

I N D E X

	PAGE
Bill of Complaint.....	1
Answer.	8
Replication	11
COMPLAINANT'S TESTIMONY:	
Raymond Ireland—Direct	19
Cross.	27
Benjamin R. Fox—Direct.....	37
Cross.	41
Recalled—Cross.	65
Carlton Godfrey—Direct	47
Cross.	49
Raymond P. Thompson—Direct.....	51
Cross.	54
John Weaver—Direct	56
Albert E. James—Direct.....	58
Cross.	60
Rollan C. Cale—Direct.....	62
DEFENDANT'S TESTIMONY:	
Hilton W. Sofield—Direct.....	66
Cross.	79

BILL OF COMPLAINT.

(Filed Aug. 1, 1924.)

IN CHANCERY OF NEW JERSEY.

*To his Honor, Edwin Robert Walker, Chancellor of
the State of New Jersey:* 10

Complainant, Samuel Ireland, of the City of Pleasantville, County of Atlantic and State of New Jersey, respectfully shows:

1. That on and prior to the 28th day of September, 1921, he was the owner in fee simple of a certain tract of land, situate in Egg Harbor Township, Atlantic County, New Jersey, particularly described as follows: 20

“BEGINNING at a point at the intersection of the Southerly line of Verona Avenue and the Easterly line of Seville Place and runs (1) Eastwardly and along the Southerly line of Verona Avenue, two hundred eighty (280) feet to the westerly line of Athens Place; thence (2) Southwardly, and along the Westerly line of Athens Place, five hundred fifty (550) feet to the Northerly line of Rialto; thence (3) Westwardly and along the Northerly line of Rialto, 30 two hundred eighty (280) feet to the Easterly line of Seville Place; thence (4) Northwardly and along the Easterly line of Seville Place five hundred and fifty (550) feet to the place of beginning.

BEING Block A, as shown on a map entitled: ‘Map of West Atlantic, Egg Harbor Township,

N. J., Ashmead & Hackney, Surveyors, Scale: 1 inch—200 feet,' which map is duly filed in the Clerk's Office of Atlantic County, at Mays Landing, N. J.'"

2. That at and prior to said date, Penn Motors Corporation, a corporation of the State of New Jersey, without business or assets, by its agents and representatives, were engaged in the County of Atlantic, and elsewhere, in a false and fraudulent scheme to sell the stock of said corporation.

3. That as one of the means of disposing of said stock of said corporation, said agents and representatives exhibited to prospective purchasers a stock of second-hand automobile parts, alleging that their profits, which would be enormous, were to be made from the purchase of second-hand automobile parts, and re-constructing them into complete automobile trucks, and the sale thereof.

4. That as a part of said scheme to sell stock of said corporation to residents of the County of Atlantic, said agents and representatives represented that they were about to erect a large factory in Atlantic County, and were then purchasing property for that purpose.

5. That at or about said date, said corporation, through its agents, did enter into an agreement with one L. White, of Absecon, for the purchase of a large tract of land, for the sum of eighteen thousand dollars (\$18,000), for which they agreed to pay two thousand dollars (\$2,000) in cash, eight thousand dollars (\$8,000) in stock of said corporation, and execute and deliver a mortgage, on the property to be purchased, to the seller for eight thousand dollars (\$8,000).

6. That after this agreement had been outstanding for some time and said corporation, through its agents and servants, canvassed the entire locality for stock, and the date of settlement arrived, said agreement of purchase, on which has been paid one thousand dollars (\$1,000), by a check dated on the day of settlement, was abandoned, payment of the check was stopped, and said Penn Motors Corporation utterly failed to perform or attempt to perform its said agreement.

10

7. That later, and on or about the 15th day of September, 1921, said Penn Motors Corporation, by its agents and representatives, appeared in Pleasantville, N. J., and begun the sale of stock by the false and fraudulent means above mentioned.

8. That said agents and representatives of said corporation appeared before the Board of Trade at Pleasantville, Atlantic County, N. J., and in an effort to sell stock, stated that said corporation proposed to build a factory in Pleasantville, N. J., for the assembling of automobile trucks, represented the great advantage such a plant would be to the city, and enlisted the members of said Board of Trade in their behalf.

20

9. That immediately thereafter, the said corporation, by its agents, sold to one John Weaver, president of said Board of Trade, five hundred dollars (\$500) worth of the Penn Motors Corporation stock, on which he paid an initial deposit of one hundred and twenty-five dollars (\$125).

30

10. That thereafter said Weaver could secure from said corporation neither the stock nor the return of his money.

11. That on or about the 20th of September, 1921, said Penn Motors Corporation, being without business or assets, which fact was unknown to complainant, by its servants and agents, to wit, one Hilton W. Sofield, then president of said corporation, solicited and requested complainant to convey to Penn Motors Corporation a tract of land hereinbefore particularly described, for the purpose of erecting a building, for an assembling plant, thereon.

10

12. That said Sofield stated and represented to complainant that they desired to purchase said land without a present outlay of cash, but would enter into an agreement to re-convey the lands to complainant, in the event Penn Motors Corporation should fail to erect thereon an assembling plant within six (6) months from the date of such conveyance, and would give its bond for four thousand five hundred dollars (\$4,500), to be paid in five (5) years from the date of said conveyance, and to be secured by a purchase money mortgage in the sum of four thousand five hundred dollars (\$4,500), payable in five (5) years from date thereof, without interest, so that complainant should be able to re-possess himself of said lands if Penn Motors Corporation failed to build, and be secured of its money at the end of five (5) years, if it did build.

