—he only had a thousand dollars in it and we wouldn't give him any money on our contract, because he had no equity in the property, so it was my job to stay with him until the contract was closed and then get him to come over in the office and then we would sign the contract for the acquisition of our right of way, after he really had some money in the property. Before that he had no money in the property and we would not consider giving him anything.

Q And at the time of those negotiations he had not title, either, to the property, had he? A No, no.

Mr. Speer: I would like now to call on Mr. Riker for the contract between Mr. Nicholson and Mr. Leshins, about which Mr. Leshins testified, the contract for $10,000.

Mr. Riker: The contract was never actually effected.

Mr. Speer: Oh, no. The contract was effected, but it was abandoned, as Mr. Leshins testified.

Mr. Riker: I don't remember he said that.

Mr. Speer: Just exactly what he said.

(Paper produced.)

Q Subsequent to the purchase of this property by Public Service Electric & Gas Company from Mr. Fairhand, did Mr. Leshins ever approach you relative to testifying for Mr. Nicholson in an action by Mr. Nicholson against the Public Service Electric & Gas Company? A He did.

Q Did he show you a contract he had between Mr. Nicholson and himself relative to renumeration to Mr. Leshins for such testimony? A He did.

Q I show you a so-called contract and ask you if this is the contract which Mr. Leshins showed you at that time? A Substantially, I should say that it is the identical agreement that was shown to me.

Mr. Taliaferro: I would like to offer this contract in evidence. It has been produced

by the other side, upon demand, and we believe it is an important part of this case.

Mr. Riker: I object to it. I think the fact it was produced does not make it evidential. It was a final contract and it was effective.

(Discussion.)

The Court: I will allow it to be introduced for what it is worth.

(Contract marked Exhibit D. 1.)

Q As I understand it, Mr. Erkins, that contract was between Mr. Nicholson and Mr. Leshins, is that correct? A Yes, sir.

Q What proposition did Mr. Leshins offer to you in connection with that contract? A He offered to assign his interest under the contract providing a fee—distort the particular facts in this case so as to make it possible to win. They had to win to get the money; in order for me to get this money which they offered to me, why, it would be necessary that they win. In order for them to win I would have to distort the facts in connection with it so as to make it possible to win. I refused to go ahead with that or agree to that and the contract—Mr. Pollard and Mr. Marsh and Mr. Leshins came to my office as a final decision, and I wouldn't go along on it and I told them—although I will amplify by saying that Mr. Pollard and Mr. Marsh are very high type gentlemen, and that they could readily see —(interrupted).

The Court: It is not necessary for you to inform the Court of that.

The Witness: (Continuing.)—and they could readily see that I could not in any way

consider a proposition of this character, as I told them I would not become criminally liable or involved in a transaction of this character for ten times that much money, and advised them to that effect.

Mr. Speer: Now you can cross examine.

Cross examination by Mr. Riker.

Q Mr. Erkins, did you ever sign any affidavit or statement for the Public Service or the Holland Company setting forth what happened in this transaction? A I believe that back some time in—(interrupted).

The Court: Well, did you or didn't you? Just say yes or no.

The Witness: Yes, I did—not an affidavit, a report of the facts.

Q Signed by you? A Yes, sir.

Q When? A At the time that the question was brought up about this case, I believe, when you folks first filed your original bill and I was requested to make a report of the facts in connection with it.

Q That was last summer some time? A Either last summer or last fall some time, yes.

Q Do the facts you have just testified to correspond with the statement made in your report? A Absolutely.

Q When you saw Mr. Marsh and Mr. Pollard, I think, Mr. Leshins was there, do you remember any discussion—do you recall whether there was any discussion as to what your duties were with Public Service? A I don't believe that they ever asked me what my duties were. It was very

plain to know what my duties were. I do not recall that they ever asked me, no.

Q Do you remember stating to them that your duties were—your job was to go out and buy properties for the Public Service and the Holland Company? A No; I never said that was my job, because that was not my job.

Q Will you state definitely you did not say that? A Absolutely.

Q Did you ever buy any property for the Holland Company or the Public Service? A I acted as the same type of investigator that I was employed to act as. I never purchased any tract for the Holland Company.

Q You never signed a contract for the purchase of any property that was turned over to the Public Service or Holland Company, is that right? A Not unless my name was used by one of the other investigators, and it may have been acquired with my consent by Mr. Saunders for the company. My name may have been used a hundred times for acquiring property.

Q You did sign a contract for the purchase of property, didn't you? A Yes.

Q And you negotiated this purchase, too, didn't you? A No, sir; no, sir.

Q Who prepared the contracts? A I don't know. Somebody in the office, I guess.

Q Who told you it was all right for you to sign them? A Well, nobody had to tell me it was all right for me to sign them. I have a head of my own.

Q You examined them, didn't you? A Examined the contracts?

Q Yes. A Surely.

Q And you saw that they were all right? A I saw that there was some property that the company needed and were to be reconveyed to them.

Q And you knew that the terms of the contract were all right, too, didn't you? A Well, they suited the company.

Q Well, did you know that? A Well, if they were approved by the buyer, Mr. Saunders, why, they certainly suited the company or Mr. Barker—if they suited them, they suited me. I was not paying the money.

Q You just told me that nobody had to tell you they were authorized, that you knew yourself. A I knew it was all right for me to sign them.

Q How did you know? A Why, for the simple reason that they were being acquired by the company and for their purpose.

Q How did you know that the terms in the contract were all right? A Well, inasmuch as I was not paying for them, I didn't care whether they were all right.

Q Oh, you would sign any contract that was for property that you believed the Public Service wanted, no matter what the terms were, because it wasn't your money; is that right? A If they were paying for it, surely.

Q Where was this conversation between you and Fairhand, and I think you said Shea was there, in May, 1926?—no, it was after that—when Fairhand told you that he was going to buy this Nicholson property? A Up at Mr. Shea's office in Chatham.

Q Did they have a contract for the purchase of the property at that time? A No, not they—Mr. Fairhand told me he was going down there to sign a contract.

Q Did you go down with him? A Absolutely.

Q And did you meet Mr. Nicholson in the office of Riker & Riker? A Yes, sir.

Q Do you know whether Mr. Nicholson and Mr. Fairhand were acquainted before the time they met in that office? A They must have been. I really don't know.

Q Do you know? A No; I don't know if they were, no.

Q Do you recall introducing them? A No; I did not introduce them.

Q You did not? A No. I could not have introduced them. I went on the assumption they knew them all the while.

Q What part did you take in the matter of the contract preparation? A No part.

Q Just sat by and listened? A As a spectator to ascertain the—(interrupted)

Q Did you make any suggestion as to the terms of the contract? A No, sir.

Q Didn't say anything? A Well, I may have said something. I ordinarily would.

Q Did you say anything with regard to the terms of the contract? A No. It was not my contract. I had nothing to do with it at the time.

Q You might just as well not have been there, as far as Nicholson and Fairhand were concerned; is that right? A Well, as far as my job was concerned, I was supposed to be there to definitely ascertain what he was to pay for it.

Q Answer the question. A No. As far as they were concerned, I would not care what they done.

Q You took no part in it? A No.

Q Do you recall a contract being prepared, prior to November 12th, the date upon which the final contract was executed? A I can't say that I do, no.

Q Do you remember when it was that you saw Fairhand up in the office of Mr. Shea in Chatham

when he told you he was going to buy? What date? A It was on the date of the closing of that contract, which, I believe, was November the 12th.

Q I show you Exhibit C. 6 and ask you if you ever saw that before? A No; it don't appear to me I ever saw that.

Q The first time you ever know that Mr. Fairhand was going to buy this property was on November 12, 1926; is that right? A Yes, sir.

Q Did you attend the closing of the title between Nicholson and Fairhand on December 15, 1926? A Yes, sir.

Q What time of day was it? A Some time in the forenoon, I believe.

Q Do you recall how the purchase price was paid? A No; I don't recall it. I had no interest in how they paid it. I don't recall it.

Q You attended many title closings? A Oh, several hundred.

Q Several hundred? A Yes.

Q Have you ever seen the consideration money paid in thousand dollar bills? A Well, if I were interested in the consideration I might be—(interrupted)

Q Have you ever seen it? A No, sir.

Q It would be unusual, wouldn't it? A I believe it would, yes.

Q If you saw it, you would be likely to remember it, wouldn't you? A Well, if I saw it, I would, yes.

Q You don't remember at all how this money was paid on this Nicholson-Fairhand property? A No, no.

Q But you say it was not paid in fourteen $1,000 bills? A No, I wouldn't say how it was paid, because I don't know.

Q What time of day was the contract between Fairhand and the Public Service executed? A My estimation is after lunch some time. I don't just recall.

Q About what time? A It must have been in the afternoon some time, because—around lunch time, because we had to be at Chatham and they told me to go on down and we drove down there and closed it up and went back up to see the property.

Q You say it was after two o'clock? A I wouldn't say certainly; I would say it was some time midday.

Q About midday? A Uh huh.

Q When was that contract prepared? A When was it prepared?

Q When and where? A I don't know. I haven't the slightest idea.

Q When was it signed? A Well, they evidently signed it at Mr. Pollard's office.

Q Were you present when the contract between Fairhand and the Holland Company was signed? A Yes, sir.

Q Where was it signed? A Between Fairhand and the Holland Company?

Q Yes. A It was signed over in Mr. Saunders' office, after the closing of the title.

Q Who prepared it? A I don't know. I couldn't tell you.

Q Tell me the circumstances under which that contract was signed. Who was present and just what happened? A Why, the best that I recall it was that after Mr. Fairhand had acquired the contract and we knew that he had purchased this property and we made a proposition for him to make us an offer—the company—for what he wanted for the right of way and he asked for

this survey, and it was furnished by our office, and he came down and he offered to sell it to Mr. Saunders for thirty thousand dollars, why, there was a contract prepared for it—by whom, I don't know—and submitted to him and he signed it and I believe I took his acknowledgement of it. Then I accompanied him down to the office and Mr. Saunders decided that inasmuch as this man had no equity in the property, any more than the original thousand dollars that he had into it, that we wouldn't give him any money, and so he held the contract then until the date that he actually took title and when he took title and had the deed, why, I brought him back over to the office on the fifteenth of December and went over and got the— Mr. Saunders signed the contract in behalf of the company, and gave it back to him, however it was—they closed the contract.

Q It was all prearranged, was it not, that after Mr. Fairhand got his title from Mr. Nicholson that he would immediately contract to sell it to the Holland Company. Wasn't that right? A He had agreed to—he had agreed to—from his side of it he had agreed to sell it to the Holland Company after he had obtained the contract, that is, after he had the contract from Nicholson, but, pending the interim of the time he had received the deed, he had tentatively agreed to accept thirty thousand dollars, but—

Q But— A —it was not consummated.

Q There was not any written contract until after he got title from Nicholson, was there? A No, not that I know of.

Q So there was not any binding agreement, was there? A Not that I know of, no. There may have been. No, not that I know of.

Q You know the contract was signed afterwards, don't you? A Absolutely.

Q I show you Exhibit C. 12 and ask you whether you ever saw that before? A I can't say that I ever saw that, but I know what it is and that has got something—

Q What is it? A Why, it is a description of the exclusion strip that was drawn from the survey that was made to definitely show Fairhand what we wanted to buy.

Q This paper bears the water mark "Public Service Bond 24." Do you know whether that stationery is used by the Holland Company and Public Service? A I believe it might be.

Q Do you know whether this was prepared in the Public Service or Holland Company offices? A I guess it was.

Q Do you know? A I believe it was.

The Court: Well, do you know or don't you?

The Witness: Well, I know that from what connection I had with it that it was necessary for us to furnish Fairhand with a description of that character so that he would be able to intelligently negotiate with our office as to what we would pay him for that strip that he was willing to sell.

Q When did the Public Service or the Holland Company determine the exact location of the right of way which it would require through Nicholson's property? A After Mr. Kentz furnished a survey of it.

Q When was it? A Sometime in November.

Q Early part or late? A Oh, about—it must have been two weeks—it must have been about two weeks after the—after Mr. Fairhand had purchased the property from Mr. Nicholson, I

would say, roughly, about the latter part of November. Of course, we didn't know what we wanted until after that was surveyed.

Q Did you know the amount of land that you would want? A No.

Q You did not? A No.

Q Was it your transmission line that you were concerned with? A Yes.

Q You knew what the distance across his land was, didn't you? A Well, we knew what the distance across the land was, but that was such an irregular shaped parcel that, not having the line established, may have required anywhere from two acres to fifty, depending where it bisected the land.

Q Was there any possibility it would require more than twenty acres? A Why, I believe if it had run diagonally through the property from end to end it would probably have taken in thirty-five acres.

Q Do you know that to be the fact? A I believe it would. It is from my recollection of the shape of the tract.

Q It is more or less of a guess, isn't it? A No, it isn't more or less of a guess. I know the shape of the tract, and I would say if a line the width of the right of way were drawn from end to end of that property that it would take at least fifty per cent more than it does as it bisects transversely.

Q The general direction of this transmission line was definitely fixed, wasn't it? A I had nothing to do with the—(interrupted)

Q Do you know whether it was or not? A Well, I know that it was not specifically. I know it was not because I was obtaining information for a territory around there in the vicinity of

two miles of this property for later establishment of where it might be.

Q It was generally fixed whether it would run north or south or east or west, wasn't it? A I wouldn't know that.

Q You don't know? A No, I wouldn't know. All I was given was a list of the property owners to interview them and to report them back and I had nothing to do with the establishment of the line, where it was going, how it ran or where it went.

Q What happened to the thirty thousand dollars that was paid to Mr. Fairhand by the Holland Company? A I couldn't say.

Q Did you get any of it? A No.

Q Are you sure of it? A Absolutely.

Q Did Mr. Fairhand get it all? A He must have. I saw him get it and what he done with it I really don't know. I saw him get the money.

Q You saw him get two thousand dollars; is that it? A I saw him get the checks, as I say, and I also saw him get the checks cashed.

Q Both of them? A I saw him get money, yes.

Q Where did he cash the twenty-five thousand dollar check? A At my home.

Q He cashed it at your home? A Yes.

Q Who paid him the cash for it? A Mrs. Wilson.

Q She had twenty-five thousand in cash there? A She brought it along with her, yes. That is why she was there.

Q What kind of bills was that? A I don't know. It was not paid to me.

Q Did you see the cash? A I saw them paid the cash, surely.

Q Do you recall if it was thousand dollar bills? A I wouldn't say offhand. I don't just remember what kind of bills it was.

Q You saw the cash, still you do not remember whether it was thousand dollar bills or not? A Well, no. I saw quite a bundle of money and I knew she had brought twenty-five thousand along to cash that check and she gave it to him and took the check, and that was all there was to it. I had no interest in it.

Q You don't know whether Mr. Saunders got any of that money? A No, I wouldn't know.

Q You don't know? A No.

Q You said that Mrs. Wilson was no relation of yours? A Absolutely not.

Q No relation by marriage? A Absolutely not.

Q Mr. Fairhand any relation? A No, sir.

Q By marriage? A No, sir.

Q Did you ever say to anybody that they were brothers-in-law or mothers-in-law? A I don't believe so. It would not be a fact.

Q Are you sure that you did not? A I don't believe so.

Q Now, can't you answer the question? Don't you know whether you did or whether you did not? A Well, I would say I never represented them to be any relative of mine when they are not, no.

Q You are sure of that? A Absolutely not.

Q Can you recall talking to Mr. Leshins over the telephone within the last three months concerning this matter? A Oh, I guess I spoke to him about ten times over the telephone concerning this matter. Which one do you mean?

Q Do you ever remember on any one of those occasions saying to him that you were going to

repudiate everything that you had said about this matter? A No.

Q You don't remember that? A No.

Q Never said any such thing? A No.

Q Do you remember talking to him over the telephone in the early part of May, 1928? A I may have.

Q You don't remember saying anything to that effect on that occasion? A To what effect on what occasion? You asked me if I—(interrupted)

Q And that you would repudiate anything you had said? A No, sir.

Q You said that Mr. Leshins asked you to distort the facts. Is that the word you used?

Mr. Speer: That is the word he used.

The Court: That is the word the witness used.

Q Is that the word Mr. Leshins used? A Absolutely.

Q Sure about that? A Absolutely.

Q He required you to distort the facts? A Well, he advised me how—we discussed what would be necessary for him to win the case and there were three outstanding facts that would have to be proven for him to win the case, and one was that we would have to prove that Mr. Fairhand was an agent of the company, and, secondly, we would have to prove that the company furnished the money for Fairhand, and, thirdly, we would have to prove that Mr. Fairhand never intended to buy this property, and that if I could so construe the facts in the case as to make that appear logical, that we could win the case, I could get the money and if they couldn't—(interrupted).

Q Who was present when he said that? A Why he said that on several occasions.

Q Who was present on these different occasions? A Well, myself, and, on one occasion, we went up in Mr. Fairhand's place.

Q Anybody else except you three? A Not that I recall, no.

Q Was anything like that said on the occasion when Mr. Marsh and Mr. Pollard came over to see you with Mr. Leshins? A Why, I recall distinctly saying that it would be—that inasmuch as I would have to be required in order for them to win to distort the facts along those lines, that I couldn't do it and that I wouldn't do it.

Q That is what you said in the presence of Mr. Marsh and Mr. Pollard? A Absolutely.

Q Were you ever asked by Mr. Erkins—Mr. Leshins to make an affidavit of the facts which you would testify to in this case? A Yes, sir.

Q Did you refuse to do so? A Absolutely.

Q When was that, before or after you saw this proposed contract which was just offered in evidence? A Why, both before and after. He tried all along to get me to make an affidavit of the facts that would assist in the winning of this case so that he could get the ten thousand dollars, but I refused to do that.

Q Was your refusal influenced at all by the fact that you made a written statement to the Public Service last summer? A Absolutely not. No. My attitude was based on my unwillingness to go along on such a proposition.

Q At this preparation of the contract between Fairhand and Nicholson, do you recall how it came about that there was a provision in the contract that the twenty acres should be ex-

cluded from the mortgage and that the location of that twenty acres should be determined at least a week before the closing of title? A I had nothing to do with drawing the contract. I would not be familiar with why they put that in there, no, sir.

Q Do you recall anything about it? A No. I didn't even know about it until later on.

Q Do you know whether that was Mr. Fairhand's own idea? A I don't know, sir.

Q What is Mr. Fairhand's business? A His business now?

Q Yes. A He has a restaurant, he owns a big Chinese restaurant out in Glen Cove.

Q What was his business during the last two years? A I really don't know, sir. I couldn't tell you, I don't know.

Q Do you know whether he has ever been a real estate operator or developer? A He said he was. I don't know. I never met him.

Q Did you ever say he was? A Did I ever say so? No. No, sir.

Re-direct examination by Mr. Taliaferro.

Mr. Taliaferro: I have two questions, your Honor please.

Q What did you say your relation with Mrs. Wilson was, Mrs. Mary Jane Wilson, I believe? A Absolutely no relation of any kind or form. She was—

The Court: She was a client, he said.

Q She was a client of yours? A Yes, sir.

Q You testified that on the occasion you had signed contracts, that is, contracts had been taken in your name? A Yes, sir.

Rene F. Erkins, re-cross.

Q Did you ever sign any of those contracts without specific authority from Mr. Saunders to do so and without having the assurance of Mr. Saunders that that was the paper which he desired you to sign for the company? A Absolutely not. I never signed one unless it was requested by either Mr. Barker or Mr. Saunders for a specific purpose.

Q Weren't many of those contracts initialled by Mr. Saunders or members of the Legal Department? A Almost every one of them.

Re-cross examination by Mr. Riker.

Q Why did you say before then that you did not receive the approval of anyone before you signed them?

Mr. Speer: I object to that; he didn't say any such thing.

The Court: I understood him to say, Mr. Riker, that he used his head, and, when he saw the O. K. of the proper officials, then he signed them and he didn't care what it was, but he used his head to find out whether they had O. K.'d it or not. That was my understanding of the testimony.

Mr. Riker: My recollection is different.

The Court: Ask him and find out.

Q Did you say that you signed these contracts before receiving the approval of anybody? A I said I signed these contracts if they were turned over to me and after I examined them and found that they were properties required by the company and that they had received the proper—I won't say "approval,"

but the proper endorsement so that I would know they were all right, then I would go ahead and sign them, hundreds of them, never saw the property.

Q You never signed a contract for the purchase of land used by the Public Service unless it was approved by somebody; is that what you say now? A Absolutely not. No property was purchased by Public Service unless it was authorized by the proper—or approved by Mr. Barker or Mr. Saunders.

Q And how was that approval communicated? A They would either put their initials on it or give you verbal authority to tell you to "go ahead" and "it is all right; we need it."

Q Here is a contract, Exhibit C. 16, between Harry Hatton and wife and yourself for the purchase of land in Chatham. Does that bear the approval of anybody that you refer to? A Well, I know the case.

The Court: Answer the question. Does it bear the approval of anybody?

The Witness: Well, my copy may have. This one does not.

Q Do you remember whether your copy did or not? A Well, I remember this, that if it did not, that I got the oral approval of either Mr. Barker or Mr. Saunders to sign it, otherwise I would not have signed it.

Q You said you remembered this particular case? A Yes, sure; I remember all of them.

Q Which approval did you get? A It was—

Q (Continuing.) Mr. Barker's or Mr. Saunders'? A Mr. Saunders.

Q Sure about that? A Yes, positive.

Q How are you so sure now? A miuute ago you said it was either Mr. Barker or Mr. Saunders in this case? A I didn't say it was either Mr. Barker or Mr. Saunders in this case. I said it was either Mr. Barker or Mr. Saunders in any case, and I am so sure about this case. Mr. Barker approved very few of them. About ninety-five per cent. of them were approved by Mr. Saunders.

Q Who negotiated this contract with Hatton? A I turned in the facts relative to it. It was submitted to the office, approved by Mr. Saunders, and I was told that it was all right for them to buy it—at least, I was told it was all right for them to buy it under those terms and conditions and I should go ahead and sign it, and I signed it.

Q Did you find out from Mr. Hatton the terms under which he would sell it? A No, Mr. Shea did.

Q Did you ever talk to Mr. Hatton about the purchase of this property? A Never saw him in my life until two or three months after the property was bought from him.

Q If he said that you negotiated he is mistaken? A He must be.

Q You never saw him before this contract was signed? A Not that I recall, no, sir. Mr. Shea conducted the entire transaction in that case. He was a broker.

HARRY L. SAUNDERS, sworn for defendant.

Direct examination by Mr. Taliaferro.

Q Mr. Saunders, what is your business? A I am right of way engineer for the Public Service Electric & Gas Company.

Q How long have you been employed by them? A Since May 1, 1925.

Q What were your duties before that time? A I was title agent for the Delaware, Lackawanna & Western Railroad Company.

Q Are you a professional man? A Yes.

Q What? A Civil engineer.

Q Civil engineer. As to the right of way of the Public Service Electric & Gas Company, who is your superior? To whom do you report? A Mr. George Barker, vice-president. And in charge of real estate and purchases.

Q Could you tell us what the make-up of the organization was in your department? A In the right of way department?

Q Yes. A It consisted of myself as the head. Then we had about seven to twelve field representatives. The number varied. These men reported directly to me daily. The other employees consisted of about four draftsmen, four or five stenographers, file clerk, my office assistant, Carl Stock, and title closer. Mr. Stock as my first assistant had under his direct supervision all the details of the office work, and the rest of the men, except the field representatives, reported directly to Stock. That included Mr. Leshins.

Q What was Mr. Leshins' capacity in the office? A Mr. Leshins' capacity in the office, he was really a connecting link between our depart-

ment and the Fidelity Union Title & Mortgage Guaranty Company to make—searching and guarantying our operators. It was his duty to examine the title reports as they came in. To note those where serious objections occurred and to check with the Fidelity from time to time to see that the titles were ready for closing when the closing day arrived. He was also supposed, as the maps were furnished him by Mr. Stock, to make out the preliminary requisitions to be submitted to the Fidelity to start the search. He was also supposed to close titles and work of that nature.

Q Were any part of his duties to assist the buyers or assist the field representatives? A Absolutely not.

Q Do you recall when Mr. Leshins came to the company? A I believe Mr. Leshins came to the company about December twenty-five, or early in the spring of '26. I am not just positive.

Q And when did he leave the employ of the company? A He left the employ of the company December the 1st or November the 30th, 1927.

Q How did he come to leave the employ of the company? A He was discharged.

Q Were there any circumstances connected with that discharge which you can relate? A Well, during the year 1927, or last year, Mr. Stock, my assistant, reported several times that the title work was getting in such condition that he was being overwhelmed in his work in trying to keep pace with it personally. In other words, he was doing work which Leshins should be doing, so, after repeated warnings, I believe I warned Leshins two or three times, and on each occasion he assured me he would try to do better or get

his work systematized to the point where Mr. Stock would be relieved of the burden. On the last occasion in October I called Mr. Leshins in and told him he must make arrangements to leave on November the 15th. He asked me if I would give him another chance and I told him I was sorry I couldn't. Between November the 1st and 15th he again called upon me and said it was impossible for him to get work and if I would hold him over to December 1st and also give him a letter of recommendation and permit him the courtesy of resigning. I told him I would not give him a letter of recommendation, but if it would make him feel any better, he could resign, but, in any event, to make arrangements to leave on December 1st. Between November the 1st—the 15th and the 1st of December, a card came in from the corridor with the name of Mrs. Brown, with a statement she wished to see me about real estate. I admitted Mrs. Brown and she came into the office. She said when she came in her name was not Brown, but it was Mrs. Leshins and she wanted to see me to see if I could help her out in any way. She was very much worried about Mr. Leshins' inability to secure work, and he had always spoken so highly of me, she came to see me to see if I couldn't assist her and to see if I couldn't keep him over until the spring of 1928.

Mr. Riker: I object to this.

(Discussion.)

The Court: I think you have had enough. It is perfectly natural for a man's wife to come and try to get him back on the job. It has nothing to do with it, in my opinion.

Q As right of way engineer of the Public Service Electric & Gas Company what were your duties? A My duty was to supervise the acquisition of all the rights of way.

Q Did you have supervision of obtaining the right of way known as the Athenia-Metuchen line? A Yes, sir.

Q Was the property of Mr. Nicholson situated on the proposed right of way line here? A Yes, sir.

Q Mr. Erkins has testified. Was he one of your assistants or field representatives, or what was his capacity with the company? A Mr. Erkins was one of four or five field representatives that I had working under my direct supervision.

Q What were his duties? A His duties were to go into the field and to interview owners to secure from them their asking prices, in the event that we had the map, and he was working on a definite stretch of line to secure asking prices which they wanted for the right of way. He was to report this back to me and carry my message back to the property owner. You might call them field scouts or investigators or representatives. He was more or less my mouthpiece in working the field, as we were working with a thousand property owners and it was impossible for me to see each one of them perosnally. I had to have these men.

Q Did Mr. Erkins have authority to negotiate with any of the owners or close contracts with any of the owners of property without your particular authority? A No, sir.

Q To your knowledge, did Mr. Erkins ever negotiate or close contracts with any of the respective sellers to Public Service Electric & Gas

Company without your approval and consent? A No, sir.

Q Will you state for us the circumstances connected with the acquiring by Public Service Electric & Gas Company of a right of way across the so-called Nicholson property? A I think it is pertinent in that connection to go over the line and clearly outline it to the Court.

Mr. Taliaferro: If the Court please, I would like to introduce as an exhibit a map which has been prepared by the company under Mr. Saunders' supervision to indicate the route over which this Athenia-Metuchen line passed.

The Court: All right.

(Map marked Exhibit D. 2.)

Q What does this map represent? A This map represents a section of the State of New Jersey. It is a Government topographical map and on it I have indicated in black the location of the Athenia-Metuchen right of way, as finally located and purchased, and by a short red line the location as originally planned, but it was amended through the borough and township of Chatham. This Athenia-Metuchen line extends from the Athenia sub-station designated on the map as "A" to the proposed Metuchen sub-station designated on the map with the letter "G." The total length of this right of way is thirty-three and a half miles and it passes through properties of 361 property owners. There has been acquired of this thirty-three and a half miles, thirty-one and 89 hundredths miles or approximately 95 per cent., consisting of the properties of 336 property owners or approximately 93 per

cent. of the total owners along the line. There is being condemned or in process of condemnation a length of one and 69 hundredths miles or approximately 5 per cent. of the length, consisting of twenty-five owners, or approximately 7 per cent. of the owners. In addition to this line we are working on various other lines totalling 400 other property owners or approximately 80 miles of line. That is in addition to this Athenia-Metuchen line. The width of this right of way varied throughout its length as follows: From Athenia to Roseland the width is 150 feet, that is, between the points A and B, and the width originally planned from B, or Roseland, to the southern extremity of the Nicholson property or the Passaic River at F, was 225 feet. This was the point—proposed point of the development for the line running to Lambertville. It was originally—this 225 feet width was amended to stop at H, or off of the Nicholson property. From the point H to Metuchen the width was originally intended to be 100 feet, or, I might say, from the Passaic River to Metuchen was originally intended to be 100 feet, but, due to various amendments, the width was varied through that section along in December, 1925, when the first maps were received on this map between A and B, or Athenia and Roseland, and on the original line as shown by the red line between C and D, in the Borough of Chatham, the usual field work, consisting of collecting information as to sales and so forth, were conducted along about February, 1926, when the first property was purchased on this line between points A and B. Along in February, late in February in 1926, field representatives reported that the Harmon National Real Estate Corporation of New York had pur-

chased a large tract in Chatham at the point marked X and were protracting lines for development to be marked in the spring. I went in to see Mr. Bert Harmon, president of the company, and, as I recall, ran through that tract and outlined to him just what the company wanted in the way of a right of way. In that, and subsequent conferences with Mr. Harmon and other officials of that company, it developed that the price they asked was far in excess of what the company desired to pay. Not wishing to commence condemnation proceedings so early in this plan with the consequent publicity of the whole line, I determined that we might be able to get through Chatham in the vicinity of the black line description. So during March we quietly secured the entire property from D. This necessitated eventually an agreed alignment of the whole line between the point C and E and after that the Nicholson property. About that time we had to pick up the various properties in the thickly settled portion of the Borough of Chatham. Maps were received from the engineering department of the Public Service Electric & Gas Company on the original red line between points D. and F, and from points F and G, making a total mileage of the maps received approximately 23 miles, as a country in the vicinity between D and C, and D and E or F was opened as regards developments and the like, I decided to concentrate my limited force of five men between F and G and between A and B, being the more valuable and thickly settled portion of that land and leave the selection of a new route to be tied down to D and between C and D and D and F at a later date. In other words, this section embracing the Nicholson property between F and

C was to be left open because the line was not determined at that time and we had enough property in the Borough of Chatham in the thickly settled part to establish our line. It was to be tied up to the original location later. And for this reason there was no title work done between C and F, and I instructed my office assistant, Mr. Stock, to hold off the title work in that section. And the statement made by Mr. Leshins, that I told him to hold off on the Nicholson tract to the exclusion of others in that section, is a lie. As a matter of fact, he did prepare the Nicholson title and that was the first one in that section between F and C that he prepared, and subsequently in February, 1927, when this line was connected, he did prepare the rest of them.

Mr. Erkins during the summer of 1926 was working in this section from the Passaic River to F-1 in the Borough and Township of New Providence. I directed him in connection with his work and from time to time to make investigations between F and along the Borough of Chatham where our new line might go and which affected the Nicholson property and to deliver to me all information such as sales, asking prices of land and other details such as the development, if any building would go on that might make our line more difficult or costly to acquire.

Q When was this? A That was during the summer of 1926 from time to time. In the summer of 1926 he did report to me on various property, Nicholson one, Conover another, Chatham Colony another property. Also, in the summer of 1926 Mr. Shea, a real estate broker in Chatham, called to see me several times. He was the agent for the owners in Chatham which we had purchased in D, and as it was getting to be general

knowledge at that time that the Public Service was perfecting a right of way, he came down to see me and he also gave me various information regarding the Nicholson property and the Conover property, one or two, that the Nicholson property had been placed in his hands, that a group of gentlemen were—

Mr. Riker: I move that be stricken out, about what Shea said.

The Witness: I am trying to give you the whole story.

The Court: Well, I do not think you have connected Shea up as Mr. Nicholson's agent yet. I do not think you ought to say anything more about Mr. Shea because—

The Witness: All right. Along about November, the middle of November, Mr. Erkins reported that he had met a Mr. Frederick Fairhand in Mr. Shea's office and Mr. Fairhand had arranged to buy the property from Mr. Nicholson, paying for it the sum of $139,000 for the approximate 165 acres. Also, that in order to verify the conditions and the price and so forth, he had accompanied Fairhand to the attorney's office to see the deal closed, and I immediately instructed Mr. Erkins to get hold of Mr. Fairhand and outline to him the plans of the company, as I did not wish another situation to develop as developed in the Harmon situation, requiring another section of the line diverted. At the same time I instructed Mr. Stock to arrange to have a survey commenced extending from F up through to H, and to secure the approval of the engineering department to move this angle point at the E on the

Nicholson property to a point north of it and to terminate the 225 foot right of way at this angle point, keeping the 225 foot right of way off of Nicholson, with the idea that the angle point at H of the Nicholson property could be later connected up to D. In other words, would extend the tangent F—F-1 straight through the Nicholson property and this—(interrupted).

The Court: This is Fairhand?

The Witness: This is the Fairhand property.

The Court: How big is it?

The Witness: That is the limit of the—

The Court: From here?

The Witness: No, Judge.

The Court: Where?

The Witness: Here are the arrows, your Honor.

The Court: I can't see them.

The Witness: Well, it runs from F.

The Court: F?

The Witness: To a point beyond E.

The Court: It does not run down here —(indicating).

The Witness: No; it stops at this ribbon.

The Court: I see.

The Witness: And runs to the point above E. Erkins reported back the next interview with Fairhand that Fairhand refused to do anything until we secured information as to the real area it needed and the location of the line. This held the matter up for a few days until we secured the survey of it from Mr. Kentz, showing the location and the

area through the Nicholson property and this showed an area of eighteen and a half acres. During the following two weeks, or the last two weeks in November, Erkins, on my instructions, had several conferences with Fairhand. The first price brought in was fifty thousand dollars and it subsequently dropped down in November to thirty-five thousand. The figures of this right of way I assumed the price paid by Fairhand to Nicholson of $139,000 to be its market value, that figured $850 per acre, and using as a multiple the various prices paid in my experience for acreage tracts, I figured that $1,600 an acre would be a fair price for this right of way. I instructed Erkins to see Fairhand and tell him that the company would pay no more than thirty thousand dollars and that we would prefer to condemn it than pay more; also to bring Mr. Fairhand into the office as I wished to see him personally. On December the first, Erkins brought Fairhand in. Fairhand stated to me that he was willing to accept the price offered by the company and that he wished the contract signed that day and that title to the Holland Company to be closed on December the fifteenth. In talking with Erkins and Fairhand it developed that Fairhand simply had a contract on the Nicholson property and had paid a thousand dollars down and title to the Nicholson property would not close until December the fifteenth. In discussing this matter I told Mr. Fairhand that I would not close on a contract with the company and pay him the three thousand dollars preliminary payment when he simply had an

interest in the property of a thousand dollars; that if he wished, he and his wife could sign a contract that day, and then, after title to Nicholson closed, he could come and I would sign it on behalf of the company and pay to him the preliminary payment. Further, I told him that December the fifteenth was entirely too short a time to have the title searched and I did not think that the Holland Company could be prepared to take title before February the fifteenth. Before leaving he requested descriptions in order that he—as he phrased it—that he could get mortgage releases drawn. These were handed to him through Mr. Stock. I instructed Mr. Stock to give them to Mr. Fairhand. There are always four or five of those things drawn up and I don't think it is strange that Riker & Riker may have received a copy.

Subsequently, and along towards December the fifteenth, I instructed Erkins to accompany Fairhand at the closing to insure the title being in his hands before I would sign a contract on behalf of the company. Erkins called me up on the phone on December the fifteenth and stated that he had arranged to accompany Fairhand to this closing and would bring him to the office afterwards. They arrived in the office, as I recall it, in the afternoon, and on Erkins' assurance that Fairhand had title to the Nicholson property I signed the contract on behalf of the company and paid to him the three thousand dollars. After they had departed I thought nothing more about this matter, simply turning the contract over to Mr. Stock as the

usual title and survey work in connection with this property.

I can go on and recite all the way through to the filing of the suit if you wish the developments in this particular matter.

Mr. Speer: If that is not objectionable it would save time.

The Witness: Well, I will carry on. I want to give you the full story to the best of my ability.

Mr. Speer: All right.

The Witness: I took you up to the signing of the contract. Mr. Stock takes the contract and he perfects the details of closing, and Mr. Leshins was supposed to close under his direction.

The statement that Mr. Leshins made during the last hearing that I specifically instructed him to go to Erkins' house without a title closer to close this title is a lie. I instructed him nothing whatever and I did not know at the time of the closing that it was closed at Erkins' house. I don't know those details. We close, as a rule, where the grantor wishes to close, but we prefer to close at the Fidelity offices when possible.

I thought nothing more of this matter until along in March, 1927, Mr. Erkins, in a conversation, stated that Mr. Fairhand was perfecting his plans for development of the property, that he was taken seriously ill and that his brother, who Fairhand had delegated to do the work, had asked him for certain assistance during his off time, Sundays and evenings, and his advice in connection with this work, and further asked me if I had any

objection to his helping him on his off time. I told him that there would be no objection, but, of course, he must not use the company's time.

Nothing else occurred until on a tour of inspection in the vicinity, I might say, the day before Decoration Day, while driving in that direction I noticed a tent on the property and, on driving down there, I found Mr. Shea and several brokers, talked to them a while, and, in leaving, I drove up the new highway known as Longview and Clifton, which is about five thousand feet on through the property, new developed road. Nothing more occurred to bring this to my mind until along in August, 1927, and I was in the office of Riker & Riker talking with Mr. Pollard in connection with the right of way through the Borough of Chatham, land for this same line, and Mr. Pollard passed the statement that Mr. Nicholson—or words to that effect, that Mr. Nicholson was dissatisfied with this deal and intimated it was a put-up job. I told Mr. Pollard I was very much astonished to hear this and if Mr. Nicholson had any doubts as to the standpoint of the company or as to the position of the company in this matter, I would like for him to arrange for an interview and have him come over and see me and talk the matter over. At that time Mr. Pollard said he would try to arrange the interview either in my office or at his office. This was never accomplished and the next word we had was the filing of the suit.

The Court: Now, are there any other details you want to bring out by questions?

New Jersey State Library

Q Did you know about the purchase of the so-called Hatton tract? A Yes, sir.

Q Can you tell us the details of that purchase? The name has been brought up here this morning. A Harry Hatton, as I remember it, owned two lots and had a very good title to two lots, and he owned an additional two lots to which he had simply a thirty year tax title. When the question of purchasing these four lots came up, it was necessary for me to refer this to our Legal Department as well as to Mr. Barker as to whether they wished to purchase this tax title of these two lots from Harry Hatton or purchase the two lots to which he had clear title and then the tax title lots. Our Legal Department ruled that we should purchase all of Hatton's interest in the four lots, and I notified Erkins to that effect and instructed him to sign a contract for these four lots.

Q Did Mr. Erkins investigate and find out the facts about the Hatton property? And did he report to you about the Hatton property? A Yes; he reported to me about the Hatton property. I believe he received his information through Mr. Shea where he received a lot of his information.

Q Do you know whether Mr. Erkins was present at the closing of the Hatton deal? A I don't know. It may be possible Mr. Erkins signed that contract in the office and it was delivered to Mr. Shea to give to Mr. Hatton.

Q Did you take up the details of that contract and the question about our accepting it with any member in the Legal Department of the company? A Yes, sir.

Q Then the contract before it was sent out for signature was approved by the company and also by you? A Yes.

Q And whoever signed the contract had the approval or understood that the company had approved the contract? A Yes, sir.

Q Did you ever engage Mr. Fairhand or authorize anyone else—Mr. Erkins for instance—to engage Mr. Fairhand to represent you or the Public Service Electric & Gas Company— A No, sir.

Q —in acquiring the Nicholson tract? A No, sir.

Q Do you have any knowledge or did you have any knowledge that Mr. Fairhand in his transactions regarding the Nicholson property acted for or in behalf of the company? A No, sir.

Q The Nicholson contract, who approved that before it was signed? When I say the Nicholson contract, I mean the contract for the purchase of the property formerly belonging to Mr. Nicholson. The contract was signed by Mr. Fairhand. A The contract between Fairhand and Holland Company was approved by myself.

Q Did you so tell Mr. Erkins that it was approved and that it would be all right to have it signed? A I signed that in my own name.

Q You signed that in your own name? A Yes, sir.

Q I show you Exhibit C. 12 and ask you to look at the so-called water mark on that paper, and tell us what it is? A That is a commercial paper known as Public Service Bond.

Q Has the word "Public Service" any significance in that paper? A It has no special significance at all. This is a commercial paper in common usage.

Q How do you know it is in common usage? Have you attempted to trace or have you pur-

chased the same paper anywhere else? A Yes; the general public can purchase that paper at any leading stationery store.

Q I show you a piece of paper marked with the water mark "Public Service Bond." I ask you did you purchase that paper? A I did, sir.

Q And where did you purchase it? A I purchased that paper at the stationery store of Thomas H. Cox & Son, 516 Broad street, Newark, New Jersey.

Mr. Taliaferro: I would like to introduce this paper in evidence.

The Court: Let it be marked.

(Paper marked Exhibit D. 3.)

Q Does Public Service, to your knowledge, still use paper which is marked with the water mark "Public Service"? A They use several brands of paper but different water marks. I don't know whether they use it now or not. I don't pay much attention to water marks.

Q To your knowledge it was never discontinued? A No. The paper was never discontinued.

Q And isn't it a fact that the paper that was used by the company is purchased by the purchasing agent? You have nothing to do with it? A No, sir.

Q Or with discontinuing the use of any particular kind of paper? A No, sir.

Cross examination by Mr. Riker.

Q Mr. Saunders, did you buy this Exhibit D. 3 in the first stationery store you went into? A No. To save myself time I called up different stationery stores.

Q How many did you call? A Grover Brothers and Cox, just the two.

Q They did not carry it? A They both carry it.

Q They both carry it? A Yes, sir.

Q How did you happen to go to this one? A Because it was on my way down to the office. I simply had to stop this morning.

Q Did you find any stationery stores where they do not carry it? A No, sir.

Q How many stationery stores did you inquire at? A Two.

Q Do you know, as a matter of fact, whether this Exhibit C. 12 was prepared in the Public Service office? A I don't know as a matter of fact that it was, nor would I say that it was not.

Q Does Mr. Shea work for the Public Service? A No, sir; he does a little work, yes, but he did not prior to the time we bought the Fairhand property.

Q Was he doing any work about the fall of 1926? A The fall of 1926 the field representatives were securing information through him, but he was the representative of the sellers, of the owners.

Q Did he at that time do any work for the Public Service? A No, sir.

Q Did he ever receive any money from Public Service about that time, to your knowledge? A Not to my knowledge.

Q Titles to various pieces of property were taken in the names of Erkins, Leshins and others, were they not? A Yes, we used various names of employees.

Q Were all those contracts submitted to you? A Every contract signed or taken in behalf of the company passed through my hands.

Q Who prepared the contracts? A They were prepared at different places: sometimes the owner's attorney; sometimes we would at the request of the owner; and there was no set rule as to that.

Q Who negotiated these contracts? A I negotiated the contracts.

Q Did you see Mr. Hatton? A I have seen Mr. Hatton.

Q Did you see him in the negotiation of that contract? A No. I simply saw Mr. Hatton at the closing of the title.

Q Was it your practice to see the purchasers prior to the closing of the title? A No, not always. Some of them I see. You mean the purchasers or the sellers?

Q The sellers, I mean. A Not always. I would some of them. A great majority I will say that I do not see.

Q Isn't it a fact that these details are all worked out by the field agents, as you call them, Mr. Erkins and others, and then the result of their negotiation is put in the form of a contract? A No, sir, that is not a fact; they have absolutely no discretion as to price or actions in the field; they cannot negotiate.