20

13. That complainant, relying upon the representations of the said agents and representatives of said Penn Motors Corporation, to wit, that said corporation would re-convey said lands in the event of failure on their part to erect a building and assembling plant on said lands within six (6) months, as well as on the execution and delivery of the bond and mortgage aforesaid, agreed to convey to the said Penn Motors Corporation, upon the terms afore-

30

said, all that tract or parcel of land situate in Egg Harbor Township, County of Atlantic and State of New Jersey, hereinabove particularly described.

14. That said agreement was reduced to writing, and settlement was made on the 28th day of September, 1921, at which time complainant executed and delivered to said Penn Motors Corporation a deed of conveyance for said lands, and at the same time Penn Motors Corporation executed and delivered to complainant a bond and mortgage in the sum of four thousand five hundred dollars (\$4,500), payable in five (5) years from date thereof, without interest, which said mortgage is of record in the clerk's office of Atlantic County, at Mays Landing, N. J., in Book No. 261 of Mortgages, page 491, &c. 10

15. That Penn Motors Corporation had caused said bond and mortgage to be prepared by its attorney, and delivered the same to complainant, fully executed, at the time of the execution and delivery of said deed by complainant, complainant not having the advice of an attorney in the matter, but relying upon the statements made to him by the agents and servants of said Penn Motors Corporation. 20

16. That at the time of the delivery of said deed and bond and mortgage, the agreement, which had previously been entered into by complainant and the said Penn Motors Corporation, was taken by the agents of said Penn Motors Corporation; complainant being informed by said agents of said corporation that the said bond and mortgage covered the terms of said previous agreement, which agreement has since been lost. 30

17. That in delivering to complainant the said bond and mortgage, with the assurance of the representative and agent of said corporation that said bond and mortgage incorporated the terms of the previous agreement, which representation was false and fraudulent, said Penn Motors Corporation perpetrated a fraud upon complainant.

10 18. That the Penn Motors Corporation utterly failed to erect on said lands any building, and utterly failed to install in said building and assembling plant, and refused and still refuse to re-convey said lands to complainant.

20 19. That upon examining said bond and mortgage, complainant discovered that neither said bond nor mortgage contained a specific agreement for re-conveyance of said lands in the event of failure to build said building; it containing only references thereto, which the said agents and representatives of defendant Penn Motors Corporation induced complainant to believe fully covered the previous agreement.

Complainant is advised by attorneys learned in the law that the references in said bond and mortgage do not amount to a specific agreement to re-convey.

30 Complainant hereby tenders himself ready and willing to surrender up the said bond and mortgage, executed and delivered to him as hereinabove stated, to said Penn Motors Corporation, upon a re-conveyance of the lands, hereinbefore described, to complainant.

Wherefore, complainant prays:

1. That said conveyance from complainant to said Penn Motors Corporation be decreed to have been secured by fraud, and that said Penn Motors Corporation be decreed to re-convey said premises to complainant.

2. That said bond and mortgage be re-formed so as to contain a specific covenant, similar to the agreement entered into between complainant and said Penn Motors Corporation, prior to the execution and delivery of the said bond and mortgage, to wit: That if said Penn Motors Corporation shall fail to erect a building and assembling plant upon said lands within six (6) months, said Penn Motors Corporation will re-convey said lands to complainant. 10

3. That Penn Motors Corporation be restrained from selling and conveying said lands or in any manner encumbering same, until final decree made in this cause. 20

4. That a writ of subpoena issue out of this Court, directed to the said Penn Motors Corporation, commanding it to answer, without oath, each and every allegation in this bill of complaint contained.

5. That complainant shall have such other and further relief as shall be agreeable to equity and good conscience.

BOURGEOIS & COULOMB,
*Solicitors for and of Counsel
with Complainant.*

ANSWER.

(Filed Aug. 30, 1924.)

IN CHANCERY OF NEW JERSEY.

10

Between

SAMUEL IRELAND,
Complainant,

and

PENN MOTORS CORPORATION,
a corp., &c.,*Defendant.*On Bill, &c.
Answer.

20

Penn. Motors Corporation, a corporation of the State of New Jersey, answering the bill of complaint, says:

1. Paragraph 1 is admitted.

2. It admits that it is a corporation of the State of New Jersey, but denies it was without business or assets, and further denies that either by itself or its agents and representatives was engaged in the County of Atlantic and elsewhere on a false and fraudulent scheme to sell the stock of said corporation.

30

3. It denies the averments in paragraph 3.

4. It denies so much of paragraph 4 as is not ad-

mitted. It admits that it intended to build a factory in Atlantic County on the premises described in the bill.

5. It denies the averments in paragraph 5.

6. It admits it canvassed the locality for sale of stock, but denies entering into any agreement with L. White for the purchase of land as alleged in paragraphs 5 and 6.

10

7. It admits an attempt to sell its stock in Pleasantville, but denies any false or fraudulent means adopted in the attempts to sell or the selling thereof.

8. The averments in paragraph 8 are admitted.

9. The averments in paragraph 9 are admitted.

20

10. It denies the averments in paragraph 10 and says that said Weaver can secure a certificate of stock whenever he pays the remainder due.

11. It admits so much of paragraph 11 as is not denied. Its negotiations were with Raymond Ireland and it denies that it was without business or assets.