Q They are there to find out what the sellers will sell for, aren't they? A Yes, sir.

Q And they come to a tentative agreement with them, don't they? A No, sir; not at that time.

Q What did they do? "Not at that time," when did they do it—when do they do it? A When I tell them to.

Q Oh, they find out what the sellers will sell for— A Yes, sir.

Q —and they come down and tell you? A Yes, sir.

Q And you say, "That is all right"? A If it is all right, yes.

Q And then they go up and tell the owners that the proposition is O. K., and they will have it put in the form of a contract; is that right? A Yes.

Q And the entire negotiation, so far as the owner and seller is concerned, is through Mr. Erkins and other people in his position? A No, sir; he does not negotiate.

Q Let us not trouble about the word "negotiate"; he is the only man that talks to the owners, isn't he? A Not always, no.

Q In many cases? A Yes, in many cases he is.

Q And he is authorized to do that, too, isn't he? A Authorized to do what?

The Court: No. Don't argue with counsel, just answer the question.

The Witness: Your Honor, the question is not clear.

The Court: Very well, repeat it, Mr. Salmon.

The Witness: I don't know what he means by that.

Mr. Speer: I will object to the question, your Honor pleases.

The Court: I think I will sustain the objection. Make it a little more clear.

Q Is Mr. Erkins, in these cases where he is the only one that talks with the owners and the sellers, authorized to tentatively come to an agreement upon the terms of the property to be sold? A No, he is not authorized to do that.

Q What is he authorized to do? A He is authorized to bring to me the price for which they will sell.

Q Yes. A If that price be a thousand dollars and I think the company should pay no more than five hundred, I then tell him—"tell Mr. Smith," or whoever the owner may be, "that the company will not pay more than five thousand dollars. If that is agreeable to him, we will enter into a contract."

Mr. Speer: You meant five hundred there—

The Court: Yes.

The Witness: Yes.

Mr. Speer: As an illustration.

The Witness: As an illustration; he is simply my mouthpiece.

Q Then Mr. Erkins goes back to the owner and he tells him what an agreement can be made at; is that right? A He tells him just what I tell him to tell him.

Q Does he have to use the exact words? A No, he doesn't have to use my exact words. He can say to the owner, "The company won't pay any more than five hundred dollars," or, "Mr. Saunders says he won't pay any more than five hundred."

Q But he tells the owners the conditions under under which you will buy the property; is that right? A Yes.

Q And then all that is left to be done is to have that put in the form of a written contract so that it will be binding on the parties. A Yes, sir.

The Court: No, that is not right. They will probably go back and tell Mr. Saunders, "We want seven hundred and fifty."

Mr. Riker: All right.

Q And when a tentative agreement is arrived at, that is all that remains to be done; is that right? A I didn't get that.

Q I say, when a tentative agreement is arrived at between the owner and Mr. Erkins, all that remains to be done is to have that put in the form of a written contract? A Yes; when the owner meets the price I tell Mr. Erkins to submit to him. Oft times the owner changes his mind and wants a little more, but all that remains is to get the contract signed.

Q When was D-2 prepared? A I am not familiar with the map.

Q The map you identified in showing the whole line. A That was prepared between the date of the last hearing and now. It has an exact date on it, but it was completed about three days ago, to be used for that date.

Q It shows the black line on there as the line of this transmission line? A Yes.

Q When was that location determined? A The location was determined—the amended location through the Borough and Township of Chatham, I think, was finally determined in February, 1927.

Q What part of February? A Oh, I couldn't say exactly. I would think the early part of February.

Q The first? A No, I wouldn't—no, it is too big a job.

Q Wasn't the line, so far as Nicholson's property, definitely determined in December? A Definitely determined in November.

Q In November? A As respects—

Q What time in November? A It was definitely determined when Mr. Kentz finished his survey and that was a few days after I first learned that Fairhand had purchased the property. I would say somewheres around between the fifteenth and the twentieth of November.

Q How do you remember it was that day? A How do I remember it was that day?

Q Yes. A Or approximately that day?

Q Yes. A I knew that I did not give instructions to start the survey until after I heard Fairhand had bought the property and I knew that—I heard Fairhand had bought the property—was a day or so after he had purchased it, and I knew it was around that time.

Q Did you ever see the form of contract that was prepared between Nicholson and Fairhand under date of November 8, 1926, which is marked Exhibit C. 6? A No, sir.

Q Do you know, as a matter of fact, whether that was prepared in the Public Service Building? A No, sir.

Q You don't know? A No, sir.

Q Never saw it before? A No.

Q Did you know of any of the terms that were incorporated in the contract between Nicholson and Fairhand before that contract was executed? A Before the contract was executed?

Q Yes. A Between Nicholson and Fairhand?

Q Being executed November 12, 1926? A No, sir.

Q When did you first hear of it? A I first hear of Fairhand buying the property?

Q Yes. A I first heard of it around the middle of November. I couldn't say the exact date. Possibly the fifteenth.

Q In the early part of November, 1926, was the width of the transmission line of the Nicholson property approximately determined? A No, sir.

Q Didn't you say it was about 220 feet there? A 225 feet was the original width through the Nicholson property.

Q When was that determined? A That was shown on the original map April 26th, but the width was greatly increased.

Q What was it finally? A The width finally now is a little over 100, possibly 125 feet.

Q When was that changed? A You mean, when it was determined, the width?

Q Well, determined finally. A As allocated. In November, 1926, around the 20th.

Q You knew, as a matter of fact, we will say, on the first of November, 1926, that the total land required for your transmission line where Nicholson's property was would not in any event be more than twenty acres, didn't you? A It was considerably more than twenty-acres if we followed the 225 foot program.

Q That was not necessary, though, was it? A Necessary?

Q To follow the 225 foot program. A It was necessary if they went along with the original plans to take off from Lambertville to the Passaic river.

Q It was not necessary to do that, was it? They didn't do it. A Not until—they amended it after I suggested—

Q You said that you went over this property, the former Nicholson property, over a road 5,000 feet long? A Yes, sir.

Q Is that right? A Yes, sir.

Q What is the name of the road? A That is what is known on the map as Longview avenue and Clifton. It extends from River road to Fairmont avenue and is the road which Mr. Nicholson called eight hundred feet long.

Q How did you go over it? A I went over it in a touring—in a sedan automobile.

Q How fast did you go over it? A Well, I don't suppose I went much over—

The Court: You ought not ask him to incriminate himself.

Q What gear did you run in? A I don't recall—

Q Did you run in first, second or third speed? A Well, I can't recollect whether I went first, second or third. I might have been in all three. It is a hill.

Q Well, you ran slowly, didn't you? A Well, I didn't go as fast as I would go on a concrete road, no.

Q What kind of a road is it? A It was a dirt—a dirt road, some gravel in it.

Q How much improved was it? A Well, it was graded throughout the entire distance for a width of approximately thirty feet or general roadway width.

Q When did you do this? A I did this either a day or two before Decoration Day.

Q This year? A No; 1926.

Q 1926? A No; I beg your pardon; 1927.

Q Does the road look anything like this picture which is a part of Exhibit C. 28? A I couldn't identify it by that picture.

Q Was it a better road than that? A Well, this has vegetation growing on the roadbed and that did not at that time. I don't know. I can't tell from a picture the condition of the road. I would say it was substantially the same sort of a road.

The Court: It looks like a country dirt road to me.

Q How do you know it was five thousand feet long? A Clocked it up on my speedometer. Afterwards, during the last year, I scaled it on the map, checked it.

Q What improvement was done in that road? A What improvement?

Q Yes. A Well, there was some cut and some fill. As to the depth, I don't know as to the fill. It was graded and the gradient was fairly light. There was no abrupt ups and downs, it was a fairly steady grade.

Q Was that road finished for use to get to the Public Service towers that go through there? A As I have been over it, it was absolutely no use to go to the Public Service towers.

Q Didn't it come anywhere near them? A No, it didn't come anywhere near them. It came within, oh, possibly nine or ten hundred feet.

Q Not within five hundred feet? A Nine or ten hundred feet of the line.

Q How do you know that? A Because I have a map and I remember the distance from that road over to the right of way.

Q Did you measure it? A I scaled it on the map.

Q When? A Since the last hearing.

Q Were there any other roads on the property? A Yes, I saw roads on the property at that time.

Q Describe them. A Well, I think I would have to have the map to describe them. There were three roads extending from River road down towards the river.

Q I mean particularly as to the nature of the roads and improvements, what did it look like? A I didn't go into it in detail. It simply looked like fill, new roads, dirt fill, some places they were cuts, and the trees were grubbed out, cleared.

Q It was nothing more than rough grading, was it? A Well, I would say a little more than rough grading; in some instances, Mr. Riker; there was gravel put on to give body to it in some instances.

Q Wasn't there gravel right there? A I don't know that there was.

Q You don't know that there was not? A No, I don't know that there was not.

Q Didn't you know, as a matter of fact, that Mr. Erkins, and other of your so-called field men, actually made contracts for the purchase of certain tracts of land themselves, without any approval of yours or Mr. Barker of the contract? A They did not, no, sir.

Q You are quite sure about that? A I am positive. We would not accept such a contract.

Q How is that approval evidenced? A The approval is evidenced by initialling an office copy of the contract and others by verbal approval.

Q What was the usual custom? A The usual custom, if a contract was submitted to the Legal Department, the Legal Department usually

initialed it and I followed it with mine. On an ordinary deal, where there was no complications, why, it was simply done by verbal approval.

Q In this Hatton contract, Exhibit C. 16, was that the property to which Hatton had good title or was that the tax title? A That covered all four lots, Mr. Riker, I believe, if my memory is is right.

Q They agreed to take them all? A It does; it covers all the lots.

Q Do you recall whether that contract was submitted to the Legal Department? A The conditions of the title were submitted to the Legal Department. Whether or not the contract itself was submitted, I don't know, but the conditions of the title were submitted.

Q This contract was not approved in writing upon its face by anyone, was it? A Well, I haven't noticed. You see, the owners' copies have no initials on them whatsoever. It is only the office copy.

Q Well, this has not been approved. Do you know whether the office copy in that case had any approval on it? A By initials? It had approval verbally or by initials. Now, I don't know whether it had initials on it or not, no, sir.

Q Who approved it? A I approved it.

Q How do you recall that? A I approve every contract that is taken by the company.

Q Mr. Barker approve any of them? A Some of them, yes.

Q You also approve the contract that he approves; is that right? A I submit the contract he approves to him for his consideration and outline the conditions.

Mr. Riker: That is all.

NOON RECESS.

RALPH E. GERTH, sworn for defendant.

Direct examination by Mr. Speer.

Q Mr. Gerth, you are a real estate agent and auctioneer, are you not? A Yes, sir.

Q And where do you carry on business? A We have a Newark office in the Military Building, Park place.

Q And do you carry on business throughout the State of New Jersey? A National organization, yes.

Q And have you an assistant by the name of Bernard Frank? A An employee by the name of Bernard Frank, yes.

Q Now, you conducted, did you not, an auction sale of property in Chatham, known as the Long View Gardens? A We conducted an auction sale there last year, yes.

Q And that was on the 27th, 28 and 30th of May, was it not? A Advertised for the 27th, 28th and 30th, right.

Q Now, on the occasion of the 28th of May, you were on the property, were you not? A Yes, sir.

Q And did a man by the name of Robert H. Steele come there that day and talk to you? A Yes, he did.

Q Mr. Steele has sworn that he came over and started—or, that you came over and started talking to him and his friend, Mr. Thompson, and that he asked you if you knew whether the auction was going on and you said the auction was not going on, that there was nobody there, that the thing was a flivver, it was just a sham, it was never intended to be an auction, that they had not spent any money in advertising, that

they had shown his man—your man, a piece of property nearer town and he made arrangements and when he got there he found it was out there, he found it was three miles out from town and he had been shown a tract a mile from town and he said that you had been given five hundred dollars for staying around the second day, that the auction was just a sham and that Mr. Nicholson, the owner—the original owner, was going to have the property thrown back on his hands and that you were sorry you were ever connected with it. Did you tell Mr. Steel anything like that? A I had a conversation with Mr. Steel, but a lot of that is news to me.

Q Won't you tell us just precisely what—(interrupted)

The Court: Did you say that or not?

The Witness: No.

Q Won't you tell us just precisely what you did say? A We had the auction on Friday the 27th—I think it was on Friday—and there wasn't enough there, not enough there to start the auction, so we adjourned it until Saturday and there weren't enough buyers there on Saturday to have an auction, in the sense of having a real auction. Several onlookers came, spectators, and one car stopped there containing Mr. Steel and two ladies, I believe, and another man, and I introduced myself to them. Mr. Steel introduced himself to me and he wanted to know when the auction was going to start. I told him I guessed there was not going to be any auction. I conversed with Mr. Steel with a certain degree of levity. I believe I did mention—I won't say "I believe I did"—I did mention to him it looked

very much to me like an accommodation sale by the Public Service. By that I meant—and I had no reason to think otherwise—that the man had sub-divided the land, spent his money in good faith—the sale was a flivver due entirely, or to a great extent, at least, to the condition of the market at that time, and it looked to me as though the property would go back to the original holder, and in the meantime he had accommodated the Public Service by selling them a right of way through it. Now, that is what I intended to tell Mr. Steel and nothing more.

Q You did not tell him or intend to tell him that the sale was a sham, did you? A No, I didn't use that word. I didn't—

Q So far as— A —I did not intend to convey that impresison to him. We made a whole-hearted attempt to put on the sale there.

Q And so far as you knew from the employment you had, the sale was a bona fide sale? A It was a bona fide attempt to put on a sale.

Q Yes. And if anything you said there conveyed any different impression, you did not mean to convey that impression, did you? A That is just right.

Cross examination by Mr. Riker.

Q You are not prepared to say, however, that you did not say what Mr. Steel testified that you did say and Judge Speer has just read to you? A I don't remember saying that to Mr. Steel.

Q Are you prepared to say that you did not say to Mr. Steel that the sale was a sham, or words to that effect? A I am prepared to say that I did not say to him that it was a sham.

Q Or words to that effect?

The Court: He says he said it was a flivver. I don't know whether a flivver is a sham or not. I thought it was a Ford car.

The Witness: I joked with Mr. Steel about the sale and the fact that there was not going to be a sale.

Q Never mind telling us about whether you joked or not. Please answer my question. Did you say it was a sham, a gesture, or other words to that effect? A I don't remember saying that, no.

Q Will you say that you did not say that? A I will say I didn't remember—I don't remember saying it. I may have used the word, but I don't remember saying it.

Q Did anybody make a deed? A We sold some lots, not at the public auction, but during the auction we had occasion to sell some lots and we did sell some. Some of my salesmen sold lots there.

Q Title conveyance? A No.

Q Contract signed? A We took and gave a temporary receipt, yes.

Q Were they bona fide purchases? A Yes.

Q Sure about that? A I am sure to the extent I have not received the money in return from the buyers.

Q Sure they were not just dummies put there to pay your own money to make it look like a sale? A No; there were bona fide buyers there which offered prices which I rejected.

Q No contract was made then, was it? A In one instance we accepted some money, that is, money was accepted by one of my employees in my absence.

Q Was it returned? A It was returned by me.

Q Did you ever say anything to Mr. Steel to the effect that this was never intended to be an auction? A No.

Q Nothing like that? A Nothing like that, no.

Q Did you ever say to him that they had not spent enough money in advertising? A I didn't say that. I didn't make that statement. I might have criticized the amount of money they spent in advertising, but I did not criticize the fact that they had not spent any money in advertising or not enough. They might have spent more. I believe I told Mr. Steel this, that if we had taken entire charge of the advertising campaign and put on the kind of a campaign we usually put on, the sale might have gone over. I do remember saying that to Mr. Steel.

Q Your criticism to him was then that they had not spent sufficient money, is that right? A I wouldn't say that I criticized the amount of money, because I didn't know how much they had spent.

Q Well, you conducted it, didn't you? A We conducted it, but we did not handle the advertising. Our advertising manager worked for them and wrote the copy, but they had their own printing done.

Q What did you do? A We advertised a sale and outlined the kind of advertising they were to do.

Q What was that? A That was contained in a budget which I approved and usually—and in this case that budget included newspaper advertising, broadsides, arrows, road signs, and in connection with the Chatham sale we specified

two road banners, that is, banners to be hung over the road.

Q Was that done? A That was all done, yes.

Q It was all done? A All done. We had—they had the banners up, they had road signs up, they had arrows up, and, with the exception of possibly a large sign on the property, everything was done, the property was put in very good shape for the sale.

Q Why, in your opinion, was it a flivver, then? A The sale of that property was impossible under these—those conditions. In other words that during the month of March, during the month of February people all over this part of New Jersey were anxious to buy property. During the end of May that desire seemed to subside until we got the condition that we are experiencing today. In other words, it got going from bad to worse and we laid a great deal of that to the market at that time.

Q What do you mean when you say that they had not done the proper advertising? A We would have put on a whole lot more. In other words, in advertising a campaign in Chatham like that would entail the expenditure of five to seven thousand dollars.

Q Didn't you outline the advertising that was supposed to be done there? A We had to keep it in the limit that Mr. Fairhand agreed to spend.

Q What was that? A Twenty-five hundred dollars.

Q That was spent? A I should say they spent at least that.

Q Do you know whether it was spent or not? A I should—I don't know. I didn't spend it. They spent it.

Q All right. If you don't know, that is all I want. Did you say to Mr. Steel anything to the effect that you or your representatives had been shown a different property and later found out that this property was further out from town than the one you had been shown? A I did say to Mr. Steel that the first time—he asked me if I had seen the property before the auction, or why I took a property way out from town that way. I told him this—

Q Can't you answer my question? Did you say anything to that effect that you had shown —(interrupted) A I did say something to that effect.

Q In what way? A I will tell you. I told Mr. Steel that some time after we signed the contract that one of my representatives took me out to look at the property and showed me a piece of property, similar property, much nearer the town of Chatham and that he represented to me as being "the property that you are going to sell at auction" and I pronounced it hardly salable and upon that condition I agreed to put on the sale at a very advantageous time, which came along Decoration Day week. Now, on a subsequent visit to Chatham we found that the property that we were actually going to sell was located considerably further from Chatham than the property I had first looked at.

Q Did you say anything to Mr. Steel about having been given five hundred dollars to stay there for the second day? A I did not mention five hundred dollars.

Q Did you mention any figure? A I did tell Mr. Steel that we charged an additional amount for maintaining our organization the second day, yes.

Ralph E. Girth, cross.

Q And that they had paid or were going to pay you? A Mr. Fairhand I believe—Mr. Fairhand paid in my presence our cashier for agreeing to leave the tent up and our organization there after we decided that we would discontinue the sale.

Q How did he pay you that money? A He gave us a check.

Q His own check? A Mr. Fairhand gave us his own check.

Q Do you remember that? A Fairhand took the check and gave it to one of my representatives.

Q What bank was it drawn on? A I don't remember that.

Q What was the amount of it? A I am not sure; I think it was $250.

The Court: In other words, Mr. Fairhand wanted you to make another effort the next day and you said that if you did you wanted some more money for staying there?

The Witness: Exactly. In other words, we were not making enough money to keep our men interested in staying there. I had guaranteed the men a certain amount and he would guarantee the men. I remember the check; I don't remember the amount distinctly.

Q Was there any possibility, in your opinion, of the sale the next day being a success? A There is always a possibility of selling land if you take care of the prospects as they come along.

Q Was there any likelihood of this one being a success that second day? A It was a possibility, not a likelihood, no.

New Jersey State Library

Ralph E. Girth, cross.

Q Rather a remote possibility? A There was a possibility. I wouldn't say it was entirely romote, no. It was a possibility. There is always a possibility.

Q Would you say it was very unlikely? A I wouldn't say that it was likely.

Mr. Riker: That is all.

Cross examination by Mr. Roller.

Q Mr. Gerth, you are Mr. Ralph E. Gerth? A Right, yes.

Q Do you recall a sale which was made at that auction to John G. Smith, Jr.? And do you recall writing this letter to Minton & Day? A Yes; I wrote that letter.

Q Do you recall why, or do you know why the sixty dollars was returned by this letter? A Why, I did not consider that a sale that would be to the advantage of the developers or a particularly good buy for Mr. Smith. We were only interested in the extent of ten per cent. commission which meant sixty dollars there, and in the interest of good real estate ethics I returned it to them and notified Mr. Frank to notify Mr. Fairhand that we had returned the money. If we had had a lot of sales and a lot of money turned in we would have turned over the report to Mr. Fairhand with the money, but in this case that was the only sale I saw some real money on, and decided to close the books and account on that sale and return the check.

Mr. Roller: I offer this letter, if there is no objection, of the organization, the order.

(Papers marked Exhibits D. 4 and D. 5.)

BERNARD FRANK, sworn for defendant.

Direct examination by Mr. Taliaferro.

Q Mr. Frank, are you connected with Gerth Company, auctioneers? A Yes, sir.

Q What is your position? A Advertising publicity manager.

Q What was your position in—early in the year 1927? A About the same character.

Q The same character. Did you ever act as agent for Charles Pfitzmayer property in West Caldwell? A Yes, sir.

Q While acting as agent for that property did you meet Mr. Rene Erkins? A Yes, sir.

Q Did you meet Mr. Erkins at a later date? A Yes, sir.

Q Did Mr. Erkins indicate to you that there was a possibility of acting as auctioneer for the sale of certain property in Chatham which a Mr. Fairhand was going to have auctioned off?

Mr. Riker: I object.

The Court: Too leading. I will sustain the objection.

The Witness: May I answer that?

The Court: No.

Mr. Taliaferro: No. Do not answer the question.

The Court: Ask him what he said.

Q What did Mr. Erkins say to you relative to the Fairhand property in Chatham, which was property formerly owned by Mr. Nicholson? A Why, I don't know the exact wording, but it was to the effect that there was a property

out near Chatham that he thought there might be a possibility of getting an auction on.

Q Were you looking for the business? A Yes, sir.

Q Did you solicit that business? A I did.

Q Did you see Mr. Fairhand? A I did.

Q What was your course of dealing with Mr. Fairhand? A Why, I gave him an auction proposition in a letter outlining a campaign that I thought would be feasible and he came into the office and we discussed it and after several meetings, why, he signed a contract.

Q Pursuant to that contract did you have anything to do with the preparation for the auction and the auctioning of that particular property? A I outlined an advertising and publicity campaign.

Q What was done to advertise the sale? A Newspaper advertising in the Newark News, Chatham Free Press, Madison Eagle, Summit Herald, Morristown Record; telephone solicitation by girls in Summit and in Chatham; distribution of 10,000 broadsides; banner over Fairmont avenue as you went to the property; road signs. I think that was about the basis of it.

Q I show you an issue of the Chatham Press dated Saturday, May the 21st—

The Court: You don't want to cumber the record with all that. I think Mr. Riker will admit the advertising appears in these papers, won't you?

Mr. Taliaferro: If he will admit that, it won't be necessary to put it in.

Q I show you a poster and ask you if that was—

Mr. Speer: That is in evidence.

Q —and ask you if this poster—if you recognize this poster and if it was used to advertise the sale of that particular property? A Yes, it was distributed by boys through—pretty much through Newark, Maplewood, Summit, Madison and territory adjacent to the property.

Q Was there any amount stated in the contract to be expended in advertising this particular auction sale?

Mr. Riker: I object to that; it doesn't make any difference what the amount stated was. The question is, what was stated?

Mr. Taliaferro: All right.

Q How much money was expended in advertising? A I couldn't say without going over the record again. I have a record of the expenditures.

Q Well, do you recall any figure, that is, an approximate figure which was spent in advertising? A To the best of my judgment without—I don't know definitely without going over the figures. I would say about two thousand dollars.

The Court: How much?

The Witness: About two thousand dollars.

The Court: Two thousand?

The Witness: Yes, sir.

The Court: All right.

Q As real estate agent in charge of the Pfitzmayer property in West Caldwell, did you arrange for the sale to Public Service Electric

& Gas Company of a right of way across that property?

Mr. Riker: I object to the question. I don't think it makes any difference.

The Court: I will allow it. Did you?

The Witness: Sir?

The Court: Answer the question; did you?

The Witness: Yes, I did.

Q You did? A Yes.

Q What was the acreage value of the Pfitzmayer property?

Mr. Riker: I object to that.

(Discussion.)

The Court: I will allow it for what it is worth.

The Witness: Will you read the question?

(Question read as follows: "What was the acreage value of the Pfitzmayer property?")

The Witness: It was held at $2,000 an acre.

Q What was the acreage value of which the plot was sold to the Public Service Electric & Gas Company for a right of way? A Well, it was about five acres, sold for $20,000.

Q Well, what would that average be?

The Court: That is a matter of computation.

Q $4,000. Have you examined or are you familiar with the Fairhand or Nicholson property in Chatham? A Fairly well.

Q Assuming—are you the man who made the arrangements for this auction sale? A I am.

Q Was the property pointed out to you in advance as the property which would be put up for sale? A Yes.

Q Then you are familiar with the Fairhand tract, aren't you? A Yes, sir.

Q Well, as a real estate expert, assuming that $139,000 was paid for this property and that that gives an acreage value of $830, would you say that the price paid by Public Service Electric & Gas Company which was in the neighborhood of sixteen hundred dollars—would you say that that was a fair market price for the right of way which was taken considering the severance and the damage which was done to the remaining property?

Mr. Riker: I object. It has not been shown he is a real estate agent, and all the testimony is that he is in the employ of Mr. Gerth.

The Court: Perhaps you better qualify him then.

Q How much experience have you had in real estate matters?

The Court: Are you a real estate man?

The Witness: No, sir.

Q Have you ever made appraisals of real estate? A Yes, sir.

Q Did you make an appraisal of the Nicholson property?

The Court: Well, what do you mean by saying you are not a real estate man?

The Witness: I am not at the present time, sir.

The Court: Well, were you?

The Witness: Yes, sir.

The Court: In 1926?

The Witness: Yes, sir.

The Court. Well, that is all right. How long had you been a real estate man up to 1926?

The Witness: About eight years.

The Court: How much?

The Witness: Eight years.

The Court: And are you familiar with the prices around Chatham and Caldwell?

The Witness: Yes, sir.

The Court: Now, assuming that this property was sold at acreage prices, at eight hundred dollars and the right of way was purchased for sixteen hundred dollars, would you say that that was a reasonable price to pay for the right of way, considering the damage to the surrounding property?

The Witness: Well, yes. I cannot—I don't know the severance value—the severance damages.

Q Did Mr. Leshins ever call on you? A Yes, sir.

Q What did Mr. Leshins say to you on that occasion? A He wanted to know if I would testify in the matter of Public Service and Nicholson.

Q What did you tell him? A I said I would gladly testify.

Q Did you tell him what you would testify to? A Well, I told him—yes, how the matter stood, just what happened.

Q What did he say then? A Well, he went —he didn't say whether it would help or hinder, and he just went out, that was all; he made no remarks.

Q Were you ever in charge of any other auction sales which were held in the vicinity of Summit or Chatham about this time? A At a later date, yes, sir.

Q How did that sale turn out?

Mr. Riker: Wait a minute. How much later?

Q This sale was in May. A About three and a half months later.

The Court: How much?

The Witness: Three and a half months later.

Mr. Riker: I object to the question anyway. I don't think it is material with regard to this case.

The Court: I will allow it.

Q Will you answer the question, please? A This is Chatham?

Mr. Taliaferro: Will the stenographer read the question, please?

(Question read as follows: "Were you ever in charge of any other auction sales which were held in the vicinity of Summit or

Chatham about this time?") Witness: Yes, sir. (Question: "How did that sale turn out?")

Q How did the sale turn out? A It was a failure.

Q Were all the usual steps taken to advertise that sale and make it a success?

Mr. Riker: I object to the question. I object to what was usual. I don't know what he means by "usual."

The Court: I will sustain the objection.

Q What did you do to make this sale a success? A You have reference to the Summit sale?

Q The last sale. A Advertised it along the same lines as we usually advertise a sale of that character.

Q What were those lines? A Newspaper advertising, circulars, arrows, bill boards.

Q In other words, every step was taken that you knew to take to make this sale a success?

Mr. Riker: I object to that.

The Court: You did what you could to make the sale a success?

The Witness: Yes, sir.

The Court: And failed?

The Witness: We did, sir.

Cross examination by Mr. Riker.

Q Where was that property? A Which property, sir?

Q The sale you are speaking of now, this other sale? A Kent place Boulevard, Summit.

Q What kind of property was it? A A great deal of it was frontage on Kent place Boulevard, some frontage on Passaic avenue, a diagonal street.

Q Vacant lot? A It was.

Q How many acres? A I don't recall.

Q Five hundred? A No, nowheres near that.

Q Twenty-five? A No, I can't say the amount; it was a small parcel. That is what I mean by that, perhaps seventy five-foot lots.

Q Who was the owner of that property? A A Mr. Johnston of Maplewood, New Jersey.

Q Do you know his first name? A Paul. S. Johnston.

Q How much was spent in advertising? A I don't recall the amount.

Q How do you know the same amount of advertising was done in that one as was in Fairhand's? A Because our campaigns are practically identical. They are changed to meet conditions a bit—but—

Q No matter where the property is your campaign is the same? A I wouldn't say that. They were practically identical. A good deal of that were identical.

Q How do you know two thousand dollars was spent at the Fairhand auction? A I didn't say two thousand.

Q About two thousand. A That is my supposition.

Q Your supposition? A About two thousand dollars.

Q I ask you how you know that? A From what we did on the sale, what we—(interrupted)

Q Did you spend the money? A No, sir.

Q Who did? A Mr. Fairhand.

Q How do you know he did? A Well, the circulars were there. I saw the advertising in the newspapers. I saw the arrows.

Q How many days did it appear in the newspapers? A Several days.

Q How many? A I can't say that now.

Q How much was paid the Newark Evening News? A I don't know.

Q How much was paid any one of the newspapers? A I don't know without going through my records.

Q Have you examined those records recently? A I have not.

Q How many circulars—

The Court: Did you place the money with the newspapers?

The Witness: No; I prepared the copy.

The Court: Then how would your books show.

The Witness: I had a record of how much the campaign was to cost.

Q How many circulars were distributed? A I don't know.

Q Were any? A Well, I fixed—(interrupted)

Q Do you know whether any were or not? A No; I didn't see anybody actually hand one out.

Q You spoke of telephone solicitation; who did that? A I was told there were two girls in Summit—(interrupted)

Q How do you know?

The Court: He was told.

The Witness: Told by the owner.

Mr. Riker: Oh, I didn't hear him say that.

Q You don't know anything about it yourself, then, do you? A I know it was telephoned from—(interrupted)

Q Now, wait a minute. You know there were telephones, is that right? A You didn't let me finish my question. In Summit—in Chatham I heard a girl telephoning.

Q How do you know they were telephoned in Summit? A The owner told me so, that he had two girls working in Summit.

Q Who was the owner? A Mr. Fairhand.

Q Everything you have testified to about the amount of money that was spent and what was done in advertising is something that Mr. Fairhand has told you, isn't that right? A No, sir.

Q Well, what do you know yourself? A I know approximately what the size is in my mind; I know what rates—(interrupted)

Q The size of what? A I know what costs are in advertising.

Q Is that all you know? A Well, I don't know just what you mean by that.

Q As to the advertising that you have testified was done in the matter of this auction sale and the cost of it. I am asking you do you know yourself, not what somebody has told you. Now, will you answer that? A I know what campaigns of like nature cost.

Q Is that the best answer you can make? A I don't know. What do you want me to say, that I don't know what was actually spent?

Q I think you have already said that.

Mr. Speer: Is that an answer or a question, Mr. Riker?

Harold P. Leshins, recalled.

The Court: It is quite apparent that he does not know what the cost was.

Q When Mr. Leshins interviewed you, asking you whether you would testify, did you ask for any figure of money as a condition? A Did I ask for any figures?

Q Of money to be paid to you before you would testify? A I did not.

Q Sure about that? A I said I did not.

Q I ask you whether you are sure. A I said I did not.

Q Did not ask for twenty-five hundred dollars? A I did not.

Mr. Riker: That is all.

The Court: Is that all?

Mr. Riker: That is all.

HAROLD LESHINS, recalled.

Examined by Mr. Speer.

Q You say you saw Mr. Frank on the stand just now? A Yes, sir.

Q Did he ask you for twenty-five hundred dollars to testify in this case? A Yes, sir.

Q He did? A Yes, sir.

Q What did you tell him? A That I was not in any position to talk about any money, that I was in cooperation with Riker & Riker, that anything that was done in the office had to be done with their knowledge and consent and that I would discuss the matter with them and report back to them.

Q Did you discuss it with them? A I did.

Harold P. Leshins, recalled.

Q And did you report it back to him? A No, sir.

Q Why not? A Because we were not going to pay any money for any testimony.

Q What did you want with that ten thousand dollar contract that you had with Mr. Nicholson? A That was based on conditions that Erkins was to supply testimony and that he said it would cost him an awful lot of money to pay these men for all the trouble and expense that they would have to go through before they would be through with the trial, and he asked for more than ten thousand; he wanted twenty thousand and then cut it down to fifteen and down to ten.

Q And you got the ten thousand dollar contract to pay him for this testimony? A No, sir.

Q What did you get it for? A It was a tentative contract. The contract was never really passed over, just a stipulation that if we could get Erkins' testimony and all the testimony that he said he could produce in the form of affidavits, that then that money would be used to disburse for these various incidents.

Q To whom? A To people that he said he could get to testify.

The Court: This exhibit says nothing whatever about Erkins. I took it out and read it at lunch. It says nothing whatever about Erkins. It says if this man can produce the testimony and win this case he is to get ten thousand.

Mr. Speer: Correct, sir, and I was just showing by him now that the ten thousand that he says he was to get, was ten thousand that he was to pay over to Erkins, the result

of which would be that he would get nothing at all. I just wanted to bring that fact out and that is all I want to ask Mr. Leshins.

The Court: Is that all?

Mr. Speer: Your Honor please, we have a witness who has been instructed to be here—it is the only other witness we will produce—by the name of Allen H. Somerville, a civil engineer of Caldwell, New Jersey. We have had him make a complete investigation and a detailed estimate of the part of the development that was done at Long Hill Gardens (Long View Gardens) in Chatham Township on the property in question in this suit, showing on it the expenditure that was required to be made in order to put these roads in and make the improvements there would be approximately $16,306.95.

The Court: I cannot admit it.

Mr. Speer: I am not asking you to, your Honor. I know you cannot. I only want to tell you that we have this witness and I was wondering whether it would be possible to go along having advised the other side of what it is we intend to prove by Mr. Sommerville. We will close our case except for him, and then go along with the testimony on their side and when he comes we will put him on, so that they will not be taken by any surprise at all. I will let them see the paper if they want.

Mr. Riker: I don't think that what Mr. Sommerville may testify, the cost of some hypothetical improvement, has anything to do with this case. It is a case of proving what the expenditures were. I think if they do

not do that, that Mr. Sommerville's testimony is not admissible.

The Court: I won't—you must close your case, Judge. I cannot wait for any more testimony.

Mr. Speer: All right, sir. The case is closed.

The Court: I regret Mr. Sommerville is not here. Now, have you any rebuttal?

Mr. Riker: Yes, sir.

ROBERT S. POLLARD, recalled.

Direct examination by Mr. Riker.

Q Mr. Pollard, I show you Exhibit D. 1 and ask you the circumstances under which that was executed? A Mr. Leshins called at my office, I should say, approximately three months before this case was to come up and asked if I would give him Mr. Nicholson's address. I told him Mr. Nicholson was then in California. He wanted to get in touch with him, he said, about this case. I asked him if there was anything I could do with respect to it. He said he wanted to see him with regard to some testimony that he would be able to produce and wanted to engage him as assistant counsel. I suggested that before he did that that he see Mr. Marsh, who was handling the case for us. He did see Mr. Marsh and the circumstances as presented were that Mr. Leshins would be able to produce a number of witnesses—the exact number of which were not stated—who could testify to facts that would absolutely settle the case in our favor; they

would also be able to produce documentary evidence of great value. These witnesses, so he stated, some of them stood to lose jobs; it would cost others a great deal of money. He wanted a retainer. The amount was not named in the first instance—in order to enable him to investigate, assemble this testimony and pay all of the expenses. I told him that it was very unusual. We wanted to know first what the expense was and what he could obtain in the way of evidence. He said he would go back and see the people which he represented, which he did, and returned to us and stated that they had all talked it over and they thought that the least they could do it was for ten thousand dollars. I said, "We will get in touch with Mr. Nicholson and see what he has to say about it." I telegraphed to him and Mr. Nicholson came on from California. The contents of the agreement are now before the Court. And he agreed on behalf of Mr. Nicholson and he also agreed personally that this agreement should be executed—delivered on condition that the evidence produced was of the value stated. In other words, that they should produce this evidence before the trial, tell us what it was going to be and on the further condition imposed by us that if the agreement went into effect it should be presented to the Court before any of the evidence was introduced, the entire situation laid before the Court so that there would be no question as to the ethics of using the testimony. The agreement was signed by Mr. Nicholson, who returned to California, and was left in my safe for—pending delivery of the conditions named, which conditions were never met. The agreement was never delivered and it never went into effect, be-

cause the conditions under which it was given in effect were not met. Mr. Leshins, a short time before the case was to come up, came to us and stated that apparently the parties who were going to give this testimony were backing out, told us who some of them were, one of them was Mr. Erkins. He then stated that Mr. Erkins would like to see us about it. He said he could not make out what the difficulty with Mr. Erkins was. This is beyond the answer to your question. Do you want me to go on with it? I have outlined the circumstances of this agreement. It was cancelled because the testimony could not—(interrupted)

The Court: Well, you saw Mr. Erkins, you say?

Q Tell us about your interview with Mr. Erkins.

The Witness: Yes. Mr. Leshins made an appointment with Mr. Marsh and me to go over with him to see Mr. Erkins in Long Island which we kept. Mr. Erkins was questioned with respect to the testimony which he was to give and why he now did not care to give it. His answer was that on calm thought he had decided it would be far better for him to keep out of the State of New Jersey; that he considered that not only he himself, but that several other parties would be subject to prosecution for criminal conspiracy, if they entered the State of New Jersey, and that he and Mr. Fairhand had consulted a New York attorney who had advised him to keep out of this state. And we asked him whether or not we could have a

commission issued to take his testimony in the State of New York, inasmuch as we wanted the entire facts to come before the Court. No, he thought it would be far better for his skin to keep out of the whole situation. We asked him if he could get Mr. Fairhand to come over and he said, "Why, he has also consulted his attorney and he thinks he better keep out of it, but have no objection to your going to see Mr. Fairhand."

Q Did you ever see him?

Mr. Roller: Your Honor please, I want to claim we are not his attorney in that case.

The Witness: Have I ever seen Mr. Fairhand?

Q Did you see Mr. Fairhand after that? A No; I have never seen him since the closing of the title.

Q About a week or so before the first hearing—the first hearing being on May 14th, I think —was there a telephone conversation between Mr. Erkins and Mr. Leshins which you overheard? A There was. Mr. Leshins came into the office and said that Mr. Erkins had left word for him to call him, so he called him, or our office, and the telephone was hooked up three ways. I listened on one of the phones. They greeted each other and Mr. Erkins says, "I am going to testify for the Public Service. I thought I ought to let you know about it." And Mr. Leshins remonstrated with him and he said, "Are you going to repudiate all you told me?" He said,

"Yes, I am, and I am not going to get in a jam over this matter." There were other protestations on Mr. Leshins' part, all of which met with refusals from Mr. Erkins.

Cross examination by Mr. Speer.

Q Do you desire to have us understand, Mr. Pollard, that this contract that you say was executed on condition was never out of your safe? A No, sir; I don't say that.

Q Well, was it? A It was out of the safe.

Q Well, where was it? A Mr. Leshins stated that he had to show it to these parties to show them that he had it in order to get them to come over to us, so after it had been in my safe about a month it was—(interrupted)

Q So that you did deliver it on that occasion to Mr. Leshins in order that he might take it over and show it to whomever the witnesses were whose testimony he desired to procure by virtue of it? A Yes. As long as he would not let it out of his possession.

Mr. Speer: I think that is all.

The Court: That is all, sir.

JOHN J. NICHOLSON, recalled in rebuttal.

Direct examination by Mr. Riker.

Q Mr. Nicholson, do you recall the occasion when title was closed of your property to Mr. Frederick Fairhand—do you not? A Yes, sir.

Q Do you recall anything being said by you and any reply being made by Mr. Erkins as to the money that was paid, at that time? A Yes.

Rene F. Erkins, recalled on rebuttal, direct.

Q What? A When the fourteen one thousand dollar bills were paid over by Mr. Fairhand I said to—before Mr. Erkins and Mr. Fairhand, I said, "Aren't you afraid to carry around so much money with you?" And Mr. Erkins remarked, he says, "No; we had to pick it up," he says, "at two or three banks in a hurry." Something to that effect.

Q Are you sure it was Mr. Erkins that said that? A Yes, positive.

Q Did anyone ever negotiate with you concerning the sale of this property except Mr. Erkins, up until the time that the contract was actually signed? A I never saw or talked with anyone except Mr. Erkins. All my negotiations were with Mr. Erkins.

Mr. Riker: That is all.

The Witness: And I never heard of Mr. Fairhand until the day he was introduced to us to take title. Never saw him.

Mr. Riker: That is all.

Mr. Speer: That is all.

The Court: Anything further?

RENE F. ERKINS, recalled in rebuttal.

Examined by Mr. Speer.

Q Mr. Erkins, you heard Mr. Pollard say that you had said to him, and I think Mr. Marsh and someone else, that you did not want to come over here because you did not want to be taken up for criminal conspiracy, or something to that effect? A I heard him say that, yes, sir.

Robert S. Pollard, recalled on rebuttal, direct.

Q Will you just tell us what was said there by you to them and what you meant by that? A Well, in the first place, I did not say that. What I said was that if I were to give the type of testimony which they required in order to get this ten thousand dollars that I would not do that and come in the State of Jersey, or any place, because I might be subject to criminal prosecution for attempting any such thing and therefore I would not do it and on advice of my attorney I would not even listen to it.

Mr. Speer: That is all.

Cross examination by Mr. Riker.

Mr. Riker: May I ask Mr. Pollard one question?

The Court: Yes.

ROBERT S. POLLARD, recalled in rebuttal.

Direct examination by Mr. Riker.

Q Where is Mr. Marsh? A Mr. Marsh is in Europe.

Mr. Roller: I would like to say this out of justice to our position as far as Frederick Fairhand is concerned, that we did not think it necessary to produce Mr. Fairhand, inasmuch as the third cause of action, calling for a foreclosure of the mortgage against both Mr. Fairhand and his wife, enjoining releasing her right of dower in the mortgaged premises, has been admitted, and the

other two causes of action, the first and second causes are, we think, quite fully taken care of by the answer, so that we cannot see where it would help matters very much to produce Mr. Fairhand, inasmuch as he admits the third cause of action.

The Court: Well, I think it is very unfortunate that he has not been produced, because it would probably clear up a great deal of this doubt which seems to surround the case. However, he is not here and the case is closed.

The testimony will be written out and counsel can have plenty of time for memorandums, because vacation begins on the first of July. The only thing I will say at this time is this, that I am not impressed particularly with the fact that the property was bought by Public Service in the names of others and negotiations were carried on by others for Public Service. I was connected as counsel and secretary of the Essex County Park Commission for twenty-seven years, and it is a very unfortunate thing, which I learned from that considerable experience, that whenever a property owner thinks that a public or quasi-public corporation desires his or her property, the price increases tremendously and, in order to protect the public itself, these public corporations have to resort to what might perhaps be construed a subterfuge, but which is really for the public good. Now, I know that from my own experience. And, if it be true that Public Service bought property through others, had contracts signed by others, I am quite confident that it was not to impose on the owners,

but it was to prevent the owners from imposing on the public.

Now, of course, as I see this case now, the first thing to decide is whether or not this man, Fairhand, was an agent of Public Service. Assuming he was and assuming that Mr. Nicholson did not know he was, was there such fraud perpetrated by the agent as to justify me in directing either a return of the property or the assumption by Public Service of the mortgage. Now, that is the whole thing, isn't it? Those are the two things I have to decide?

Mr. Speer: Those are the two primary points, I think.

The Court: Very well. If you will prepare your memorandums, after Mr. Salmon writes up the testimony, as soon as I get back from my vacation in the fall, I will try to consider the thing with a rested mind.

OPINION OF VICE-CHANCELLOR.

IN CHANCERY OF NEW JERSEY.

Between

JOHN J. NICHOLSON,
Complainant,

and

FREDERICK FAIRHAND, *et als.*,
Defendants.

Opinion.

Riker & Riker, for complainant.

William H. Speer, Esq., and Leland Taliaferro, Esq., for defendants.

CHURCH, *V.-C.*

Complainant filed a bill in this Court against the Public Service Electric & Gas Company, the Holland Company and one Fairhand. He seeks relief from a contract made with Fairhand by him for the sale of about 168 acres of land in Chatham and from a deed by which he made conveyance. Complainant sold the property to Fairhand for $139,000 and took back a mortgage for $124,000. Fairhand thereafter conveyed a right of way through the property to the Holland Company, which is the holding company for Public Service. This right of way is to be used for the high power transmission lines of Public Service.

The final contract between complainant and Fairhand contains this clause:

"The party of the first part hereby agrees that twenty acres of the land herein contracted for shall not be included in the purchase money

mortgage hereinafter mentioned, said twenty acres to be selected by the party of the second part and specifically designated by said party of the second part at least one week prior to the time set for the closing of title as herein specified, provided, however, that said twenty acres shall not include more than two hundred and fifty feet of street frontage on any one side of Long Hill Road or River Road hereinabove mentioned." This tract was subsequently, with the consent of complainant, excluded from the purchase money mortgage. It was acquired by the Holland Company. The complainant is a business man of wide experience, accustomed to deal with large affairs.

Complainant charges that he was fraudulently induced by the agents of Public Service (I shall so designate hereafter Public Service Electric & Gas Company and the Holland Company) to part with his property for a purpose for which had he known, he never would have consented. The first question to be determined, therefore, is whether agents of Public Service participated in, or in the company's name engineered the sale. The department of Public Service having charge of securing the rights of way for the high power transmission lines was, and is, under the general supervision of Mr. George Barker. Next to him is Mr. Harry L. Saunders, and under him again are a number of "field representatives." It is admitted that Mr. Saunders is a right of way engineer. His duties were to ascertain the names of the owners, the valuation at which they held the property, the value of surrounding properties and generally to find for Mr. Barker all information along these lines. Also within limits to be determined upon by Mr.

Barker, he was authorized to make purchases of lands. Among the "field representatives" was one Rene F. Erkins. This man, complainant insists as agent of Public Service fraudulently induced him to part with his property. What were his powers and duties? The record, which is undisputed, discloses that he is a field man under Harry L. Saunders, engineer of rights of way. In reply to the question "What were his powers and duties?" the answer which stands without contradiction is "He had no powers." His duties were "to go into the field and to interview owners to secure from them their asking prices in the event that we had the map, and he was working on a definite stretch of line to secure asking prices which they wanted for the right of way. He was to report this back to me and carry my message back to the property owner. You might call them field scouts or investigators or representatives. He was more or less my mouthpiece in working the field as we were working with a thousand property owners and it was impossible for me to see each one of them personally. I had to have these men." This is the testimony of Mr. Saunders, Erkins' immediate superior. There is no testimony that would justify the conclusion that Fairhand was the agent of Public Service. It is not contended that Erkins and Fairhand led complainant to believe that they were acting for Public Service. On the contrary, Mr. Nicholson says he thought they were representing themselves.

The sole question, therefore, is were these men the actual agents of Public Service for the purpose of acquiring rights of way? I do not think they were. The testimony I have summarized

clearly shows they had no power to buy anything—certainly not a tract of 168 acres.

I shall, therefore, deny the prayer of the bill that the contract and deed be set aside, and shall also deny the prayer that Public Service assume the mortgage.

Furthermore, I cannot see that any fraud was perpetrated on complainant by anyone. He is a man of wide business experience, at one time president of a very large manufacturing concern. He desired to sell his homestead and to that end consulted a man named Shea and "put my house where I was living with him for sale; and of course he knew I had this acreage." He then specifically says that Shea was his agent for the sale of this property. Shea brought Erkins to Mr. Nicholson and they tried to persuade him to sell twenty acres. He consulted his counsel and refused to do so. These negotiations fell through and complainant says he considered himself "completely out of the picture." Sometime afterwards his agent, Shea, again approached him and told him he could produce a purchaser for the whole tract. He brought Mr. Erkins to see Mr. Nicholson, terms were arranged and the contract was signed in the office of Mr. Nicholson's solicitors.

The purchaser was to be Fairhand and Fairhand took title. Nicholson says he understood he was selling to Fairhand, but his personal impression was that Erkins and Shea were in the deal. It is significant to note that Nicholson says Erkins spoke to him "of his high power organization, what they would do—different times referred to it. One time he spoke of sending out two of his surveyors." But there is no evidence that Nicholson ever told the purchaser that

he objected to a right of way for high power transmission. The description for the twenty-acre exception to be inserted in the purchase money mortgage was sent to Mr. Nicholson's attorneys who prepared the instrument.

Nicholson could have restricted the property against use for high power transmission. Certainly he could have inquired the purpose of excepting from the mortgage a strip of land running directly through it, which, while having an area of twenty acres, had a frontage of less than 200 feet. It seems to me that it should have been apparent to almost anyone that such a strip could not be used to any advantage for the development of building sites, and that it clearly indicated some sort of right of way.

There is evidence that Fairhand, after he had conveyed the strip to Public Service for $30,000, made at least some effort to develop the property, but could not make the development a success.

From a careful reading of all the testimony, I believe the situation to have been this. Fairhand thought he could get enough money from the sale of the right of way to Public Service to develop and sell the remainder at a profit. In this he failed either through lack of energetic effort or the drop in the real estate market. I cannot see that he or anyone practiced any fraud on complainant. As I have said he is a man of wide business experience and has his own real estate agent and his own lawyer to guide him, and could have investigated thoroughly before agreeing to the transaction and could and should have made inquiries as to the reason for excepting from the purchase money mortgage a narrow strip run-

ning straight through the property and practically dividing it in half.

This case was instituted in large measure as the result of allegations and representations of one Harold P. Leshins.

He is a discharged and discredited employee of Public Service. He evidently endeavored to be revenged on his former employers by preparing a suit which would injure, not only their finances, but their reputation for fair dealing. He went to Mr. Nicholson and procured a contract by which he was to receive $10,000 if this case were won. He endeavored to procure witnesses for cash, but only succeeded in part. He intimates that Erkins was to have told a different story, but changed his testimony. Erkins denies this and I believe him. The whole attitude of this man, his evident spite against his employers and his constant demand for considerable sums of money make his testimony utterly unworthy of belief. He attempted to betray those he had formerly served and distorted the facts and interjected fiction for gain and vengeance.

I will advise a decree dismissing the bill except as to the foreclosure of the mortgage.

I will direct that the foreclosure be proceeded with.

FINAL DECREE.

IN CHANCERY OF NEW JERSEY.

Between	
JOHN J. NICHOLSON, *Complainant,*	*On Bill, &c.*
and	*Final Decree.*
FREDERICK FAIRHAND, *et als., Defendants.*	

The matter being opened to the Court in the presence of Riker & Riker, solicitors of the complainant, John J. Nicholson, Honorable William H. Speer, of counsel with the defendants, Holland Company, a corporation, and the Public Service Electric & Gas Company, a corporation, and Minton & Day, solicitors of the defendants, Frederick and Isabella Fairhand, and the Court having duly considered the pleadings and heard the evidence and argument of counsel representing the respective parties in said cause; and it appearing to the Court that on or about December 15, 1926, the complainant conveyed certain lands and premises located in the Borough of Chatham, County of Morris and State of New Jersey, and more particularly described in the bill of complaint, to Frederick Fairhand, defendant, and that the said Frederick Fairhand thereupon made and executed to complainant a purchase money bond and mortgage in the principal sum of $124,000.00 covering the lands and premises so as aforesaid conveyed to him, except a tract of approximately twenty acres, and that said twenty-acre tract had been conveyed to the Hol-

land Company, defendant, by Frederick Fairhand and Isabella Fairhand by deed dated February 1, 1927, as set forth in the bill of complaint, and it appearing to the Court that the bill of complaint consists of three causes of action; the first asking for the rescission of the sale of the said lands and premises to Frederick Fairhand on the ground of fraud; the second asking that if the Court should determine that complainant was not entitled to the relief prayed for in the first count that the Holland Company or the Public Service Electric & Gas Company be required to assume the payment of the bond and mortgage of Frederick Fairhand, as aforesaid; the third cause of action asking that if the Court should determine that complainant was not entitled to the relief prayed for in either the first or second counts that then the mortgage of the said Frederick Fairhand be foreclosed and the premises sold to satisfy the amount due complainant; and it appearing to the Court that the complainant is not entitled to the relief prayed for in either the first or second causes of action and that the same should, therefore, be dismissed and that the complainant should proceed with the foreclosure of his mortgage as prayed for in the third cause of action,

It is on this 6th day of March, 1929, ORDERED, ADJUDGED and DECREED that the first and second causes of action of the said bill of complaint be and the same hereby are dismissed.

It is further ORDERED that the complainant pay to the defendant Public Service Electric & Gas

Company and Holland Company their costs of suit to be taxed.

E. R. WALKER,
C.

Respectfully advised,

ALONZO CHURCH,
V.-C.

We hereby consent to the form of the above decree.

WILLIAM H. SPEER,
Solicitor of Public Service and Holland Company.

MINTON & DAY,
Solicitors of Frederick and Isabella Fairhand.

RIKER & RIKER,
Solicitors of Complainant.

Exhibit C. 1.

EXHIBIT C. 1.

IN CHANCERY OF NEW JERSEY.

JOHN J. NICHOLSON, *Complainant,* *vs.* FREDERICK FAIRHAND, *et als., Defendants.*	*On Bill, &c.* *Answer to Interrogatories.*

To John J. Nicholson, Complainant in the above stated cause:

The interrogatories served on the defendant, The Holland Company, on April 28th, 1928, in the above stated cause, are severally answered under oath in writing, said answers being numbered as interrogatories, as follows:

First. Early in the year 1925.

Second. Identity of officers.

Third. A map of the right of way made in April, 1926, showed the line as running across complainant's property.

Fourth. The map of April 1926, made indication thereof, but the line had not then been definitely fixed.

Fifth. Nothing, as changes were made in the line and direction, and its exact proposed location was not known until November, 1926.

Sixth. No.

Eighth. Not so advised.

Thirteenth. No; was employed by Public Service Electric and Gas Company as right of way engineer.

Exhibit C. 1.

Fourteenth. Employed as above stated.

(b) To make all investigations of and concerning the property desired for the right of way and to acquire the same as, when and if directed by the subscriber.

Fifteenth. Was in charge of details of and concerning purchases, under and subject to the direction of subscriber.

Sixteenth. It was his duty to gain all information and report thereon to the subscriber, and carry out in detail such directions as were given concerning the same from time to time by the subscriber.

Seventeenth. No.

Eighteenth. Rene F. Erkins, named in Seventeenth, was a field man employed by the Engineer for Right of Way, and subordinate to him.

(b) He had no powers. His duties were to ascertain all the facts and circumstances that were available concerning the ownership, prices and the like, of and concerning all the property in the said right of way, and report to the said engineer, Harry L. Saunders, who gave him direction from time to time.

(c) In December, 1925.

(d) Until December 31st, 1927.

Nineteenth. Only as stated in seventeenth and eighteenth.

Twentieth. As stated in seventeenth and eighteenth.

(b) There were upwards of 361 different owners interested in the lands which said proposed right of way traversed, and a large number of these were interviewed and reports made concerning the same.

Exhibit C. 1.

(c) During the time from March 1926 to December 31st, 1927.

Twenty-first. No.

Twenty-third. No, he was a subordinate, as field man, to secure information and the like, as hereinabove stated, for Harry L. Saunders, Engineer.

Twenty-fourth. No.

GEORGE BARKER.

STATE OF NEW JERSEY,
COUNTY OF ESSEX. } *ss.*

GEORGE BARKER, of full age, being duly sworn according to law, on his oath saith:

1. I am Vice-President in charge of Real Estate and Purchases of The Holland Company, one of the defendants in the above stated cause named, and the officer of said Company who has charge and control of the business matters and things referred to in the said interrogatories, and personal knowledge of the facts.

2. I have made in writing the foregoing answers to the interrogatories served in this cause and subscribe to the same.

3. Such answers are true and correct.

GEORGE BARKER

Sworn and subscribed before me this
8th day of May, A. D. 1928,

CLARA E. HURLBURT
(SEAL) Notary Public of N. J.
My Commission Expires April 11, 1932

EXHIBIT C. 2.

IN CHANCERY OF NEW JERSEY.

JOHN J. NICHOLSON, *Complainant,* *vs.* FREDERICK FAIRHAND, *et als., Defendants.*	*On Bill, &c.* *Answer to Interrogatories.*

To John J. Nicholson, Complainant in the above stated cause:

The interrogatories served on the defendant, Public Service Electric and Gas Company, on April 28th, 1928, in the above stated cause, are severally answered under oath in writing, said answers being numbered as are the interrogatories, as follows:

First. Public Service Electric and Gas Company for several years had in contemplation the building of the transmission line running through the Township of Chatham and took definite steps therefor in 1924, making money available for the securing of right of way in 1925. Public Service Electric and Gas Company was formed in 1924, and Public Service Electric Company was one of the constituents of that, and this company had made for some years past studies and preliminary examinations concerning the same.

Second. The location in Chatham Township was not finally determined until November 1926.

Third. Yes.

Fourth. In the office of the defendant company, Public Service Electric and Gas Company.

Exhibit C. 2.

(b) The defendant company's engineers.

(c) They have been changed many times and from time to time, originally dated April 1st, 1926.

Fifth. Yes.

Sixth. The location was not definitely settled until November 1926, and then it was at the location indicated.

Seventh. Answered by eighth and ninth.

Eighth. Immediately after appropriation was made available therefor, which was early in the year 1925.

(b) By action of the officers whose maps and plans were furnished.

Ninth. Not specifically, but his land was in the line desired.

Tenth. Answered by Ninth.

(b) In the maps furnished.

Eleventh. No, it was not determined just where the line was to go concerning the property owned by the complainant until after he had sold or agreed to sell the same to the defendant, Fairhand.

Thirteenth. No.

Fifteenth. No.

Seventeenth. Yes.

Eighteenth. As right of way engineer.

(b) Under the subscriber, he was to ascertain the names of the owners, the valuations at which they held the property, the value of surrounding properties, and generally to find for the subscriber all information concerning the same. Within limits determined upon by the subscriber he also was authorized to make purchases of

Exhibit C. 2.

lands which were acquired by The Holland Company.

Nineteenth. Yes, as answered in the above answer.

Twentieth. As above answered.

Twenty-first. Yes.

Twenty-second. Field man under Harry L. Saunders, Engineer of Right of Way.

(b) Had no powers. His duties were to investigate prices of real estate within the lines of the right of way desired, as well as surrounding lands for comparison, get the names of and interview owners, and learn anything of interest to the acquisition of the right of way, and make report thereof from time to time to said Engineer.

(c) December 1925.

(d) December 31st, 1927.

Twenty-third. As above answered.

Twenty-fourth. As above answered.

(b) Very many of the units of purchases comprised in the right of way. It would be extremely difficult to identify them.

(c) March 1926 to December 31st, 1927.

Twenty-fifth. No.

Twenty-seventh. No, he was an employee under Harry L. Saunders.

Twenty-eighth. No.

GEORGE BARKER

Exhibit C. 2.

STATE OF NEW JERSEY,
COUNTY OF ESSEX. } *ss.*

GEORGE BARKER, of full age, being duly sworn according to law, on his oath saith:

1. I am Vice-President in charge of Real Estate and Purchases of Public Service Electric and Gas Company, one of the defendants in the above stated cause named, and the officer of said Company who has charge and control of the business matters and things referred to in the said interrogatories, and personal knowledge of the facts.

2. I have made in writing the foregoing answers to the interrogatories served in this cause and subscribe to the same.

3. Such answers are true and correct.

GEORGE BARKER

Sworn and subscribed before me this
8th day of May, A. D. 1928,

CLARA E. HURLBURT
(SEAL) Notary Public of N. J.
My Commission Expires April 11, 1932

Exhibit C. 3.

EXHIBIT C. 3.

IN CHANCERY OF NEW JERSEY.

Between	
JOHN J. NICHOLSON, *Complainant,*	*On Bill &c.*
and	*Interrogatories.*
FREDERICK FAIRHAND, *et als., Defendants.*	

To "Public Service Electric & Gas Company," Defendant.

TAKE NOTICE that the complainant requires answers to the following Interrogatories within ten days of the date of the service hereof in accordance with the rules and practice of the court:

First Interrogatory:—When did the Public Service Electric & Gas Co., first determine to construct its transmission lines in the Township of Chatham as referred to in the pleadings in the above entitled cause?

Second Interrogatory:—When did the Public Service Electric & Gas Co., first determine the definite location of the necessary rights of way for the construction of the said transmission lines in Chatham?

Third Interrogatory:—Were the necessary rights of way shown upon any plans of maps of the Public Service Electric & Gas Co.?

Fourth Interrogatory:—If so, where are such plans?

(b) Who prepared them?

(c) What date do they bear?

Exhibit C. 3.

Fifth Interrogatory:—Did the right of way required by said plans cross the premises of the complainant located in the Township of Chatham which are described in the bill of complaint in the above entitled cause?

Sixth Interrogatory:—If so, did the said plans call for a right of way across the lands of the complainant which is the same or substantially the same in location to the premises acquired by the Holland Company in accordance with the allegations of Paragraph 10 of the answer of the Defendant?

Seventh Interrogatory:—Did the Public Service Electric & Gas Co., request and/or authorize the Holland Company to acquire the rights of way necessary for its transmission lines in the Township of Chatham?

Eighth Interrogatory:—If so, when did the Public Service Electric & Gas Co., give such request or authorization?

(b) In what manner was such request or authorization transmitted?

Ninth Interrogatory:—Did the Public Service Electric & Gas Co., request and/or authorize the Holland Company to acquire a right of way for its transmission lines across the lands of the complainant as described in the bill of complaint?

Tenth Interrogatory:—If so, when did the Public Service Electric & Gas Co., make such request or give such authorization?

(b) In what manner was such request or authorization transmitted?

Eleventh Interrogatory:—Did the Public Service Electric & Gas Co., authorize any person or persons to negotiate with the complainant for

Exhibit C. 3.

the purpose of acquiring the whole or any part of the premises described in the bill of complaint?

Twelfth Interrogatory:—If so, when were the authorization or authorizations given?

(b) In what manner were they given?

(c) Who was or were so authorized?

Thirteenth Interrogatory:—Did anyone inform the Public Service Electric & Gas Co., that the complainant refused to sell any part of his large holdings without selling the whole of the same?

Fourteenth Interrogatory:—If so, who furnished the information?

(b) When was the information so furnished?

(c) In what manner?

Fifteenth Interrogatory:—Did the Holland Company communicate to the Public Service Electric & Gas Co., an alleged refusal of the complainant to sell any part of his holdings without selling the whole?

Sixteenth Interrogatory:—If so, when was such alleged refusal communicated?

(b) In what manner?

Seventeenth Interrogatory:—Was Harry L. Saunders employed by the Public Service Electric & Gas Co., during the year 1926?

Eighteenth Interrogatory:—If so, in what capacity was he employed?

(b) What were his powers and duties?

Nineteenth Interrogatory:—Was Harry L. Saunders in charge of the purchase of rights of way for the Public Service Electric & Gas Co., in the Township of Chatham during the year 1926?

Twentieth Interrogatory:—If not, did he have any powers or duties in connection with such purchase of rights of way?

Exhibit C. 3.

Twenty-first Interrogatory:—Was Rene F. Erkins employed by the Public Service Electric & Gas Co., during 1926?

Twenty-second Interrogatory:—If so, in what capacity was he employed?

(b) What were his powers and duties?

(c) When was he first employed?

(d) For how long a time did such employment continue?

Twenty-third Interrogatory:—What were the powers and duties of Rene F. Erkins in connection with negotiations for and acquisition of rights of way for the transmission lines for the Public Service Electric & Gas Co., in the Township of Chatham and adjacent municipalities?

Twenty-fourth Interrogatory:—Did he participate in any negotiations for and acquisition of rights of way?

(b) If so, what were the properties which were involved in said negotiations or acquisitions?

(c) What period of time did such negotiations cover?

Twenty-fifth Interrogatory:—Was the said Rene F. Erkins authorized in any way by the Public Service Electric & Gas Co., to negotiate with the complainant for the acquisition of the whole or any part of the premises of the complainant?

Twenty-sixth Interrogatory:—If so when was he so authorized?

Twenty-seventh Interrogatory:—Was Rene F. Erkins an assistant of Harry L. Saunders during the year 1926 or any part thereof?

Exhibit C. 3.

Twenty-eighth Interrogatory:—Did Rene F. Erkins participate in any negotiations with the complainant for the acquisition of a right of way across the premises of the complainant?

Dated: April 27th, 1928.

Yours truly,

RIKER & RIKER,
Solicitors for Complainant.

To Frank J. Bergen, Esq.,
Solicitors of Defendant.

Service of the within Interrogatories is hereby acknowledged this 28th day of April, 1928.

FRANK BERGEN,
Solicitors of Defendant,
Public Service Electric & Gas Company.

Exhibit C. 4.

EXHIBIT C. 4.

IN CHANCERY OF NEW JERSEY.

Between JOHN J. NICHOLSON, *Complainant,* *and* FREDERICK FAIRHAND, *et als., Defendants.*	*On Bill Interrogatories.*

To "Holland Company," Defendant.

TAKE NOTICE that the complainant requires answers to the following Interrogatories within ten days of the date of the service hereof in accordance with the rules and practice of this court:

First Interrogatory:—When was the Holland Company first advised that the Public Service Electric & Gas Co., desired to acquire rights of way in Chatham and adjacent municipalities for its transmission lines?

Second Interrogatory:—How was such information conveyed to the Holland Company?

Third Interrogatory:—Did the same cover a right or rights of way across the lands and premises of complainant described in the bill of complaint?

Fourth Interrogatory:—If not, when was the Holland Company first advised that the Public Service Electric & Gas Co., desired to acquire such a right of way?

Fifth Interrogatory:—What did the Holland Company do to acquire said right of way across the land of the complainant?

Exhibit C. 4.

Sixth Interrogatory:—Did the Holland Company authorize any person or persons to negotiate with the complainant for the acquisition of such right of way?

Seventh Interrogatory:—If so, when was said authorization given?

(b) What person or persons were so authorized?

Eighth Interrogatory:—When was the Holland Company advised that the complainant had refused to sell any part of his large holdings without selling the whole of same?

Ninth Interrogatory:—Who informed the Holland Company of such alleged facts?

Tenth Interrogatory:—In what manner was the information delivered to the Holland Company?

Eleventh Interrogatory:—Having received such information did the Holland Company make any attempt to communicate with the complainant concerning the same?

Twelfth Interrogatory:—If so, when was such attempt made?

(b) In what manner?

(c) What was the result thereof?

Thirteenth Interrogatory:—Was Harry L. Saunders employed by the Holland Company during the year 1926?

Fourteenth Interrogatory:—If so, in what capacity was he employed?

(b) What were his powers and duties?

Fifteenth Interrogatory:—Was Harry L. Saunders in charge of the purchase of rights of way for the Holland Company in the Township of Chatham during the year 1926?

Exhibit C. 4.

Sixteenth Interrogatory:—If not, did he have any powers or duties in connection with such purchase of rights of way?

Seventeenth Interrogatory:—Was Rene F. Erkins employed by the Holland Company during 1926?

Eighteenth Interrogatory:—If so, in what capacity was he employed?

(b) What were his powers and duties?

(c) When was he first employed?

(d) For how long a time did such employment continue?

Nineteenth Interrogatory:—What were the powers and duties of Rene F. Erkins in connection with negotiations for and acquisition of rights of way for the transmission lines for the Holland Company, in the Township of Chatham and adjacent municipalities?

Twentieth Interrogatory:—Did he participate in any negotiations for and acquisition of rights of way?

(b) If so, what were the properties which were involved in said negotiations or acquisitions?

(c) What period of time did such negotiations cover?

Twenty-first Interrogatory:—Was the said Rene F. Erkins authorized in any way by the Holland Company to negotiate with the complainant for the acquisition of the whole or any part of the premises of the complainant?

Twenty-second Interrogatory:—If so, when was he so authorized?

Twenty-third Interrogatory:—Was Rene F. Erkins an assistant of Harry L. Saunders during the year 1926 or any part thereof?

Exhibit C. 5.

Twenty-fourth Interrogatory:—Did Rene F. Erkins participate in any negotiations with the complainant for the acquisition of a right of way across the premises of the complainant?

Dated: April 27, 1928.

Yours truly,

RIKER & RIKER,
Solicitors for Complainant.

To Frank J. Bergen, Esq.,
Solicitors of Defendant.

Service of the within Interrogatories is hereby acknowledged this 28th day of April, 1928.

FRANK BERGEN,
Solicitors of Defendant, Holland Company.

EXHIBIT C. 5.

Telephone Astoria 6363

RENE F. ERKINS
Civil Engineer
473 Steinway Ave.

Long Island City July 8, 1926

Mr. John Nicholson,
New Providence, New Jersey,

Dear Sir:—

The attached schedule embodies the offering prices net to you cash for the sale of the fee in the lots shown on schedule, free and clear of all encumbrances as previously outlined.

As discussed with you on earlier date it will be impossible for me to dispose of these lots

Exhibit C. 5.

unless you previously have Mr. Kentz lay-out and stake-out the lots as outlined on this sketch.

As soon as this is under way or at any date within the near future I will be prepared to enter into a contract with you for the sale of your lots upon a basis as previously discussed.

Very truly yours,

Rene F. Erkins

RFE;k

BLOCK "A"

Lot	1	$ 500.00	
"	2	300.00	
"	3	300.00	
"	10	300.00	
"	6	250.00	
"	4	200.00	
"	5	200.00	
"	7	200.00	
"	8	200.00	
"	9	200.00	

Total for Block "A".....$2,650.00

BLOCK "B"

Lot	1	300.00	
"	18	275.00	
"	2-17 inc	250.00	each

Total for Block "B".....$4,575.00

BLOCK "C"

Lot	1	300.00
"	36	250.00
"	72	250.00
"	37	250.00

Exhibit C. 5.

"	2-35 inc	150.00	each
"	38-71 inc	150.00	each

Total for Block "C".....$11,250.00

BLOCK "D"

Lot	4	500.00	
"	1	400.00	
"	5	400.00	
"	6	400.00	
"	7	400.00	
"	2	300.00	
"	3	300.00	
"	31	300.00	
"	32	300.00	
"	9-30 inc	175.00	each
"	33-58 inc	150.00	each

Total for Block "D".....$11,050.00

BLOCK "E"

Lot	91	$ 600.00	
"	1	500.00	
"	58	400.00	
"	33-29 inc	300.00	each
"	40-45 inc	300.00	each
"	46-57 inc	250.00	each
"	2-28 inc	225.00	each
"	34-39 inc	200.00	each
"	59-90 inc	200.00	each

Total for Block "E".....$21,475.00

Exhibit C. 5.

BLOCK "F"

Lot	1	500.00	
"	47	400.00	
"	22	250.00	
"	23	250.00	
"	46-24 inc	225.00	each
"	2-21 inc	200.00	each

Total for Block "F".....$10,575.00

BLOCK "G"

Lot	3	600.00	
"	1	400.00	
"	2	400.00	
"	24	400.00	
"	25	400.00	
"	71	400.00	
"	66	400.00	
"	107	325.00	
"	4-23 inc	300.00	each
"	49-62 inc	250.00	each
"	72-85 inc	225.00	each
"	63-65 inc	200.00	each
"	67-70 inc	200.00	each
"	66-106 inc	200.00	each

Total for Block "G".....$21,575.00

BLOCK "H"

Lot	1 and 10	250.00	each
"	2-9 inc	175.00	each
"	11-13 inc	150.00	each

Total for Block "H".....$2,350.00

Exhibit C. 5.

BLOCK "I"

Lot	1	350.00	
"	9	350.00	
"	2-8 inc	200.00	each
"	10-12 inc	150.00	each

Total for Block "I".....$ 2,550.00

BLOCK "J"

Lot	5	$ 300.00	
"	1-4 inc	200.00	each
"	6-23 inc	150.00	each

Total for Block "J".....$ 5,300.00

BLOCK "K"

Lot	1	2000.00	
"	3	300.00	
"	2	200.00	
"	4-11 inc	150.00	each

Total for Block "K".....$ 3,700.00

BLOCK "L"

Lot	1	300.00	
"	2-4 inc	200.00	each
"	5-8 inc	150.00	each

Total for Block "L".....$ 1,500.00

BLOCK "M"

Lot 1 and 41		200.00	each
"	2-40 inc	150.00	each

Total for Block "M".....$ 6,250.00

Exhibit C. 6.

BLOCK "N"

Lot	1	200.00	
"	2-17 inc	150.00 each	
Total for Block "N"			$ 2,600.00

BLOCK "O"

Lot	1	200.00	
"	2-12 inc	175.00 each	
"	13-16 inc	150.00 each	
Total for Block "O"			$ 2,725.00
Grand Total			$110,125.00

EXHIBIT C. 6.

THIS AGREEMENT made the eighth day of November, in the year of our Lord One Thousand Nine Hundred and twenty-six BETWEEN John J. Nicholson, unmarried Meyersville Road of the Township of Chatham in the County of Morris and State of New Jersey party of the first part; AND Frederick Fairhand Grand & Erickson Avenues, of the city of East Elmhurst in the County of Queens and State of New York party of second part;

WITNESSETH, That the said party of the first part, for and in consideration of the sum of One Hundred and Thirty-nine Thousand ($139,000.00) Dollars 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, doth agree to and with the said party of the second part, that he the said party of the first part, will well and sufficiently

Exhibit C. 6.

convey to the said party of the second part, his heirs and assigns, by Deed of Warranty free of all encumbrances except mortgage hereinafter referred to. on or before the 15th day of Dec next ensuing the date hereof, ALL that tract , or parcel , of land and premises, hereinafter particularly described situate, lying and being in the Township of Chatham in the County of Morris and State of New Jersey; that is to say:—

[NOTE: Description not printed as premises are those owned by complainant involved in suit.]

The party of the first part hereby agrees to convey free and clear of all encumbrances, 20 acres of the herein contracted for parcels free and clear of all encumbrances. The said 20 acres are to be selected by the party of the second part, and specifically designated by the said party of the second part prior to the drawing of the deed for the conveyance of land herein contracted for. It is mutually agreed upon by both parties hereto however, that in no case can the said 20 acres to be selected be along the entire frontage of any parcel herein contracted for, it being hereby understood that in no case can the party of the second part select as part of the 20 acres, to be conveyed free and clear of all encumbrances, any parcel having a greater frontage than 300 feet on each side of River Road and Long Hill Road or any streets or roads subsequently laid out or designated by the party of the second part

AND the said party of the second part for himself, his heirs, executors and administrators, doth covenant, promise and agree to and with the said party of the first part, his heirs, executors, administrators and assigns, that he the said party of the second part, will pay and satisfy, or

Exhibit C. 6.

cause to be paid and satisfied, unto the said party of the first part, the said sum of One Hundred and Thirty-nine Thousand ($139,000.00) Dollars as and for the purchase money of the foregoing described land and premises, in the following manner, that is to say:

$1,000.00 Upon signing of this instrument, receipt of which is hereby acknowledged.

$14,000.00 Upon Delivery of Deed.

$124,000.00 Balance as Purchase Money Mortgage for five (5) years with interest at 6%. payable semi-annually on the unpaid principal, with the payment of $10,000 per annum which is to be deducted from the principal.

The Mortgage Shall contain the following release clauses:—

* * * * * * * *

This Contract is entered into upon the knowledge of the parties as to the value of the land and whatever buildings are upon the same, and not on any representations made as to character or quality.

And the said party of the 1st part hereby agrees to pay to the licensed and authorized agent James E. Shea a commission of 5% on the purchase price aforesaid.

AND IT IS FURTHER AGREED, by the parties to these presents, that the said party of the second part, his heirs and assigns, may enter into and upon the said land and premises on the 15th day of Dec next ensuing the date hereof, and from thence take the rents, issues and profits to him and their use.

Exhibit C. 6.

AND IT IS FURTHER AGREED, by the parties hereto, that the said deed of Warranty shall be delivered and received at office of Riker & Riker between the hours of ten o'clock in the forenoon and four o'clock in the afternoon on the said eighth day of January next ensuing the date hereof.

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 which they hereby fix and settle as liquidated damages therefor.

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

Signed, Sealed and Delivered
in the presence of

In consideration of mutual promises and agreements herein stated, we hereby agree to extend the date for the delivery of deed and execution of this contract to
at same hour and place

WITNESS hand and seal this
day of A. D. 19

Exhibit C. 6A.

STATE OF NEW JERSEY }
COUNTY OF MORRIS } *ss.*

BE IT REMEMBERED That on this day of in the year of our Lord One Thousand Nine Hundred and twenty-six before me, the subscriber, personally appeared John J. Nicholson, unmarried, who, I am satisfied, is the grantor mentioned in the within Instrument, to whom I first made known the contents thereof, and thereupon he then acknowledged that, he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed.

EXHIBIT C. 6A.

ARTICLES OF AGREEMENT, made the 12th day of November, in the year of Our Lord One Thousand Nine Hundred and Twenty-six

BETWEEN John J. Nicholson, unmarried, of the Township of Chatham in the County of Morris and State of New Jersey, party of the first part;

AND Frederick Fairhand, of the City of East Elmhurst in the County of Queens and State of New York, party of the second part;

WITNESSETH, That the said party of the first part, for and in consideration of the sum of One Hundred and Thirty Nine Thousand ($139,000.00) Dollars 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, doth agree to and with the said party of the second part, that he the said party of the first part, will well and sufficiently convey

Exhibit C. 6A.

to the said party of the second part, his heirs and assigns, by Deed of Warranty free from all encumbrance, except mortgage hereinafter referred to, on or before the Fifteenth day of December next ensuing the date hereof, all those lots, tracts, or parcels, of land and premises, hereinafter particularly described situate, lying and being in the Township of Chatham in the County of Morris and State of New Jersey:

[NOTE: Detailed description of property not printed, but same covers entire tract of property involved in suit, as described in full in the Bill of Complaint.]

The party of the first part hereby agrees that twenty acres of the land herein contracted for shall not be included in the purchase money mortgage hereinafter mentioned, said twenty acres to be selected by the party of the second part, and specifically designated by said party of the second part at least one week prior to the time set for the closing of title as herein specified, provided, however, that said twenty acres shall not include more than two hundred and fifty feet of street frontage on any one side of Long Hill Road or River Road hereinabove mentioned.

Taxes, water rents, insurance, etc., shall be adjusted as of the date of closing title.

It is understood and agreed by and between the parties hereto that this contract shall not be assigned without the written consent of the party of the first part.

Time is of the essence of this contract.

It being expressly understood and agreed between the parties hereto that the reasonable charges and expenses incurred by the said party of the second part in the examintion of said title

and making survey shall be paid for by him, and that in case the title should prove defective and unmarketable the deposit of $1000.00 shall be returned by the said vendor aforesaid, to the said vendee, and in that event, no claim shall be made by either party for or on account of damages for breach or failure to carry out or perform the terms of this agreement.

And the said Party of the second part for himself, his heirs, executors and administrators, doth covenant, promise and agree to and with the said party of the first part, his heirs, executors, administrators and assigns, that he the said party of the second part, will pay and satisfy, or cause to be paid and satisfied, unto the said party of the first part, the said sum of $139,000.00. as and for the purchase money of the foregoing described land and premises, in the following manner, that is to say:

On Execution of this agreement for which this is also a receipt..$ 1,000.00
On delivery of deed, cash..... $14,000.00.
On Bond and Mortgage, same containing usual interest, tax, assessment, insurance and installment default clauses, and an agreement not to claim credit on the interest payable on bond and mortgage, by reason of any tax assessed, or to be assessed against the premises, with interest at 6% payable for five years .....$124,000.00.

Said mortgage further providing for the payment of Ten Thousand Dollars per annum on account of the principal. The following release clause shall also be contained in said mortgage:—

Exhibit C. 6A.

That the mortgagee will execute and deliver to the mortgagor releases for any part of the premises described in that part of Tract 1 lying North of Long Hill Road and all of Tract 6, upon receipt of payment therefor at the rate of $800.00., per acre, plus interest accrued on the amount paid for the release to the date of delivery of said release, and for any part of the premises described in that part of Tract 1 lying South of Long Hill Road and all of Tracts 2, 3, 4 and 5 upon receipt of payment therefor at the rate of $1200.00 per acre, plus interest accrued on the amount paid for the release to the date of said release, provided, however, that no land lying North of Long Hill Road or South of River Road will be released, unless such release shall cover land running from the North side of said Long Hill Road, or the South side of River Road, as the case may be, to the rear or outside line of the whole tract, and no land lying between Long Hill Road and River Road will be released, unless such release shall cover land running from the South side of Long Hill Road or the North side of River Road to a point approximately midway between said two roads.

The intention of the above provisions being that there shall at no time remain any interior lot or parcel of land covered by this mortgage, which has no frontage upon at least one of the two roads or highways herein mentioned. It is further provided that the mortgagee shall be under no obligation to release less than 100 feet of street frontage in any one release, nor shall he be under obligation to give releases of such dimensions as would leave a lot of less than 100 feet street frontage covered by the mortgage. Any such release shall be prepared by the mort-

Exhibit C. 6A.

gagee or his attorney at the costs and expense of the mortgagor.

This contract is entered into upon the knowledge of the parties as to the value of the land and whatever buildings are upon the same, and not on any representations made as to character or quality,

And the said party of the first part hereby agrees to pay to a commission of % on the purchase price aforesaid, said commission to be paid in consideration of services rendered in consummating this sale; said commission to become due and payable upon the execution of

AND IT IS FURTHER AGREED, by the parties to these presents, that the said party of the second part, his heirs and assigns, may enter into and upon the said land and premises on the Fifteenth day of December, 1926, next ensuing the date hereof, and from thence take the rents, issues and profits to his and their use.

AND IT IS FURTHER AGREED, by the parties hereto, that the said Deed of Warranty shall be delivered and received at the office of Riker & Riker, No. 24 Commerce St., Newark, N. J. between the hours of ten in the fore-noon and three o'clock in the after-noon on the said Fifteenth day of December next ensuing the date hereof.

The rents of said premises, insurance premiums, water rents, taxes, and interest on Mortgage, if any, shall be adjusted, apportioned and allowed as of the day of delivery of said deed.

Gas and electric fixtures, gas stoves, hot water heaters and chandeliers, carpets, linoleum, mats and matting in halls, screens, shades, awnings, ash cans, heating apparatus, if any, and all other personal property appurtenant to or used in the

Exhibit C. 6A.

operation of said premises is represented to be owned by seller and is included in this sale.

The risk of loss or damage to said premises by fire or otherwise until the delivery of said deed is assumed by the party of the first part.

In case the premises shall suffer injury beyond the ordinary wear and tear, the party of the first part, shall repair the damage before the date set for delivery of said deed or make an appropriate deduction from the purchase price herein stated.

It is understood and agreed that the buildings upon said premises are all within the boundary lines of the property as described in the deed therefor, and that there are no encroachments thereon and that the buildings comply with municipal ordinances and regulations and the provisions of the New Jersey State Tenement House Act as enforced by the State Board of Tenement House Supervision, to be shown by the report of the department or board enforcing the same where such ordinances, regulations and said act apply.

It is expressly understood and agreed that the title to the land and premises hereby agreed to be conveyed is not derived from any Martin Act proceedings or any Act for the Sale of Land for non-payment of the municipal taxes or assessments.

If at the time for the delivery of the deeds, the premises or any part thereof shall be or shall have been affected by an assessment or assessments which are or may become payable in annual installments of which the first installment is then due or has been paid, then for the purposes of this contract all the unpaid installments of any such assessment, including those which are to become due and payable after the delivery

Exhibit C. 6A.

of the deed, shall be deemed to be due and payable and to be liens upon the premises affected thereby and shall be paid and discharged by the seller thereof, upon the delivery of the deed.

And for the performance of all and singular the covenants and agreements aforesaid, the said parties to bind themselves and their respective heirs, executors and administrators; and they hereby agree to pay, upon failure to perform the same, the sum of which they hereby fix and settle as liquidated damages therefor.

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

John J. Nicholson (L. S.)
Frederick Fairhand (L. S.)

Signed, Sealed and Delivered
in the presence of

Robert S. Pollard.

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

Be it Remembered, That on this 12th day of November in the year of Our Lord One Thousand Nine Hundred and Twenty-six before me, the subscriber, A Master In Chancery of New Jersey, personally appeared John J. Nicholson, Unmarried, who, I am satisfied, is the grantor mentioned in the within Instrument, to whom I first made known the contents thereof, and thereupon he acknowledged that, he signed, sealed and

Exhibit C. 6A.

delivered the same as his voluntary act and deed, for the uses and purposes therein expressed.

ROBERT S. POLLARD
Master in Chancery of N. J.

CONTRACT

For the Sale of Property

John J. Nicholson, Unmarried,
To
Frederick Fairhand

Dated, Nov. 12th 1926

Exhibit C. 7.

EXHIBIT C. 7.

ABSOLUTE AUCTION SALE

331—These Business and Residential Lots—331
Long Hill Gardens, Chatham, N. J.

MAP OF PROPERTY.

(Rubber Stamp on Map.)

JAMES E. SHEA
Real Estate Broker
Home Sites, Residences & Farms
#1 Passaic Ave., Next to Post Office
Phone Chatham 2352 Chatham, N. J.

On The Premises in a large tent
Friday, Saturday and Monday
May 27th, 28th, and 30th
At 2 P. M. rain or shine

70% may remain on mortgage

For Further Particulars Apply
THE GERTH CO.
Local Offices
1 Passaic Ave. & on property
Chatham, N. J.
Military Park Building
Newark, New Jersey
Telephone: Mitchell 2997

Exhibit C. 7.

AUCTION ON THE GROUNDS

Regardless of Weather
May 27-28-30 2 P. M.

HOW TO REACH THE PROPERTY

Take Special Buses from either Chatham or Summit. By motor: from Summit along Springfield Avenue to Central Avenue, turn right 1290 feet to property. By motor from Chatham: beautiful drive along Fairmount Avenue direct to property.

FOLLOW THE ARROWS

THE GERTH COMPANY
Auctioneers
Military Park Building, Newark, N. J.
Telephone Mitchell 8722

MINTON & DAY
Attorneys
Morristown, N. J.

INFORMATION OFFICE
On Premises or
No. 1 Passaic Avenue, Chatham, N. J.
Telephone 2352 Chatham

(Illustration)
BUSINESS CENTER

(Illustration)
CHATHAM HIGH SCHOOL

STARTLING OFFER!

The realization of a lifetime desire of this prominent builder; to offer the public a selection of

Exhibit C. 7.

high-grade residences at fixed moderate prices on land of your selection at

LONG HILL GARDENS
CHATHAM, N. J.

Your Bank is Your Guarantee of the Fulfillment of Our Promise

Select any lot you wish at this AUCTION—determine the house you desire, from our numerous plans at fixed prices, then

Deposit $500 in Your Bank

with our contract, plans and specifications and we will deliver complete, the house you selected, within 90 working days from date of contract.

Upon receipt of deed you pay $500 and the balance on a mortgage with monthly payments, same as rent.

(Illustration)

SUMMIT'S MAIN STREET

(Illustration)

SUMMIT HIGH SCHOOL

(Illustration)

$7,000

7 Room Dutch Colonial House with all improvements, which we will erect

LONG HILL GARDENS

is on FAIRMOUNT AVENUE between Summit and Chatham, two of the fastest growing communities in the metropolitan zone.