12. It denies the averments in paragraph 12 of the complaint except as to the averments that it was seeking to purchase upon the basis of a bond and mortgage to secure a part of the consideration.

30

13. It denies the averments in paragraph 13 of the bill.

14. It denies the existence of the alleged agreement or that it was reduced to writing. The other averments are admitted.

15. It admits the execution and delivery of the bond and mortgage as alleged and denies the other averments.

16. It denies the averments in paragraph 16.

10

17. It denies the statement of facts and the conclusions in paragraph 17.

18. It admits that it failed to erect a building on the land described in the bill and that it has refused and still refuses to re-convey the same to complainant. It could not build its factory on the land because the previous owner of the premises had imposed thereon restrictions against the building of a
20 factory and the use of the same for that purpose, all of which was known to the complainant when he granted the premises to defendant, and which was unknown to the defendant.

19. Defendant is without knowledge concerning the alleged discovery made by complainant as to the provisions of the bond and mortgage save by the averments in the bill, and prays proof thereof. It
30 denies that it made any statement to the complainant concerning the provisions in said bond and mortgage and avers that he had full knowledge thereof at the time the same were delivered.

Further answering, the defendant says that complainant knew that at the expiration of six months from the delivery of the deed in question that it had not constructed or begun the construction of a factory building on the premises, but made no com-

plaint or objection before the filing of the bill in this cause and in the meanwhile, to the knowledge of complainant, the defendant paid the taxes on said property as the same became due and payable and advertised itself as the owner of the same.

Further answering the bill of complaint by way of a plea, defendant says that admitting to be true all the facts sufficiently pleaded there is not shown any equity in favor of the complainant or that he is entitled to any decree against the defendant. 10

ALBERT C. ABBOTT,
Solicitor of Defendant.

C. L. COLE,
Of Counsel.

REPLICATION.

(Filed Sep. 5, 1924.) 20

IN CHANCERY OF NEW JERSEY.

Between
SAMUEL IRELAND,
Complainant,
and
PENN MOTORS CORPORATION,
a corporation, &c.,
Defendant. } On Bill, &c.
Replication. 30

Complainant joins issue on answer of defendant.
BOURGEOIS & COULOMB,
*Solicitors for and of Counsel
with Complainant.*

not fully informed as to the facts. Paragraph 16 on page 5 of the bill, at the end of that paragraph I stated "And it has not since been in the possession of complainant." That I find is not accurate and I want to strike those words out and interline in place of them, "Which agreement has since been lost." I learned the agreement had been in Mr. Ireland's possession after that agreement, and I did not know it at the time the bill was drawn. May I have that order?

10

The Court: Any objection to that?

Mr. Cole: No.

(Original bill amended.)

The Court: The amendment may be made by consent and I take it there is no desire to answer otherwise?

20

Mr. Cole: No.

Mr. Bourgeois: First I want to have an order of substitution signed, if I may. I have a petition here, which is verified, setting forth the death of Samuel Ireland.

The Court: No objection, I take it?

Mr. Cole: No.

30

Mr. Bourgeois: An order substituting his widow, the executrix.

The Court: An order will be made substituting the executrix.

COMPLAINANT'S OPENING.

Mr. Bourgeois: If your Honor please, prior to September 28, 1921, a man by the name of Sofield, representing the Penn Motors Company, came to Pleasantville or Atlantic City, at any rate, somewhere in this locality, as apparently a promotor, and endeavored to secure land on which to establish a
10 plant for the assembling of automobile parts with the thought, apparently, of having that as the basis for selling stock and after making two or three efforts, he finally entered into an agreement with Samuel Ireland for a tract of land over on the Boulevard within the limits of what is now—I mean the extreme limits of what is now the tract that Fix is endeavoring to develop. The agreement entered into was this, as I am told; that they finally arrived
20 at with Ireland, that Ireland agreed to convey that tract of land to the Penn Motors Company, without any present consideration, but was subject to a condition that they were to erect a plant, construction plant, within six months, and if they failed to erect that plant within six months, then the Penn Motors Company were going to re-convey the land to him. The agreement further provided that at the time of the conveyance he would not exact any immediate cash because they were not in position to pay cash, but would accept their bond and mortgage
30 for a period of five years without interest. Now, the bond I want to read to you and then I want to say to you that the conveyance was made, the bond and mortgage were given, the plant was not erected within five years or any other time and the present time and when an application was made to have the property re-conveyed they refused, then he made some investigation with regard to the mortgage or the

bond and this is what it provides: "The condition of this obligation is such, that if the above bounden obligor, its successors, heirs, executors or administrators or any of them, shall and do well and truly pay, or cause to be paid to the above named obligee, his certain attorney, executors, administrators or assigns, the just sum of four thousand five hundred dollars, lawful money as aforesaid, but without interest on or before the twenty-eighth day of September, which shall be in the year of our Lord one thousand nine hundred and twenty-six, or shall on or before the date last named re-convey to the said Samuel Ireland a certain tract or parcel of land conveyed by him and Margaret Ireland, his wife, unto the said obligor, the said Penn Motors Corporation, then this obligation shall be void, otherwise to remain in full force and effect; and in the case of either failure aforesaid in respect of the payment of the said sum of four thousand five hundred dollars on or before the date above provided, or of the re-conveyance of the premises above referred to on or before the said date, then this obligation shall be and become immediately due and payable and may be enforced and recovered at once.

"And provided further, and it is hereby expressly agreed, that if at any time hereafter by reason of any default as above provided, suit should be brought in any court for the amount of such principal sum or the re-conveyance of the said premises, or judgment should be obtained by virtue of the warrant of attorney annexed hereto or proceedings to foreclose the accompanying mortgage should be had, an attorney's fee of ten per cent for collection, shall be payable, by reason of such suit, judgment or proceedings, and may be recovered in addition to whatever principal, interest and taxes may then be due besides costs of suit."

Now, your Honor will, of course, realize the handicap under which we are laboring because of Mr. Ireland's death, but I am going to attempt to show that there was such an agreement provided and then we pray for a re-formation of the bond and mortgage and also for a re-conveyance of this land on the ground of fraud because our contention is, after we have shown, if we do, that this agreement, as I have stated, that they perpetrated a fraud on him in inducing him to accept the agreement, which, instead of providing for a re-conveyance for his benefit, provides for a re-conveyance for their benefit, on the theory that it was a fraud perpetrated upon him and also for a re-formation of this bond.

Mr. Cole: Now, may it please your Honor, both upon the face of this bill and the opening of counsel we think this bill ought to be dismissed. They say that preceding the time of the making of the deed and the bond and mortgage there was a written agreement by the terms of which the defendant was to re-convey this property if it did not, within six months of the date thereof, build a plant upon the land which Ireland had agreed to convey. That agreement was in Ireland's possession. They say it has been lost. There is no claim that that agreement was to become a part of either the deed which Ireland was to make or the bond and mortgage which we were to make, so that today that written agreement is still subsisting, only thing is, they say it is lost. Now, one of two things in the law happened when the deed was made, assuming that the written agreement was made, either prior to the date of the deed or, if you please, contemporaneously with it, it either became merged in the deed or it didn't because it was a collateral agreement.

Now, your Honor has probably read some of the

recent cases where that subject has all been fought out as to whether or not a thing is collateral or whether it is a part of the deed itself. Of course, my submission is that that agreement became merged in the deed because it had to do with the terms and conditions of the deed and, having in mind that Mr. Ireland is the man who made the deed, he made the deed and expected to know its contents, and acknowledged that he understood everything there was in it, so the agreement, I submit, 10
is gone, because it became merged in that deed. But, if we give them the most favorable view and say that that is still a collateral agreement, it subsists for the purpose of enforcement in this court or some other court. Now, the claim is that that collateral agreement should have been inserted in the bond and mortgage. There is no suggestion that the agreement so provides. Where is the fraud? How can you say that there was a fraud because this 20
alleged agreement in writing, which was in possession of Mr. Ireland, which he says he lost, was to become a part of this bond and mortgage? They don't say it is in the agreement. If it was in the agreement then all they have got to do is prove the agreement, but no suggestion of that sort.

Now, my submission is either that this bill should be dismissed because the agreement has become merged in the deed or, if it isn't, it is collateral and the agreement itself can be enforced and the suit, if any, for re-possession of this property, should 30
be grounded upon that agreement, not upon the idea there was some fraud because the terms of the agreement were not inserted in the bond and mortgage. Nobody suggested it was to be inserted there. I am unable to see what ground exists for the bill. The agreement either exists in itself—if it does there is a cause of action, if they have any right at

all, it will be grounded upon that agreement, upon proof it existed, upon proof it was lost, upon proof of the terms of it. I think, therefore, the bill should be dismissed.

10 Mr. Bourgeois: The bill is so drawn if the Court finds, as I think it will find, that it is a collateral agreement, then it will be enforced and it would not be merged in this deed; if you find that it was not a collateral agreement, then under the terms of the agreement it was to be and should have been and was necessarily a part of the mortgage. There are two phases of this bill, and I think the Court is bound to accept one or the other. In other words, we are not out. If it is a collateral agreement, then we have a right to have that re-conveyance made, because it was not merged in the deed and would not be merged in the deed, if it is collateral with regard to the re-conveyance. On the other hand, if it is not a collateral agreement, then it would naturally
20 be a part of the mortgage which provided for a re-conveyance.

The Court: I will refuse the motion to dismiss.

Mr. Bourgeois: The conveyance of the land is admitted by the answer. I want to offer in evidence the bond and mortgage in this case.

30 Mr. Cole: We object to the bond and mortgage upon the ground there is no allegation in the bill or the opening that justifies any challenge of that bond and mortgage.

The Court: Admitted.

(Bond and mortgage admitted in evidence, marked Exhibits C1 and 2 respectively.)

RAYMOND IRELAND, SWORN for complainant.

Direct examination.

By Mr. Bourgeois:

Q. Mr. Ireland, you live where?

A. Pleasantville.

Q. What relation were you to Samuel Ireland? 10

A. Son.

Q. Do you remember a time in 1921, when a man by the name of Sofield came to Pleasantville apparently in the interest of the Penn Motors Company?

A. I do.

Q. Did you meet him?

A. I did.

Q. What was the occasion of your meeting him?

A. He came to Pleasantville with Mr. ——— 20

Mr. Cole: May it please your Honor, I don't know what the witness intends to say, but if the object is to support the averments in this bill concerning anything that happened before the execution of these papers, I want to make an objection that all proof should be limited to the papers themselves.

Mr. Bourgeois: Well, it is for that purpose, for showing the transaction itself, for the purpose of 30 showing the introduction to this transaction, about the execution of this paper.

The Court: The execution of the agreement?

Mr. Bourgeois: The execution of the agreement.