Exhibit C. 7.

The land is ideally adapted for this immense residential colony. Convenient to either Summit or Chatham and their vast facilities.

OUR PREDICTION:
300 Residences Within Three Years

(Illustration)

FAIRMOUNT AVENUE RESIDENCE

(Illustration)

STATION AT CHATHAM

THIS IS AN ABSOLUTE AUCTION

Every Lot Offered Will Be Sold to the Highest Bidder Regardless of What Price is Bid

TERMS OF SALE

10% of the purchase Price plus Auctioneers fee of $15 per lot when knocked down. 20% in 30 days. 70% may remain on mortgage or installment contract.

MAY 27-28-30
2 P. M., Rain or Shine

(Map of Long Hill Gardens)

MAY 27-28-30
2 P. M., Rain or Shine

TO HIGHEST BIDDER

BUSES TO PROPERTY Summit or Chatham

(Illustration)

$7,500

7 Room English Type House with all improvements, which we will erect.

Exhibit C. 8.

OUR CHALLENGE
WE SAVE YOU
25%
on the cost of the dwellings we offer,
due to our vast buying power
and mass production—
COMPARE!

(Illustration)

RESIDENCE NEAR PROPERTY

(Illustration)

STATION AT SUMMIT

EXHIBIT C. 8.

LONG HILL GARDENS
Owned and Developed by Frederick Fairhand
Office: No. 1 Passaic Ave.
Chatham, N. J.
Phone Chatham 2352

June 11th. 1927.

Mr. John J. Nicholson,
c/o Riker & Riker,
Federal Trust Bldg., Newark, N. J.

Dear Sir:

Contrary to expectations, and due jointly to the depressed real estate market, my extended illness and consequent inability to give LONG HILL GARDENS my personal attention, the sale recently held was an absolute failure.

My prolonged illness, has resulted in my being ordered by my physician to a drier climate, and

Exhibit C. 9.

therefore, I find it impossible to concentrate upon the disposition of my holdings in this development.

The heavy drain on my finances occasioned by my illness and losses due to my consequent inattention to my other affairs, forces me to submit to you for your consideration the proposition of my conveying back to you this property for such cash consideration that you feel is equitable after taking into consideration my equity in the property, which is in excess of $32,000.00 which comprises the cost of improving, plus the cash payment to you.

Awaiting word from you at the earliest possible date, as to your attitude in this matter, I remain,

Yours very truly,

Frederick Fairhand
M. C.

EXHIBIT C. 9.

THIS INDENTURE, made the Fifteenth day of December in the year of Our Lord One Thousand Nine Hundred and Twenty-six

BETWEEN Frederick Fairhand, Single, of the City of East Elmhurst in the County of Queens and State of New York, of the First Part:

AND John J. Nicholson, of the Township of Chatham in the County of Morris and State of New Jersey, of the Second Part:

WHEREAS, the said Frederick Fairhand is justly indebted to the said party of the second part, in the sum of One Hundred and Twenty Four Thousand ($124,000.00) Dollars lawful money of

Exhibit C. 9.

the United States of America, secured to be paid by his certain bond or obligation, bearing even date with these presents, in the penal sum of Two Hundred and Forty Eight Thousand ($248,-000.00) Dollars lawful money as aforesaid, conditioned for the payment of the said first mentioned sum of $124,000.00., as follows:—$10,000.00 on the 15th day of December, 1927; $10,000.00., on the 15th day of December, 1928; $10,000.00., on the 15th day of December, 1929; $10,000.00 on the 15th day of December, 1930, & the balance of $84,000 lawful money as aforesaid, to the said party of the second part, his executors, administrators, or assigns, on the Fifteenth day of December which will be in the year One Thousand Nine Hundred and Thirty-one and interest thereon, to be computed from the day of December One Thousand Nine Hundred and Twenty-six at and after the rate of six per cent. per annum, and to be paid semi-annually

AND IT IS THEREBY EXPRESSLY AGREED, that should any default be made in the payment of the said interest or any installment of principal or of any part thereof, on any day whereon the same is made payable, as above expressed, or should any tax, assessment, water rent, or other municipal or governmental rate, charge, imposition or lien be hereafter imposed or acquired upon the premises described in this mortgage, and become due and payable, and should the said interest or any installment of principal remain unpaid and in arrear for the space of thirty days, or said tax, assessment, water rent or other municipal or governmental rate, charge, imposition or lien, or any or either of them remain unpaid and in arrear for the space of six days then and from thenceforth, that is to say, after the lapse or ex-

piration of either of the said periods as the case may be, the aforesaid principal sum of One Hundred and Twenty Four Thousand Dollars with all arrearage of interest thereon, shall, at the option of the said party of the second part, or his legal representatives, become and be due and payable immediately thereafter, although the period above limited for the payment thereof may not then have expired, anything therein before contained to the contrary thereof in anywise notwithstanding; as by the said bond or obligation, and the condition thereof, reference being thereunto had, may more fully appear.

Now, this Indenture Witnesseth. That the said party of the first part, for the better securing the payment of the said sum of money mentioned in the condition of the said bond or obligation with interest thereon according to the true intent and meaning thereof, and also for and in consideration of the sum of one dollar, to him in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, released, conveyed and confirmed, and by these presents does grant, bargain, sell, alien, release, convey and confirm, unto the said party of the second part, and to his heirs and assigns forever, All those certain tracts or parcels of land and premises, hereinafter particularly described, situate, lying, and being in the Township of Chatham in the County of Morris and State of New Jersey:—

FIRST TRACT:—Beginning at an oak tree, a corner of land of William Sayre and Aaron Johnson; thence (1) on Johnson line South eighty-seven degrees West thirteen chains and

Exhibit C. 9.

seventy-six links to a corner of land of Asher W. Morehouse; thence (2) along his line North fifteen and one-half degrees West eight chains and forty-two links to his corner in the middle of the road that runs along the back side of Long Hill; thence (3) along the middle of said road North fifty-eight degrees East ten chains and thirty-four links on a line of land of Robert Colbert to his corner; thence (4) on his line North thirty-six degrees West thirty-four chains to the old tier line; thence (5) on the tier line (it being a line of Thomas Bond and Pierson Lum) twenty-six chains and sixty-five links to a corner of land of Francis Cordes; thence (6) on his line South three degrees East Eleven chains and ninety-five links to his corner; thence (7) on his line South twenty-nine degrees thirty minutes East six chains and forty links to a line of the Hand lot; thence (8) on the line of the same North forty-six degrees East two chains and thirteen links to James Campbell's corner; thence (9) on his line South nine degrees East nine chains to his corner; thence (10) on his line South twenty-nine degrees East six chains and seventy-four links to a corner of lands of William Sayre; thence (11) on his line South fifty-eight and one-half degrees West eleven chains and eighteen links to his corner; thence (12) South three degrees East three chains and sixty-five links to the place of Beginning. Containing seventy-seven and ninety-two one-hundredths acres of land, be the same more or less.

SECOND TRACT:—Begins at a white oak tree for a corner of lands of David Morehouse and in a line of land of Aaron Johnson situate on the North side of Long Hill; and running thence (1) North fourteen degrees and forty min-

Exhibit C. 9.

utes West on said David Morehouse's line eight chains and fourteen links to the road leading along the North side of Long Hill; thence (2) along the South side of said road South fifty-three and one-half degrees West seven chains and fifty-five links to the East end of a stone row under a fence of Aaron Johnson's; thence (3) along said Johnson's line South twenty-one and one-half degrees East three chains and eighty-nine links to his corner; thence (4) still on his line North eighty-eight degrees East six chains and seventy-five links to the place of BEGINNING. Containing three and ninety-two one-hundredths acres of land, be the same more or less.

THIRD TRACT:—BEGINNING at an iron pin standing in the line of land of one Nicholson, which pin is distant eleven hundred and two feet and fifty one-hundredths of a foot on a course North eighty-seven degrees three minutes West from what was formerly a black oak stump which stood on the side hill now the top of Long Hill and what was formerly a corner of David Morehouse's land and being a corner of lands quit-claimed by Aaron Johnson to William Sayre on April 29, 1836, and which point is also the end of the seventh course in deed bearing date April 5, 1911 made by the said Charles A. Johnson to Bessie Aline Johnson Genung; from said point of beginning running thence (1) along line of lands conveyed April 5, 1911 by said Charles A. Johnson to the said Bessie Aline Johnson Genung South one degree thirty-seven minutes West six hundred and thirty feet and thirty-three one-hundredths of a foot to an iron pin in the line of lands of one Meyers; thence (2) along the line of lands of said Meyer (it being the present fence

Exhibit C. 9.

line) South seventy-two degrees thirty-six minutes West six hundred and thirty-seven feet to a stake in line of lands of said Charles A. Johnson; thence (3) along line of lands of said Johnson, V. F. Pelletreau and one Piker North three degrees eleven minutes East one thousand and three feet and sixty one-hundredths of a foot to the center line of Long Hill Road; thence (4) along the center line of said Long Hill Road North fifty-seven degrees thirty-two minutes East one hundred and eighty-nine feet and eight one-hundredths of a foot to land of said Nicholson; thence (5) along line of land of said Nicholson South seventeen degrees four minutes East two hundred and seventy-eight feet and thirty one-hundredths of a foot to an iron pin; thence (6) still along line of land of said Nicholson South eighty-seven degrees three minutes East three hundred and twenty-nine feet and thirty one-hundredths of a foot to the point or place of Beginning.

Excepting, However, from the above the following described land and premises:—Beginning at a point in the center line of Long Hill Road at the dividing line between lands of Nicholson and land formerly of Charles A. Johnson, said point being the end of the fourth course in the third tract hereinabove described; thence (1) along line of land of said Nicholson South seventeen degrees four minutes East one hundred and eighty-one feet and fifty-two one-hundredths of a foot; thence (2) South fifty-seven degrees thirty-two minutes West one hundred and sixty-two feet and ten one-hundredths of a foot; thence (3) North eighty-eight degrees four minutes West eighty-four feet and seventy-seven one-hundredths of a foot; thence (4) North three

Exhibit C. 9.

degrees eleven minutes East one hundred and fifty-six feet and forty-two one-hundredths of a foot to the aforesaid center line of Long Hill Road; and thence (5) along the same North fifty-seven degrees thirty-two minutes East one hundred eighty-nine feet and eight one-hundredths of a foot to the point or place of Beginning.

FOURTH TRACT:—Beginning at what was formerly a Black Oak Stump which stood on the side hill now the top of Long Hill and what was formerly a corner of David Morehouse's land and being a corner of land quit-claimed by Aaron Johnson to William Sayre on April 29, 1836, said point being also a corner of lands now of one Scheidermann; from said point of beginning running thence (1) along said Scheidermann (formerly Sayre) South thirty-five degrees eighteen minutes East six hundred and forty feet and sixty one-hundredths of a foot to the upper side of the River Road; thence (2) along the said line of said Road South sixty degrees sixteen minutes West seven hundred and thirty-seven feet and five one-hundredths of a foot to a point; thence (3) still along said side line of said Road South sixty-one degrees twenty-two minutes West three hundred and fifty-seven feet and twenty-seven one-hundredths of a foot to line of land of one Meyers; thence (4) along line of land of Meyers (it being the present fence line) North nineteen degrees fifty-four minutes West five hundred and twenty-eight feet and forty-seven one-hundredths of a foot to a corner; thence (5) still along said Meyers (it being the present fence line) North eighty-two degrees seven minutes West two hundred and twenty-three feet and fifty-two one-hundredths of a foot

Exhibit C. 9.

to another corner of said Meyers; thence (6) still along said Meyers (it being the present fence line) South seventy-two degrees thirty-six minutes West one hundred and thirty-nine feet and sixty-eight one-hundredths of a foot to an iron pin, same being in line of lands heretofore conveyed by the said Bessie Aline Johnson Genung and others to Charles A. Johnson; thence (7) along line of said lands heretofore conveyed by said Bessie Aline Johnson Genung to Charles A. Johnson North one degree thirty-seven minutes East six hundred and thirty feet and thirty-three one-hundredths of a foot to an iron pin in the line of lands of one Nicholson; thence (8) along said Nicholson land South eighty-seven degrees three minutes East eleven hundred and two feet and fifty one-hundredths of a foot to the point or place of BEGINNING.

FIFTH TRACT:—BEGINNING in the North side of the road passing along the foot of Long-hill and in the middle of the road leading from the Bridge to Aaron Johnson's; thence (1) in the middle of the last named road North nineteen degrees West four chains and ninety links to said Johnson's corner; thence (2) on his line North seventy-seven and a quarter degrees East one chain and fifty-one links; thence (3) on the same North one degree West seven chains and ninety-six links to Aaron Johnson's corner at the end of a stone fence; thence on his line (4) North sixty-six degrees and three-quarters of a degree East eleven chains and ninety links; thence (5) South eighty-eight and one-quarter degrees East three chains and thirty-four links; thence still on his line (6) South twenty-six and a half degrees East eight chains and twenty links to the North side of said first named road;

Exhibit C. 9.

thence (7) along the North side of the same South fifty-five and a half degrees West five chains and fifty links; thence (8) along the same South fifty-eight and a quarter degrees West fourteen chains and fifty links to the place of Beginning. Containing seventeen acres and fifty-six one-hundredths of an acre of land more or less.

EXCEPTING, HOWEVER, out of the above the following described premises:—BEGINNING at a point in the center line of River Road distant four hundred fifty-one feet and eighty-nine one-hundredths of a foot Easterly from the center line of the road leading from New Providence to Long Hill past the residence of the late Charles Johnson; thence (1) North nine degrees ten minutes West two hundred and thirty-three feet and eighty-six one-hundredths of a foot; thence (2) North sixty-one degrees seventeen minutes East one hundred and seven feet; thence (3) South twenty-three degrees thirty-eight minutes East two hundred and thirty-six feet to the aforementioned center line of River Road; thence (4) along the center line of River Road South sixty-six degrees twenty-two minutes West one hundred and sixty-five feet to the point and place of BEGINNING.

SIXTH TRACT:—Being the upper or Western part of the Colwell Meadow, and Begins in the road at Johnson's Bridge at a corner of Samuel Durie's land on the bank of Passaic River; thence running (1) on his line in the road North thirty-one and a half degrees West about four chains and forty links to the beginning corner of the first lot herein described; thence (2) on its line on the North side of the road North fifty-eight and a quarter degrees East fourteen

Exhibit C. 9.

chains and fifty links; thence (3) on the same North fifty-five degrees and a half East five chains and fifty links to Aaron Johnson's corner; thence (4) on his line on the Northernmost side of the road fifteen chains and sixty-five links on a course North fifty-three and three-quarters degrees East; thence (5) South thirty-nine and three-quarters degrees East nine chains and seventy-five links along a ditch to said River; thence (6) up the River the several courses thereof to the place of Beginning. Containing twenty-nine acres be the same more or less. The last lot above described being subject to the right and privilege reserved in deed from Jonathan C. Bonnel to Samuel Durie recorded in Book F 5 of deeds for Morris County, on pages 341-342-343 and 344, if any, and recited as follows:—"Said last described lot is conveyed subject to the right of said Jonathan C. Bonnel, his heirs and assigns, owners or occupants of the mill site and premises next below said lot and now owned by said Bonnel, forever to flow the same by the present or any future dam of said mill site, which right is hereby reserved, it being understood that said right is limited to the flowing of said land to the extent to which said land has been flowed for the five years last past."

EXCEPTING, nevertheless, from the above described premises the following three tracts or parcels of land:—

FIRST TRACT:—BEGINNING at a point in the center line of Fairmount Avenue or Long Hill Road distant therein Southwesterly seven hundred and five feet and fifteen one-hundredths of a foot from the intersection of the same with the dividing line between the lands of the owner and lands of Charles E. Weyrich; thence (1) North

Exhibit C. 9.

ten degrees six minutes East seven hundred and eighty-six feet and ninety-two one-hundredths of a foot to a point; thence (2) South seventy-nine degrees fifty-four minutes East one hundred and thirty-five feet and eighty-six one-hundredths of a foot to a point; thence (3) North four degrees one minute East seven hundred and eighty-eight feet and seventy one-hundredths of a foot to a point; thence (4) North eighty-four degrees thirty-six minutes West two hundred and twenty-eight feet and ninety-seven one-hundredths of a foot to a point; thence (5) South ten degrees six minutes West seventeen hundred and twenty-nine feet and seventy-nine one-hundredths of a foot to the center line of Fairmount Avenue, or Long Hill Road; thence (6) North fifty-five degrees thirty-five minutes East two hundred and twenty-seven feet and thirty-two one-hundredths of a foot to an angle in the same; thence (7) still along said center line North forty-seven degrees fifty-seven minutes East twenty-two feet and sixty-eight one-hundredths of a foot to the point and place of Beginning. Containing 8.329 Acres.

SECOND TRACT:—Beginning at a point in the center line of Fairmount Avenue, or Long Hill Road, distant therein Southwesterly seven hundred and five feet and fifteen one-hundredths of a foot from the intersection of the same with the dividing line between lands of the owner and lands of Charles E. Weyrich; thence (1) South ten degrees fifty-one minutes West eleven hundred and twenty-one feet and thirty-five one-hundredths of a foot to an angle; thence (2) South ten degrees six minutes West eleven hundred and nine feet and fifty one-hundredths of a foot to the center line of River Road; thence (3) South sixty-one degrees twenty-five minutes West and

Exhibit C. 9.

along the center line of said River Road two hundred feet to a point; thence (4) North ten degrees six minutes East ten hundred and eighty-eight feet and ninety-two one-hundredths of a foot; thence (5) North nine degrees fifty minutes East ten hundred and eighty-nine feet and sixty one-hundredths of a foot to the said center line of Fairmount Avenue, or Long Hill Road; thence (6) North fifty-five degrees thirty-five minutes East and along said center line of Fairmount Avenue, or Long Hill Road two hundred and twenty-seven feet and thirty-two one-hundredths of a foot to an angle in the same; thence (7) still along said center line North forty-seven degrees fifty-seven minutes East twenty-two feet and sixty-eight one-hundredths of a foot to the point and place of Beginning. Containing 8.137 Acres.

THIRD TRACT:—Beginning at a point in the center line of River Road, distant therein Northeasterly eleven hundred and thirty feet and fifty-five one-hundredths of a foot from the intersection of the same with the center line of Road leading from New Providence to Chatham; thence (1) South five degrees forty-eight minutes West four hundred and fifty-five feet and ninety one-hundredths of a foot to the high water line of Passaic River; thence (2) North fifty-two degrees thirty-one minutes East and along said high water mark of the Passaic River eleven feet and eighteen one-hundredths of a foot to a point; thence (3) North sixty-nine degrees fifty-three minutes East and still along said high water mark in Passaic River two hundred feet and twenty-five one-hundredths of a foot to a point; thence (4) North three degrees East four hundred and seventy-four feet and twenty one-hun-

Exhibit C. 9.

dredths of a foot to the center line of River Road; thence (5) South sixty-one degrees twenty-five minutes West two hundred feet to the point and place of Beginning. Containing an area of 1.904 Acres. Including all the party of the first part's right, title and interest in and to the lands lying within the limits of the projection of courses one and four to the south of courses two and three (in the herein described third tract) to the center of the Passaic River.

Being part of the same premises conveyed to the party of the first part hereto by deed from John J. Nicholson, Unmarried, bearing even date herewith, and this mortgage is given to secure a part of the purchase money for said conveyance.

The party of the second part hereto agrees that he will execute and deliver to the party of the first part releases for any part of the premises described in that part of Tract 1 lying North of Long Hill Road and all of Tract 6, upon receipt of payment therefor at the rate of $800.00., per acre, plus interest accrued on the amount paid for the release to the date of delivery of said release, and for any part of the premises described in that part of Tract 1 lying South of Long Hill Road and all of Tracts 2, 3, 4 and 5 upon receipt of payment therefor at the rate of $1200.00., per acre, plus interest accrued on the amount paid for the release to the date of said release, provided, however, that no land lying North of Long Hill Road or South of River Road will be released, unless such release shall cover land running from the North side of said Long Hill Road, or the South side of River Road, as the case may be, to the rear or outside line of the whole tract, and no land lying between Long Hill Road and River Road will be released, unless

Exhibit C. 9.

such release shall cover land running from the South side of Long Hill Road or the North side of River Road to a point approximately midway between said two roads.

The intention of the above provisions being that there shall at no time remain any interior lot or parcel of land covered by this mortgage, which has no frontage upon at least one of the two roads or highways herein mentioned. It is further provided that the mortgagee shall be under no obligation to release less than 100 feet of street frontage in any one release, nor shall he be under obligation to give releases of such dimensions as would leave a lot of less than 100 feet street frontage covered by the mortgage. Any such release shall be prepared by the mortgagee, or his attorney, at the costs and expense of the mortgagor.

It is understood and agreed that any amounts which may be paid by the party of the first part for releases as above set forth are not intended to take the place of or in any way affect the provisions herein contained for amortization of principal, but that the installments herein provided for in reduction of principal are to be paid as herein specified, notwithstanding any releases which may be obtained.

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof: AND ALSO all the estate, right title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in and to the same and every part and parcel thereof, with the appurtenances. To

Exhibit C. 9.

HAVE AND TO HOLD, the above granted and described premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, to his and their own proper use, benefit and behoof, forever.

PROVIDED ALWAYS, and these presents are upon this express condition, that if the said party of the first part, his heirs, executors, or administrators shall well and truly pay unto the said party of the second part, his executors, administrators or assigns, the said sum of money mentioned in the condition of the said bond or obligation, and the interest thereon, at the time and times, and in the manner mentioned in the said condition, according to the true intent and meaning thereof, that then these presents, and the estate hereby granted, shall cease, determine and be void. AND THE SAID Frederick Fairhand for himself, his heirs, executors and administrators, does covenant and agree to pay unto the said party of the second part his executors, administrators or assigns, the said sum of money and interest, as mentioned above and expressed in the conditions of the said bond.

AND IT IS ALSO AGREED, by and between the parties to these presents, that the said party of the first part shall and will keep the buildings erected, and to be erected, upon the lands above conveyed, insured against loss or damage by fire, by insurers, and in an amount approved by the said party of the second part, his executors, administrators or assigns, and assign the policy and certificates thereof to the said party of the second part; and in default thereof, it shall be lawful for the said party of the second part to effect such insurance, and the premium and premiums paid for effecting the same shall be a lien,

Exhibit C. 9.

on the said mortgaged premises, added to the amount of the said bond or obligation, and secured by these presents, payable on demand, with interest at the rate of six per cent. per annum, from the time of payment of such premium or premiums.

And the said party of the first part, for himself, his heirs, executors and administrators, does covenant and grant to and with the said party of the second part, his heirs and assigns, that the said party of the first part, his heirs and assigns, shall not nor will claim or demand or be entitled to receive any credit or credits on the interest payable hereon or on the moneys to secure payment of which this mortgage is made for so much of the taxes assessed against said lands as is equal to the tax rate applied to the amount due on this mortgage or any part thereof. All of the covenants and agreements hereinabove contained shall be for the benefit of and shall apply to and bind the said parties hereto and their respective heirs, executors, administrators, successors and assigns.

In Witness Whereof, the said party of the first part has hereto set his hand and seal the day and year first above written.

Frederick Fairhand (L. s.)

Signed, Sealed and Delivered
in the presence of

Lawrence Day

Exhibit C. 9.

STATE OF NEW JERSEY, }
COUNTY OF ESSEX } *ss.*

BE IT REMEMBERED, That on this 15th day of December in the year of our Lord One Thousand Nine Hundred and Twenty-six before me the Subscriber, A Master In Chancery of New Jersey, personally appeared Frederick Fairhand, Single, who, I am satisfied, is the grantor mentioned in the within Indenture, and to whom I first made known the contents thereof, and thereupon he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed:

LAWRENCE DAY
Master in Chancery of N. J.

10577

MORTGAGE

FREDERICK FAIRHAND, Single

—to—

JOHN J. NICHOLSON

Dated December 15 1926

RECEIVED in the Clerk's Office of the County of Morris, N. J. on the 17th day of Decr A. D., 1926, at 10:36 o'clock, in the forenoon, and Recorded at length in Book U 10 of Mortgages for said County, on pages 553 &c.

E. Bertram Mott,
Clerk.

Exhibit C. 10.

EXHIBIT C. 10.

John J. Nicholson
To
Frederick Fairhand

This Indenture, Made the Fifteenth day of December, in the year of our Lord One Thousand Nine Hundred and Twenty-six BETWEEN JOHN J. NICHOLSON, Unmarried, of the Township of Chatham, in the County of Morris and State of New Jersey, of the First Part, And FREDERICK FAIRHAND, of the City of East Elmhurst in the County of Queens and State of New York, 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 good and valuable consideration money of the United States of America, to him in hand well and truly paid by the said party of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the first part, therewith fully satisfied, contended and paid, has given, granted, bargained, sold, aliened, released, enfeoffed, conveyed and confirmed, and by these presents does give, grant, bargain, sell, alien, release, enfeoff, convey and confirm to the said party of the second part, and to his heirs and assigns forever, All those certain tracts or parcels of land and premises, hereinafter particularly described, situate, lying and being in the Township of Chatham in the County of Morris and State of New Jersey:

[NOTE: Description not printed, same as set out in Bill of Complaint.]

TOGETHER with all and singular the houses, buildings, trees, ways, waters, profits, privileges, and advantages, with the appurtenances to the same belonging or in anywise appertaining; Also,

Exhibit C. 10.

all the estate, right, title, interest, property, claim and demand whatsoever, of the said party of the first part, of, in and to the same, and of, in and to every part and parcel thereof. TO HAVE AND TO HOLD, all and singular the above described land and premises, with 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 he the said Party of the first part does for himself, his heirs, executors and administrators covenant and grant, to and with the said party of the second part, his heirs and assigns, that he the said Party of the first part is the true, lawful and right owner of all and singular the above described land and premises, and of every part and parcel thereof, with the appurtenances thereunto belonging; and that the said land and premises, or any part thereof, at the time of the sealing and delivery of these presents, are not encumbered by any mortgage, judgment, or limitation, or by any encumbrance whatsoever, by which the title of the said party of the second part, hereby made or intended to be made, for the above described land and premises, can or may be changed, charged, altered or defeated in any way whatsoever, except as aforesaid. And also, that the said party of the first part now had good right, full power and lawful authority, to grant, bargain, sell and convey the said land and premises in manner aforesaid. And also, that he the said Party of the first part will Warrant, secure and forever defend the said land and premises unto the said Party of the second part, his heirs and assigns, forever, against the lawful claims and demands of all and every person or

Exhibit C. 10.

persons, freely and clearly freed and discharged of and from all manner of encumbrance whatsoever, except as aforesaid.

In Witness Whereof, the said party of the first part has hereunto set his hand and seal the day and year first above written.

John J. Nicholson (seal)

Signed, Sealed and Delivered
in the presence of

Robert S. Pollard

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

Be It Remembered, That on this 15th day of December, in the year of our Lord One Thousand Nine Hundred and Twenty-six before me, the subscriber, a Master in Chancery of New Jersey, personally appeared JOHN J. NICHOLSON Unmarried, who, I am satisfied is the grantor mentioned in the within Indenture, and to whom I first made known the contents thereof, and thereupon he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressd.

Robert S. Pollard,
Master in Chancery of New Jersey.

Received and Recorded December 17, 1926, at 10:36 o'clock A. M.

E. Bertram Mott, Clerk. No. 15362.

Exhibit C. 10.

STATE OF NEW JERSEY, }
COUNTY OF MORRIS. } *ss.*

I, E. BERTRAM MOTT, Clerk of the County of Morris, do hereby Certify that the foregoing is a true copy of the record of a Deed given by John J. Nicholson To Frederick Fairhand, as fully and entirely as the same remains of record in my office in Book G-30 of Deeds for said County, on pages 521, etc.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said County, at Morristown, this First day of May, A. D. nineteen hundred and twenty-eight.

E Bertram Mott
Clerk.

By Edwin W. Orr
Deputy Clerk

(SEAL)

MORRIS COUNTY CLERK'S OFFICE
Morristown, New Jersey

DEED

John J. Nicholson
To
Frederick Fairhand

Certified Copy.

Deed Dated Dec. 15, 1926
Rec. Dec. 17, 1926
Book G-30 of Deeds on Pages 521 &c.

Elias Bertram Mott, Clerk

Exhibit C. 11.

EXHIBIT C. 11.

Frederick Fairhand & wf., To The Holland Company, THIS INDENTURE, Made the First day of February, in the year of Our Lord One Thousand Nine Hundred and Twenty-Seven BETWEEN FREDERICK FAIRHAND and ISABELLA FAIRHAND, his wife, of the Township of East Elmhurst in the County of Queens and State of New York of the First Part AND THE HOLLAND COMPANY, a Corporation of the State of New Jersey, Having its principal office in the City of Newark in the County of Essex and State of New Jersey of the Second Part;

WITNESSETH, That the said party of the first part, for and in consideration of one dollar and other valuable consideration, lawful money of the United States of America, to them in hand well and truly paid by the said party of the second part, at or before the sealing and delivery of these presents, the receipts whereof is hereby acknowledged, and the said party of the first part, therewith fully satisfied, contended and paid, have given, granted, bargained, sold, aliened, released, enfeoffed, conveyed and confirmed, and by these presents do give, grant, bargain, sell, alien, release, enfeoff, convey and confirm to the said party of the second part, and to its successors and assigns forever, ALL that tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the Township of Chatham in the County of Morris and State of New Jersey: BEGINNING at a point in the center line of River Road, distant therein 1130.55 feet north-easterly from the intersection of the same with the center line of

Exhibit C. 11.

a road leading from New Providence to Chatham; thence south 5 degrees 48 minutes west 455.90 feet to the high-water mark of the Passaic River; thence along the same north 52 degrees 31 minutes east 11.18 feet to an angle; thence still along the same north 69 degrees 53 minutes east 200.25 feet to an angle; thence north 3 degrees 00 minutes east 474.20 feet to an angle situated in the center line of River Road; thence north 10 degrees 06 minutes east 1109.50 feet to an angle; thence north 10 degrees 51 minutes east 1121.35 feet to an angle situated in the center line of Fairmount Avenue or Long Hill Road; thence north 10 degrees 06 minutes east 786.92 feet to a corner; thence south 79 degrees 54 minutes east 135.86 feet to a point; thence north 4 degrees 01 minutes east 788.70 feet to a corner; thence north 84 degrees 36 minutes west 228.97 feet to a corner; thence south 10 degrees 06 minutes west 1729.79 feet to an angle situated in the center line of Fairmount Avenue or Long Hill Road; thence south 9 degrees 50 minutes west 1089.60 feet to an angle; thence south 10 degrees 06 minutes west 1088.92 feet to the point and place of BEGINNING. Excepting therefrom so much thereof as lies in the beds of River Road and Fairmount Avenue or Long Hill Road. This description in accordance with a survey made by John J. Kentz, Civil Engineer and Surveyor, Summit, New Jersey, January 10, 1927. Being part of the premises conveyed to the party of the first part by Deed Book G 30 page 521, recorded December 17, 1926. Excepting easement as in Deed Book F 5 page 341, which easement is as follows: "Said last described lot is conveyed subject to the right of said Jonathan C. Bonnel, his heirs and

assigns, owners or occupants of the Mill site and premises next below said lot and now owned by said Bonnel. Forever to flow the same by the present or any future dam of said Mill Site, which right is hereby reserved.— "It being understood that said right is limited to the flowing of said land to the extent to which said land has been flowed for the 5 years last past." Together with all the right title and interest which the Owners may have in and to the lands lying within the limits of River Road and Fairmount Avenue or Long Hill Road and the Passaic River abutting the property herein conveyed. TOGETHER with all and singular the houses, buildings, trees, ways, waters, profits, privileges and advantages, with the appurtenances to the same belonging or in anywise appertaining: ALSO all the estate, right, title, interest, property, claim and demand whatsoever, of the said party of the first part, of in and to the same, and of, in and to every part and parcel thereof. TO HAVE AND TO HOLD, all and singular the above described land and premises, with the appurtenances, unto the said party of the second part, its successors and assigns, to the only proper use, benefit and behoof of the said party of the second part, its successors and assigns forever: AND they the said party of the first part do for themselves, their heirs, executors and administrators covenant and grant to and with the said party of the second part, its successors and assigns, that they the said party of the first part are the true, lawful and right owners of all and singular the above described land and premises, and of every part and parcel thereof, with the appurtenances thereunto belonging; and that the said land and premises, or any part thereof, at the

Exhibit C. 11.

time of the sealing and delivery of these presents, are not encumbered by any mortgage judgment or limitation, or by any encumbrance whatsoever, by which the title of the said party of the second part, hereby made or intended to be made, for the above described land and premises, can or may be changed, charged, altered or defeated in any way whatsoever. AND ALSO, that the said party of the first part now have a good right, full power and lawful authority, to grant, bargain, sell and convey the said land and premises in manner aforesaid. AND ALSO, that they the party of the first part will WARRANT secure, and forever defend the said land and premises unto the said party of the second part, its successors and assigns forever, against the lawful claims and demands of all and every person or persons, freely and clearly freed and discharged of and from all manner of encumbrance whatsoever. IN WITNESS WHEREOF, we the said party of the first part have hereunto set our hand and seals the day and year first above written.

Frederick Fairhand (L. S.)
Isabella Fairhand (L. S.)

Signed, Sealed and Delivered
in the presence of

Rene F. Erkins

(Rene F.)
(Erkins)
(Notary)
(Public)
(New Jersey)

Exhibit C. 11.

STATE OF NEW JERSEY, } *ss.*
COUNTY OF ESSEX. }

BE IT REMEMBERED, That on this First day of February in the year of our Lord One Thousand Nine Hundred and Twenty-seven before me, a Notary Public of New Jersey personally appeared Frederick Fairhand and Isabella Fairhand, his wife, who, I am satisfied are the grantors mentioned in the within Indenture, and to whom I first made known the contents thereof, and thereupon they acknowledged that they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed: *And the said*

Rene F. Erkins
Notary Public of New Jersey
My Commission Expires Feb. 18, 1931

Received & Recorded Feb. 2nd, 1927 at 3:13 o'clk. P. M.

E. Bertram Mott, Clerk. No. 15967

STATE OF NEW JERSEY, } *ss.*
COUNTY OF MORRIS. }

I, E. BERTRAM MOTT, Clerk of the County of Morris, do hereby Certify that the foregoing is a true copy of the record of a Deed given by Frederick Fairhand & wf., To The Holland Company, as fully and entirely as the same remains of record in my office in Book I-30 of Deeds for said County, on pages 554, etc.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said County, at

Exhibit C. 11.

Morristown, this First day of May, A. D. nineteen hundred and twenty-eight

E. Bertram Mott
Clerk.

By Edwin W. Orr
Deputy Clerk.

(SEAL)

MORRIS COUNTY CLERK'S OFFICE
Morristown, New Jersey

DEED

Frederick Fairhand & wf.
To
The Holland Company.

Certified Copy

Deed Dated Feb. 1st., 1927
Rec. Feb. 2, 1927
Book I-30 of Deeds
Pages 554 &c.

Elias Bertram Mott, Clerk

EXHIBIT C. 12.

PARCELS TO BE EXCLUDED FROM PURCHASE MONEY MORTGAGE.

First Tract:

BEGINNING at a point in the center line of Fairmount Avenue, or Long Hill Road, distant therein southwesterly 705.15 feet from the intersection of the same with the dividing line between the lands of the Owner and lands of Charles E. Weyrich; thence (1) N 10° 6′ E 786.92 feet to a point; thence (2) S 79° 54′ E 135.86 feet to a point; thence (3) N 40° 1′ E 788.70 feet to a point; thence (4) N 84° 36′ W 228.97 feet to a point; thence (5) S 10° 6′ W 1729.79 feet to the center line of Fairmount Avenue, or Long Hill Road; thence (6) N 55° 35′ E 227.32 feet to an angle in the same; thence (7) still along said center line N 47° 57′ E 22.68 feet to the point and place of beginning. Containing 8.329 Ac.

Second Tract.

BEGINNING at a point in the center line of Fairmount Avenue, or Long Hill Road, distant therein southwesterly 705.15 feet from the intersection of the same with the dividing line between the lands of the Owner and lands of Charles E. Weyrich; thence (1) S 10° 51′ W 1121.35 feet to an angle; thence (2) S 10° 6′ W 1109.50 feet to the center line of River Road; thence (3) S 61° 25′ W and along the center line of said River Road 200 feet to a point; thence (4) N 10° 06′ E 1088.92 feet; thence (5) N 09° 50′ E 1089.60 feet to the said center line of Fairmount Avenue, or Long Hill Road; thence (6) N 55° 35′ E and along said center line of Fairmount Avenue, or Long Hill Road, 227.32 feet to an angle in the

Exhibit C. 12.

same; thence (7) still along said center line N 47° 57′ E 22.68 feet to the point and place of Beginning. Containing 8.137 Acres.

Third Tract.

Beginning at a point in the center line of River Road, distant therein northeasterly 1130.55 feet from the intersection of the same with the center line of Road Leading from New Providence to Chatham; thence (1) S 50° 48′ W 455.90 feet to the high water line of Passaic River; thence (2) N 52° 31′ E and along said high water mark of the Passaic River 11.18 feet to a point; thence (3) N 69° 53′ E and still along said high water mark in Passaic River 200.25 feet to a point; thence (4) N 3° E 474.20 feet to the center line of River Road; thence (5) S 61° 25′ W 200 feet to the point and place of Beginning. Containing an area of 1.904 Acres.

Including all the Owner's right title and interest in and to the lands lying within the limits of the projection of courses one and four to the south of courses two and three (in the herein described 3d tract) to the center of the Passaic River.

This description is in accordance with the data furnished by J. J. Kentz, surveyor of Summit, N. J., as required by covenant of contract between Frederick Fairhand and John L. Nicholson, covering a total of 18.370 Acres.

Exhibit C. 12A.

Newark, N. J., Dec. 7, 1926.

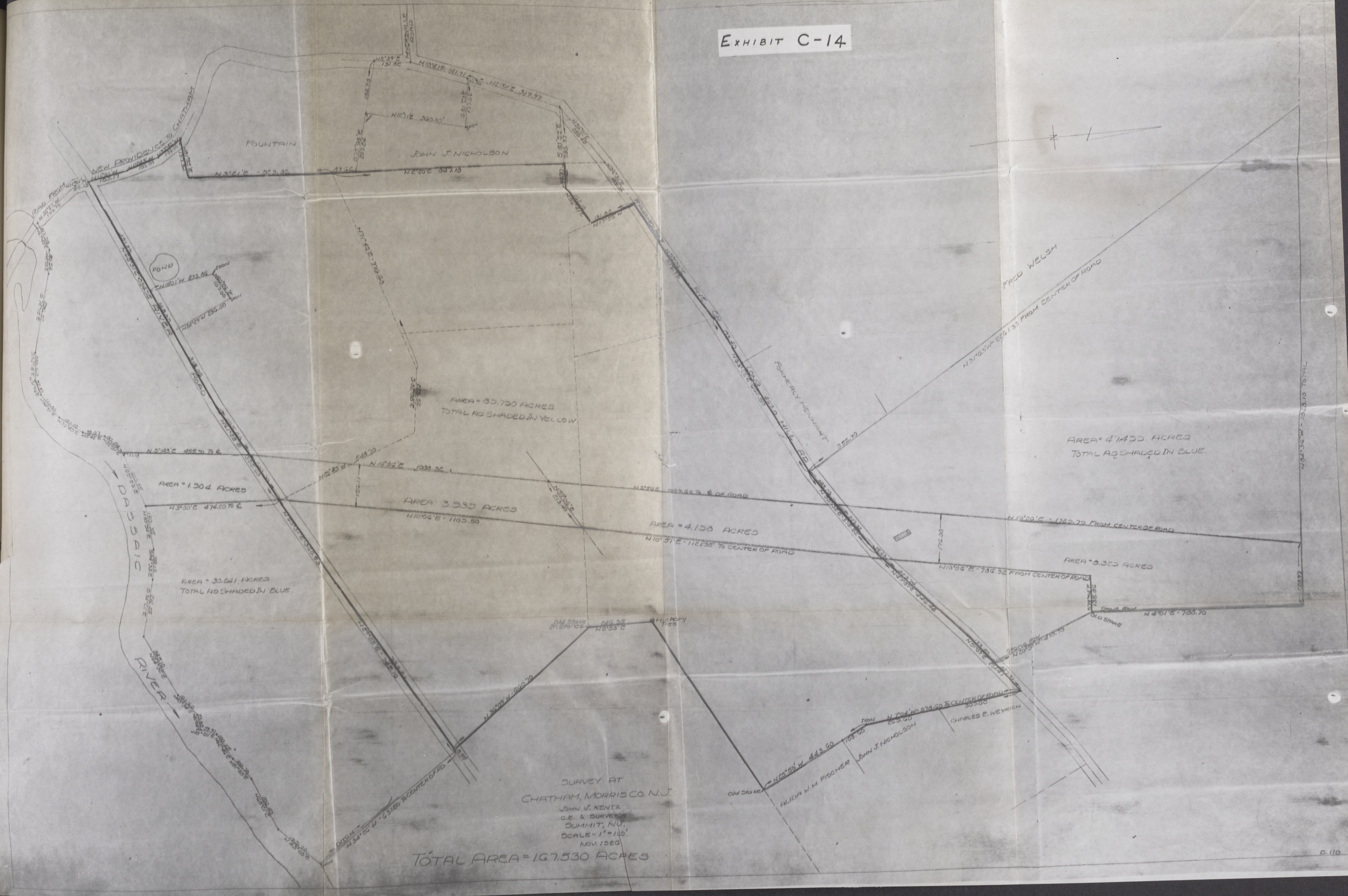
RECEIVED FROM FREDERICK FAIRHAND description of parcels to be excluded from purchase money mortgage as required in covenant of contract between the said Frederick Fairhand and John L. Nicholson, of recent date for 166 acres, more or less in Chatham Township, N. J.

Riker & Riker
per Robert S. Pollard

EXHIBIT C. 12A.

Exhibit 12A consists of Five Letters by officials of the Public Service Corporation on paper watermarked "Public Service Bond."

EXHIBIT C-14


MORRISTOWN ROAD
NEW PROVIDENCE TO CHATHAM
ROAD FROM NEW PROVIDENCE TO CHATHAM
FOUNTAIN
JOHN J. NICHOLSON
POND
DAGGETT'S LANE
MILLER ROAD
DAGGETT'S LANE
DUNN ROAD
DUNN ROAD
DUNN ROAD

Exhibit

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Exhibit C. 16.

EXHIBIT C. 16.

THIS AGREEMENT, MADE the sixth day of April in the year of our Lord One Thousand Nine Hundred and Twenty-six

BETWEEN Harry Hatton and Bessie J. Hatton, his wife, of the Borough of Chatham in the County of Morris and State of New Jersey party of the First Part;

AND Rene F. Erkins of the City of Newark in the County of Essex 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 Five Thousand Two Hundred and Fifty Dollars ($5250.) to be paid and satisfied as hereinafter mentioned, and also in consideration of the covenant and agreements hereinafter mentioned, made and entered into by the said party of the second part, doth agree to and with the said party of the second part, that they the said party of the first part, will well and sufficiently convey to the said party of the second part, his heirs and assigns, by deeds as hereinafter mentioned on or before the fifteenth day of June next ensuing the date hereof, all those lots, tracts, or parcels, of land and premises, hereinafter particularly described, situate, lying and being in the Borough of Chatham in the County of Morris and State of New Jersey

[Description of property omitted.]

AND the said Rene F. Erkins for himself, his heirs, executors and administrators, doth covenant, promise and agree to and with the said party 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

New Jersey State Library

Exhibit C. 16.

to be paid and satisfied, unto the said party of the first part, the said sum of Five Thousand Two Hundred and Fifty Dollars ($5250.) as and for the purchase money of the foregoing described land and premises, in the following manner, that is to say:

$525. on signing of this contract receipt whereof is hereby acknowledged.
4725. cash on delivery of deed.

$5250

Taxes to be apportioned at time of closing

It is understood that James E. Shea is the broker in this transaction and is entitled to 5% of the purchase price as his commission at the time of closing, to be paid by the party of the first part.

Party of the First Part agrees to furnish the Party of the Second Part at the date of closing with a statement of all moneys expended on third tract by Party of the First Part. J. E. S.

AND IT IS FURTHER AGREED, by the parties to these presents, that the said party of the second part, his heirs and assigns, may enter into and upon the said land and premises on the fifteenth day of June next ensuing the date hereof, and from thence take the rents, issues and profits to him and their use.

AND IT IS FURTHER AGREED, by the parties hereto, that the said Deed shall be delivered and received at the offices of the Fidelity Union Title & Mortgage Guarantee Co. between the hours of ten in the fore-noon and four o'clock in the after noon on the said fifteenth day of June next ensuing the date hereof

Exhibit C. 16.

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

Harry Hatton (L. S.)
Bessie J. Hatton (L. S.)
Rene F. Erkins (L. S.)

Signed, Sealed and Delivered
in the presence of

James E. Shea
(SEAL) Notary Public N. J.

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

Be it Remembered, That on this sixth day of April in the year of our Lord, One Thousand Nine Hundred and twenty six before me, the subscriber Harry Hatton and Bessie J. Hatton his wife personally appeared who, I am satisfied, are the Grantors in the within Agreement named; and I, having first made known to them the contents thereof, did acknowledge that they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed:

And the said Bessie J. Hatton being by me privately examined, separate and apart from her husband, did further acknowledge that she signed, sealed and delivered the same as a voluntary act and deed, Freely, without any fear, threats or compulsion of her said husband.

James E. Shea
Notary Public N. J.

Exhibit C. 16.

AGREEMENT

for the

SALE OF PROPERTY

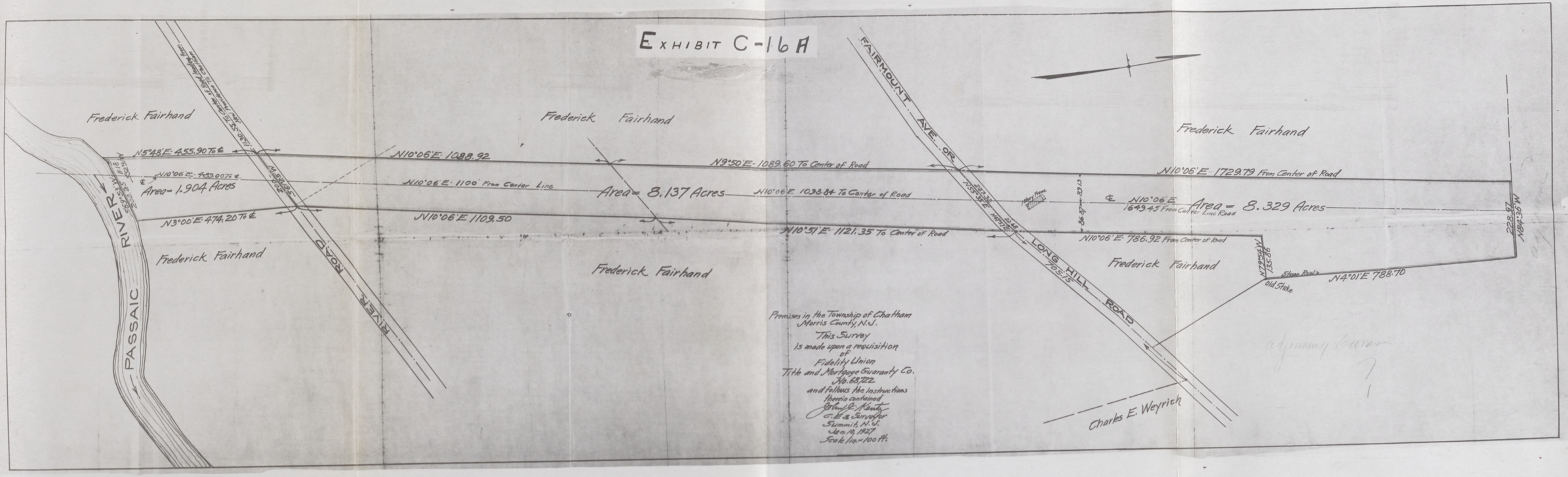
Harry Hatton & wife

to

Rene F. Erkins

Dated April 1926

EXHIBIT C-16A



Premises in the Township of Chatham
Morris County, N.J.
This Survey
Is made upon a requisition
of
Fidelity Union
Title and Mortgage Guaranty Co.
No. 68,722
and follows the instructions
therein contained
Garret R. Kents
C. E. & Surveyor
Summit, N.J.
Jan. 19, 1927
Scale 1 in. = 100 ft.

Exhibit C. 17.

EXHIBIT C. 17.

RIKER and RIKER
Federal Trust Building
24 Commerce Street, Newark,
New Jersey

August 16, 1927.

Gentlemen:—

We have been retained by Mr. John J. Nicholson in connection with the sale of property formerly owned by him in the Borough of Chatham.

Mr. Nicholson hereby tenders himself ready and willing to return the sum received on account of the purchase price for said property, upon receiving a deed reconveying the property heretofore conveyed to your agent, Frederick Fairhand.

Yours very truly,

Riker & Riker

TMcCM: S.

Public Service Electric & Gas Co.,
Public Service Terminal,
Park Place, Newark, N. J.

(Stamp) Public Service Corp. of N. J. Real Estate Dept. Received Aug 17 1927

Exhibit C. 18.

EXHIBIT C. 18.

THE HOLLAND COMPANY
80 Park Place, Newark, N. J.

August 17th. 1927.

Riker & Riker,
24 Commerce St., Newark, N. J.

Gentlemen:

I am returning herewith a letter which was evidently sent here through a mis-understanding-

Mr. Fairhand some time ago sold to this Company some land in the vicinity of Chatham, but he is not an Agent of this Company. I suggest that you communicate directly with Mr. Fairhand in connection with this matter.

Yours very truly,

H. L. Saunders
(Harry L. Saunders)
Right-of-Way-Engineer
Real Estate Department.

HLS/BPW.

Exhibit C. 19.

EXHIBIT C. 19.

PUBLIC SERVICE ELECTRIC AND GAS COMPANY
80 Park Place, Newark, N. J.

August 19th. 1927.

Riker and Riker,
24 Commerce St., Newark, N. J.

Gentlemen:

I am returning herewith the second letter received in connection with the matter between Mr. John J. Nicholson and Frederick Fairhand. As explained in my previous letter Mr. Fairhand has never represented this Company in any capacity, and I suggest you take this matter up with him direct.

Yours very truly,

H. L. Saunders
(Harry L. Saunders)
Right of Way-Engineer
Real Estate Department.

HLS/BPW.

Exhibit C. 20.

EXHIBIT C. 20.

RIKER and RIKER
Federal Trust Building
24 Commerce Street, Newark
New Jersey

August 16, 1927.

Dear Sir:—

We are writing to you as Attorneys for Mr. John J. Nicholson, to advise you that Mr. Nicholson is prepared to return the amount received on account of the purchase price of property located in the Borough of Chatham upon securing from you a reconveyance of all of the property heretofore conveyed to you by him.

Please let us hear from you by return mail, in default of which a bill in Chancery will be filed.

Yours very truly,

Riker & Riker.

TMcCM:S.

Mr. Frederick Fairhand,
c/o Long Hill Gardens,
1 Passaic Avenue, Chatham, N. J.

2711 Ericison Street, East Elmhurst

Long Island, N. Y. August 22, 1927.

Messers. Riker & Riker,
Federal Trust Bldg.,
24 Commerce St., Newark, N. J.

Gentlemen:

Yours of the 16th at hand, and the thought expressed therein appears to me to be quite ridiculous, as I have never shown any intent or

Exhibit C. 20.

thought of reconveying the entire premises purchased by me from Mr. Nicholson at Chatham, N. J. Due to my present financial embaressment and ill health, I have, however discussed with Mr. Nicholson a proposition to reconvey to him the premises covered in the mortgage of record in consideration of his returning to me the bond and a satisfaction piece for the said mortgage. This proposition was accepted in letter received by me from your office through Mr. Robert S. Pollard dated June 16, 1927, but was never consumated.

Therefore, in view of my desire not to inconvenience Mr. Nicholson unduly, by forclosure proceedings. I will restate my proposal that, if the bond and the satisfaction piece for mortgage given on the premises, is delivered to me, I will be willing to turn over simultaneously a properly executed deed for the premises now owned by me in the holdings purchased from Mr. Nicholson, either at my office or at the office of my attorney.

I have recently endeavored to obtain financial assistance with the idea of again trying, to market the subdivision next spring, in an effort to recover the losses sustained by me, by the failure of my prior campaign, and the thought occurs to me that if Mr. Nicholson will defer or extend the last past interest paying date until December 15 next my affairs and health will be in such shape at the time, to enable me to carry my development plans thro successfully, to the benefit of all concerned.

Either of the above mentioned plans are acceptable to me, if Mr. Nicholson does not care to

accept either suggestion, the only alternative in my opinion is to proceed with foreclosure.

Yours very truly,

Frederick Fairhand

10

EXHIBIT C. 21.

ARTICLES OF AGREEMENT, made the 12th day of June in the year of Our Lord One Thousand Nine Hundred and twenty-six BETWEEN JOSEPH MARINCHO, and MARINCHO, his wife and DOMINICK FORNARO, and FORNARO, his wife of the township of New Providence in the County of Union and State of New Jersey of the First Part; AND HARRY K. FORD of the city of Newark in the County of Essex and State of New Jersey of the Second Part;

WITNESSETH That the said party of the first part, for and in consideration of the sum of Eleven Hundred ($1100.00) dollars 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, doth agree to and with the said party of the second part, that they the said party of the first part, will well and sufficiently convey to the said party of the second part, their heirs and assigns, by Deed of Warranty free from all encumbrance on or before the 13th day of September next ensuing the date hereof, all that lot , tract , or parcel , of land and premises, hereinafter particularly described, situate, lying and being in the township of New

20 30 40

Exhibit C. 21.

Providence in the County of Union and State of New Jersey

* * * * * * * * *

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

Domenico Fornaro
Lucy Fornaro
Her Mark X
Jos Marincho
Harry K. Ford

Signed, Sealed and Delivered
in the presence of

(seal) Rene F. Erkins

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

Be it Remembered, That on this 12th day of June in the year of Our Lord One Thousand Nine Hundred and twenty-six before me, Notary Public personally appeared JOSEPH MARINCHO, and MARINCHO, his wife and DOMINICK FORNARO, and FORNARO, his wife who, I am satisfied are the Grantors in the within Agreement named; and I having first made known to them the contents thereof, they did acknowledge that they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed:

RENE F. ERKINS
(seal) Notary Public of New Jersey
My Commission Expires Feb. 18, 1931



CH. TWP. 4
S-7
As of Nov. 22, 1926
As of Oct. 19, 1926
As of April 1, 1926
As of Nov 22, 1926
CONRAD HUBERT
MARY A PROTROWSKI
FRED HALL THOMAS
JOHN J NICHOLSON
ELIZ H HANHART
ROBT. SCHENCK
CHAS. JOHNSON
FAIRMOUNT
AVENUE
CLIFFORD DAY
FRED. H. THOMAS
JOHN C SMITH
JOHN HOWARD CONOVER
BESSIE M. ASPINWALL
NOE FARM INC.
MARY T. DODSON
BENJ. PERRY
OSCAR BEHRING
DWINNELL'S CO.
ANNA SCHNEIDERMAN
S-18
S-21
12.5 Ac.
9.96Ac
2.39Ac
10.65Ac
2.4Ac
2.25Ac
1.5Ac
4.0Ac
3Ac.
2.6Ac
3.6Ac
9.5Ac
0.10Ac
1.80
1.4Ac
3.62 Ac
5.80 Ac.
77Ac
76Ac
7.46 Ac
4.81 Ac
SEE 1650-R
DATED APRIL 20, 1927
VOID
EXHIBIT C 22
Line revised Nov. 22, 1926
Line revised Oct. 19, 1926
JOB NO. WO-LH 12013
DRAWING NO. 1650-R
SCALE 1" = 200'

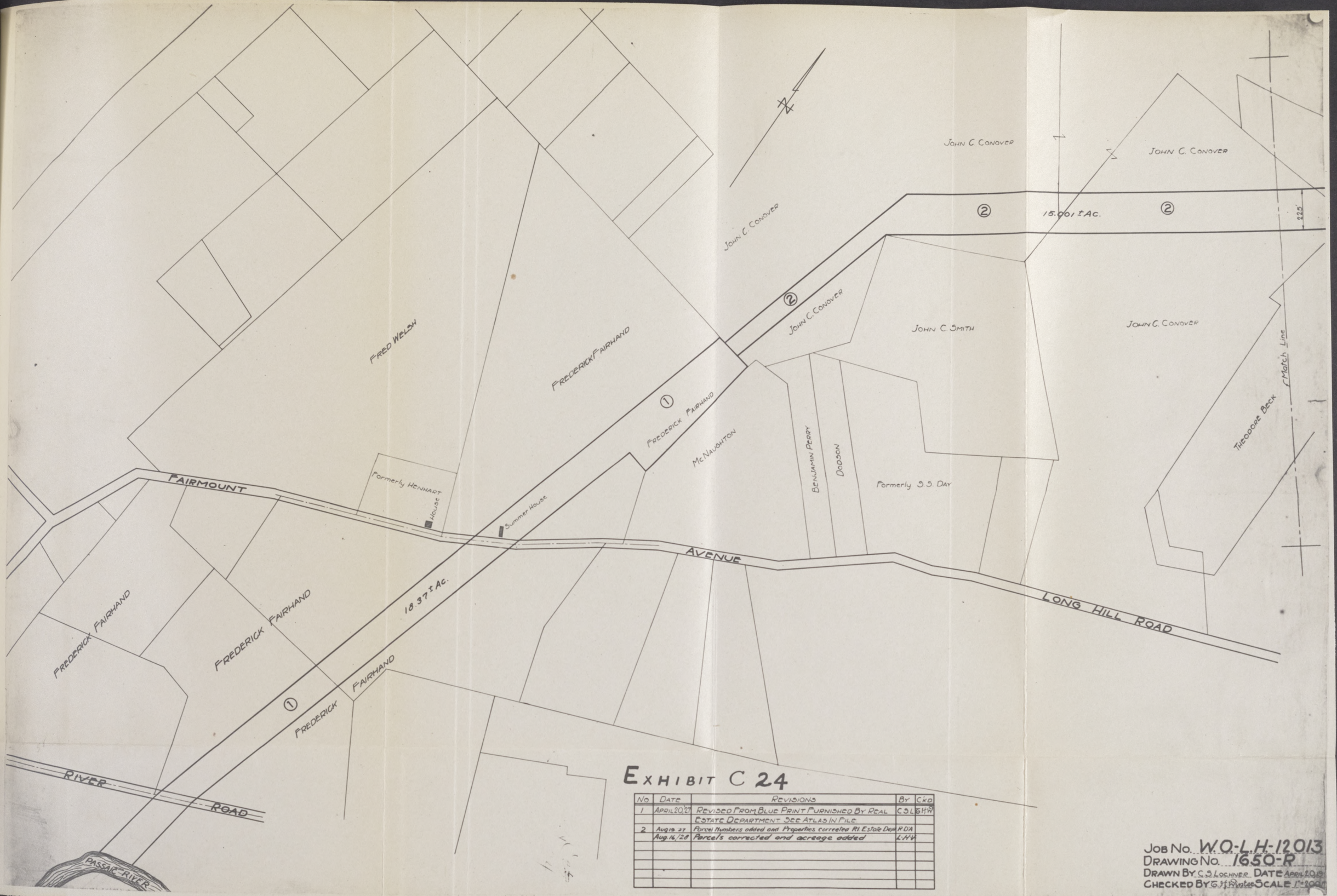


EXHIBIT C 24

No	Date	Revisions	By	Ckd
1	April 20, '27	Revised From Blue Print Furnished By Real Estate Department. See Atlas In File.	C.S.L.	G.H.W.
2	Aug. 19, 27	Parcel Numbers added and Properties corrected R.I. Estate Dep.	R.D.A.	
	Aug. 16/28	Parcels corrected and acreage added	L.H.V.	

JOB No. W.O.-L.H.-12013
DRAWING No. 1650-R
DRAWN BY C.S. LOCHNER DATE APRIL 20, 19
CHECKED BY G.H. Winter SCALE 1" = 200'

Exhibit C. 26.

EXHIBIT C. 26.

Newark, N. J. Jan 29 1927 No. 1356

FIDELITY UNION TRUST COMPANY

Pay to the order of Fidelity Union Title & Mortgage Co. $27,000.00

Twenty Seven Thousand Dollars.

THE HOLLAND CO.
F A Ners
Asst. Treasurer

Countersigned
C E Olume
Assistant to the General Auditor

(Stamped on back)
Pay to the Order of
FIDELITY UNION TRUST CO.
E 511 Newark, N. J. E 511
Fidelity Union Title & Mortgage Company
NORMAN E. RUTAN, Treas.
Settlement Account

(Perforated)
PAID
2-1 27

Exhibit C. 27.

EXHIBIT C. 27.

RIKER and RIKER
Federal Trust Building
24 Commerce Street, Newark
New Jersey

August 16, 1927.

Gentlemen:—

We have been retained by Mr. John J. Nicholson in connection with the sale of property formerly owned by him in the Borough of Chatham.

Mr. Nicholson hereby tenders himself ready and willing to return the sum received on account of the purchase price for said property, upon receiving a deed reconveying the property heretofore conveyed by him to Frederick Fairhand, your agent.

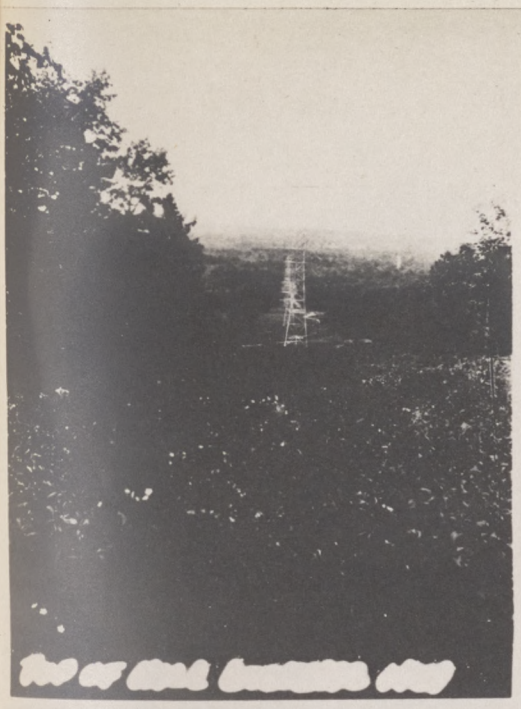
Yours very truly,

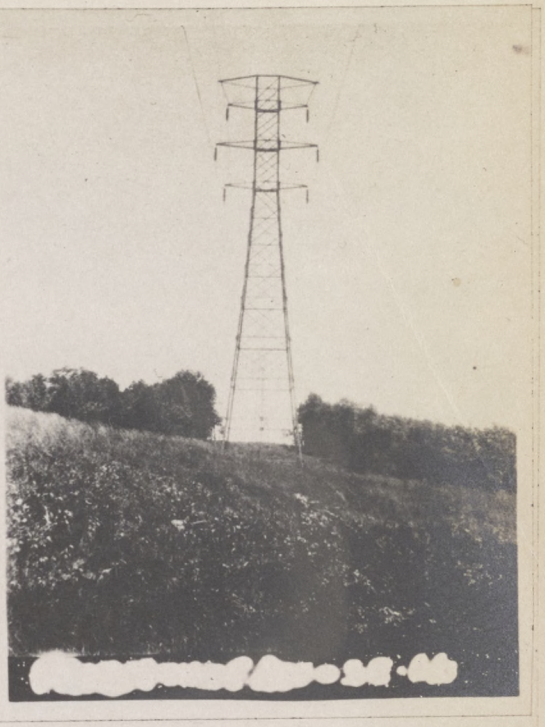
Riker & Riker.

TMcCM: S.

The Holland Company,
Public Service Terminal,
Park Place, Newark, N. J.

(Stamp) Public Service Corp. of N. J. Real Estate Dept. Received Aug 17 1927





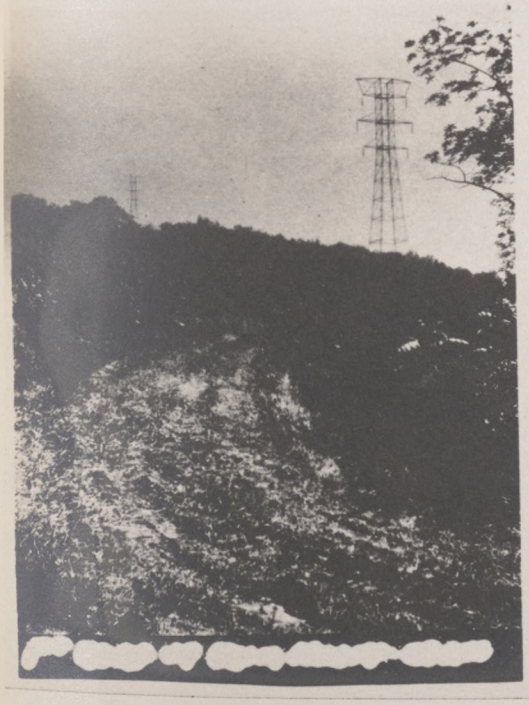




EXHIBIT C. 28.

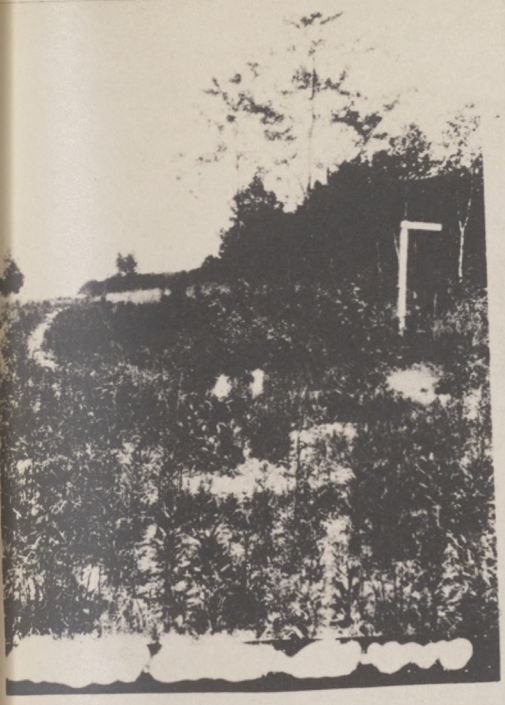








EXHIBIT C. 28.

Exhibit D. 1.

EXHIBIT D. 1.

THIS AGREEMENT made this 5th day of March in the year of Our Lord One Thousand Nine Hundred and Twenty-eight,

BETWEEN JOHN J. NICHOLSON of the City of Jersey City, County of Hudson, and State of New Jersey, of the first part, and HAROLD P. LESHINS of the City of Newark, County of Essex and State of New Jersey, of the second part, WITNESSETH:

1. The party of the first part does hereby employ the party of the second part as associate counsel to represent him in a certain action now pending in the Court of Chancery of the State of New Jersey brought by the party of the first part as complainant against Frederick Fairhand, The Holland Company and the Public Service Electric & Gas Co., defendants.

2. Should the party of the first part fail to obtain a decree in his favor in the aforementioned action, or fail to obtain satisfaction from any or all of the defendants in the form of settlement before or after trial, then and in that event the party of the second part shall be entitled to no compensation whatsoever for his services. Should the party of the first part succeed in obtaining a decree in his favor or in effecting a settlement as before mentioned, then and in that event the party of the second part shall be entitled to compensation as follows:

(a) In the event that the party of the first part shall obtain a decree compelling the Public Service Electric & Gas Company and/or The Holland Company to assume the payment of the $124,000.00 mortgage given by Frederick Fairhand to the party of the first part on premises

Exhibit D. 1.

in Chatham Township, Morris County, then the party of the second part shall receive the sum of $10,000.00 as his compensation for such services.

(b) In the event that the party of the first part shall obtain a decree setting aside the conveyance from himself to Frederick Fairhand for the aforementioned premises located in Chatham Township, Morris County, then the compensation of the party of the second part shall be dependent upon the amount received by the party of the first part for a right-of-way for the high tension line of the Public Service Electric & Gas Co. across said premises in Chatham Township, Morris County, whether such right-of-way be obtained by purchase or by condemnation. Should the price received by the party of the first part for said right-of-way, either through purchase or condemnation, equal or exceed the sum of $50,000.00, then and in that event the party of the second part shall be entitled to the sum of Ten Thousand Dollars ($10,000.00) for his services. Should the amount so received by the party of the first part be less than $50,000.00, then the compensation to which the party of the second part shall be entitled shall be reduced in equal proportion. The right-of-way contemplated above is one not exceeding a strip of land 200 feet in width running in a straight line across said premises in Chatham Township, Morris County, formerly owned by the said party of the first part.

3. It is agreed by the party of the first part that he will accept no settlement before or after trial, or will make no private sale of said right-of-way for a sum less than the amount which will entitle the party of the second part to his

Exhibit D. 1.

full compensation of $10,000.00 under the terms hereof, unless he shall pay to said party of the second part said full compensation of $10,000.00.

4. The party of the second part agrees that all of his activities in connection with the conduct of said case shall be under the direct supervision and control of the firm of Riker and Riker of the City of Newark, counsel for the party of the first part in said action, and that the entire conduct of said trial and all matters pertaining to settlement, or any other activities connected therewith shall be in the hands of said firm of Riker and Riker, and their decision shall be binding on all such matters.

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

JOHN J. NICHOLSON
HAROLD P. LESHINS

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

ROBERT S. POLLARD


A
B
C
D
X
H
E
F
F'
G
FAIRHAND PROPERTY
MOUNTAINSIDE
WEST ORANGE
SOUTH ORANGE
ROOSEVELT
EXHIBIT D 2

Exhibit D. 4.

EXHIBIT D. 4.

ORIGINAL
ORDER FOR DEED

May 31, 1927

To Minton and Day
Morristown. 21 South St.
Please issue CONTRACT to
Name John G Smith Jr.
Street 83 North Brighton Av City East Orange
Covering lots 25 and 26 Block 6 Long Hills Gardens Chatham
Total Purchase Price is.....$600.xx
Purchaser has paid on account.....$ 60.xx

Additional money to be paid on signing of Contract $120.xx
Balance on Contract in one, two and three years, payable in monthly installments with interest at 6% on each monthly balance.

GERTH REALTY EXPERTS
R. E. GERTH
AUCTIONEERS

By Eugene Christion

(SEAL)

Countersigned
Ralph E Gerth
General Manager.

Bernard Frank
Atty.

This order is NOT valid unless countersigned by Ralph E. Gerth (Gen. Manager)

Exhibit D. 5.

EXHIBIT D. 5.

THE GERTH CO.
Real Estate Auctioneers
New Jersey Office
Military Park Bldg.
Newark, New Jersey

June 7, 1927.

Minton & Day,
Morristown, N. J.

Gentlemen:—

One of our salesmen has turned over to me, the papers pertaining to the sale of two lots, Nos. 25 and 26, Block 6, Long Hill Gardens, Chatham, N. J.; sold to John G. Smith, Jr., for $600. Mr. Smith tendered his check for $50. and a cash payment of $10., according to the record I have.

I am, today, writing him that the owners are willing to release him from his purchase and are returning to him the $60. in the form of our check for $10. and his check for $50. This, as I understand, is the desire of your client, Mr. Fairhand.

Very truly yours,

Ralph E Gerth
Ralph E. Gerth.

REG:EJM

Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

New Jersey Court of Errors and Appeals

Between

JOHN J. NICHOLSON,
Complainant-Appellant,

and

FREDERICK FAIRHAND, PUBLIC SERVICE ELECTRIC & GAS COMPANY, a corporation, and HOLLAND COMPANY, a corporation,
Defendants-Appellees.

On Appeal from Chancery.

BRIEF FOR COMPLAINANT-APPELLANT.

Statement of Issues.

Complainant below John J. Nicholson has appealed to this court from a decree of the Court of Chancery entered on the advice of Honorable Alonzo Church, Vice-Chancellor, dismissing the first and second causes of action as set out in his bill of complaint.

The bill has three causes of action, but as the third is not in any way involved in the appeal, it may be totally disregarded for the purposes hereof.

The first cause of action alleges in brief that the Public Service Electric & Gas Company determined during the year 1926, or prior thereto, to construct a high power transmission line through the Borough of Chatham and adjacent territory; that to accomplish this it became necessary to acquire the rights of way therefor and the Holland Company, a real estate holding company of the Public Service, was the agent used

for the purpose of securing and holding the legal title to the tracts of land in question; the complainant-appellant, John J. Nicholson, was at that time the owner of a large tract of land in the Borough of Chatham consisting of approximately 168 acres which it was necessary for the proposed transmission line to cross in order to construct the line as planned although such fact was not then known to him. The defendant company employed various agents in order to procure for them the tracts of land necessary to secure the right of way and, in particular, used one Rene F. Erkins for that purpose; that these agents, including Erkins, negotiated with the complainant for his land and, as a result, the complainant entered into a contract on November 12, 1926 to sell the entire tract for $139,000.00 to the defendant, Frederick Fairhand, and consummated this transaction and conveyed the premises to Frederick Fairhand by deed dated December 15, 1926. Frederick Fairhand conveyed the desired right of way to the Holland Company by deed dated February 1, 1927, and subsequently tendered back to the complainant the remaining land.

The complainant claims that the contract and sale so made by him were induced by fraud and that the fraud consisted of misrepresentations by agents of the Public Service as to the intention of the nominal buyer with respect to his use of the land purchased; that all of the defendants were responsible therefor and he asks in his first cause of action that the contract of sale and the deed made under such fraudulent representations be set aside and rescinded upon his restoring the consideration paid.

The second cause of action is of the same nature as the first and alleges, in addition to the

matters above stated, that in connection with the sale to Frederick Fairhand a bond and mortgage were given by Frederick Fairhand to the complainant for $124,000.00 as part payment of the consideration and he, therefore, prays that this bond and mortgage, nominally executed by Frederick Fairhand, be held to be an instrument of either the Public Service Electric & Gas Company or the Holland Company, and that the said companies, or one of them, should be compelled to assume payment thereof.

The Court of Chancery determined that the transactions involved were not induced by fraud and that even if it was fraud the Public Service and Holland Company were not chargeable therefor and thereupon entered a decree dismissing the two causes of action of the bill of complaint.

From this decree the complainant has appealed to this Court alleging that the same is erroneous and that the transaction was in fact fraudulent throughout and that the defendants were equally responsible therefor in equity and that he is entitled to a decree rescinding the entire transaction.

LAW.

Fraud justifies rescission of contract.

The right to rescind or cancel a contract for fraud is a well recognized ground of equitable relief.

> "Fraud, in some of its phases has long been an occasion for the exercise of jurisdiction both at Law and in Equity. The various reliefs * * * which are possible * * * are * * * Equity. The affirmative relief of cancellation whereby the defrauded party procures an instrument, obli-

> gation, transaction, or other matter affecting his rights and liabilities to be set aside and annulled and himself to be restored to his original position of right, and as a consequence to re-establish his title, or to recover possession and enjoyment of property."
>
> Pomeroy Equity, 4th Edition, Section 872.

> "The bill in the case is filed to procure a decree rescinding a contract alleged to have been made between the defendant, Winter, and two persons as partners, one of whom is dead, the complainant being the survivor * * *."

> "In order to set aside a contract founded in fraud, it is only necessary in Equity to prove that the representation upon which the action is founded is false, that it is material and that damage has ensued; while at Common Law the proof must go to the extent of satisfying the jury that the defendant knew that the statement relied on was false."
>
> *Schoenfield* v. *Winter,* 76 N. J. E. at 512.

Therefore, the complainant is undoubtedly entitled to the relief prayed for in the first cause of action in the bill as against Frederick Fairhand if he can establish a fraud which has reference to a material matter and that damages were caused thereby.

Another element than the mere fraudulent representations, however, is involved in this case. Part of the land conveyed by the contract and deed referred to has been conveyed to the Holland Company. That company claims to be entirely innocent of any fraud even if the Court should find that the defendant, Frederick Fairhand, is guilty thereof. The complainant charges that the persons who actually handled the transaction and made the representations were Rene F. Erkins and Frederick Fairhand; that Erkins

was an agent of the Holland Company and Frederick Fairhand a mere dummy whose participation enabled the fraud to be perpetrated on the complainant. If these facts can be established it is unnecessary in equity to prove direct authorization to commit the fraud because an innocent principal will not be permitted to retain the benefit of a fraud committed by his agent. The following cases will illustrate the rule:

> "On the ground thus assumed, then, the cause would be that of a sale made by fraud-doing agents in behalf of an innocent vendor. Whatever uncertainty may at one time have prevailed in regard to the legal incidents of such a position, such uncertainty no longer exists, and the rights, under the given circumstances, of both vendor and vendee, have been plainly defined, and, as I think, firmly settled by recent judicial decisions. In the light of such authorities it is clear that an innocent vendor cannot be sued in tort for the fraud of his agent in effecting a sale. In such a juncture the aggrieved vendee, has at law, two, and only two, remedies; the first being a rescission of the contract of sale and a reclamation of the money paid by him from the vendors, or a suit against the agent, founded on deceit."
>
> *Kennedy* v. *McKay,* 43 N. J. L. at 290.

> "The general rule * * * in this state at Law as well as Equity is that contract procured by the fraud of an agent may be rescinded even as against an innocent principal."
>
> *Marsh* v. *Buchan,* 46 N. J. E. 602.

> "The defendant has the undoubted right to rescind the contract for fraud. The whole subject of the rights of the vendee against an innocent vendor in such cases was discussed by Chief Justice Beasley in Kennedy *v.* McKay, 14 Vr. at 291 and his statement that the remedy against the innocent vendor is a rescission of the sale and not an action

for the agent's fraud has been accepted as settling the principle in this state."

Reilman v. *Fiorillo,* 76 N. J. L. 810.

See also

Towbin v. *Pierro,* 97 N. J. E. 259; 128 Atl. 154, Aff. 131 Atl. 923.

"The responsibility of an innocent principal for the fraud of an agent has been one of the vexed questions of the Law. That an innocent principal cannot as a general proposition be permitted to benefit by the fraud of his agent has been settled in this court. Marsh *v.* Buchan, 46 N. J. E. 595. Reilman *v.* Fiorillo, 76 N. J. L. 815. It seems to be settled that a principal is not liable in tort for deceit upon fraudulent representations made by his agent without his knowledge or consent (cites cases); the remedy in such cases resting on a rescission of the contract."

Meck v. *Corporation of Royal Exchange,* 87 N. J. L. 607.

Erkins and Fairhand were agents of the defendant company.

In considering this case on appeal, the first question involved in the facts presented is the status of Rene F. Erkins and Frederick Fairhand. The Court of Chancery in its opinion stated it in this form:

"The sole question, therefore, is were these men the actual agents of Public Service for the purpose of acquiring rights of way? I don't think they were. The testimony I have summarized clearly shows that they had no power to buy anything, certainly not a tract of 168 acres."

State of the Case, page 316, line 37 to page 317, line 2.

The Court stated as the primary question, whether or not Erkins and Fairhand were agents *for the purpose of acquiring rights of way* and having determined that they had no such actual power decides that the complainant is not entitled to relief.

We emphatically dissent from this premise. The complainant's right to relief does not depend upon their actual powers. They may not have been authorized to acquire a tract of 168 acres, but they were agents of the Public Service; they were the "mouthpieces" of the right of way department and if they acted fraudulently and the Public Service secured a benefit from their transaction the companies were chargeable in equity insofar as to justify rescission of the contract.

Let us, therefore, examine, in detail, what was the exact status of these representatives and their relationship with the defendant companies.

Rene F. Erkins was employed by the defendant, Public Service Electric & Gas Company and the Holland Company during all of the time when the transactions involved in the case occurred. The Holland Company was a holding company of the Public Service and the corporation which acquired the legal titles to land utilized by the corporation for its business including the right of way for the high power transmission lines. The department having charge of this matter was under the general supervision of Mr. Barker. Next in line was Harry L. Saunders and under him were field representatives, among them Rene F. Erkins, whose primary duty was to interview the property owners.

The answer to the interrogatories by both the Public Service and Holland Company concede this fact.

> Interrogatory 18. In what capacity was he (Saunders) employed? What were his powers and duties?
>
> Answer. As right of way engineer.
>
> (b) Under the subscriber (Barker), he was to ascertain the names of the owners, the valuation at which they held the property, the value of surrounding properties, and generally to find for the subscriber all information concerning the same. Within the limits determined upon by the subscriber, he also was authorized to make purchases of lands which were acquired by the Holland Company.
>
> Interrogatory 22. In what capacity was he (Rene F. Erkins) employed? What were his powers and duties?
>
> Answer. Field man under Harry L. Saunders, Engineer of right of way.
>
> (b) Had no powers. His duties were to investigate prices of real estate within the line of the right of way desired, as well as surrounding lands for comparison, get the names of and interview owners and learn anything of interest to the acquisition of the right of way and make report thereof from time to time to said Engineer.

Mr. Saunders elaborates that further in his testimony.

> "Q What were his (Rene F. Erkins) duties? A His duties were to go into the field and to interview owners to secure from them their asking prices, in the event that we had the map, and he was working on a definite stretch of line to secure asking prices which they wanted for the right of way. He was to report this back to me and carry my message back to the property owners. You might call them field scouts or investigators or representatives. He was more or less my mouthpiece in working the field as

we were working with a thousand property owners and it was impossible for me to see each one of them personally. I had to have these men."

State of the Case, page 257, lines 20-33.

"Q Let us not trouble about the word 'negotiate,' he (Mr. Erkins or someone in his position) is the only man that talks to the owners, isn't he? A Not always, no.

Q In many cases? A Yes, in many cases he is."

State of the Case, page 273, lines 15-18.

"A He (Rene F. Erkins) tells him just what I tell him to tell him."

State of the Case, page 274, line 25.

However, in spite of Mr. Saunders' efforts to limit the actual powers of Erkins we find, as a fact, that he actually signed a contract to purchase a section of the right of way for the Public Service.

Testimony of Mr. Hatton:

"Q Did you own certain real estate in Chatham in the neighborhood of this transmission line in 1926? A Yes, sir.

Q Did someone come to see you and offer to buy it? A Yes, sir.

Q Who? A Mr. James E. Shea and Mr. Rene F. Erkins.

Q And did you enter into a contract for the sale of this property? A I did.

Q To whom? A To Rene F. Erkins."

State of the Case, page 127, lines 24-34.

"Q This contract describes two—three tracts as part of the property described in there—been conveyed by you? A Yes.

* * * * * * *

Q To whom did you convey the property? A The Holland Company.

* * * * * * *

Q Do you know where the transmission line of the Public Service is? A Yes, sir,

it crosses right over the ground that I sold.

Q Pursuant to that contract? A Yes, sir."

State of the Case, page 128, lines 1-3, 12-13, 21-24.

He also handled the transaction with Dominick Fornino for the purchase of his property for the right of way.

Testimony of Dominick Fornino:

"Q Did Rene Erkins negotiate that contract? A Yes; the last lot, and got fourteen before this."

State of the Case, page 155, lines 1-3.

The testimony of Isaac Eisencher and Benjamin Shieb is to the same effect.

Q He bought it. Well, who settled the deal? A It is a long drawn affair. If you want me to go into details, I may be able to.

Q I mean, who finally made the bargain with you? A Erkins all the way through.

Q Erkins all the way through? A Yes. You see, there is not any one parcel there in question; there is a number of parcels here."

State of the Case, page 158, lines 25-32.

"Q What did you think in the other parcels? A On the other parcels we knew already that it is not Erkins. We were not conducting any negotiations with Erkins as such. He was a representative of the Public Service.

Q How did you know that? A He told us so."

State of the Case, page 159, lines 11-17.

"Q Did you ever personally see any representative of the buyer or the buyer himself? A Well, not the buyers of the property, but I seen—I see Mr. Erkins and Mr. Fairhand."

* * * * * * *

"Q Who were they buying them for? A For the Public Service."

State of the Case, page 160, lines 1-4, 17-18.

Testimony of Mr. Cogan:

"Q Mr. Cogan, did you own real estate in Chatham or New Providence in the Public Service transmission line? A Yes.

Q Did someone negotiate for the purchase of that from you? A Yes.

Q Who? A Mr. Erkins."

State of the Case, page 161, lines 18-23.

From these answers it is apparent that Erkins was the field representative of the defendant in connection with the purchase of property in Chatham and vicinity and the person who actually met and talked to the prospective vendors, negotiated sales, and, in so doing, was acting as an agent of the Public Service.

In connection with the acquisition of the property of the complainant which eventually was deeded to Fairhand and a part of which Fairhand deeded to the Holland Company, Erkins was the only person other than Shea, a broker, who actually interviews the complainant concerning the sale and, in so doing, he represented the Holland Company and the Public Service.

Let us now examine the status of Fairhand and his relationship with Erkins and the Public Service.

Prior to the negotiations which terminated in the Fairhand contract of November 12, 1926, the Public Service had determined to construct the transmission line as shown by the map marked Exhibit C. 22 (State of the Case, p. 402). This right of way crossed the Nicholson property. The map is marked "Line Revised October 19, 1926—Line Revised November 22, 1926." For the final line as revised see Exhibit C. 24 (following in State of the Case, Exhibit C. 22). The difference between the two maps shows a different right of way in some particulars, but in both

instances crossing Nicholson property. The fact that it was revised and may have been somewhat uncertain as to location, on November 12, 1926, the date of the contract, helps to explain the unusual features of the contract to which we will refer later.

In the summer of 1926, Erkins, the field representative, interviews Nicholson and ascertains that he will not sell a fraction of his property.

> "Q What did he (Erkins) say to you (Nicholson)? He wanted to know if I wanted to sell twenty acres of it.
>
> Q How many acres were there about in all? A There were at that time about 168 or 169 acres.
>
> Q And what did you tell him? A I told him, no. I didn't care to sell a part of it. If I sold it at all I wanted to sell it as a whole."
>
> State of the Case, page 57, line 39 to page 58, line 9.

This was known to the Public Service, as the answer says:

> "This defendant, the Holland Company * * * says that it desired to obtain, in order to furnish the same to the defendant, Public Service Electric & Gas Company, the tract of land hereinabove described * * * but was informed that the then owner of the same, the complainant in this cause, refused to sell any part of his large holding without selling the whole of the same."
>
> State of the Case, page 43, lines 1-16.

The earlier negotiations having failed the matter remained in abeyance until about November 1, 1926. Erkins again appears on the scene and enters into negotiations with Nicholson without Fairhand appearing until the time when the contract is actually signed.

Prior to November 12, 1926 and before Fairhand appears the price had been determined, including the amount of cash to be paid, and the negotiations had been put in form in a draft of a proposed contract. (See Exhibit C. 6, State of the Case, p. 343.)

Fairhand did not appear until the time (Nov. 12th) when the contract was signed. The circumstances are given in Mr. Nicholson's testimony.

> "Q When you saw Mr. Erkins the second time in Chatham who was present? A Mr. Shea, Mr. Erkins and myself.
>
> Q What did Mr. Erkins say to you? A Mr. Erkins wanted to know if I still had my property and that *he* was ready now to accept my proposition."
>
> State of the Case, page 59, line 38 to page 60, line 5.

> "Q Did *Mr. Erkins* submit to you the form of contract? A Yes."
>
> State of the Case, page 60, lines 39-40.

On November 12, 1926, the contract was executed in the office of Riker & Riker, at which time Mr. Fairhand appeared.

> "Q Did you ever see Mr. Frederick Fairhand before that time? A I never saw him until the day the contract was signed; never heard of him until I saw his name on the contract.
>
> Q What did Mr. Erkins say to you at that time concerning Mr. Fairhand? A That Mr. Fairhand was one of his associates and that they were going to develop this property and that he would take title."
>
> State of the Case, page 61, line 37 to page 62, line 8.