The Court: Admitted.

Mr. Cole: I object to that on the ground any conversation touching that paper was merged in the paper itself.

Mr. Bourgeois: I can't do it all —

10 Mr. Cole: You see, may it please your Honor, there is no allegation here of any fraud in the agreement; they say the agreement mentioned what they agreed to do.

Mr. Bourgeois: I am not going to show fraud now; I am going to lead up.

Mr. Cole: I want to be sure my objection is here to any proofs touching fraud anterior to the execution of these papers.

20

The Court: I will permit the question.

A. Mr. Sofield was brought to Pleasantville by a Mr. Johnson and introduced to me as president of the Penn Motor Car Company. They were looking for a site to build a plant.

Q. Penn Motor Car or Penn Motors Company?

30 A. Penn Motor Company, Penn Motor Truck Company, I guess. And I took him and introduced him to Mr. Weaver, who was then president of the Chamber of Commerce, looked around for, I should say, a week, trying to find some site to locate the factory in Pleasantville, which the Chamber of Commerce was interested in, and everyone to have the site in Pleasantville. It went on and we finally located on a tract on the Boulevard owned by my father. I took Mr. Sofield and some other gentlemen

he had with him, I think was Duell, and Mr. Johnson; we went around to the house and we talked over with my father and I talked with him again that night, and we finally came to the decision that he would convey this land to the —

Mr. Cole: Just a moment.

Q. Was the agreement that you came to reduced 10 to writing?

A. Yes, sir.

Q. Did you ever see that writing?

A. I did.

Q. Ever read it?

A. I did.

Q. Do you know whether it was executed or not, signed, I mean? Was it signed?

A. Yes, it was signed.

Q. By the Penn Motors Company?

A. By Mr. Sofield as president of the Penn Motor Company. 20

Q. Do you know where the agreement is now?

A. I do not.

Q. Do you have access to your father's papers?

A. I do.

Q. Have you made a search for it?

A. I have.

Q. More than one?

A. Yes, sir.

Q. Were you able to find it? 30

A. No, sir.

Q. When was the last search you made, or last time?

A. Yesterday afternoon.

Q. And you still could not find it?

A. No, sir.

Q. Will you state what the contents of that agreement were?

Mr. Cole: I object.

By Mr. Cole:

Q. Are you the representative of the estate?

A. No, sir.

10 Q. Father leave a will?

A. Yes, sir.

Q. Who was the executor?

A. My mother.

Mr. Cole: I think the proof of the search for the papers should come from the representative of the estate.

20 Mr. Bourgeois: If this person has the access to them.

The Court: Yes, I will permit it.

Q. Where did you search?

A. I searched the house where my father had all of his papers and yesterday I went back and searched all the agreements that was in there of the Atlantic Company and other agreements in the house.

30 Q. How do you know where your father had all of his papers?

A. I have been with my father ever since I was born.

Q. Where did he keep them?

A. He kept them in a little pantry, in the pantry of his house, most all his papers.

Q. He have a bank account?

A. Yes, sir.

Q. More than one?

A. Yes, sir.

Q. In how many banks did he deposit?

A. Deposited in three banks.

Q. Which are they?

A. The Pleasantville Trust Company, Union National Bank and the Atlantic, I think the Atlantic Safe Deposit, one of those places.

Q. Did he have a box in any one of those banks? 10

A. He had a box in the Pleasantville Trust Company.

Q. Have you been in that box?

A. Yes, sir.

Q. When were you there?

A. I was in the box right after my father's death.

Q. The paper wasn't there?

A. No, sir.

Q. He have a box in any other bank?

A. Not that I know of. 20

Q. Were there any other papers in the box in the bank?

A. Yes, sir.

Q. Was the box pretty well filled?

A. Not so very much filled, no.

Q. You find the deed there, the bond and mortgage, rather, this bond and mortgage, where did you find the bond and mortgage?

A. The bond and mortgage was over here in Atlantic. 30

Q. Where?

A. In Mr. Godfrey's hands at one time, then I don't know where it went from there.

Q. Where did you find it after your father's death or find them?

A. The bond and mortgage?

Q. Yes.

A. Bond and mortgage was in Mr. Bourgeois' hands after my father's death.

Q. Had they been delivered to Mr. Bourgeois in your father's lifetime?

A. Yes, sir.

Q. Do you know where they came from just before they came to Mr. Bourgeois?

A. I do not. From my father brought them to Mr. Bourgeois, I think.

10

Mr. Cole: I am objecting to this witness testifying to the contents.

The Court: I will permit it.

By Mr. Bourgeois:

(Question repeated: "Will you state what the contents of that agreement were?")

20

A. I can't state the exact contents but the agreement was that he was to convey this land to them for the use of building an automobile factory, they were to start operation within six months and if they failed to start operation within six months they were to give him the property back, convey the property back to him. He was to take a mortgage of forty-five hundred dollars, without any payment down whatever, and with no interest for five years.

30

Q. Now by whom do you say that agreement was signed?

A. That agreement was signed by Hilton Sofield, president of the Penn Motor Company.

Q. Do you know if your father did convey the property?

A. That he gave them a deed?

Q. Yes.

A. Yes, sir; he gave them a deed.

Q. After your father had given that deed or that agreement, rather, and the deed, did you ever see that paper in his possession?