Nobody disputes Mr. Nicholson's statement that he never met Fairhand until November 12, 1926. It is true that Erkins denies any prior knowledge of Fairhand and says that he never

saw or heard of him until November 12, 1926, or knew that a contract was even contemplated. To accept this statement would leave us with not the slightest explanation of how draft of contract (C. 6) came into existence, or how and why Fairhand, at present (as Erkins says) the owner of a Chinese restaurant at Glen Cove, Long Island, came to be interested in buying.

This contract itself contains unmistakable evidence that the Public Service and Holland Company were involved. The original draft of the contract (C. 6) provided for a purchase of the entire tract for $139,000.00, of which $15,000.00 was to be paid in cash and the balance secured by a purchase money mortgage, and then contains this significant exception.

> "The party of the first part (Nicholson) hereby agrees to convey free and clear of all encumbrances 20 acres of the herein contracted for parcels free and clear of all encumbrances. The said 20 acres are to be selected by the party of the second part and specifically designated by the said party of the second part prior to the drawing of the deed for the conveyance of the lands herein contracted for" (Exhibit C. 6).
>
> State of the Case, page 344, lines 16-23.

This same clause appears in the final contract (Exhibit C. 6A) as follows:

> "The party of the first part hereby agrees that twenty acres of the land herein contracted for shall not be included in the purchase money mortgage hereinafter mentioned, said twenty acres to be selected by the party of the second part, and specifically designated by said party of the second part at least one week prior to the time set for the closing of title as herein specified provided however that said twenty acres shall not include more than two hundred and fifty feet of street frontage on any one side of

Long Hill Road or River Road hereinabove mentioned."

State of the Case, page 348, lines 17-29.

This 20-acre tract is, as subsequently designated, actually excluded from the purchase money mortgage and then conveyed to the Holland Company for the right of way. By excluding the 20 acres from the mortgage, the tract of land which was wanted for the right of way was conveyed to Fairhand without encumbrances and by not defining it definitely, the Public Service was enabled both to conceal its location and to revise its plans on November 22, 1926 between the making of the contract and the transfer of title as shown by Exhibit C. 22 referred to. To say that Fairhand when he signed this contract had no thought of the Public Service and that this clause was his own inspiration passes human credulity. That clause bears the obvious handmark of the Public Service. They wanted 20 acres for their right of way and got it by using Fairhand as an alleged independent buyer.

There are still other bits of evidence establishing the same fact.

The actual description of the 20 acres to be excluded from the mortgage (Exhibit C. 12, p. 387) is not prepared or presented by Frederick Fairhand, but delivered by Harold Leshins, a Public Service employee, to Riker & Riker. It is prepared on paper marked "Public Service Bond," which was the same watermarked paper then in use by Public Service or Holland Company regardless of whether that is a commercial watermark or not.

This is also admitted by Erkins:

"Q This paper bears the watermark 'Public Service Bond 24.' Do you know whether that stationery is used by the Hol-

land Company and Public Service? A I believe it might be.

Q Do you know whether this was prepared in the Public Service or Holland Company offices? A *I guess it was.*"

State of the Case, page 244, lines 13-20.

Erkins negotiated the contract of sale. The testimony of Mr. Pollard is quite conclusive on that point.

"Q And who was present at that time when that was done? A At the time the contract was executed there was present Mr. Nicholson, Mr. Erkins, Mr. Fairhand, Mr. Shea and myself.

Q What was said, if anything, by Mr. Erkins? A Mr. Erkins was the only man that said anything for the other side. There were numerous points which had to be settled, points of difference at the time the contract was executed."

State of the Case, page 94, lines 15-25.

Also, take the circumstances of the closing. Erkins is again present. $14,000.00 is paid in cash, 14 $1,000.00 bills being used, an unusual thing in itself. Cormier, a disinterested witness, says that he saw 14 $1,000.00 bills given to Fairhand at the office of the Public Service.

"Q Mr. Cormier, were you present in the offices of the Public Service or the Holland Company in December, 1926? A I was.

Q Whereabouts? Outside of whose office? A It was on the sixth floor in the ante room.

Q Who was there? A Mr. Fairhand.

Q His first name? A I am not positive of his first name; I think it is Frederick.

Q Who else were there? A Mr. Erkins.

Q Anyone else? A And myself.

Q Tell us what happened on that occasion. A Why, Mr. Erkins on this particular day—it was in the first part of December—handed over Mr. Fairhand some money.

Q Mr. Erkins handed Mr. Fairhand? A Yes, sir.

Q What was the money? A $14,000.00.

Q In what denominations? A $1,000 bills.

Q Did either Mr. Fairhand or Mr. Erkins say anything— A To me?

Q —at the time, that you heard? A Yes, Mr. Erkins told me that they were going that day to close the Nicholson deal."

State of the Case, page 104, lines 15-37.

This is confirmed by the testimony of Mr. Leshins.

"Q Were you in the office or ante-room outside the office somewhere in the Public Service Building, in December, 1926? A Yes; just prior to the time when the employees' offices were removed to the Military Park Building, I had an office adjoining Saunders', and at that time I was waiting to see Saunders for some reason and Frederick Fairhand was there and Erkins was there and Cormier. Erkins was in the room with Saunders closeted, and just Fairhand was sitting there, and I came in—into the ante-room there, and a general discussion was taken up regarding the Nicholson title, and Fairhand made some remark about the Nicholson title and I tried to ignore it, because of my position with the company.

Q What did he say? A He wanted to know whether I, as an attorney, could say anything to him about the Nicholson title, because he was going to take title to the Nicholson property, he wanted to know—oh, in his way, how that would work to him, or what detriment that might be to him—could I, as an attorney advise him.

Q What did you say to him? A Well, I avoided the subject and nothing further was said about that, and just shortly after that Saunders and Erkins came out of Saunder's room and they exchanged greetings. Saunders and Fairhand shook hands, and some more discussion was raised about the Nichol-

son property, I don't know the exact words, and Erkins remarked something about 'Let us go and get through with the Nicholson title.' And that was all I knew of it at that time. I proceeded to wait in Saunders' room to see him."

State of the Case, page 165, line 35 to page 166, line 35.

That the transaction was closed by the use of 14 $1,000 bills is confirmed by both complainant and Robert Pollard (State of the Case, p. 97, l. 20).

Further than that, we have Erkins' own testimony that this allegedly entirely disinterested person, Fairhand, upon the closing of the transaction with Nicholson, immediately went with him to the Public Service Building (leaving somewhere his attorney, Mr. Lawrence Day) and signs a contract with them to convey the right of way.

"Q Why were you present at the closing between Mr. Nicholson and Mr. Fairhand when Mr. Fairhand purchased the property? A Why, I was present there to definitely ascertain that the title had passed to Fairhand and inasmuch *as we had a contract* which was *made on the 15th of December with Mr. Fairhand*—that is, we had a contract *made with him* to convey us the right of way, but it only gave him a thousand dollars inasmuch as—he only had a thousand dollars in it and we wouldn't give him any money on our contract, because he had no equity in the property, so it was my job to stay with him until the contract was closed and then get him to come over in the office and then we would sign the contract for the acquisition of our right of way after he really had some money in the property. Before that he had no money in the property and we would not consider giving him anything."

State of the Case, page 234, lines 21-40.

This statement should be contrasted with his re-statement of the arrangement on cross examination.

"Q Tell me the circumstances under which that contract was signed. Who was present and just what happened? A Why, the best that I recall it was that after Mr. Fairhand had acquired the contract and we knew that he had purchased this property and we made a proposition for him to make us an offer—the company—for what he wanted for the right of way and he asked for this survey, and it was furnished by our office, and he came down and he offered to sell it to Mr. Saunders for thirty thousand dollars, why there was a contract prepared for it—by whom, I don't know—and submitted to him and he signed it and I believe I took his acknowledgment of it. Then I accompanied him down to the office and Mr. Saunders decided that inasmuch as this man had no equity in the property, any more than the original thousand dollars that he had into it, that we wouldn't give him any money, and so he held the contract then until the date that he actually took title and when he took title and had the deed, why, I brought him back over to the office on the fifteenth of December and went over and got the—Mr. Saunders signed the contract in behalf of the company, and gave it back to him, however it was—they closed the contract.

Q It was all prearranged, was it not, that after Mr. Fairhand got his title from Mr. Nicholson that he would immediately contract to sell it to the Holland Company. Wasn't that right? A He had agreed to—he had agreed to—from his side of it he had agreed to sell it to the Holland Company after he had obtained the contract, that is, after he had the contract from Nicholson, but, pending the iterim of the time he had received the deed, he had tenta-

tively agreed to accept thirty thousand dollars, but * * *."

State of the Case, page 242, line 32 to page 243, line 32.

It is very apparent from this latter account that Fairhand and Erkins were working at all times in close co-operation for the benefit of the Public Service.

While we think that all of this testimony shows beyond question that Fairhand was a mere tool of Erkins, a dummy acting for the Public Service, there are three other circumstances that point to the same effect following the consummation of the sale. In the first place, Erkins while still actively working for the Public Service, participated in the arrangement for the so-called auction sale of part of the property. In the second place, before the first interest date of the bond and mortgage, Fairhand without making any reference to his conveyance to the Holland Company offers to reconvey the property to Nicholson, asking for a return of cash (Letter of June 11, 1927, Exhibit C. 8). (Note—The first interest for the purchase money mortgage fell due June 15, 1927), and then in his letter of August 22, 1927, agreeing to reconvey what he had left and ignoring the $32,000.00 which he alleged he had spent on the property. Lastly, we has his own complete failure to take the stand and explain his connection with the matter.

All of this evidence establishes conclusively that Erkins and Fairhand were acting for the Public Service and Holland Company to secure a right of way for the high power transmission line across the complainant's land.

The Public Service and Holland Company have derived a benefit from their action, to wit:

the legal title to the right of way which they desired. If, therefore, in accomplishing this Erkins and Fairhand perpetrated a fraud on the complainant he is entitled to have the contract and deed rescinded as against all the defendants.

The fraudulent scheme.

In considering this question perhaps it would be well to first outline what the complainant considers to be the fraud practiced upon him. In brief it is this, the Public Service Electric & Gas Company desired to secure a right of way for their high power transmission line across the complainant's property. Finding out that he would not sell a part of his land they planned a trick to secure it from him. Their representative, Erkins, approached him claiming that he and his associates, including Fairhand, were land developers of great experience who desired to purchase his entire tract to develop and sell for building lot sites. With this in view, they offered to buy his entire property—provided 20 acres be sold to them free and clear. They represented that the purpose of eliminating 20 acres was to enable them to develop this part first and sell the 20 acres—then with the proceeds release other properties and so go forward with the scheme. Having in this manner disguised their real purpose, to acquire a right of way, they induced Nicholson to execute a contract and later a deed to Fairhand for the entire property. Thereupon Fairhand executed a bond and mortgage purporting to secure the remainder of the purchase price, which mortgage covers all the property except the right of way. The right of way is deeded to the Holland Company, and then Fairhand defaults on his bond and mortgage and disappears from New Jersey,

leaving Nicholson the worthless privilege of recovering his original property with a strip taken out of the very heart of the premises and that this strip to be used for the purposes which will destroy in large measure the residential value of the balance.

If this be proved, the law is clear that a gross fraud had been perpetrated justifying rescission of the contract. The following cases will illustrate the holdings of the Courts under similar conditions:

> (Summary of Facts) The plaintiff was the owner of a lot 100 feet front x 160 feet and of two other lots adjoining. The defendant sought to purchase the first lot stating that he desired it for residential purposes. The defendant stated to plaintiff's agent that he, the plaintiff, intended to build dwellings upon the lot if purchased. The sale was consummated and immediately the defendant proceeded to erect a garage on the lot. The court set aside the sale.
>
> Held: "Any contract induced by fraud as to a matter material to the party defendant is voidable * * * We have in this case findings by the trial judge sustained by the record, which show that the defendant purposely, intentionally and falsely stated to the plaintiff that he desired to purchase a portion of her vacant lot for the purpose of building a dwelling or dwellings thereon. He must have known that if he thereby induced her to convey to him such portion of the lot, and his intention (*i. e.* to build a garage) was carried out, it would injure her to an extent in excess of the full consideration to be paid to her for such lot. The plaintiff relied upon the defendant's honesty and good faith in the purchase and was apparently willing to take her chances of a subsequent change in his intentions, or of his selling the lot to another whose inten-

tions and purposes might be entirely different."

The simple question in this case is, therefore, whether the alleged intention of the defendant to build a dwelling or dwellings upon the lot which he sought to purchase is such a statement of an existing material fact as authorizes the court to cancel the deed because of the fraud. * * *

"Unless the court affirms this judgment it must acknowledge that although a defendant deliberately and intentionally by false statements obtained from a plaintiff his property to his great damage, it is wholly incapable of righting the wrong * * * We are of the opinion that the false statements made by the defendant of his intention should, under the circumstances of this case, be deemed to be a statement of material existing facts of which the court will lay hold for the purpose of defeating the wrong that would otherwise be consummated thereby."

Adams v. *Gillig*, 199 N. Y. 314, 92 N. E. 670, 32 L. R. A. N. S. 127.

(Summary of Facts) Berry, an agent for defendant corporation informed plaintiff that the prospective customer was a married man who was about to build a dwelling house on the lot to be sold. The deed was made to the agent and he conveyed to the Roman Catholic Archbishop who commenced the erection of a chapel.

Held: Without considering the representations which were promissory, there is enough to show that a gross fraud was practiced upon the plaintiff. A Roman Catholic Corporation which was the owner and builder of churches was a very different party, in reference to the ownership and probable use of a lot of land, from a man with a small family employed in a high position at a large salary by a great corporation. * * *"

"A statement as to the position or character of the purchaser was a statement of an existing material fact, in reference to which an intentional falsehood, if relied upon, would be actionable fraud."

"There can be no doubt that it is within the scope of the apparent authority of the purchasing agent to give the names of the purchaser or to make other statements which will show to what class he belongs; and if he fraudulently represents him to be the head of a family seeking a home, when in fact the buyer is a corporation seeking a site for a factory or a church, his principal must take the consequences of his fraud."

Thompson v. *Barry* (Mass.), 68 N. E. 674.

(Syllabus) "Representations by a contract purchaser of land that he would build a residence on the land, whereas he intended to erect a store building, are material, defeating his right to specific performance of the contract where the vendor's remaining residence property is affected, though a store is needed in that vicinity, and the projected building would cost more than other neighboring buildings."

"Misrepresentations by a contract purchaser of part of a lot of land concerning the use to which he intended to put it, if material and false, and inducing the vendor to contract to convey when he would not otherwise have so contracted, precludes specific performance in favor of the purchaser."

Bowker v. *Cunningham,* 78 N. J. E. 458.

Same rule is recognized in *Brown* v. *Honiss,* 74 N. J. L. 501.

That a statement of a matter in future if affirmed as a fact may amount to fraudulent representations as well as a statement of facts as existing at present is held in the case of *Freggins* v. *Clark* (N. J.), 135 Atl. 681.

Evidences of Fraud.

The complainant was the owner of a large piece of property in the Borough of Chatham for several years prior to the time of the transactions in question in suit. The property consisted of 168 acres located in the country and had served as a handsome country residence.

He was interested in disposing of the premises, but only as an entirety; that is shown very clearly in his own testimony in the case.

> "Q What did he (Erkins) say to you? A He wanted to know if I wanted to sell 20 acres of it * * *
>
> Q What did you tell him? A I told him I did not care to sell any part of it. If I sold it at all I wanted to sell the whole of it."
>
> State of the Case, page 57, line 40 to page 58, line 7.

Erkins does not directly deny this conversation, but the fact that it did take place is completely borne out by the allegations of the answer of the defendants, Public Service and Holland Company in which they say (par. 12), "but was informed that the owner of the same, the complainant in this cause, refused to sell any part of his large holding without selling the whole of the same." It thus appears not only that the complainant did not want to sell a part, but that Public Service and Holland Company knew that fact before final negotiations took place.

It is also apparent from the answers to the interrogatories and the plans of the Public Service admitted in evidence that in the early part of 1926 and before Erkins approached the complainant, they had determined to erect a high power transmission line which would necessarily cross the complainant's land.

Needing the right of way and knowing that Nicholson would not sell a part of his property, Erkins disguised as civil engineer or Long Island realtor (see Exhibit C. 5) approaches the complainant in November 1926 as a prospective developer and buyer. What happens is thus described by Nicholson:

> "Q What did he say as to that at this time? A At this time he said he saw his way clear to accept that proposition if I was still willing to sell the property, and I told him that I had already sold a lot out of it, so then he changed the proposition from $140,000 to $139,000.
>
> Q And what, if anything, did he say about what he was going to do with the property? A They were going to develop it, a real estate development, a high class development.
>
> Q What use? A To build houses and lay out streets, and make a real development out of it, such as I had intended to do.
>
> Q What, if anything, did he say about himself with reference to developing it—his experience? A Well, they had developed property on Long Island."
>
> State of the Case, page 60, lines 12-28.

Such were the original representations, but they were repeated when we came to the time for the preparation of the contract at the office of Riker & Riker, when Mr. Fairhand appears.

> "Q What did Mr. Erkins say to you at that time concerning Mr. Fairhand? A That Mr. Fairhand was one of his associates and that they were going to develop this property and that he would take title.
>
> * * * * * * * *
>
> Q Did Mr. Erkins or Mr. Fairhand, or both, say anything at that time, just before the contract was signed, concerning their intention to develop this property? A Yes, yes.

Q What did they say? A They said they were.

Q And which one said it? A Well, Mr. Fairhand, the day that the contract was signed. Mr. Erkins had, of course, repeated that numerous times beforehand.

Q To you? A To me, and even gave me a blue print of what they were going to do.

Q And did they speak of it at that time? A Yes.

Q And in Mr. Fairhand's presence? A Yes, sir; in the office of Riker & Riker."

State of the Case, page 62, lines 1-7, 11-25.

Mr. Nicholson further testified as to the representations that were made to him about the elimination of the 20-acre tract.

"Q Were you informed at that time as to the exact location of the twenty acres? A No; I was not. I asked Mr. Erkins, when he first spoke of that release, where he wanted to take the twenty acres. He said he was not sure, that he would send out a couple of draftsmen—or, rather, surveyors, to take some lines before they would determine where they wanted to take that twenty acres.

Q What did he say, if anything, concerning the reason that he wanted those twenty acres excepted from the mortgage? A The idea was that they did not want to put in any more money than they had to on their first payment because of the expense they would be put to in developing the property, in laying out the streets, having it surveyed, searching title and other things, that they did not want to put in any more money at first than they absolutely had to, that they were perfectly willing as additional acreage was required to pay the cash for it and a credit against their contract.

Q I don't think you are quite answering my question. What was the reason that he gave, if he did give one, that he wanted this particular or any twenty acres excepted? A So as not to put any additional money into

it, to give him that money for developing that twenty acres; they wanted to be conservative and go along slowly, develop twenty acres at a time."

State of the Case, page 67, line 29 to page 68, line 21.

It is true that Erkins denies any conversation with Nicholson at all concerning the matter of development and release. This is strange in itself in view of the unusualness of the provision releasing an undefined 20 acres from the mortgage security. The whole conversation, however, is amply supported by the testimony of Robert Pollard who describes very fully the meeting at his office.

"Q What was said, if anything, by Mr. Erkins? A Mr. Erkins was the only man that said anything for the other side. There were numerous points which had to be settled, points of difference at the time the contract was executed. One of them was—the largest one was the question of this twenty acres which was to be reserved from the purchase money mortgage. I objected as strongly as I could to the reservation of any property from that mortgage, and it was held out to us at that time by Mr. Erkins that it was necessary then, absolutely necessary, to have some property free of the mortgage, which they could dispose of without having to pay for releases, because of the fact that they had to put a great deal of expense on the property for developing purposes. I also objected to not having a definite description of that twenty acres at that time, and the answer to that was that they had just purchased—just come to an agreement on the property, they had not as yet had a chance to have their engineers and surveyors lay it out, and he was not in a position to tell me the twenty acres at that time which would be most advantageous to him.

Q Was there anything said concerning Mr. Fairhand, in whose name the contract was being made? A There was.

Q Who said it. A Mr. Erkins.

Q And what was it? A At the time I recollect asking him who Mr. Fairhand was, asking Mr. Nicholson if he knew Mr. Fairhand. Mr. Erkins stated he was one of his associates, a man who had had experience in developing property on Long Island and who was going in with him on this transaction and he desired him to take the title; he said he was a man with wide experience on Long Island, but had never done any development in this State."

State of the Case, page 94, line 19 to page 95, line 20.

That these representations were relied on by Mr. Nicholson is testified to by him and not denied by anyone.

"Q Mr. Nicholson, you stated it was represented to you by Mr. Erkins that he and his associate, Mr. Fairhand, intended to develop this property? A Yes, sir.

Q What effect, if any, did that have upon you and your entering this contract? A Why it had every effect because I wouldn't —had I known there was any idea before of that right of way going through there. I would not have sold it, I wouldn't have sold it."

State of the Case, page 65, line 39 to page 66, line 11.

These representations related to a future happening, a use of the property for development purposes. As has been shown by the cases—if a fraudulent statement is made of a present intention to do a future act and no such actual intention exists—the representation is just as fraudulent as if it related to an existing state of facts.

Were the representations false? It is perfectly obvious that the allegations about the twenty

acres were false. Fairhand and Erkins had no idea of developing the twenty acres or any part therein. They made no attempt to do so and Fairhand immediately agreed to convey and did convey them as an entirety to the Holland Company.

The Court of Chancery in its opinion states that in spite of all these misrepresentations it finds no fraud and used this most surprising argument.

> "But there is no evidence that Nicholson ever told the purchaser that he objected to a right of way for high power transmission * * * Nicholson could have restricted the property against use for high power transmission. Certainly he could have inquired the purpose of excepting from the mortgage a strip of land running directly through it, which having an area of 20 acres had a frontage of less than 200 feet."

Why should Nicholson have made an objection to power line? He had no reason to suspect that such a thing was contemplated. He was lulled to sleep by a supposed purchaser of all his property for a development. Must a vendor restrict the property he is to sell against every contingency when he is told definitely by the buyer what is to happen?

Then again as to the 20 acre tract to which the Court refers—the original contract of sale required him to except 20 acres of land from his mortgage. This elimination he accepts in good faith for the reasons given to him and at that time the supposed buyer refuses to define the lands. Later a description is given him and in good faith he accepts it and carries out his contract without suspecting a trick. Is he to be charged again with knowledge that a right of way for a high power transmission line is being

secured for the Public Service at that time because when he came to give a deed in accordance with the provisions of a binding contract the area omitted is a narrow strip containing 20 acres and not a square area of 20 acres?

As a matter of fact, neither the complainant nor his counsel knew it was a strip shaped like a right of way at the time of closing. It was not plotted but merely checked to see that total area did not exceed 20 acres. Finding it did not, Nicholson carried out his contract in good faith. (See State of the Case, page 98, line 10 and following.)

The Court's reasoning seems entirely fallacious and if a victim of fraud such as this is denied relief because he did not foresee the fraud then no contract could ever be rescinded.

A great deal of testimony is taken up with the alleged development and the auction sale subsequent to the deed to Fairhand. It is true that something was done by way of laying out roads or staking them, but certainly nothing serious was ever attempted. Such roads as were rough graded merely served as a convenient approach to the Public Service right of way and had no particular bearing on a real development. No attempt was made to build any houses. What was done appears in Mr. Nicholson's testimony.

> "Q How many of those streets were laid out at the time of the auction? A Well, I coludn't say as to that, as to the cross streets. I know the main streets, the main street over the hill there, was laid out, and also a street two streets up from Fairmount avenue.
>
> Q When you said 'laid out,' what do you mean? A Well, they were just indicated through the property, probably taken a plow and tractor, but nothing in the way

of grading done. There was some grading done, that is, just taking some of the gravel from the gravel pit there on the road leading over to the hill, but the others, as I recall them, had done nothing but run a furrow, very probably, through it to indicate the road."

State of the Case, page 64, line 30 to page 65, line 9.

Mr. Steele described the so-called development as follows:

"Q What did you find the condition to be with reference to development? A Well, there has been an attempted so-call development.

Q Well, what was done? A Well, there is some rough plowed streets, some sign posts knocked down, evidently attempted lot plotting."

State of the Case, page 129, lines 15-20.

The photographs introduced in evidence all establish the same thing—that no real development was ever undertaken. (Exhibit C. 28.)

Some references are made by the defendant to an expenditure of $17,000, for development and for the auction sale, but there is no proof whatsoever that any money was actually spent except a partial payment to the surveyor of $300, on account of a bill of $1,460 (page 126, line 38 to page 127, line 8) and a payment to the auctioneer of $500.00. Fairhand's evidence on this point as well as every other point is conspicuous by its absence.

The auction sale was the only other evidence tending to show an attempt to carry out the development idea. What an auction! Not a sale actually made. The testimony of Mr. Steele best describes it.

Witness: Mr. Gerth said to me—we asked him what time the auction was going on, be-

cause we were interested, and he said it was not going on, that there was nobody there, that Shea had lost all interest in it and had not spent any time there, that there had been no money spent on advertising, that his representative had been shown a tract of land within a mile of town, another tract of land, not this tract of land; when he got there and found it was three miles from town, that he was not interested and that there had not been enough money spent for the advertising to make it a success; it was simply a gesture on the part of the dummy who was holding the property; that the property—when this was through, the property would be thrown back on Mr. Nicholson's hands, and that they had given him five hundred dollars to stay there a second day to make it look all right.

State of the Case, page 144, lines 12-33.

Mr. Gerth was called by the defendant to deny this, but while denying certain particular phrases he concedes much.

"I conversed with Mr. Steele with a certain degree of levity. I believe I did mention—I won't say 'I believe I did' I did mention to him it looked very much to me like an accommodation sale by the Public Service."

State of the Case, page 283, line 38 to page 284, line 2.

and a little further on he says

"Q Did you say it was a sham, a gesture or other words to that effect? A I don't remember saying that, no.

Q Will you say that you did not say that? A I will say I didn't remember. I don't remember saying it. *I may have used the word,* but I don't remember saying it."

State of the Case, page 285, lines 12-19.

However, regardless of the genuineness of the auction sale the fact remains that no actual improvement was ever made—and that the primary

intention of the buyer was to convey a right of way to the Holland Company conveying the twenty acres, and that, therefore, the representations made by Erkins and Fairhand were false and known to them to be false when made.

Damage.

It seems hardly necessary to argue as to whether or not complainant sustained any damage by reason of the transactions. The situation in which he finds himself is that he has received $15,000, in cash and a bond and mortgage for $124,000, executed by a man of no financial strength and covering property which has depreciated 50% in value by reason of the right of way bisecting the property and the existence of the high power transmission line.

Both of the experts, Messrs. Steele and Murphy, called for the complainant testify that the property has depreciated 50% at least in value. It is not necessary to accept their testimony as the defendant's own witnesses concede that the severance damage is at least $15,000.00.

Sanderson

Q And you testified did you not that you paid anywhere from 50 to 75% more than acreage value when you were purchasing the right of way because of the severance from the property? A Yes, twenty-five to seventy-five per cent."

State of the Case, page 208, lines 21-27.

Saunders

"The figures of this right of way I assumed the price paid by Fairhand to Nicholson of $139,000, to be its market value, that figured $850, per acre, and using as a multiple the various prices paid in my experience per acreage tracts, I figured that $1600 an

acre would be a fair price for the right of way."

State of the Case, page 264, lines 11-19.

It is apparent that even the Public Service concedes that to sever a right of way from a large tract is worth money and Nicholson has suffered damage at least to that extent.

Leshins and Erkins.

The Court of Chancery has laid considerable importance in its opinion on the relative merits of Leshins and Erkins, witnesses called for the complainant and defendant respectively. The opinion states:

> "This case was instituted in large measure as the result of allegations and representations by one Harold P. Leshins."

This statement is totally incorrect. The matter was referred to the firm of Riker & Riker in August, 1927, and on August 16, 1927, a letter was written by that firm to the defendants tendering a return of money received for a reconveyance of the premises. (Exhibits C. 17, C. 18, C. 19 and C. 20, State of the Case, pages 396-399.) Suit was instituted by Nicholson in September, 1927. Harold P. Leshins was in the employ of the Public Service until December 1, 1927.

(Leshins) State of the Case, page 164, line 16.

(Saunders) State of the Case, page 225, line 25.

He did not interview Riker & Riker or the complainant until February or March, 1928. The case was not "instituted" as a result of allegations of Harold P. Leshins and there is not the slightest foundation to support the Court's statement and upon which the Court lays much weight.

The testimony of Leshins relates very largely to conversation with Erkins and Fairhand and

deals very little with the elements of the case which we consider fundamental, such as the representation made to Nicholson and the artful elimination of the right of way from the purchase money mortgage.

However, as the Court has stressed in its opinion that it considers this case to be based upon the actions of Leshins and that he wilfully distorted the facts, it seems necessary to consider, in some detail, his relationship to the case and to Mr. Erkins in particular.

Mr. Leshins testified quite extensively with reference to his negotiations with Erkins following his discharge from the Public Service. (See State of the Case, p. 171, commencing l. 20.)

Erkins, according to his testimony, approached him and offered to appear as a witness along with Fairhand in order to sustain the claim of the complainant that the transaction was fraudulent; that following that he consulted Riker & Riker and then again reports the results of this to Mr. Erkins and seeks to get his testimony reduced to affidavit form and that after various negotiations Erkins refuses to consummate the transaction and repudiates the statements which he had made to Mr. Leshins to the effect that Fairhand was a mere dummy in the transaction. Erkins, on the contrary, testifies in effect that Mr. Leshins endeavored to bribe him and to induce him to go on the stand and to distort the facts to suit his (Leshins') views.

It is quite apparent from the testimony of both of these witnesses that there was a considerable number of conversations between them with reference to the matter and it is hardly consistent with the story of Erkins wherein he describes himself as nobly rejecting a bribe to

be constantly discussing and re-discussing the matter with the alleged bribe giver. Again, what explanation is there of the fact that Erkins made and kept an appointment in Flushing, Long Island, to interview Messrs. Marsh and Pollard concerning the testimony which he might give in this case. It is inconceivable that he would have made an appointment for the sole purpose of telling Mr. Leshins that he would not distort the facts, and further, it is inconceivable that Mr. Leshins would have taken two members of the firm of Riker & Riker for the purpose of having them witness his attempts to cajole or bribe Erkins to lie.

Mr. Pollard, a member of the firm of Riker & Riker, testified concerning the interview. No one questions his truthfulness and it sustains Mr. Leshins' version.

> "Mr. Leshins made an appointment with Mr. Marsh and me to go over with him to see Mr. Erkins in Long Island which we kept. Mr. Erkins was questioned with respect to the testimony which he was to give and why he now did not care to give it. His answer was that on calm thought he had decided it would be far better for him to keep out of the State of New Jersey; that he considered that not only himself, but that several other parties would be subject to prosecution for criminal conspiracy, if they entered the State of New Jersey, and that he and Mr. Fairhand had consulted a New York attorney who had advised him to keep out of this state."
>
> State of the Case, page 307, lines 23-39.

Mr. Marsh was not called as a witness as he was in Europe at the time.

Again Mr. Pollard confirms Mr. Leshins in his testimony that Erkins called him up a short time prior to the final hearing in this cause and

told him that he was going to repudiate the statements that he had theretofore given to him concerning this case.

> "I listened on one of the phones. They greeted each other and Mr. Erkins says, 'I am going to testify for the Public Service. I thought I ought to let you know about it.' And Mr. Leshins remonstrated with him and he said, 'Are you going to repudiate all you told me?' He said, 'Yes, I am, and I am not going to get in a jam over this matter.' "
>
> State of the Case, page 308, line 35 to page 309, line 2.

He had made a statement to Public Service at the time suit was instituted (State of the Case, p. 237, l. 11, etc.) and was apparently afraid by testifying to the story he had told Leshins to put himself in the position of telling different stories at different times and of ~~engineering~~ admitting the fraud practiced on the complainant.

These actions of Mr. Leshins and this corroborating testimony of Mr. Pollard reflect on the honesty of Mr. Erkins rather than that of Mr. Leshins.

Mr. Erkins is not a beginner in the art of fraud. In another case he indulged in a similar scheme, as is shown by the opinion of the Court of Chancery in the case of *Davis* v. *Koch,* Atlantic Reporter, Volume 145, page 473, supplement of May 2, 1929.

That suit was brought by the complainant therein to rescind a contract for fraud. Vice-Chancellor Backes determines that the transaction was tainted with fraud and sets aside the conveyance. An examination of the facts will indicate that the mortgages involved "had their genesis in the plans of the Public Service Corporation for a high power line across the state.

* * * The $6,000.00 (by cash) was furnished by the Public Service and Young, a straw man by one Erkins, the company's right of way man, a real estate operator, drafted from Long Island City. * * * Young was a lather, financially irresponsible, living in poor quarters in Long Island City, a tool of Erkins. That Young was a dummy and his mortgage fictitious security, and the deal a scheme of Erkins to promote the right of way, is apparent."

How similar that case is to this. The property acquired is for the right of way and the Public Service. The method of securing it was by the use of a dummy brought over from Long Island the same as Fairhand was in this case. While this case is not directly controlling in any way upon the facts in the present case, it is an excellent illustration of the method employed by Erkins, the Public Service employee, to secure the right of way which the Public Service so badly needed and the only difference between that case and the present one is that the Vice-Chancellor who heard it recognized the fraudulent scheme, while the one who heard the case at bar accepted the story of this rascal Erkins.

It is, therefore, insisted that the Court of Chancery entirely misconceived the relative standings and accuracy of these two witnesses and that Leshins is entitled to a much greater credence than Erkins, but disregarding and eliminating the testimony of either or both of these witnesses as being unreliable we still come back to the fact that Mr. Nicholson has had carved out of a tract of 168 acres across a right of way of twenty acres upon which the Public Service had its high power transmission line and that the rest of the property has been thrown back on his hands without the slightest effort

being made to pay interest on his purchase money mortgage or any of the carrying charges thereof, and that such a situation could not have arisen unless a trick had been played on the complainant.

The sale to the Public Service.

In its argument before the Court of Chancery, the defendant stressed the fact that it paid Fairhand $30,000 for the same property for which Nicholson, in effect, got but $15,000. However, we do not think that this one fact is, in any sense, controlling or disproves the fraudulent misrepresentations which underlie this case particularly in view of the fact that the sale itself from Fairhand to the Holland Company was handled in a furtive and unusual manner for transactions of that character in ordinary business matters.

The title closing itself was admittedly held at the home of Erkins in East Orange. The first reason given for this by Erkins is that Mrs. Mary Jane Wilson, an old client of Erkins, "quite an elderly woman and a very high type and did not want to be down at the title company sitting around," so instead of coming to Newark she takes $25,000, in cash, to East Orange for the alleged purpose of enabling Fairhand to cash a check of the Fidelity Union Trust Company in that amount.

It is a peculiar circumstance that in the case of *Koch* v. *Davis,* above referred to, Mr. Erkins also suggests the use of a woman by the name of Wilson to assist in his scheme.

Another alleged reason why the title is closed in East Orange is given by Mr. Erkins as due to

Mr. Fairhand's insistence. What reason there was for his insistence does not appear. He lived on Long Island and on every other occasion he had been ready and willing to close title or make a contract at a location convenient to other people. His contract with Nicholson was signed at the office of Riker & Riker in Newark and at that office he closed the title. He attended freely at the office of the Holland Company in connection with his contract for the right of way. Yet Erkins states that at the time when the money is paid Fairhand insists on going to East Orange to receive the $25,000 in cash. No attorney or representative is present with Mr. Fairhand to assist or advise him in the closing. The deed is prepared apparently by the Public Service. The Fidelity Union Trust Company is not represented although, in the ordinary case, they examine and guarantee titles for the Public Service. Leshins, whom the defendant described as a mere clerk, is the only lawyer present. Insofar as appears, there is no settlement statement or title affidavits prepared. The only person present besides Fairhand, his wife, Erkins and Leshins was this unknown figure of Mary Jane Wilson. The explanation of her presence is that she was intending to loan money to Fairhand to assist him in erecting some contemplated buildings on the Chatham tract. However, she never actually does anything in this connection so far as appears. The only thing she really does is to produce $25,000 in cash to enable Fairhand to cash the check of the Fidelity Union Trust Company.

"Q Where did he cash the twenty-five thousand dollar check? A At my home.
Q He cashed it at your home? A Yes.
Q Who paid him the cash for it? A Mrs. Wilson.

Q She had twenty-five thousand in cash there? A She brought it along with her, yes. That is why she was there."

State of the Case, page 246, lines 29-37.

At the same transaction, another check was given for $2,000 which was endorsed by Erkins, and in that connection and for the purpose of explaining how his signature appears on the back of the check he very glibly says that Mr. Fairhand desired to cash the same and was unable to do so and that it became necessary for him to take him to the Fidelity so that he could secure the sum of $2,000, and this apparently at a time when Fairhand had, in his pocket, $25,000 in cash, if these stories are to be believed. (See State of the Case, p. 233, ll. 28-40.)

Why was it necessary for Mrs. Wilson to go to Erkins' home in East Orange to cash a check of the Fidelity Union Trust Company for Fairhand. The only explanation of the matter is that the individuals concerned preferred to use cash so that the ultimate destination of the money cannot be traced just as, for the same reason, they did not wish the source of the money to be found and so used 14 $1,000 bills to purchase the property from Nicholson.

2ND COUNT.

The second count in the bill of complaint alleges the same facts in general as have already been fully discussed, to wit: the fraudulent negotiations of Erkins and Fairhand as agents of the Public Service resulting in the sale by complainant to Fairhand, and the transfer of the 20-acre tract to the Holland Company. In connection with that sale to Fairhand and in pursuance of the contract Fairhand gave to the com-

plainant a purchase money bond and mortgage for $124,000. Fairhand was the mere dummy of the Public Service Electric & Gas Company or Holland Company, the undisclosed principals, in connection with this transaction. The principals should be compelled to perform the obligations which their agents undertook as part and parcel of the fraudulent scheme. The complainant, therefore, says that if the Court should not decree a rescission of the contract it should decree that the principal to the contract should now be compelled to assume the burden of the undertaking, so that complainant might secure that which he expected to secure, a bona fide sale of the entire tract for $139,000. In order to effectuate that result the defendant should be required to assume the payment of Fairhand's bond and mortgage.

The general equitable principal governing the remedy in cases of fraud is thus stated in Pomeroy Eq., 4th Ed., Section 899, as follows:

> "Where an agreement or other like transaction has been procured by means of a material fraudulent representation by one of the parties, the other has an election of equitable remedies. The injured party may, at his option, compel the fraudulent party to make good his representation—that is to carry it into operation in the nature of specific performance—when it is of such nature that it can be thus performed. * * *"
>
> Sec. 910. "The jurisdiction (of equity in cases of fraud when it exists may be exercised by granting reliefs which are purely equitable or reliefs which are wholly pecuniary and, therefore, legal. In conferring these reliefs which are purely equitable and, therefore, exclusive, the power of equity knows no limit. The Court can always shape the remedy so as to meet the demands of justice in every case however peculiar. The

> most important of these equitable final reliefs, to one or the other of which all special instances and forms may be reduced, are these: * * * Specific enforcement by which the fraudulent party is compelled to perform the very specific obligation which rests upon him, and the defendant party obtains the enjoyment of the very right of which he was deprived through fraud."

We are familiar with the rule laid down in *Borcherling* v. *Katz,* 37 N. J. E. at 150, to the effect that the rule that an unnamed and unknown principal is liable for the contract of his agent does not apply to a demise under seal. However, this does not apply to fraud for, in the case of *Schenck* v. *Spring Lake Beach Improvement Co.,* 47 N. J. E. at page 48, Vice-Chancellor Van Fleet in discussing the doctrine of undisclosed agency says:

> "The rule generally, if not universally recognized and enforced here, as I have always understood, is this, that a written contract whether within the Statute of Frauds or not and whether under seal or not, which is free from ambiguity and perfect in itself and *not the product of fraud* or the result of mistake, and which has not been changed by a subsequent contract cannot be changed, varied or contradicted by oral evidence, but must be accepted as the only evidence by which the rights and liabilities of the contracting parties shall be measured and determined."

The Court then goes on to hold that in the case then under consideration as no facts were present which established any of the exceptions referred to, such as fraud, an undisclosed principal would not be held liable on an agent's agreement to sell lands.

See for same rule *Le Grand Co.* v. *Richman,* 82 N. J. E. 481.

Vice-Chancellor Stevenson considered the same question in *Babcock* v. *Stobbe* quoted in opinion of *Simson* v. *Klipstein,* 88 N. J. E. at 234. In that case the contract of sale was signed by agents and the Court says:

> "It would, it seems to me, be an amazing result of the application of antiquated technicalities if either the complainant, Babcock or the defendant, Stobbe (note: neither of whom signed) could in a court of equity maintain the proposition that by the contract they were not both bound. * * *"
>
> "With the aid of certain authorities which have been cited, an argument can be made in favor of the proposition that if this instrument in fact must be deemed a deed *inter partes* under seal it can be taken in equity as the deed of Stobbe. In my judgment a court of equity would be astute to discover any theory of this transaction consistent with our modern law according to which the absurdity and injustice could be avoided of finding that complainant paid his $750, upon the execution of this contract without receiving any obligation from Stobbe the owner to convey the land, but only the obligation of the agent, Moore, to convey the land which all the parties to the transaction well know Moore did not own."

While, therefore, there is a general rule that in the ordinary case a contract under seal signed by one party cannot be deemed the instrument of another, equity will wherever possible and in order to do justice be astute in finding some way to overcome this technical objection and does so in cases of fraud.

We have already demonstrated the fraud of the defendant and the same evidence and reasoning applies here. It is insisted, therefore, we are equally entitled to the relief prayed for in this second count, as in the first count.

However, the complainant is resting his major claim to relief on his right to rescind under the well recognized rules of equity and this count is inserted only in case the Court should for some reason feel that the assumption of the mortgage debt by defendant, Public Service, was a more appropriate remedy than the rescission of the contract.

SUMMARY.

While the question involved in the appeal is largely one of fact, the complainant insists that the Court of Chancery has not only failed to grasp the facts, but has totally misconceived the legal status applying thereto. The opinion of the Court of Chancery stresses that for the complanant to recover he must prove that Erkins and Fairhand had actual authority to buy 168 acres. No such proof is necessary to hold the Public Service liable. It makes no difference whatsoever whether Erkins had to report to Saunders the prices he received and Saunders had to approve the same before a contract of sale could be signed in determining the rights of complainant to rescind. Erkins was the "mouthpiece," the contact man for the Public Service. If, therefore, in inducing the seller to make a contract to sell his land at any price, he used fraudulent misrepresentations and as a result the vendor parted with his property and the Public Service acquires it, the Court of Equity will rescind such a contract. Numerous cases in equity, several of which have been cited in the brief, maintain this principle and no case in equity permits the purchaser or principal to escape responsibility for the fraudulent conduct by alleging that the agent was not authorized specifically to make the contract itself or to make the representations.

The proof shows beyond question Erkins employment and agency for the Public Service, the need and attempts of that company or its subsidiary, the Holland Company, to acquire the right of way, the fraudulent representations and the fact that the Holland Company received the property it sought as a result of those representations.

It is, therefore, respectfully submitted that the transaction in question should be rescinded and the decree of the Court of Chancery reversed.

RIKER & RIKER,
Solicitors of Complainant-Appellant.

THEO. McC. MARSH,
Of Counsel.

New Jersey Court of Errors and Appeals

Between JOHN J. NICHOLSON, *Complainant-Appellant,* *and* FREDERICK FAIRHAND, PUBLIC SERVICE ELECTRIC & GAS COMPANY, a corporation, and THE HOLLAND COMPANY, a corporation, *Defendants-Appellees.*	*On Appeal from Chancery.*

BRIEF FOR PUBLIC SERVICE ELECTRIC AND GAS COMPANY AND THE HOLLAND COMPANY.

This whole case stands or falls upon the proof by complainant by the clear preponderance of the evidence of the facts of agency and the possession of actual authority on the part of Erkins and Fairhand from The Holland Company to purchase the land in question in this suit. If there was no agency and no such authority, there is no case and there can be no recovery. As introductory to the question of the presence of agency and authority, I wish to point out with clearness the very limited character of those questions as involved in this suit.

There is no contention, and could be none, on the part of complainant that Erkins and Fairhand or either of them represented to complainant that they were acting for or on behalf of Public Service Electric and Gas Company or The Holland Company. The evidence of Mr. Nicholson, the complainant, and all the rest of the

evidence in the cause is to the effect that neither Mr. Erkins nor Mr. Fairhand represented to Mr. Nicholson that they appeared for or had any authority from either of the defendant companies, and Mr. Nicholson himself swears that he dealt with them on the basis that they were representing themselves.

In this posture of the case no question of *apparent* or *ostensible authority* or *agency by estoppel* can arise, but on the contrary, the sole question that emerges in such a case is as to what was the extent of the *actual* authority possessed by Erkins and Fairhand or either of them from the defendant companies or either of them. This being the limited inquiry to which the Court in this case is obliged to direct its attention on this phase of the case, I earnestly request your Honors' having this in mind, to read with particular attention the brief of complainant's counsel from pages 6 to 21, both included, "*Erkins and Fairhand were Agents of the defendant company.* I request this because when complainant's brief is read with the extent of the permissible inquiry in mind, it will demonstrate that neither Erkins nor Fairhand was possessed of any actual authority from the Holland Company to purchase the land in question for it, and that consequently your Honors do not need to look any further in the case to conclude that complainant cannot have a decree in his favor on either the first or second count in the bill of complaint.

The first observation I wish to make with respect to this portion of complainant's counsel's brief is that your Honors will see from a perusal of it that, making the strongest presentation of all the applicable evidence which is possible to be made, the brief falls far short of establishing ac-

tual authority in either Erkins or Fairhand to purchase the land in question for The Holland Company, but on the contrary shows that they neither possessed such authority nor attempted to exercise it. If complainant has said in his brief the most that can be said for the existence of actual authority on the part of Erkins and Fairhand or either of them, it will be apparent that it is utterly insufficient to establish the requisite agency upon which to found a decree.

It appears by that brief that the department of The Holland Company having care of this matter was under the general supervision of Mr. Barker, and that next in line was Harry L. Saunders, and that under him were field representatives, among whom was Rene F. Erkins. In order to lend some unwarranted extension to the alleged authority of Mr. Erkins, complainant's counsel in speaking of the duty of field representatives says it was their "*primary duty* to interview the property owners." This is disingenuous, since the interviewing of property owners was not only their primary duty but their sole duty, unless they received special instructions in particular cases to do other work.

The extent of the powers of Mr. Erkins appears in complainant's brief on pages 8 and 9, where, in response to interrogatory 22—"In what capacity was he (Rene F. Erkins) employed? What were his powers and duties?"—the answer is, "Field man under Harry L. Saunders, Engineer of right of way. (b) Had no powers. His duties were to investigate prices of real estate within the line of the right of way desired, as well as surrounding lands for comparison, get the names of and interview owners and learn anything of interest to the acquisition of the right of way and make report thereof from

time to time to said Engineer." The brief continues—

"Mr Saunders elaborates that further in his testimony.

"Q What were his (Rene F. Erkins) duties?

"A His duties were to go into the field and to interview owners to secure from them their asking prices, in the event that we had the map, and he was working on a definite stretch of line to secure asking prices which they wanted for the right of way. He was to report this back to me and carry my message back to the property owner. You might call them field scouts or investigators or representatives. He was more or less my mouthpiece in working the field as we were working with a thousand property owners and it was impossible for me to see each one of them personally, I had to have these men."

And later on he says: "He (Rene F. Erkins) tells him (property owner) just what I tell him to tell him."

After having stated the particularly limited character of the duties and powers of Rene F. Erkins, complainant's counsel then says, "From these answers it is apparent that Erkins was the field representative of the defendant for the purchase of property in Chatham and vicinity and the person who actually met and talked to the prospective vendors and in so doing was acting as an agent of the Public Service."

It is perfectly clear that complainant's counsel errs in stating that from these answers it is apparent that Erkins was the field representative of the defendant *for the purchase of property in Chatham and vicinity* * * * and in so doing was acting as an agent of the Public Service. The fact is that it is apparent from these an-

swers that Mr. Erkins was the field representative of the defendant, but that he was not its representative for the purchase of property, since the evidence shows clearly and conclusively that he was not possessed of power to purchase property, but merely to act as a scout and mouthpiece for Mr. Saunders. And when complainant's counsel says that in so doing he was acting as an agent of Public Service, it is true that he was acting as an agent for Public Service, but as an agent for the special and limited purpose of making inquiries and reports for and to his superior officer, and was without the slightest shred of authority to enter into negotiations for the purchase of property or to conclude the same.

Complainant's counsel then proceeds in his brief to say, "In connection with the acquisition of the property of the complainant which eventually was deeded to Fairhand and a part of which Fairhand deeded to The Holland Company, Erkins was the only person other than Shea, a broker, who actually interviews the complainant, and in so doing he unquestionably represented The Holland Company and the Public Service." This again is an utter *non sequitur* and is clearly misleading. The evidence in the case shows without fear of sucessful contradiction that in connection with the acquisition of the property of the complainant, which was eventually deeded to Fairhand and a part of which Fairhand deeded to The Holland Company, Erkins unquestionably represented Fairhand and did not represent either Public Service Electric and Gas Company or The Holland Company.

It is to be borne in mind that Mr. George Barker, Vice President in charge of Real Estate and Purchases of Public Service Electric and Gas Co. and The Holland Company, was the di-

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rect authority in matters of this kind; that Saunders was the right-of-way engineer, and that his powers and duties, as testified to by Mr. George Barker, as will be found on page 8 of complainant's brief, were as follows: "Under the subscriber (Barker), he was to ascertain the names of the owners, the valuation at which they held the property, the value of surrounding properties, and generally to find for the subscriber all information concerning the same. Within the limits, determined upon by the subscriber, he also was authorized to make purchases of lands which were acquired by The Holland Company." It thus appears that the actual authority to make purchases rested primarily in George Barker; that Mr. Saunders, within the limits determined upon by Mr. Barker, was authorized to make purchases of lands which were acquired by The Holland Company; and that Rene F. Erkins was possessed of neither power nor authority to make purchases of lands for either company. And the evidence quoted in complainant's brief and which will be found in the testimony of Mr. Erkins himself demonstrates that Mr. Erkins did not attempt to purchase this tract of land for The Holland Company; that he had neither authority nor power from that company so to do, and that in the transaction he was acting either with or for Mr. Fairhand in making a purchase of the property for development purposes entirely dissociated from any activity of either Public Service Electric and Gas Company or The Holland Company.

* * * * * * *

The brief of complainant-appellant is utterly misleading. In stating what the Court of Chancery determined it says on page 3—"The Court of Chancery determined that the transactions in-

volved were not induced by fraud and that even if it was fraud the Public Service and Holland Company were not chargeable therefor and thereupon entered a decree dismissing the two causes of action of the bill of complaint." What the Court of Chancery determined is stated very clearly on pages 315 *et fol* of the State of Case. The Vice-Chancellor there says:

> "Complainant charges that he was fradulently induced by the agents of Public Service (I shall so designate hereafter Public Service Electric & Gas Company and the Holland Company) to part with his property for a purpose for which had he known, he never would have consented. The first question to be determined, therefore, is whether agents of Public Service participated in, or in the company's name engineered the sale. The department of Public Service having charge of securing the rights of way for the high-power transmission line was, and is, under the general supervision of Mr. George Barker. Next to him is Mr. Harry L. Saunders, and under him again are a number of 'field representatives.' It is admitted that Mr. Saunders is a right of way engineer. His duties were to ascertain the names of the owners, the valuation at which they held the property, the value of surrounding properties and generally to find for Mr. Barker all information along these lines. Also within limits to be determined upon by Mr. Barker, he was authorized to make purchases of lands. Among the 'field representatives' was one Rene F. Erkins. This man, complainant insists as agent of Public Service fraudulently induced him to part with his property. What were his powers and duties? The record, which is undisputed, discloses that he is a field man under Harry L. Saunders, engineer of rights of way. In reply to the question, 'What were his powers and duties?' the answer which stands without contradiction is 'He had no powers.'

His duties were 'to go into the field and to interview owners to secure from them their asking prices in the event that he had the map, and he was working on a definite stretch of line to secure asking prices which they wanted for the right of way. He was to report this back to me and carry my message back to the property owner. You might call them field scouts or investigators or representatives. He was more or less my mouthpiece in working the field as we were working with a thousand property owners and it was impossible for me to see each one of them personally. I had to have these men.' This is the testimony of Mr. Saunders, Erkins' immediate superior. There is no testimony that would justify the conclusion that Fairhand was the agent of Public Service. It is not contended that Erkins and Fairhand led complainant to believe that they were acting for Public Service. On the contrary, Mr. Nicholson says he thought they were representing themselves.

"*The sole question,* therefore, is were these men the actual agents of Public Service for the purpose of acquiring rights of way? I do not think they were. The testimony I have summarized clearly shows they had no power to buy anything—certainly not a tract of 168 acres.

"I shall, therefore, deny the prayer of the bill that the contract and deed be set aside, and shall also deny the prayer that Public Service assume the mortgage."

The learned Vice-Chancellor having thus clearly stated the pivotal and decisive issue in the case, as clearly and decisively determined it. It is, of course, quite understandable why complainant-appellant would wish to avoid the consideration of this vital and conclusive question, and turn rather to a consideration of the question as to whether the transactions involved were induced by fraud. But the extent to which

the question of fraud played a part in the decision of the case by the Vice-Chancellor is made clear on page 317 of the State of Case. Having accurately stated the fundamental issue involved, and having decided the same, he then unnecessarily, but none the less properly, added some remarks about the question as to the existence or non-existence of fraud in the case. His words were: "Furthermore, I cannot see that any fraud was perpetrated on complainant by anyone." He then deals with the question of fraud at some length; but it is obvious that he thoroughly understood that the case depended upon the issue of agency, that he had determined that issue, and thereby disposed of the case unfavorably to complainant-appellant.

* * * * * * *

Before speaking of the ground upon which the Court of Chancery determined the cause, I said that the brief of complainant-appellant is utterly misleading, and in addition to the effort of complainant-appellant to have it appear that the case was decided solely upon the ground of fraud, I wish to direct the Court's attention to what appears in that brief on pages 9 *et fol.*, by way of quotation from the testimony of Messrs. Hatton, Fornino, Eisencher and Shief, as well as some others, by which it is sought to make it appear that Erkins was possessed of authority to negotiate sales as an agent of Public Service, dissociated from any necessity to report his information to his immediate superior, Mr. Saunders, and apparently free from any trammels in the execution of his alleged agency.

A reading of the quoted testimony will demonstrate that there is nothing inconsistent in the actions and authority of Mr. Erkins, as set forth on pages 7, 8 and 9 of complainant-appellant's

brief and in the decision of the Vice-Chancellor hereinbefore quoted, since it is clear that nothing was said by any of the witnesses whose testimony is quoted in complainant-appellant's brief which militates against the decision of the Vice-Chancellor when he said, "The sole question, therefore, is were these men the actual agents of Public Service for the purpose of acquiring rights of way? I do not think they were. The testimony I have summarized clearly shows they had no power to buy anything—certainly not a tract of 168 acres." Everything the witnesses mentioned, swore to, is perfectly consistent with Mr. Barker's testimony as quoted on page 8 of complainant-appellant's brief that Erkins "had no powers. His duties were to investigate prices of real estate within the line of the right of way desired, as well as surrounding lands for comparison, get the names of and interview owners and learn anything of interest to the acquisition of the right of way and make report thereof from time to time to said engineer." The testimony agrees also with Mr. Saunder's testimony, also on page 8, "Q What were his (Rene F. Erkins) duties? A His duties were to go into the field and to interview owners to secure from them their asking prices, in the event that we had the map, and he was working on a definite stretch of line to secure asking prices which they wanted for the right of way. He was to report this back to me and carry my message to the property owners. You might call them field scouts or representatives or investigators. He was more or less my mouthpiece in working the field as we were working with a thousand property owners and it was impossible for me to see each one of them personally. I had to have these men." And on page 9 of said brief, where Mr. Saunders swore, "A He (Rene F. Erkins) tells him just what I tell him to tell him."

It is thus apparent from complainant-appellant's own brief that no actual authority, in the case *sub judice,* existed in Erkins. Complainant-appellant did not, however, set forth in his brief the rest of the evidence with respect to the transactions with Mr. Hatton and the others mentioned. On pages 268 *et fol.* of the State of Case, Mr. Saunders' testimony is as follows:

> "Q Did you know about the purchase of the so-called Hatton tract? A Yes, sir.
>
> Q Can you tell us the details of that purchase? The name has been brought up here this morning. A Harry Hatton, as I remember it, owned two lots and had a very good title to two lots, and he owned an additional two lots to which he had simply a thirty year tax title. When the question of purchasing these four lots came up, it was necessary for me to refer this to our legal department as well as to Mr. Barker as to whether they wished to purchase this tax title of these two lots from Harry Hatton or purchase the two lots to which he had clear title and then the tax title lots. Our legal department ruled that we should purchase all of Hatton's interest in the four lots, *and I notified Erkins to that effect and instructed him to sign a contract for these four lots.*
>
> Q Did Mr. Erkins investigate and find out the facts about the Hattan property? And did he report to you about the Hatton property? A Yes; he reported to me about the Hatton property. I believe he received his information through Mr. Shea where he received a lot of his information."

(Then follows a statement of the manner in which the contract was prepared and approved by the company and Mr. Saunders, and that whoever signed the contract had the approval or understood the company had approved the contract.) Then there follows on page 269:

"Q Did you ever engage Mr. Fairhand or authorize anyone else—Mr. Erkins for instance—to engage Mr. Fairhand to represent you or the Public Service Electric and Gas Company— A No, sir.

Q —in acquiring the Nicholson tract? A No, sir.

Q Do you have any knowledge or did you have any knowledge that Mr. Fairhand in his transactions regarding the Nicholson property acted for or in behalf of the company? A No, sir.

Q The Nicholson contract, who approved that before it was signed? When I say the Nicholson contract, I mean the contract for the purchase of the property formerly belonging Mr. Nicholson. The contract was signed by Mr. Fairhand. A The contract between Fairhand and Holland Company *was approved by myself.*

Q Did you so tell Mr. Erkins that it was approved and that it would be all right to have it signed? A I signed that in my own name.

Q You signed that in your own name? A Yes, sir."

And on page 271, in cross examination of Mr. Saunders, appears the following:

"Q Titles to various pieces of property were taken in the names of Erkins, Leshins and others, were they not? A Yes, we used various names of employees.

Q Were all those contracts submitted to you? A *Every contract signed or taken in behalf of the company passed through my hands.*

Q Who prepared the contracts? A They were prepared at different places; sometimes the owner's attorney; sometimes we would at the request of the owner; and there was no set rule as to that.

Q Who negotiated these contracts? A I negotiated the contracts.

Q Did you see Mr. Hatton? A I have seen Mr. Hatton.

Q Did you see him in the negotiation of that contract? A No. I simply saw Mr. Hatton at the closing of the title.

Q Was it your practice to see the purchasers prior to the closing of the title? A No, not always. Some of them I see. You mean the purchasers or the sellers?

Q The sellers, I mean. A Not always. I would some of them. A great majority I will say that I do not see.

Q Isn't it a fact that these details are all worked out by the field agents, as you call them, Mr. Erkins and others, and then the result of their negotiation is put in the form of a contract? A *No, sir, that is not a fact; they have absolutely no discretion as to price or actions in the field; they cannot negotiate.*

Q They are there to find out what the sellers will sell for, aren't they? A Yes, sir.

Q And they come to a tentative agreement with them, don't they? A No, sir; not at that time.

Q What did they do? 'Not at that time,' when did they do it—when do they do it? A *When I tell them to.*

Q Oh, they find out what the sellers will sell for— A Yes, sir.

Q —and they come down and tell you? A Yes, sir.

Q And you say, 'That is all right'? A If it is all right, yes.

Q And then they go up and tell the owners that the proposition is O. K., and they will have it put in the form of a contract; is that right? A Yes."

And then follow several pages of discussion upon these powers and on pages 274 and 275 (State of Case) it will appear that after Erkins reports to Saunders and receives directions from Saunders, he gose back to the owner and tells the owner just what Saunders tells him to tell him; and there is no testimony in the case from

any witness that Mr. Erkins had any other or greater or different power or authority than that hereinbefore specified.

A consideration of the evidence in the entire State of Case will demonstrate the following fifteen propositions:

FIRST

It was Erkins primary duty during summer and fall of 1926 to ascertain values of land, verify sales and keep in touch with proposed developments in the Township of Chatham in the vicinity of Nicholson's property to prepare data for the relocation of Line.

SECOND

One of his sources of information was James E. Shea, Broker at Chatham, broker for Nicholson and many other owners in that vicinity.

THIRD

Erkins never saw or talked with Nicholson unless accompanied by Shea, and only as a seeker of information and data, knowing Nicholson's property to be on the market.

FOURTH

After Erkins' visit to Nicholson, in company with Shea, in May or June 1926, and before the Right-of-Way location was determined, at which time Nicholson alleges Erkins made inquiry about 20 acres, which Erkins denies—Nicholson admits that his broker Shea was the next man to bring the sale of this acreage to his attention, which eventually resulted in the sale to Fairhand. (See Nicholson, State of Case, pp. 73 and 74.)

FIFTH

At the time, November 12, 1926, that Fairhand contracted to purchase Nicholson's property the location of Right-of-Way and extent of acreage

required was not known; Shea notified Erkins of proposed sale on November 12, 1926, and introduced him to Fairhand; Erkins stayed with Fairhand and Shea in order to verify price and ascertain Fairhand's plans with reference to development, knowing it would be important to the Company.

SIXTH

Erkins immediately reported facts of sale and detail of Fairhand's proposed development to his superior, Saunders, who, fearful that Fairhand's development would cause a material detour in the line or increase cost of Right-of-Way if negotiations were delayed, instructed Erkins to inform Fairhand of our plans and endeavor to get Fairhand's idea of cost. At the same time Saunders instructed Engineering Department to locate line in order to ascertain Company's requirements. (Saunders, State of Case, p. 264.)

SEVENTH

The sale to Fairhand and his development did not benefit or render easy the acquisition of Right-of-Way, rather it hurried the surveying and acquisition of a stretch of line that we had no desire to work on until the Spring or Summer of 1927. Fairhand first asked $50,000.00 for this Right-of-Way and it was not until after extended negotiations over a period of two weeks, and after a threat of condemnation, that the price of $30,000 was agreed upon on December 1, 1926. (See Saunders, State of Case, pp. 264-265.)

Note:—

The area purchased from Fairhand for Right-of-Way was 18.37 acres. At the price paid by Fairhand to Nicholson of $850 per acre, the land value of this Right-of-Way would be $15,604.50. The difference between this sum and $30,000.00 being for damages to Fairhand's remaining land.

EIGHT

On December 1, 1926, when price for Right-of-Way was agreed upon with Fairhand, a copy of the description of the land we were to purchase from him was handed to Fairhand so that he could prepare for the mortgage release. This found its way to Riker & Riker before December 15, 1926, when Nicholson—Fairhand Title was to close. (See Saunders, State of Case, p. 265.)

NINTH

On December 1, 1926, when price was agreed upon with Fairhand, he wished Contract signed with Public Service on that day and title closed on December 15, 1926, on same day he received title from Nicholson. This the Public Service refused to do, telling Fairhand that the Contract would not be signed by the Company until December 15, 1926, or after he had secured title from Nicholson, and that the title from him to The Holland Company would not close until February 1, 1927, because of title searches, etc. This was done as at the time price was agreed upon (Dec. 1, 1926) Fairhand had put $1,000 tied up in the Nicholson property and we were to pay him 10% or $3,000.00 preliminary payment on our Contract. (See Saunders, State of Case, pp. 264-265.)

TENTH

Erkins was instructed to ascertain that Fairhand actually had title on December 15, 1926, and bring Fairhand to Public Service Office after title closing with Nicholson at which time Contract for Right-of-Way would be signed for Public Service and preliminary payment of $3,000.00 paid Fairhand. Hence Erkins' presence of the Nicholson—Fairhand closing. (See Saunders, State of Case, p. 265.)

ELEVENTH

Fairhand develops property in Spring of 1927, giving personal attention to securing surveys, Auctioneer, also retaining throughout this deal the services of a personal Attorney and paying bills by personal checks. The office of "LONG HILLS GARDENS" from where extensive advertising was carried on was the office of James E. Shea (see Exhibit C. 7), Nicholson's Broker, at No. 1 Passaic Ave., Chatham, N. J.

TWELFTH

The auction was handled by an Auctioneer with a National Organization, who stated that "the property was put in very good shape for a sale" (see State of Case, p. 287, l. 10) but that market conditions made the sale impossible. It is also shown that another auction in the same neighborhood was a failure, also that extensive advertising was done (Frank, State of Case, pp. 292-293). Fairhand claims he spent $17,000.00 over and above the $15,000.00 he paid Nicholson for improvements to property (see Exhibit C. 9). It is shown that one street of a length of 5,000 feet that was constructed through this property by Fairhand was in such good condition that it was possible to traverse it in a sedan automobile (see Saunders, State of Case, p. 267, l. 10). It is noticed that the map which was a part of Exhibit C. 7 and shows the great extent of this development is conveniently omitted from the State of Case by Riker & Riker.

THIRTEENTH

After the failure of the auction and the great loss of money to Fairhand (he still owes a bill for surveys, which does not indicate he is the agent or dummy of a corporation) Fairhand still takes an active personal interest in the property

up until August 22, 1927, about the time Nicholson started suit, which is evidenced by request (see Exhibit C. 20, p. 400) to Nicholson that the interest payment on the mortgage be deferred until December 15, 1927, in order to enable him to refinance and carry on with his development plans.

FIFTEENTH

Nicholson started suit without attempting to ascertain what Fairhand had invested in the property (see Nicholson, State of Case, p. 85, ll. 20 to 40) or ascertain from Public Service personally or through his Attorney any facts in connection with this matter (see Saunders, State of Case, p. 267, ll. 20 to 40) and by his refusal to have his own Broker (who was in the deal throughout up to and including the auction) testify for him, certainly makes it appear that he is trying to have an innocent and financially able Corporation assume the burden of a bad business deal in which he, assisted by able attorneys, sold a parcel of land for approximately 10% of its value in cash and took back a purchase money mortgage of 90% of its value from a man without attempting to ascertain his financial responsibility.

As to the agency and "dummy" character of Mr. Fairhand, it is sufficient to say that there is not the slightest shred of evidence in the case to show that Public Service Electric and Gas Co., The Holland Company, or any one else authorized by them or either of them, ever authorized Frederick Fairhand or empowered him to act for them in this or in any other matter. The testimony of Erkins is clear that he never had met Mr. Fairhand until he was introduced to him by Mr. Shea, and there is nothing in the case to

show that Public Service or any of its subsidiary companies either authorized or had the slightest notion or knowledge that Fairhand was acting for it or on its behalf or claimed to be so doing. Mr. Saunders in the testimony hereinbefore quoted distinctly swears that Fairhand had no connection whatever with the company or in any way represented the company in the purchase of the property from Nicholson.

It does not need any citation of authorities in support of the proposition that if Erkins was himself unauthorized to purchase the land from Nicholson, that he had no power to engage Fairhand to act on behalf of Public Service and do what he, Erkins, himself had no authority to do. An agent cannot under any circumstances delegate to another the doing of that which he himself is unempowered to do. The maxim is, "*Delegatus non potest delegare.*"

Whether the transaction should be considered in the light of a contract or a tort, the law is equally settled adversely to the contentions of complainant-appellant. In matters of contract it is settled that, "A person is not as a rule bound by the contracts of one who assumes without authority to represent him as agent, nor by contracts made by his agent beyond the scope of his actual or apparent authority, nor by acts done in connection therewith without authority or in excess of authority," (*Blanchard* v. *Berendge*, 85 N. J. L. 532)—holding that a written contract to purchase goods, entered into by a clerk in the name of his employers without their consent or ratification, is not binding upon them—(*Kirkpatrick* v. *Winans*, 16 N. J. Eq. 407) "unless the principal ratifies the same, or is estopped to deny the agent's authority in the particular case; and this rule is not affected by the fact that the agent

in acting in excess of his authority, intended to benefit the principal." (*Ure* v. *Currell*, 4 Mart. N. S. (La.) 502; *Keish* v. *Purvis*, 4 S. C. Eq. 114) 2 C. J., section 515 of *Agency*, p. 834.

In matters of tort the rule is equally well settled that "The principal's liability for the torts of his agent is limited to acts within the scope of the agent's authority, or committed in the course of his employment; unless he subsequently ratifies them. Thus in the absence of ratification or estoppel the principal will not be liable for fraud committed by the agent without the scope of his authority." 2 C. J., section 535, pages 851-852; *Kennedy* v. *Parke*, 17 N. J. Eq. 415.

* * * * * * *

At this point it will be illuminating to consider the unanimous decision of this Court in *Savoy Silk Mfg. Co.* v. *Royal Piece Dye Works*, 103 N. J. L. 139, where Mr. Justice Katzenbach used the following language:

> "It is also contended that as Mr. Wiley had signed for the defendant a similar agreement in another matter, that this was evidence of a general agency in this regard. In our opinion the trial judge ruled properly in directing a verdict for the defendant. The lien of the defendant was admitted. The defendant could only be deprived of it if the agreement was binding upon it. It was incumbent upon the plaintiff to show that the agreement was signed by the defendant corporation by one who had authority to bind by his act the corporation. It was said in this court, in the case of *Aerial League of America* v. *Aircraft Fireproofing Corp.*, 97 N. J. L. 530:
>
> 'A corporation is bound by the act of an officer or agent only to the extent that the power to do the act has been conferred upon such officer or agent expressly by the charter, by-laws, or corporate action of its stock-

> holders or board of directors, or can be implied from the powers expressly conferred, or which are incidental thereto, or where the act is within the apparent powers which the corporation has caused those with whom its officers or agents have dealt to believe it has conferred upon them.' "

In the case of *Aerial League* v. *Aircraft Corp., supra,* which was also a unanimous decision of this Court, in addition to the excerpt above quoted, the Court held that: "To obligate a corporation upon a contract, it must be proven that the contract was the act of the corporation, either by corporate action, the act of an authorized agent, or by adoption and ratification." In this case Mr. Justice Katzenbach, on page 532, cites several apposite cases in our own State in support of the above rule.

* * * * * * *

Throughout the brief of complainant-appellant the alleged statements of Messrs. Erkins and Fairhand are quoted, because complainant-appellant seems to think that the authority of an agent to act in a given matter may be proven by the unsworn statement of such alleged agent. This Court in another unanimous opinion, in the case of *Sattler* v. *Howe Rubber Corp.,* 98 N. J. L. 463, speaking thru the Chief Justice said:

> "There is no proof in the case to justify the conclusion that Tenney, in entering into the contract of April 15th with the plaintiff, was acting under authority previously conferred upon him by the board of directors. It is true that he then stated to the plaintiff that he had such authority, but no attempt was made by the plaintiff to prove the truth of this statement; for, of course, the mere assertion of an assumed agent that he is authorized to act in a given matter, and in a specified manner, by the principal he claims to represent is no evi-

> dence at all of the existence of the agency, or of his right to represent his alleged principal. This proposition is so elementary as to require no citation of authority for its support."

Another error which is constantly persisted in by complainant-appellant in its brief arises from its apparent inability to distinguish between an act done by the servant within the scope of, and an act during, his employment. The mere fact that Erkins was employed by Public Service or The Holland Company did not validate any act done by him outside the scope of his employment, notwithstanding the fact that it may have been done during such employment.

To pursue further complainant-appellant's contention with respect to Fairhand: In his brief complainant-appellant's counsel says: "To say that Fairhand when he signed this contract had no thought of the Public Service and that this clause was his own inspiration passes human credulity." Later he says, "This of itself proves conclusively that Fairhand was being used for the purposes of the Public Service." Further, he says, "It is very apparent from this latter account that Fairhand and Erkins were working at all times in close cooperation for the benefit of the Public Service." And still later, "While we think that all of this testimony shows beyond question that Fairhand was a dummy acting for the Public Service, there are three other circumstances that point to the same effect following the consummation of the sale. In the first place, Erkins while still actively working for the Public Service participated in the arrangement for the auction sale. In the second place, before the first interest date of the bond and

mortgage, Fairhand without making any reference to his conveyance to The Holland Company offers to reconvey the property to Nicholson, asking for a return of cash, and then in his letter of August 22, 1927, agreeing to reconvey what he had left and ignoring the $32,000, which he alleged he had spent on the property. Lastly, we have his own complete failure to take the stand and explain his connection with the matter."

Then, with that utter unwillingness to recognize the non-existence of either logical or legal cogency, counsel concludes as follows: "All of this evidence establishes *conclusively* that Erkins and Fairhand were acting for the Public Service and Holland Company to secure a right of way for the high-power transmission line across the complainant's land." "The Public Service and Holland Company have derived a benefit from their action, to wit; the legal title to the right of way which they desired. If, therefore, in accomplishing this Erkins and Fairhand perpetrated a fraud on the complainant he is entitled to have the contract and deed rescinded as against all the defendants."

The law is so clearly settled as not to need citation of authorities in its support to the effect that if a transaction is equally susceptible of the conclusion that it was innocent and *bona fide* as with the conclusion that it was fraudulent and *mala fide,* then the court must conclude that it was *bona fide* and honest, rather than the contrary, since the burden of establishing by the clear weight of the evidence the fraudulency of a transaction rests upon the complainant, and if the mind of the court is in a state of equipoise upon this matter, the plaintiff not having borne the burden cast upon him by the law, he must fail.

If the court will read carefully the testimony of Rene F. Erkins, it will, I think, unhesitatingly conclude that the worst that can be charged against him, even by far-fetched and strained inferences, is that he and Fairhand, knowing that Public Service desired to purchase a right of way through the property in question, and that Mr. Nicholson would not sell the same except in bulk, and seeing the possibility of making for themselves a handsome profit without investment of any of their own money in the transaction, by entering upon a scheme of development of the property into plots and sale of the same, conceived the idea that they would purchase the property or that Fairhand would, and would sell to Public Service a sufficient amount thereof to give it a right of way across the same, and would use the money received from the sale thereof in developing the property and making it marketable and profitable; that in pursuance of this understanding the property was purchased by Mr. Fairhand with the *bona fide* intent of developing the same and selling it in plots for a profit, and that Mr. Fairhand, with the aid of Mr. Erkins, entered upon this scheme with the *bona fide* intention of carrying it through and making a profit. And if it had not been that the booming condition of the real estate market, which up to that time was a notorious fact, had ceased and been succeeded by a slump, Mr. Fairhand would have made the profit which he expected and the matter would have been ended. This explanation of the matter explains all the circumstances which seem to complainant's counsel to be either suspicious or inexplicable, and leaves The Holland Company in the situation of an innocent purchaser for value without notice. It explains why Fairhand and Erkins were working in close

cooperation, if they were so working, and it shows that that cooperation, if there was such, was for the benefit of themselves and not for the benefit of Public Service.

Mr. Erkins has testified that he kept a close eye through the office of Mr. Shea upon prospective purchasers for the property in bulk, and thus became aware that Mr. Fairhand was a prospect; and thus became acquainted with and made contact with him. It is clear, therefore, that if he was anxious that Fairhand should purchase the property that he would naturally be willing to assist him in obtaining the same and in making the purchase a profitable one. It is natural also to suppose that if Mr. Erkins saw an opportunity to become a participant with Mr. Fairhand in the development of this property with a prospective profit an extremely likely outcome of such association, that he would be willing to ally himself with Mr. Fairhand on his own account in such a venture.

This situation would clearly show, not that Fairhand was a dummy acting for Public Service, but on the contrary a principal acting for himself or, to put the worst phase possible upon the transaction, acting for himself and Erkins. This would be a rational explanation of why Erkins participated in the arrangement for the auction sale, since he naturally would desire to have the same a success. There is nothing sinister in the desire of Fairhand to escape from the transaction after he had given it a thorough trial and had found that the property could not be sold, and that he being liable personally on the bond secured by the purchase-money mortgage would in all likelihood be held for a

deficiency judgment, if the property on a sale under foreclosure should bring an insufficient amount to discharge the bond.

With respect to the failure of Mr. Fairhand to take the stand and explain his connection with the matter, it would seem that a great burden of responsibility rested upon complainant, upon whom the burden of proof was placed, for not producing him, and that complainant has conspicuously failed to bear the same.

Instead therefore of concluding this part of the brief as complainant's counsel concludes it, I think it would be more reasonable to say that all of this evidence establishes conclusively that Erkins and Fairhand were acting for themselves in the *bona fide* attempt to secure a piece of property for development purposes so that they might make a profit for themselves, and were using Public Service as a mere collateral instrument through which they could obtain money by the sale to Public Service of the right of way, which would enable them to carry on their own individual designs of developing the property and selling the same, and deriving therefrom a profit for themselves.

If this is so, then neither Erkins nor Fairhand perpetrated a fraud upon the complainant, and complainant is not entitled to rescind the contract as against any of the defendants.

The principles of law which govern in a case of this kind will be set forth later in this brief.

It is the settled rule that the authority of a special agent must be strictly pursued (*Cooley* v. *Perrine*, 41 N. J. L. 322; *Campbell* v. *Hough*, 73 N. J. Eq. 601), and this authority must be limited to the particular business and particular

instructions given (*Slingerland* v. *East Jersey Water Co.,* 58 N. J. L. 411; *Brockway* v. *Mullin,* 46 N. J. L. 448). A special agent cannot bind his principal by acts outside the scope of his authority (*Dowden* v. *Cryder,* 55 N. J. L. 329; *Black* v. *Shreve,* 13 N. J. Eq. 455).

Even though Erkins had been authorized to purchase a right of way for The Holland Company, which it is conclusively established by this case he was not, The Holland Company would not be responsible if the agent had not purchased what he was authorized to buy within the limits within which he was authorized to act, both as to the quantity and the kind of property purchased and the price to be paid.

But it is profitless to pursue such an inquiry further, since in this case the whole structure of complainant's claim rests upon the fact of the actual authority and agency of Erkins and Fairhand. If they were not agents clothed with adequate authority to act in the premises for Public Service Electric and Gas Company and The Holland Company, then complainant's whole fabric falls to the ground, and he can have no remedy against either company. The established doctrine and test as to the liability of the principal for the acts of his agent is "as to whether the acts were committed in the course of his employment and within the scope of his authority," for without such course and scope the agent is a stranger to his principal. This, as has been said, is not a case for the application of the doctrine of ostensible or apparent authority or agency by estoppel, since according to all complainant's evidence and contentions neither Erkins nor Fairhand appeared or represented themselves as acting for or having authority from either of said com-

panies, but on the contrary Erkins represented himself as acting for himself and Fairhand, or as the agent of Fairhand; and Nicholson so testifies and does not pretend that he considered either of them as representing Public Service or The Holland Company, or that either of those companies had held them out to him as possessing such authority.

The cases are uniform that where the subject matter of inquiry is the real or actual authority of the agent, the burden is upon the complainant to show that such agent was acting in the business for which he was employed by his principal, and had *full* authority *to complete* the transaction. If the agent, for purposes of his own, quits sight of his principal's business and embarks upon a venture for his own interest and profit, and makes collateral contracts for the advancement thereof, the principal is not liable thereon. In *Smith* v. *Tracy,* 36 N. Y. 79, the point of the decision is "It must be observed, however, that even this responsibility for instrumentalities does not extend to collateral contracts made by the agent in excess of his actual or ostensible authority, and not known to the principal at the time of receiving the proceeds, though such collateral contract may have been the means by which the agent was enabled to effect the authorized contract, and the principal retains the proceeds thereof after knowledge of the fact." This principle is dispositive of the case now sub judice, for notwithstanding the strength of the naked assertion, reiterated again and again in complainant's brief, "that Erkins and Fairhand were agents for Public Service and The Holland Company in the transaction in question," the case itself is utterly barren of evidence to support the

same. On the contrary, George Barker, Vice President in charge of Real Estate and Purchases, and Mr. Saunders, whose clear and comprehensive testimony must have impressed and convinced your Honor, and upon whose testimony the only effect of a most rigorous and exhaustive cross examination was to confirm and strengthen it, both swore that Erkins was a mere field man investigator or scout, to interview owners, but absolutely without any authority to negotiate sales or conclude them, and that Fairhand was not employed by either company in any capacity. If Erkins and Fairhand are to be held agents of either company to negotiate and complete for Public Service Electric and Gas Co. or The Holland Company a purchase of land, it can only be by branding Mr. Barker and Mr. Saunders as perjurers, and then inferring from inadequate proof by forced reasoning an agency which the evidence does not establish.

There is no evidence whatever supporting the notion that either Erkins or Fairhand was authorized by either company to purchase the right of way, much less to purchase the entire tract of 168 acres for either company, and there is complete denial from the companies' witnesses of this fact. If, then, Erkins, utterly without authority, either special or general, from either company to purchase this tract of land from complainant conceived the idea of purchasing it for himself or another, and for their benefit and profit, and financing it thru-money received from a sale to Public Service of a right of way there through, which he knew it desired to purchase, and, thru the instrumentality of Fairhand carried out the scheme, then the doctrine enunciated in *Smith* v. *Tracy, supra,*

becomes applicable and is dispositive of the case. See also *Hammond* v. *Michigan State Bank,* Walker's Chancery Reports, 214; *Young* v. *White,* 7 Beav. 506.

Of course, it is unnecessary to argue—because the fact is self-evident—that if Fairhand purchased the entire tract *bona fide* for development purposes, even tho he may have had scant hope of success, but was willing to take a gambler's chance and intended to finance his operation by money derived from a sale to Public Service, which Erkins had informed him he could make, that the transaction is perfectly legitimate and untained by any fraud, and no remedy against Public Service or The Holland Company is available, nor is any remedy except foreclosure and a decree or judgment for deficiency available against Fairhand.

While I think the evidence clearly establishes the *bona fides* of the purchase by Fairhand and the honest intention on the part of Fairhand to develope the property and sell it in plots, and while it is clear that if such is the case no remedy of any kind except that of foreclosure and a judgment or decree against Fairhand for deficiency is available to the complainant, yet I think it may fairly be said that the utmost that any candid mind cautiously analyzing and evaluating the evidence in the cause would conclude unfavorably to the participation by Erkins and Fairhand in the transaction would be that Erkins had been told by Shea, who was Nicholson's agent, that Nicholson would not divide the land but desired to sell it in bulk, and that Erkins naturally requested Shea to keep him in touch with all inquiries from intending purchasers; that Shea put Erkins in touch with Fairhand, who was a person who

desired to invest in real estate, and that when he and Erkins met they determined, acting for themselves and for their own profit and interest, to take a flyer at the development and sale of the entire plot. That Erkins naturally told Fairhand they could swing the deal on money which he could procure from a sale of an unencumbered twenty acres of it to a prospective purchaser. That at that time the market for real estate seemed good and promising, and that Fairhand, either in partnership with or assisted by Erkins, entered upon the project. That Erkins had to keep Fairhand in sight, so that when Fairhand should become the owner of the entire tract he would be able to get the right of way there through for The Holland Company; and that Fairhand desired to keep Erkins in sight so that he would be able to obtain from a sale of the portion of the property which he intended to purchase an amount sufficient to enable him to carry on successfully the project of development and sale of the land purchased in plots.

In such a situation the twenty acres which were sold by Fairhand to Public Service was an entirely independent and collateral arrangement, and Erkins was as much a stranger to The Holland Company in the purchase of the entire plot as he would have been if he had never worked for the company in any capacity whatever.

As I have stated above, if neither Erkins nor Fairhand had authority to purchase the right of way or the entire tract for The Holland Company, and they or either of them took upon themselves or himself to purchase the entire tract for their own profit and interest, and to sell to The Holland Company thereout a portion

thereof for a right of way, then as to this transaction both Erkins and Fairhand were strangers to The Holland Company, and The Holland Company in buying from Fairhand the right of way occupied the legal position of a *bona fide* purchaser for value without notice.

In 2 Pomeroy's Equity Jurisprudence, section 918, under the title "Persons against whom relief is granted" the learned author says:

> "The remedy which equity gives to the defrauded person is most extensive. It reaches all those who were actually concerned in the fraud, all who directly and knowingly participated in its fruits, and all those who derive title from them *voluntarily or with notice.* A court of equity will wrest property fraudulently acquired, not only from the perpetrator of the fraud, but, to use Lord Cottenham's language, from his children and his children's children, or as elsewhere said, from any persons amongst whom he may have parceled out the fruits of his fraud. *Vane* v. *Vane,* L. R. 8 Ch. 383, 397, per James, L. J.; *Huguenin* v. *Baseley,* 14 Ves. 273. There is one limitation: if the property which was acquired by the fraud has come by transfer into the hands of a bona fide purchaser for a valuable consideration and without notice, even though his immediate grantor or assignor was the fraudulent party himself, the hands of the court are stayed, and the remedy of the defrauded party, with respect to the property itself, is gone; his only relief must be personal against those who committed the fraud. *Stephens* v. *Board of Education,* 79 N. Y. 183. To this limitation there is, however, an exception, where the general rule giving relief applies even as against a bona fide purchaser. Where an owner has been apparently deprived of his title by a fraudulent conveyance or assignment which is *void,* as where he was procured to execute it by the fraudulent representation and

> under the conviction that it was an entirely different instrument, or where it was fraudulently executed in his name without any authority express or implied, or where, after being executed by him for one purpose, it was fraudulently altered without his knowledge or authority, so as to include the property, or where it was a forgery, and he has done no collateral act with reference to it which might amount to an equitable estoppel by conduct, and the property, by means of such transfer, comes into the hands of a purchaser for value and without notice, the original defrauded owner is not barred of his remedy."

This exception, it will be observed, is only authority for the proposition that the doctrine of a *bona fide* purchaser for value without notice is a defense where the conveyance is *wholly void. Moore* v. *Riddle,* 82 N. J. Eq. 197; *Livingston* v. *Hubbs,* 2 Ch. 512. It is thus clear that the rule is that equity will relieve by cancelling the fraudulent apparent transfer, and by compelling a reconveyance or re-assignment, even as against the holder who is innocent of wrong; and the doctrine of estoppel and the *bona fide* purchaser do not apply when the conveyance is *wholly void,* but the doctrine is in full force and a perfect protection to a *bona fide* purchaser for a valuable consideration without notice when the transaction, as in this case, is only *voidable.*

Before passing from this phase of the case I wish to point out a circumstance which is relevant thereto and which is attempted to be slurred over in the brief of complainant's counsel. On page 22 of his brief he says: "Undoubtedly great stress will be laid on the fact that whereas Nicholson only received $15,000, Fairhand got $30,000. If this transaction had been

handled a little more as an ordinary business transaction and a little less furtively it would be entitled to greater consideration." Surely complainant's uneasiness and fear in the presence of this convincing and pivotal fact, conclusively established and utterly undenied and unimpaired, is most significant, and the sheer insufficiency of the attempt in his brief to minify it magnifies at once its importance and its conclusiveness. According to complainant's contention in his bill of complaint, proof and brief, Fairhand was an agent for Public Service Electric and Gas Company and The Holland Company in this transaction, and a mere dummy. According to complainant Nicholson is willing, and defendants know that he is, and he contracts to and does, accept $15,000 payment, and to except twenty acres from the lien of the purchase-money mortgage (which twenty acres he contends was and was intended to be the right of way desired by Public Service and Holland Company), and yet Public Service and Holland Company pay Fairhand, its agent and mere dummy, $30,000 therefor, or $15,000 more than there was any need for it to pay.