A. That agreement?

Q. Yes, the agreement?

A. Yes, sir.

Q. On more than one occasion?

A. I saw it the time they signed it, and then I saw it afterwards.

10

Q. Now you say you don't know what became of it?

A. I do not, no, sir.

Q. Did the Penn Motors Company ever start any operations on that plot of ground?

A. They did not.

Q. Were you ever in any place after that agreement was signed by Mr. Sofield when its contents were made known, when he was present?

A. Yes, sir.

20

Q. Where?

A. In Mr. Weaver's store.

A. What was the occasion of your being there?

A. We had a meeting of the Penn Motor and members of the Chamber of Commerce and some of the council members trying very hard to get the plant located in Pleasantville. We had the meeting in the back of Mr. Weaver's store and the contents was then made of the agreement.

Q. Now tell me what happened there in that store in Mr. Weaver's presence, that is anything that he said concerning this agreement or anything that was said by you in his presence concerning the agreement?

30

A. I came in the store and there was several of them in there, members of the Chamber of Commerce, and I told them that —

Mr. Cole: You say Mr. Sofield was there?

A. Mr. Sofield was in the store, yes—and I told them that my father had agreed to convey this land over to them, and explained as the agreement read.

Q. What did you explain then?

A. I explained that he had given it to them—or conveyed it over to them with the provision that they would start operation within six months and
10 that if they didn't start operation they was to return it to him. I didn't mention, I don't think, the mortgage.

Q. Who was present there at that time that you ran recall?

A. There was Mr. Weaver, Mr. Cale, Mr. Thompson, Albert James, Mr. Sofield, another gentleman with him and Mr. Henry Johnson.

Q. Did he have anything with him at that time, Mr. Sofield?

20 A. He had plans of a factory which he contemplated building in Pleasantville.

Q. Were any marks made upon those plans, if you recall, showing or connecting with this location?

A. Yes, sir; there was; he had showed the plot with his grass terrace in front and driveway in it and he had a very elaborate plan there of the building.

Q. What showing, any street?

A. Pardon me.

30 Q. Show any street I say?

A. It showed only the boulevard, as I remember.

Q. Now did Mr. Sofield, when you explained to Mr. Weaver and those present the agreement that your father had made, did he make any dissent?

A. No, sir.

Q. Do you remember whether or not he had any conversation with them as to what the terms were?

- A. I do not.
Q. Your father died when?
A. My father died on the sixth of October.
Q. Of this present year?
A. Of this present year, yes, sir.

Cross-examination.

By Mr. Cole:

- Q. What was the date of the agreement? 10
A. I don't remember.
Q. Did it have a date?
A. Yes, sir.
Q. Was it acknowledged?
A. By whom?
Q. Anybody?
A. It was witnessed by myself and signed by Mr. Sofield as president of the Penn Motor.
Q. Your father sign it? 20
A. Yes, sir.
Q. How many copies were there?
A. There was only this one copy.
Q. Only the one your father had?
A. Yes, sir.
Q. Who drew it?
A. My father.
Q. On what kind of paper?
A. On his own letter head paper.
Q. Did you see him draw it? 30
A. I did.
Q. Who were present?
A. Mr. Sofield, and my father and I think McDuell, this other man, I don't know.
Q. Who?
A. McDuell I think was his name.
Q. Where was it drawn?

- A. In my father's office.
- Q. You don't know the date?
- A. I do not.
- Q. Have any idea?
- A. No.
- Q. How long was it before the deed was delivered?
- A. That I couldn't say.
- Q. Do you know when the deed was delivered?
- A. I do not.
- 10 Q. Were you there when your father acknowledged, father and mother acknowledged that deed?
- A. No, sir.
- Q. Was that the time that you read the agreement when your father drew it?
- A. Yes, sir.
- Q. Where did he put it?
- A. He put it on the desk.
- Q. What did he do with it after that?
- A. That I couldn't tell you.
- 20 Q. When did you next see it?
- A. I saw it about two weeks after that.
- Q. Where?
- A. Still lying on the desk.
- Q. In other words he had not removed it during that two weeks?
- A. No, sir.
- Q. When you saw it the second time had the deed yet been made?
- A. I couldn't say.
- 30 Q. You have no knowledge whatever about the execution of the deed and the bond and mortgage?
- A. No, sir.
- Q. You live with your father?
- A. No, sir.
- Q. How did you happen to be in his home on this occasion?
- A. I took them to my father.