It was Herbert Spencer who defined a tragedy as a beautiful theory slain by an ugly fact. In the presence of this fact of Nicholson's having taken $15,000 and this dummy having been paid $30,000, the beautiful theory of complainant is slain beyond resurrection. The best offset he can offer is "if this transaction had been handled a little more as an ordinary business transaction and a little less furtively it would be entitled to greater consideration." It is precisely because it was handled as an ordinary business transaction that the admitted circumstances derive their compelling and conclusive significance

adverse to complainant's contention. Fairhand wanted and asked for $50,000 as his price for the right of way, and after negotiation he agreed to accept $30,000. He and defendants were dealing in an ordinary business way at arm's length. There was nothing furtive about the transaction so far as the deal between Public Service and Fairhand was concerned. If there had been, then the greater the furtiveness and the greater the sense of security which its secrecy would have afforded, the less necessity for and the less likelihood of any payment of $30,000 to Fairhand for what the company, if complainant's claim were true, could have obtained for $15,000. No! The uneasiness which this circumstance causes complainant cannot be allayed or removed by the flippant suggestion that the transaction between Public Service and Fairhand involving the purchase from him by it of the right of way was not done "in an ordinary business way but furtively." I respectfully request the court to specially peruse the testimony of Messrs. Saunders and Erkins on the matter of this purchase, since it demonstrates the ordinary business nature of the transaction and the utter absence of furtiveness.

To state the point last stressed from a different angle: The first point of law made by complainant in his brief is that "Fraud justifies rescission of contract." The position of complainant is that the bill is filed to rescind or cancel a contract made between the plaintiff and the defendant Frederick Fairhand for the sale of complainant's lands, and also the deed from the complainant to Frederick Fairhand conveying the premises in question because of the fraud involved. We have no quarrel with the citations of law from Pomeroy's Equity and the New

Jersey cases. The complete and conclusive answer, however, to this point is that there is no fraud attributable to Public Service Electric and Gas Company or The Holland Company which would justify the rescission of the contract and the reconveyance of the premises in the matter of the conveyance of the twenty acres of land from Frederick Fairhand to The Holland Company.

Another element relied upon by complainant under this point is that part of the land covered by the contract and deed referred to has been conveyed to The Holland Company. That that company claims to be entirely innocent of any fraud, even if the court should find the defendant Frederick Fairhand is guilty thereof. Complainant charges that the persons who actually handled the transaction and made the contracts were Rene F. Erkins and Frederick Fairhand; that Erkins was the agent of The Holland Company and Frederick Fairhand a mere dummy, whose participation enabled fraud to be perpetrated on the complainant. It is then contended that if these facts can be established, it is unnecessary in equity to prove direct authorization to commit the fraud, because an innocent principal will not be permitted to retain the benefit of a fraud committed by his agent.

We do not quarrel with the New Jersey cases cited in support of these legal propositions, but we assert that The Holland Company is a *bona fide* purchaser for value from said Frederick Fairhand and is without notice of any fraud, and therefore, as against The Holland Company, no relief can be afforded under the cases cited or any other cases which can be found.

It cannot be lost sight of that the law is that "in the case of fraud between the parties, where a conveyance has been obtained by the grantee's fraud, so that it would be set aside at the suit of the defrauded grantor, but the fraudulent grantee has in turn conveyed to a bona fide purchaser for value and without notice, the latter will take and hold the property free from all these equities, protected against the equitable remedies of the original defrauded owner." 2 Pomeroy's Equity Jurisprudence, fourth edition, section 777, and the multitude of cases there cited in support thereof. The doctrine which governs is stated with crystalline clarity in 2 Pomeroy's Eq. Jur., section 918, hereinbefore quoted.

It is clear that fraud is never presumed, but the party alleging fraud must prove it either directly or by establishing such circumstances as will warrant a presumption against the instrument in question. The facts from which fraud will be inferred must clearly establish the inference. *Summerill* v. *Summerill,* 83 N. J. Eq. 3, affirmed in 83 N. J. Eq. 350.

It is trite law which needs no citation of authorities in its support that the evidence to establish fraud must be clear and convincing, and that no adjudication of fraud will be made from the existence of circumstances which merely create a suspicion thereof. Unless and until complainant in this suit has established that Frederick Fairhand and Rene F. Erkins were agents of the defendant The Holland Company and possessed of authority, either express or implied, to make on behalf of The Holland Company the purchase of the tract of land owned by complainant, and identified in his bill of complaint, he cannot claim that any transactions entered into by them or either of them with com-

plainant is binding upon said defendant, nor can the said complainant avail himself of the equitable remedy of rescission against said defendant. Rene F. Erkins was an agent of The Holland Company for a specific purpose, and was to investigate the matter of the availability of property for the use of defendant or its allied companies, to report thereon to his superior in respect thereto, and to communicate to the owners thereof such matter with respect to said property and only with respect to such matters as he should be directed to do by his superior, Harry Saunders. There is not the slightest shred of legal proof in the case that Frederick Fairhand was an agent of any Public Service company or had any kind of connection therewith.

The strained effort made in the brief of complainant to show a connection between Erkins and Fairhand in respect to the purchase of this property, even if the fullest recognition should be given thereto, falls far short of showing that Fairhand was either a dummy for Public Service or in any way had a connection with it as an agent. It is trite law that agency cannot be established by the declarations of an agent. *Gifford* v. *Landrine*, 37 N. J. Eq. 127, and *a fortiori* the authority of one alleged but unproved agent cannot be established by the unsworn declarations of another. Furthermore, it would be strange indeed if Erkins, who did not himself possess authority to purchase the right of way, much less to purchase the entire tract, could be held as possessing power to delegate such authority to Fairhand.

Furthermore, even if it were true that Mr. Erkins and Mr. Fairhand, neither of whom had authority from the defendant company to negotiate for or complete a purchase of the entire

tract, had nevertheless done so without the knowledge, authority or consent of said defendant, it would not be bound thereby, nor could a rescission be obtained against it on account thereof. If Mr. Erkins and Mr. Fairhand, neither of whom had authority from the defendant company, had essayed for purposes of their own, perhaps because they thought that in the then state of the real estate market they could make some money thereby, to purchase for their own purposes the whole tract of property and had considered that if they could procure, as they did, the exemption from the purchase-money mortgage to be given therefor of twenty acres thereof, so that they might obtain from The Holland Company thirty thousand dollars ($30,000) or some such sum which would enable them to carry on the work of development and preparation of the property thus purchased for the market, and had put the deal through with Mr. Nicholson and sold the twenty acres thereof exempted from the mortgage to The Holland Company for cash, which company had purchased for this valuable consideration in good faith and without notice of any fraudulent intention or fact, it is too clear for argument that The Holland Company would hold a position of an innocent purchaser for value without notice, and that neither the remedy of rescission nor any other remedy could be had against it with respect to the property thus purchased. In such an event, Messrs. Erkins and Fairhand would occupy the position not of agents of The Holland Company in such a transaction, but the position of strangers to such company, and no one would contend for a moment that if Erkins and Fairhand had been entirely dissociated from The Holland Company at the time of the purchase of the property from Nicholson, and had embarked

upon the venture as a speculation which would require little or no money on their part, and involved possibilities of considerable profit if they could swing the deal, and if in the meantime, as was testified by Mr. Gerth and others in this case, the real estate market had gone stale, so as to make what appeared at the time of the purchase to be reasonably likely to be profitable a failure, that complainant could have successfully sought and obtained a remedy either by rescission or otherwise against The Holland Company.

I wish to here insert a portion of my brief before the Vice-Chancellor:

> Defendants, with entire confidence in the result, earnestly request your Honor to read the answers of Mr. George Barker to the questions propounded in the interrogatories, which are in evidence in this case, the testimony of Mr. Harry L. Saunders, and the testimony of Mr. Erkins. I make this request because on page 22 of his brief, counsel for complainant says, "The chief evidence to sustain the defendants is given by Erkins." This, of course, is not true. Mr. Erkins, who is no longer connected with either Public Service or The Holland Company, was called by defendant and testified fully and intelligently upon all the questions involved in the transaction now under consideration. An exhaustive cross examination entirely failed to shake his recital of the facts in any particular. On the other hand, even if the testimony given by Mr. Erkins were in any degree challengeable, it is entirely unnecessary to sustain the right of the defendants to a decree in this case, since the clear and convincing evidence given on

all the pivotal points in the case by Harry L. Saunders—whose demeanor and fairness undoubtedly appealed to your Honor and stamped him as a credible witness who told a credible story—was amply sufficient to substantiate the defenses interposed by the defendants in this cause.

In contrast with the demeanor and testimony of Mr. Saunders, I direct your Honor's attention to the shifty and incredible Leshins, upon whose evidence and activities in securing witnesses in questionable ways and under questionable circumstances complainant's case so entirely depends. While the facts and the hearing were fresh in my mind, I dictated the following memorandum to my stenographer on the last day of the hearing, with respect to the testimony and actions of Mr. Leshins:

"When Mr. Leshins was recalled to the stand by me at the practical conclusion of the case, he testified with respect to the contract made between Nicholson and himself to pay him a compensation of $10,000 additional upon his securing testimony and witnesses, which he had alleged himself able to procure, that Erkins and the others whose testimony he was to get had at first demanded a contract for a sum in excess of $20,000, and that he had beaten them down in the amount until eventually it was understood that if they were to come across with the testimony they were to receive $10,000. In this particular the contract between Nicholson and Erkins provides for only $10,000 to be paid to Leshins. It is therefore perfectly apparent that if Erkins and the others were to receive the $10,000 provided for by the

contract from Leshins, that Leshins would be left without any compensation whatever. This is important because (a) it is apparent that Leshins is not the kind of man to work for nothing, (b) if his testimony is true that Erkins and the others were to get all of the $10,000, which was all that Nicholson agreed to pay, that it must have been because Leshins himself either was in a conspiracy with them and expected to receive some part thereof for himself, or was to be compensated in some other way. This testimony is of great importance in the light of the suggestion made by the Vice-Chancellor to me that he had noticed in looking over the contract that nothing was to be paid to Erkins by the terms of the contract, but the whole sum was to be paid to Leshins. In whatever manner this contract is viewed, in the light of the testimony hereinbefore mentioned, given by Leshins, it is highly improbable and unbelievable.

The Vice-Chancellor, in suggesting the questions that are to be considered and decided, declared that they were only two: (1) Was Fairhand an agent for Public Service? (2) Assuming that he was an agent for Public Service, did he commit a fraud in purchasing from Nicholson the property out of which he later sold to Public Service the right of way? As bearing upon this latter issue, it is important to consider that the Vice-Chancellor has stated that it was a perfectly legitimate transaction within his own knowledge—owing to his connection with the Essex County Park Commission—for quasi-public companies to buy in the names of dummies, because if this were not done, the public would be mulct by the

enhanced prices brought about by the knowledge that the purchase was being made for such instrumentalities. Therefore, it is obviously in his mind that it was perfectly legitimate for Public Service to engage Fairhand as a dummy to purchase for it this property, and the next question which would have to be considered in this respect would be whether any such representations were made by Fairhand or Public Service of such a fraudulent kind as materially induced Nicholson to enter into the contract.

One of the most important considerations in the case bearing upon the bona fides of the purchase by Fairhand (and I conceive that to be one of the most important questions in the case—as to whether Fairhand was buying bona fide for himself) is as to the things done both before and after the purchase by him showing that the purchase was made by him and for his own advantage. These matters are the borrowing of the money from Mary Jane Wilson, which does not seem to be in dispute in this case, and the bona fide efforts made by Fairhand through his brother and Erkins and agents employed by him to develop and sell in plots the property purchased by him.

Another circumstance which bears strongly upon the question came out in the testimony of Mr. Gerth, and is to the effect that the failure of the venture was obviously due to one of those slumps in the real estate market which are common and one of which we are passing through at the present time. He stated that the real estate market had been brisker and had induced people to come in and buy and speculate up to about the

latter part of March, 1926, and that from then on the slump took place; that the inability to sell the property was due to the general condition of the real estate market. This fact was brought out further by Mr. Frank, who said another sale was attempted about three months later at Summit, which, after the usual efforts to make it successful, had proved a failure.

It has seemed to us that the first question proposed by the Vice-Chancellor for briefing—which is, whether or not Fairhand was an agent for Public Service—is the crucial and utterly decisive question in the case. I think it may be fairly said that there is no evidence whatever in this case that Fairhand was the agent for Public Service. It is distinctly denied in the uncontradicted and unshaken testimony of Mr. Saunders; it is utterly denied by the testimony of Mr. Erkins; it is completely negatived by the course of dealing in the matter of property purchases, which required the approval of either Mr. Saunders or Mr. Barker before any purchase would be carried through on account of the company.

If there is any evidence in the case at all that bears upon this subject of agency on the part of Fairhand for the company, it is mere suspicious circumstances drawn from the mouths of utterly discredited witnesses. This, of course, runs immediately counter to the general rule of law that where the issue is fraud, as it is in this case, the proof, in order to convict the party charged, must be of a clear and convincing character. In this case, instead of being clear and convincing, whatever testi-

mony there is in the case bearing upon the subject is of a feeble and fumbling kind, and could under no circumstances sustain a decree.

It is proven in the case that Leshins is a discharged employe of Public Service. He sought to credit his standing by testifying that he resigned from the employ of the company and was not discharged. Mr. Saunders however testified with minuteness to the exact circumstances under which Leshins' connection with the company was discontinued. Mr. Saunders says that Leshins' services were unsatisfactory, that he was warned on two occasions at least, and was eventually discharged; that he begged for another chance, and kept on for a little while longer; that his wife went to see Saunders about retaining him in the company's employ, and that after he had received his notice of discharge he asked for a letter of recommendation and to be permitted to resign. Mr. Saunders says he refused to give him the letter of recommendation, but permitted him to go through the motions of resignation for appearance sake. Notwithstanding this minute and detailed statement of the circumstances of Leshins' exit from the company by Saunders, Mr. Leshins did not deny a single word of the story as told by Mr. Saunders.

It also appeared that both Leshins and his wife stated that Leshins was unable to procure other employment and was in effect flat broke.

We therefore have a picture of a man who had been discharged from the company and who was financially broke. In order to

satisfy at once his desire for vengeance and his need for money, he goes to Riker and Riker, the firm of lawyers which represents Nicholson, the complainant in this suit, and assures them that he can produce witnesses who would undoubtedly win the case for Nicholson, and on the strength of these extravagant and false representations he procures from Nicholson a contract for the payment to Leshins as associate counsel for $10,000, which, however, the caution of Riker and Riker conditions upon the production of the testimony and the winning of the case. Leshins thereupon takes the contract for $10,000 to show to some of the proposed witnesses so they might be assured that if they gave the testimony and produced the result they would be paid and well paid for such testimony. This contract was for the purpose of inducing Erkins and Fairhand to come to the front for Nicholson. Leshins had also represented that he could procure other witnesses. One of these was Bernard Frank, a realtor who testified on the trial for the defendant. Another was Mr. Cormire, who testified for the complainant. Another was Mr. Steel, who also testified for the complainant; and there were others.

Mr. Leshins himself testified that it was necessary when these witnesses demanded money for their testimony that he should report the fact of that demand to Riker and Riker, so they might tell him whether the demand would be complied with or not. He testified that Mr. Frank demanded of him $2,500 for his testimony. This Mr. Frank utterly denies. Mr. Erkins also denies that he ever agreed to testify as Leshins had re-

quested him to do, by making a distortion of the facts in order to enable Nicholson to win.

In the light of these facts which I have recited, certain inferences are practically inevitable. I think it may be said to be clear that Mr. Leshins is a witness who, by the obvious falsity of his testimony before your Honor in the respects which will be hereinafter pointed out, by his interest to discredit the company from which he had been discharged; by his apparent hatred of that company, evidenced by the circulars which he put out to enable him to bring in those who would defeat the company in the suit; by the pecuniary interests which he has under the contracts which were made between him and Nicholson, may without extravagance be characterized as at once untrustworthy and unbelievable. It also may clearly be inferred that Leshins, having made extravagant and insupportable statements of the great use which he would be to the complainant and of the testimony and effects which he could produce in complainant's behalf, was sorely put to it to retain with the complainant his standing and connections at the same time that he was falling down in the performance of the promises of help which he had given. He therefore hit upon the expedient of reporting to Riker and Riker that the demands of the witnesses for the testimony which he had represented they would give in favor of the complainant were so extravagant that he could rest well assured that Riker and Riker would not be willing to make such payments. This would enable him to be in the position of saying to Riker and Riker, "I could have produced the witnesses and

have obtained the testimony which I represented to you I could obtain if you had been willing to pay the price demanded by the witnesses for their service." This he well knew Riker and Riker would not be willing to do, and consequently he would be in a position where he could claim it was not he who fell down on his part, but they who fell down on theirs with him.

Another consideration growing out of this situation is that either his story with respect to the demands of Frank, Erkins and others is utterly false or else it would have to be inferred that Public Service had procured witnesses who were demanding extremely fancy prices for their testimony for nothing, which would seem almost unbelievable, or else that Public Service had outbid Leshins and paid even more extravagant prices for the testimony than Leshins said it could have been procured for on behalf of the complainant. This latter supposition is, of course, utterly incredible.

It must not be lost sight of also that if all the witnesses approached by Leshins were demanding money and some of them did testify, it is likely that those who did testify were paid their price for the testimony, and this should be taken into consideration in weighing the value of their testimony—."

On page 19 of his brief, complainant's counsel says—"Some references are made by counsel for the defendant to an expenditure of $17,000, for development and for the auction sale, but there is no proof whatsoever that any money was actually spent except a partial payment to the surveyor of $300, on account of a bill of $1,460 (pp. 93

and 94) and a payment to the auctioneer of $500. Fairhand's evidence on this point as well as every other point is conspicuous by its absence." Complainant's brief on this point, as on many other points, is conspicuous by its disingenuousness. Defendants direct your Honor's attention to the state of the record in respect to this matter. It is important that this should be done, because it is the confident contention of the defendants that the evidence clearly establishes that a bona fide attempt to develop the property and to sell the same in villa plots, pursuant to the purpose for which it was originally purchased by Mr. Fairhand, was made. And that this bona fide attempt at development and the expenditure of very substantial sums of money in pursuance thereof are convincing proof of the bona fides of the original purchase by Fairhand from Nicholson.

The only testimony of the complainant on this subject is by Mr. Nicholson, Mr. Murphy and Mr. Steel. Mr. Nicholson says on pp. 30 and 31 that all he knew of the development was what he could see from the road, as follows: Testimony, bottom page 30:

> "Q How many roads were there at that time on the premises? A Well, as I recall it, at that time all I could see was what I saw from the road. I didn't go up over the property but I could see where they were laid out, reaching up over the hills."

Mr. Nicholson says further on page 32 that the long road was seven or eight hundred feet long. Testimony, bottom page 31:

> "Q * * * Now this road that you say had been continued, is how long over that property? A How long is it?

Q Yes. A Well, I should imagine it probably would be about seven or eight hundred feet."

This is another indication that his testimony is not at all accurate because he has not properly informed himself. Mr. Saunders, who is accurately informed on these matters by maps and investigations on the property says that that same road is five thousand feet long. Testimony, Mr. Saunders, p. 277:

"A I drove up the new highway known as Longview avenue, Clifton, which is about five thousand feet, on through the property, a new developed road."

Mr. Saunders, p. 291:

"Q You said that you went over this property the former Nicholson property over a road five thousand feet long? A Yes, sir.

Q What is the name of the road? A That is what is known on the map as Longview avenue, Clifton. It extends from River Road to Fairmount avenue and is the road which Mr. Nicholson called eight hundred feet long."

Mr. Saunders, p. 292:

"Q How do you know it was five thousand feet long? A Clocked it up on my speedometer. Afterwards during the last year I scaled it on the map, checked it."

Mr. Murphy, who was also asked some questions concerning the condition of the development, admits that he did not examine the property until the Wednesday before the hearing which would be May 9, 1928—over a year after the work on the development had taken place. Murphy, testimony, p. 121:

"Q When did you examine it? A Last Wednesday."

As to Mr. Steel, his examination was made about the same time, over a year after the work was done, after the rains and storms of one year had beaten down on the gravel roads which, of course, were not repaired or kept up in the meantime and after a year's growth of vegetation had had an opportunity to further demolish the work done. Steel, testimony, page 96:

"Q Have you gone over the property that was formerly owned by Mr. Nicholson? A I have.

Q When? A Last Monday." (May 7, 1928.)

Testimony for the complainant on this subject does not come from well-informed witnesses; in fact, each knows very little at all about the situation. Even the photographs offered by the complainant were taken, also, a year after the developing took place.

The defendants, on the other hand, presented accurate testimony on the subject, including a letter written by Mr. Fairhand to Mr. Nicholson which was introduced in evidence by the complainant, as noted on page 14 of the testimony. (Exhibit C. 8.) The pertinent part of the letter reads as follows:

"The heavy drain on my finances occasioned by my illness and losses due to my consequent inattention to my affairs, forces me to submit to you for your consideration the proposition of my conveying back to you this property for such cash consideration that you feel is equitable, after taking into consideration my equity in the property, which is in excess of thirty-two thousand dollars ($32,000), which comprises the cost of improving, plus the cash payment to you." (The cash

payment was $15,000, which means that $17,000 was spent in improving the property.)

As to the cost of the survey by Mr. Kentz, see testimony on page 93:

"Q Mr. Kentz, might I ask you: you say Mr. Fairhand ordered these, did he? A Yes, he did.

Q And what was the bill for them? A Well, there were two surveys, the original and this lot development—

Q I understand— A —and it amounted to $1,460."

As to the cost of the advertising, Mr. Gerth's testimony on p. 303:

"Q Did you outline the advertising that was supposed to be done there? A We had to keep it in the limit that Mr. Fairhand agreed to spend.

Q What was that? A $2,500.

Q That was spent? A I should say they spent at least that."

Mr. Frank on page 310 places this figure at something in the neighborhood of $2,000.

"Q Well, do you recall any figure that is, an approximate figure which was spent in advertising? A To the best of my judgment without—I don't know definitely without going over the figures. I would say about $2,000."

To this figure must be added the auctioneer's fee including what he was paid to stay the second day.

Using $0.50 as the cost of grading a running foot as given by Mr. Steel, the cost of grading the five thousand foot road would be $2,500, and then we must add the cost of all the other roads and we must bear in mind that that is just for grading. There was of course, the cost of the gravel, the cost of trucks to haul it, the cost of installing curbing and street signs, all in addition to the

time of Mr. Fairhand given to the project. Who should know better than he what that cost? He places the figure at $17,000, and his statement about the matter has not been contradicted or found to be wrong. The only testimony of the complainants is loose and inaccurate on the subject. The statement of Mr. Fairhand in reality stands unquestioned in the matter, as the complainant admits its accuracy by introducing into evidence the very letter which contained the statement.

* * * * * * * *

I think a word should be said in this brief concerning the second count in the complainant's bill of complaint, notwithstanding the fact that complainant's counsel seems virtually to have abandoned the same.

On page 26 of the brief, after some discussion with respect to the rules of law which he conceives to be relevant to that phase of the controversy, he concludes as follows: "However, the complainant is resting his major claim to relief on his right to rescind under the well-recognized rules of equity, and this count is inserted only in case the Court should for some reason feel that the assumption of the mortgage debt by defendant, Public Service, was a more appropriate remedy than the rescission of the contract."

I can well see the reason for complainant assuming this attitude with respect to the second count. The rule laid down in the case of *Schenck* v. *Spring Lake Imprv. Co.*, 47 N. J. Eq. 48, is still the law in this State, and has been on more than one occasion affirmed by the Court of Errors and Appeals.

That rule was stated in the following language: "The rule generally, if not universally, recognized and enforced here, as I have always understood, is this: that a written contract, whether within the statute of frauds or not, and whether under seal or not, which is free from ambiguity and perfect in itself, and not the product of fraud, or the result of mistake, and which has not been changed by a subsequent contract, cannot be changed, varied or contradicted by oral evidence, but must be accepted as the only evidence by which the rights and liabilities of the contracting parties shall be measured and determined."

And later in the case, at page 51, he says, quoting with approval the case of *Williams* v. *Christie,* 4 Duer 20: " 'We consider the doctrine well settled, that every written contract made by an agent, in order to be binding on his principal must purport on its face to be made by the principal, and must be executed in his name, and not in the name of the agent. It cannot be shown by parol that the alleged agent, in signing his own name to the contract, in fact signed as agent, and thus convert a contract, which, on its face, is his own, into a contract of his alleged principal, and make it enforceable as such. This would be altering the plain meaning and clear import of the written contract by unwritten evidence, which is inadmissible.'

Counsel for complainant seeks to avoid the force of this rule, which has been uniformly adhered to in the State of New Jersey in every case where the question directly arose, by citing an opinion of Vice-Chancellor Stevenson in *Babcock* v. *Stobbe,* quoted

in opinion of *Simson* v. *Klipstein,* 88 N. J. Eq. 234, and then drawing the conclusion from the language of the Vice-Chancellor that "While, therefore, there is a general rule that in the ordinary case a contract under seal signed by one party cannot be deemed the instrument of another, equity will wherever possible and in order to do justice be astute in finding some way to overcome this technical objection and does so in cases of fraud."

Several things are to be observed with respect to the case of *Simson* v. *Klipstein,* 88 N. J. Eq. 234, in which Vice-Chancellor Lane attempted to rest his opinion upon the oral opinion of Vice-Chancellor Stevenson in *Babcock* v. *Stobbe.* The first important consideration is that *Simson* v. *Klipstein* was reversed by the Court of Errors and Appeals, in *Simson* v. *Klipstein,* 89 N. J. Eq. 544. The second thing to be noticed is that in the Babcock and Stobbe case the contract was not required to be and was held not to be under seal, while in the case now *sub judice* the deed *inter partes* was required by the statute of frauds to be in writing, and is required by the rules of law to be and is under seal.

The next thing to be considered is that when an instrument by virtue of either mistake or fraud does not express the intention of the parties, the remedy in equity is not to enforce it in its existent shape, but to apply, under the doctrine of reformation of contracts, to reform the contract and make it speak the will and intention of the parties. This was not attempted in this case, and it is sought, therefore, by the second count

in the bill of complaint herein to compel a company which is not a party to a bond in a suit directly brought for that purpose to pay the amount due on said bond, or at least to become obligated therefor. This has never been done in any reported decision in this State, and it is confidently contended that it cannot be done.

The next consideration with respect to the second count is that in the absence of actual fraud on the part of the defendant company such relief could not be afforded. It has been hereinbefore demonstrated that no such fraud on either the part of Public Service Electric and Gas Company or The Holland Company exists in this case. The complainant bargained for and only sought to have the security of the property for the unpaid portion of the purchase money, and the personal responsibility of the vendee Frederick Fairhand. Indeed, the mortgage being a purchase-money mortgage, the only person who could execute the same and become responsible for the payment of the sum secured by the mortgage would be the vendee. It is immaterial for that purpose who executed the mortgage, provided it was a guarantee of the property to the complainant. That was done. There was no bargain or thought or expectation on the part of the complainant that he was to have as a mortgagor other than he did have. It was immaterial to him, therefore, whether the mortgagor represented himself or another. All that he can possibly secure under the second cause of action is a foreclosure decree and a sale of the mortgage property, precisely the same as is prayed for under the third cause of action.

Furthermore, under the doctrine asserted in the cases contained on the brief of complainant's counsel, this remedy would not be available to complainant. In *Kennedy* v. *McKay,* 43 N. J. L. 290, found on page 4 of complainant's brief, the following language occurs:

> "On the ground thus assumed, then, the case would be that of a sale made by fraud-doing agents in behalf of an innocent vendor. Whatever uncertainty may at one time have prevailed in regard to the legal incidents of such a position, such uncertainty no longer exists, and the rights, under the given circumstances, of both vendor and vendee, have been plainly defined, and, as I think, firmly settled by recent judicial decisions. In the light of such authorities it is clear that an innocent vendor cannot be sued in tort for the fraud of his agent in effecting a sale. In such a juncture the aggrieved vendee, has at law, two, and only two, remedies; the first being a rescission of the contract of sale and a reclamation of the money paid by him from the vendors, or a suit against the agent, founded on deceit."

It is thus clear that equity will not decree that the bond of Frederick Fairhand is and must be taken to be the bond of The Holland Company, since in equity, as at law, it is held that "The general rule * * * in this State at law as well as equity is that contract procured by the fraud of an agent may be rescinded even as against an innocent principal." *Marsh* v. *Buchan,* 46 N. J. E.; also found on page 4 of complainant's brief.

* * * * * * *

In one or two places in his brief, complainant's counsel has animadverted upon the fact that Mr. Fairhand was not a witness in the case, and has seemed to desire an inference to be drawn by your Honor unfavorable to the defendants Public Service Electric and Gas Company and The Holland Company because Mr. Fairhand did not see fit to appear in court and defend the cause.

Mr. Fairhand is not and never was an agent or employe of either of the defendant companies. According to the testimony, he resides on Long Island, and is not amenable to the process of this court. The burden of establishing fraud rested upon complainant, and it is everyday practice for a complainant thus burdened to call even his adversary to elicit the facts in the case.

I will note but one case in passing, which occurs to my mind because I was the solicitor in the cause. I refer to *Thorp* v. *Leibrecht,* 56 N. J. Eq. 499. In that case I, acting for the plaintiff, called the defendants as my witnesses and established my case out of their mouths. I had a clear appreciation of the burden which rested upon me to make out the fraud charged, and I established the same out of the mouths of my adversaries. The same course was open to the complainant in this case. If he did not see fit to avail himself of what was at once his duty and his opportunity, he certainly cannot charge the failure to produce the evidence upon his adversary, when both the opportunity and the ability to procure it were open to him.

* * * * * * *

On page 13 of complainant's brief he sets forth in detail the fraudulent scheme of which he complains, in the following language: "In considering this question perhaps it would be well to first outline what the complainant considers to be the fraud practiced upon him. In brief it is this, the Public Service Electric and Gas Company desired to secure a right of way for their high power transmission line across the complainant's property. Finding out that he would not sell a part of his land they planned a trick to secure it from him. Their representative, Erkins, approached him claiming that he and his associates, including Fairhand, were land developers of great experience who desired to purchase his entire tract to develop and sell for building lot sites. With this in view, they offered to buy his entire property—provided 20 acres be sold to them free and clear. They represented that the purpose of eliminating 20 acres was to enable them to develop this part first and sell the 20 acres—then with the proceeds release other properties and so go forward with the scheme. Having in this manner disguised their real purpose, to acquire a right of way, they induced Nicholson to execute a contract and later a deed to Fairhand for the entire property. Thereupon Fairhand executed a bond and mortgage purporting to secure the remainder of the purchase price, which mortgage covers all the property except the right of way. The right of way is deeded to The Holland Company, and then Fairhand defaults on his bond and mortgage and disappears from New Jersey, leaving Nicholson

the worthless privilege of recovering his original property with a strip taken out of the very heart of the premises and that this strip to be used for purposes which will destroy in large measure the residential value of the balance.''

This alleged fraudulent scheme is entirely unestablished by the complainant in this case. There is not the slightest evidence that any person in authority in either Public Service Electric and Gas Company or The Holland Company planned a trick to secure a right of way for their high power transmission line across complainant's property, but on the contrary the evidence of Messrs. Barker, Saunders and Erkins conclusively establishes the contrary. He next asserts that their representative (meaning the representative of defendant companies) Erkins approached him claiming he and his associates, including Fairhand, were land developers of great experience who desired to purchase his entire tract to develop and sell for building lot sites. There is no evidence whatever that Erkins was ever the representative of either of the defendant companies to purchase the tract in question or any part thereof, but on the contrary by the testimony of Messrs. Barker, Saunders and Erkins it is clearly and conclusively established that Erkins in the transaction represented Fairhand, and did not in any way in the transaction leading up to the purchase of the tract represent either of the defendant companies.

I think it may be said without fear of successful contradiction that Fairhand, either alone or with associates, did desire

to purchase Nicholson's entire tract to develop and sell it for building lot sites, and that he actually did purchase the same for that purpose, embarked upon the project, and if it had not been for the slump in the real estate market, which was practically contemporaneous with his purchase of the site, would have carried through the transaction. At any rate, he expended a sum of money, approximately $17,000, in the development of the property and showed every evidence of good faith in carrying out the transaction.

It is true that an offer was made by Mr. Fairhand to purchase the entire property, provided twenty acres were sold to him free and clear. There can be no doubt that this is a common practice in the development of property, and that it was neither extraordinary nor uncommon is conclusively demonstrated by the fact that it approved itself to Mr. Nicholson himself and to the very capable lawyers to whom Mr. Nicholson had referred the matter and who now represent him in this suit. The reason for such exception is that it enables the developers to sell the excepted portion and to procure therefrom sufficient money to enable them to embark upon the project of development and make the project a success.

Complainant's brief then goes on to say that in this manner they disguised their real purpose to acquire a right of way and thus induced Nicholson to execute a contract and later a deed to Fairhand for the entire property. The overwhelming weight of the evidence in the case establishes that the real purpose of Fairhand, or, to put the very

worst construction upon the testimony, of Fairhand and Erkins, was to acquire the entire tract so they might develop the same and sell it in lots and plots and thereby make for themselves a large profit, and that The Holland Company was used in the transaction by them merely as a party which desired to purchase a tract which they would be able to sell to it and thereby obtain in the furtherance of their real purpose of developing the entire tract sufficient money to enable them to carry out that purpose.

All the rest of the alleged fraudulent scheme, the fact of the execution of the bond and mortgage by Fairhand to secure the remainder of the purchase price, the deeding of the right of way to The Holland Company, and the default by Fairhand on his bond and mortgage, leaving Nicholson the privilege of recovering his property by foreclosure, is not in any way probative of an original fraudulent scheme on the part of Fairhand in the purchase of the property. It is merely the natural and normal consequence of the failure of the purchase to produce for the purchaser the results which he bona fide anticipated.

This alleged fraud which complainant has the burden of establishing by clear and convincing proofs, not mere circumstances of suspicion, he has signally failed to establish.

Knowing as I do that your Honor, with your customary care and thoroughness in dealing with the facts in a case, will read the testimony of complainant's witnesses and discover the shortcomings in his case, I content myself with a brief allusion to them. Nicholson, the complainant, knew little about

the case, since it was largely and almost entirely handled for him by others. The little that he did claim to have knowledge of was shot through with exaggeration or minification and was either the result of strong feeling or faulty and insufficient observation. He did not call or examine Fairhand. If this were excusable or explainable, utterly inexcusable and inexplainable was his conspicuous neglect to call as a witness his own broker, Shea, who had handled this transaction for him, who had dealt with Erkins and Fairhand; had, as testified by Erkins, brought Erkins and Fairhand together and knew, if anybody did, how Fairhand first came to him, how he became interested in the property, how Erkins came in contact with him, whether Erkins asked him, Shea, to keep Erkins in touch with prospects for the purchase of Nicholson's land in bulk, whether he, Shea, informed Erkins that Fairhand was nibbling, how the contracts spoken of in complainant's brief were drawn, when and by whom; what talks about the property, its purchase, development and sale, he had had with Fairhand, Erkins and Nicholson himself; what he had told Nicholson about it; how and to what extent the land had been developed and a myrad of other crucial matters in the case. He, Shea, was Nicholson's broker, known by Nicholson to be intimately possessed of this knowledge, and yet Nicholson utterly neglects to call him. Was it fear, based upon knowledge of what Shea would say about these important matters?

I think your Honor is justified in drawing the inferences and presumptions that the

cases and reason say may be drawn in such cases, *i. e.*, that if he had been called his evidence would have made against complainant, and that he was not called to deny what Erkins had sworn involving him because he could not have denied, but would have confirmed it.

What the lawyers in the case have testified to has been already commented upon herein. They have written into their brief their interpretation of the inference drawable from their meager testimony, directed as it was to single point in the case. Our interpretation is diametrically opposed thereto. We contend that their evidence shows that Leshins, a picturesque and coruscating liar and plotter, as shown by the evidence in the case, had dangled big bait before the eyes not only of Erkins but of several of complainant's witnesses to get them to throw in their lot with him and, by twisting the facts to mulct Public Service for their mutual profit. Some of them took the bait and sold themselves to Leshins. Erkins was unwilling to "get in a jam" by doing so—that is, to subject himself to a prosecution for perjury for the false testimony required. A reading of the cross examination of the others, who did not appear to fear "getting into a jam" thereby, will demonstrate to your Honor that their testimony was fantastically false, the result of coaching, and utterly incredible.

I have set out complainant's statement of the alleged fraudulent scheme and the entire compatability of the facts proven in the case with honesty of purpose on the part of Fairhand in the purchase of the property, and

the utter absence of any participation in any trick or fraudulent design by either of the defendant companies, in order that I might conclude this brief, as I opened it, with a demonstration to the Court of the fact that the case charged by the complainant in his bill of complaint is utterly unsustained by the proof, and that complainant is not entitled to the relief which he seeks.

As to the third cause of action, the defendant companies have no interest and inasmuch as Mr. Fairhand has allowed the same to go by default, it is clear that there should be a decree of foreclosure.

I, therefore, respectfully ask that a decree be entered in favor of defendants Public Service Electric and Gas Company and The Holland Company on the first and second causes of action set forth in the bill of complaint.

Turning now from my brief before the Vice-Chancellor, I wish to direct the Court's attention to one or two other matters before closing this brief, which I fear has already been drawn out too long.

It is unnecessary to consider the alleged evidences of fraud mentioned by complainant-appellant in his brief, but a careful reading of the testimony of Mr. Saunders will manifest that even if there were fraud in the transaction between Nicholson and Fairhand, Public Service Electric and Gas Co. and The Holland Company were in no way participants therein. A complete resume of the pertinent evidence from the stenographer's minutes of the testimony was furnished to the Vice-Chancellor by defendant-appellee and was duly considered by him. I have

excised it from this brief as a concession to the shortness of human life, and also because its consideration is entirely unnecessary before this Court in the light of the fact that however gross may have been the fraud of Erkins, if he committed any, there is not the slightest evidence in the case that these defendants in any way or degree knew of, assented to, or participated therein, nor is there the slightest evidence that in whatever Erkins may have done with Fairhand and with Nicholson, that he was endowed with authority by these defendants or either of them to act for them or on their behalf in the matter.

Again, complainant-appellant, on page 30 of his brief, says that the Court of Chancery in its opinion states that in spite of all these misrepresentations it finds no fraud and used this most surprising argument: "But there is no evidence that Nicholson ever told the purchaser that he objected to a right of way for high power transmission * * * Nicholson could have restricted the property against use for high power transmission. Certainly he could have inquired the purpose of excepting from the mortgage a strip of land running directly through it, which having an area of 20 acres had a frontage of less than 200 feet." And then complainant-appellant says: "Why should Nicholson have made an objection to power line? He had no reason to suspect that such a thing was contemplated. * * *" Complainant-appellant has excised from the paragraph in the opinion of the Vice-Chancellor the last sentence thereof—"It seems to me that it should have been apparent to almost anyone that such a strip could not be used to any advantage for the development of build-

ing sites, and that it clearly indicated some sort of right-of-way."

Having this in mind, and having in mind that Mr. Nicholson was a man skilled in large business transactions, and was in consultation with a real estate agent and expert lawyers, who if they had given the slightest attention to the character of the plotting could not have failed to realize, as the Vice-Chancellor so potently said, that such a strip could not be used to any advantage for the building of sites, and that it clearly indicated some sort of right of way, we may apply to the situation the very pertinent remark of the Chancellor in a case in this Court entitled *Crescent Ring Co.* v. *Travelers Indemnity Co.*, 102 N. J. L. 93, which was, it must be borne in mind, an action at law for deceit: "While one sued for fraud cannot set up as a defense that if the plaintiff had exercised reasonable care, he would not have been defrauded; yet, where no active wrong-doing is attributed to the principal defendant, and reliance is placed upon the fraud of an agent, who was not instructed, or actually or impliedly authorized, to commit it, there can be no recovery by a plaintiff who could have protected himself by examning into the character of the transaction and the truthfulness of the representations made, unless the defendant, with knowledge, ratifies it."

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Another most amazing situation is presented in complainant-appellant's brief on pages 38 *et fol.* There is there cited the case of *Davis* v. *Koch*, 145 Atl. Rep. 473. He does not cite it because any principle of law therein has the slightest bearing upon the case now under consideration, and he does not pretend that he does. He cites it purely for its factual and psychological

effect upon the members of this Court. He must know that the law is perfectly settled to the effect that: "The decision of a question of fact is based upon the evidence presented in the particular case. The same question of fact may recur in a subsequent case, but the evidence may then be entirely different and lead irresistibly to a different conclusion. Now the doctrine of precedents is not concerned with matters of this kind. The rule of *stare decisis* inculcates a steady adherence to a rule or principle of law once laid down as applicable to a given state of facts, when the same state of facts shall recur, *but has nothing to do with the establishment of the facts themselves.* Hence, a judicial decision which merely finds the existence of certain facts has no value or authority as a precedent." Black's Law of Judicial Precedents, p. 198.

It is to be observed that in the case thus illegitimately cited, Public Service Corporation was not a defendant, took no part therein, and had nothing whatever to do therewith. It was not claimed or established in the case that Public Service knew anything whatever with respect to the facts of the transaction, nor was it claimed, nor could it be claimed, that Public Service had taken any part in the transaction which came under the consideration of the Vice-Chancellor and formed the subject-matter of the suit which was pending before him. That suit was between other parties and grew out of a transaction that took place after the right of way had been purchased and paid for in cash by Public Service; and while it is true that the Vice-Chancellor in his opinion states that the mortgages involved had their genesis in the plans of Public Service Corporation for a high power line across the

State, he does not in any way indicate or suggest that Public Service was in any way involved in the transaction, whatever it may have been that came under his judicial scrutiny and formed the subject-matter upon which his decision was pronounced.

If one were inclined to draw inferences from that case, he would undoubtedly conclude that so far as the connection of Public Service Corporation therewith was concerned, that that connection was in every way legitimate and unassailable, since the vendors of the property have not challenged the sale thereof nor in any way conceived that any right of action with respect thereto existed against Public Service. It would, furthermore, be a legitimate inference therefrom that Public Service was entirely unaware of and unconnected with the alleged injuries complained of in that suit, else it would have been made a party thereto and a remedy therein would have been sought against it.

Perhaps the most cogent inference which must be drawn from the citation of this utterly unrelated case, for the purpose of insinuating into the mind of the Court a sinister psychological influence, must be that complainant-appellant, finding himself short of legitimate citations sufficient to enable him to support his plea, has of necessity been compelled to resort to illegitimate ones to eke out the legal insufficiencies of his position. Not a solitary principle of law or a case is cited in this opinion. It was a pure fact case. Unsatisfied with this utterly irrelevant and illegitimate citation, complainant-appellant seeks further to befog and mislead by indirectly insinuating—what a mere inquiry of counsel in the Koch case would have assured him was *not* the fact—that the lady named Wilson in that case was

identical with the Mary Jane Wilson mentioned in this. When one feels himself in such dire straits that only illegalities and untruths can deliver him, his position is desperate indeed.

* * * * * * * *

It is deemed unnecessary to make any answer to the reflections in the brief of complainant-appellant with respect to the second count of the complaint. He himself furnishes a complete ground for such abstention. On pages 45 and 46 of his brief he says: "We have already demonstrated the fraud of the defendant and the same evidence and reasoning applies here. It is insisted, therefore, we are equally entitled to the relief prayed for in this second count, as in the first count." It is quite true that complainant-appellant is equally entitled to the relief prayed for in the second count as in the first count, since it has been demonstrated herein that he is entitled to no relief whatever in the first count. He then says, "However, the complainant is resting his major claim to relief on his right to rescind under the well recognized rules of equity and this count is inserted only in case the Court should for some reason feel that the assumption of the mortgage debt by defendant, Public Service, was a more appropriate remedy than the rescission of the contract."

It is clear that if complainant-appellant rests his major claim on his right to rescind, and that right depends upon the actual agency of Erkins and Fairhand, for the reasons hereinbefore set forth he must fail; and inasmuch as the second count is rested upon the same grounds of complaint and differs only in respect to the relief sought, if he fails on the first count, he must equally fail on the second.

It is therefore respectfully submitted that the Decree of the Court of Chancery should be affirmed.

Respectfully submitted,

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Public Service Electric & Gas Co. and
The Holland Co.