Q. What?

A. I took them to my father.

Q. Where do you live or where did you live at that time?

A. I live 110 Chester Avenue, Pleasantville.

Q. When you say that this paper was signed by Mr. Sofield as president, just how was it signed, what did it say?

A. It was signed by the Penn Motors Corporation, Hilton Sofield, as president.

10

Q. Any seal of the corporation on it?

A. There was a little hand seal on it.

Q. No seal of the corporation?

A. No, sir.

Q. Your father have a seal to his signature?

A. Only his, he never had any seal.

Q. Scroll wasn't it?

A. Yes.

Q. There were two scrolls on this writing?

A. Yes, sir.

20

Q. How many sheets of paper were there?

A. One sheet of paper.

Q. Was it all written on one side?

A. Yes, sir.

Q. Of a letter head?

A. Yes, sir.

Q. What was the size of the letter head?

A. Well, it is—I don't know the size of it, about twelve by eight, I should imagine, regular letter head that was.

30

Q. Anything printed on the letter head?

A. Yes, sir.

Q. What was printed on it?

A. Samuel Ireland, Lumber, Lath, and different things.

Q. Have you a copy of the letter head on which that agreement was written? Can you furnish that?

A. Now?

Q. Sometime before we are through?

A. Yes, sir.

Q. Will you do that?

A. Yes, sir.

Q. And your father in your presence, at his home, and in the presence of Sofield, wrote this agreement himself?

A. Yes, sir; my father wrote all of his agreements
10 or most of them.

Q. And it was all written on one side of the paper?

A. Yes, sir.

Q. How did it start out, how did it begin?

A. I don't know just the beginning of it.

Q. How did it conclude?

A. I don't know that.

Q. What was in the middle of it?

A. Well, all I know was in it was just about as I
have stated.

20 Q. Anything said about the bond and mortgage
being made for five years?

A. No, sir.

Q. Anything said as to how long the bond and
mortgage was to be made?

A. No, sir.

Q. Was there anything said about a bond and
mortgage at all?

A. Not in the agreement, no, sir.

30 Q. Anything said about your father deeding the
property?

A. My father said he would convey the property.

Q. When?

A. Well, at that time, I guess; I don't know when.

Q. Not what you guess, what did the agreement
say?

A. The agreement said he would convey the prop-

erty to the Penn Motors provided they would start operation within six months.

Q. For how much money?

A. For forty-five hundred dollars, to take a mortgage for forty-five hundred.

Q. I thought you said they said nothing about the bond and mortgage?

A. That was the agreement, they talked about that day.

Q. But didn't you just say there was nothing said 10 about the bond and mortgage.

A. I don't know anything about the bond and mortgage.

Q. I am asking you, we are talking about the paper all the time, aren't you?

A. Talking about the agreement.

Q. The writing?

A. In writing, yes, sir.

Q. Now a moment ago you said there was nothing in that writing about a bond and mortgage; now 20 you say there was? Which is correct?

A. There was in there, as I have stated in the first, about the forty-five hundred dollars.

Q. When was it to be paid?

A. Didn't say when it was to be paid.

Q. Didn't mention any time?

A. No, sir.

Q. How much interest was to be paid?

A. Interest wasn't mentioned to the best of my knowledge.

Q. Who was to pay the taxes on the property? 30

A. I don't know.

Q. Was there anything in the agreement about that?

A. Not that I know of.

Q. Well, you read it?

A. I read the agreement, yes.

Q. Now your father had signed it and after Sofield signed it you read it, didn't you?

A. I read it.

Q. Now will you please tell us, according to your best recollection, just how that paper read?

A. I have told you as near as I can remember.

Q. Now, tell me again, please.

A. That the agreement, that he would convey the property to them, Penn Motors, they were to build, to
10 start building within six months; if they didn't start building within sixth months they were to convey the property back to my father; he was to take a forty-five hundred dollar mortgage, they were to pay it in five years with no interest.

Q. I thought you said a while ago they didn't say anything about the term of the mortgage, how long it was to run? I asked you whether they didn't say something about five years and you said no.

A. I don't think I said no.

20 Q. What do you say now about that?

A. Just as I said now.

Q. Go ahead and tell us what else was in it?

A. That was all I remember.

Q. Are you sure about that?

A. Yes.

Q. You can't recall anything else was in it?

A. No.

Q. Did it describe the land?

A. Said the tract on the Boulevard.

30 Q. What?

A. Tract on the Boulevard.

Q. Is that all?

A. Tract they are taking, yes.

Q. Say how much land there was?

A. No.

Q. Did it say where on the Boulevard it was?

A. No.

Q. What?

A. No, not that I remember.

Q. Did it tell in there how your father got the title?

A. Not that I remember.

Q. Just said tract on the boulevard?

A. That is all I remember.

Q. Was there anything in that agreement which said that the agreement was to be embodied in the deed, part of the deed?

10

A. Not that I remember.

Q. Well, you would remember it; you read it, didn't you? Was there anything in the agreement which said it was to be embodied in the bond and mortgage?

A. Not that I remember.

Q. Did you ever see your father in possession of the bond and mortgage after it was made?

A. No.

Q. Did Mr. Godfrey represent your father at that time?

A. I think he did; I am not sure.

Q. You notice that this mortgage has on it "record and return to Carlton Godfrey," notice that?

A. Yes.

Q. Did Mr. Godfrey represent your father at that time?

A. I couldn't say.

Q. Did he ever represent him?

A. I couldn't say that.

Q. Well, you know a great deal about your father's business, don't you?

30

A. I knew quite a little about it, yes, sir.

Q. You mean to say you don't know whether Mr. Godfrey represented your father?

A. I do not, no, sir.

Q. Did you ever hear of Mr. Godfrey doing any-

thing for your father, legal work—Mr. Godfrey is a lawyer, isn't he?

A. Yes, sir.

Q. Did you ever hear of Mr. Godfrey representing your father?

A. I have heard that he represented him in this case, but I don't know.

Q. Who told you that Mr. Godfrey represented your father in this case?

10 A. I couldn't say.

Q. What?

A. I couldn't say.

Q. Can you account for the fact that this mortgage has on it "record and return to Carlton Godfrey" upon any other theory than that he represented your father at that time?

A. I don't know; I heard that Mr. —

Q. What is your judgment about it?

20 A. I heard that Mr. Godfrey represented the Penn Motors and my father both; I don't know that to be a fact.

Q. Who told you that?

A. I don't remember where I heard it now.

Q. Did you ever read the bond and mortgage?

A. I did not.

Q. Your father ever read them in your presence?

A. Not that I know of.

Q. Did your father ever tell you what was in those, in the bond and mortgage?

30 A. No, sir.

Q. Never discussed it with you at all?

A. Only since the case started, when he started to get his deed back.

Q. Since the case started your father discussed the bond and mortgage with you, didn't he?

A. No, I can't say that he did; he asked me if I remembered the conditions of the things.

Q. Did he ask you about the bond and mortgage, what was in that?

A. No.

Q. Did he tell you what he had seen in the bond and mortgage after he read them?

A. No.

Q. Well, he—this bill was filed, of course, months before he died, wasn't it?

A. I don't know.

Q. At all events he never discussed with you 10 what was in this mortgage?

A. No, sir.

Q. And you have never read it yourself since?

A. No, sir.

Q. Well, did he tell you that this mortgage provided as follows: "Being the same premises this day conveyed by the said Samuel Ireland and Margaret Ireland, his wife, to the party of the first part, and this indenture is executed in order to secure the payment of the purchase money of said last named conveyance, or the reconveyance of the premises hereinbefore mentioned and described, in accordance with the terms of the certain obligation or writing herein above referred to." Ever discuss that with you? 20

A. No, sir.

Q. Ever read that to you?

A. No, sir.

Q. Did he ever tell you that he had read the bond and that it contained this provision: "And in case of their failure aforesaid in respect to the payment of the said sum of forty-five hundred dollars on or before the date above provided or the reconveyance of the premises above referred to on or before the said date, then this obligation shall be and remain immediately due and payable and may be enforced and recovered at once?" 30

A. No, sir.

Q. Did he ever tell you that he had read this bond and found it did not contain the provision of the deed?

A. No, sir.

Q. Never mentioned it to you?

A. No, sir.

Q. He talked to you about this suit, didn't he, that he had with the Penn Motors Company?

10 A. No, he never talked to me at all about the suit, didn't talk over it once.

Q. Did he talk to you at all about it?

A. Yes, he talked to me at all about it.

Q. Did he mention the bond and mortgage to you?

A. No, sir.

Q. You knew he had taken back a bond and mortgage, didn't you?

A. I did not, no, sir.

20 Q. What?

A. I did not until this case started.

Q. You never knew there was a bond and mortgage?

A. No, sir.

By Mr. Bourgeois:

Q. Mr. Ireland, how many pieces of property did your father have down on the Boulevard?

30 A. He had that tract down there, Mr. Bourgeois, and he was interested in another tract down by Fish Creek.

Q. I know, but as far as he alone owned, did he own any other land except this particular tract?

A. No, sir.

BENJAMIN R. FOX, sworn for complainant.

Direct examination.

By Mr. Bourgeois:

Q. Mr. Fox, you live where?

A. Verona Avenue, West Atlantic City.

Q. You are the person who is making the development over there in Pleasantville? 10

A. Yes.

Q. Did you endeavor—did you learn of an interest of Samuel Ireland in a tract of land on the Boulevard?

A. Yes.

Q. Where does that lie with regard to the land that you are developing?

A. Right—well, right merged in between two sections of it. 20

Q. Did you endeavor to purchase that property from Mr. Ireland?

A. Yes.

The Court: Mr. Fox, is this the tract that is not filled as high as the rest?

A. Yes.

Q. And the tract in question is the one where it is not filled in at all except a little sand ran in? 30

A. That is the idea.

Q. Did you ever have any conversation with him about that property?

A. With Mr. Ireland?

Q. Yes.

A. Yes.

Q. And did you learn that there was—that the title was in the Penn Motors Company?

A. Yes.

Q. From whom?

A: From Mr. Ireland.

Q. Now did he endeavor or negotiate with you for the sale of it to you?

Mr. Cole: I object, incompetent.

10

The Court: What is the relevancy?

Mr. Bourgeois: Only leads up to the point I want.

The Court: Sustain the objection.

20 Q. During any time when you were in conversation with Mr. Ireland were you shown a paper writing?

A. I was.

Q. Pertaining to this land?

A. Yes.

Q. Did you read it?

A. I did.

Q. Will you tell the court who the parties were to it?

A. To this writing?

Q. Yes?

30

A. Mr. Ireland and the Penn Motors Corporation.

Q. Will you tell the court what it contained, what its provisions were?

A. Can I answer that question in my own way, Mr. Bourgeois?

Q. No, first you just tell them what it contained, not your own judgment, but what it contained.

Mr. Cole: Of course I object to this on the ground there has not the proper foundation been laid for the loss of this paper, and this testimony is not admissible out of the mouth of a third party; certainly there is no identification by this witness of the paper in question.

The Court: Not as yet, but if he describes the contents of some other paper I will strike it.

10

A. Mr. Brooks had the agreement, together with an agreement between Mr. Ireland and myself, which Mr. Ireland signed.

Q. I don't care anything about that. I want to know the one between Ireland and Penn Motor Company?

A. I saw it, yes.

Q. And you read it?

A. Let me say just how that happened.

Q. I don't care how it happened; just tell me what it said, what the agreement provided? 20

A. Mr.—I can't just tell you the words of the agreement.

Mr. Cole: He will have trouble answering that; he can't do it that way; better let him do it his own way. Tell us what was in the paper, Mr. Fox.

A. Mr. Brooks stated to me——

Mr. Cole: I object.

30

Q. Just state what was on the paper?

A. The paper stated the Penn Motors Corporation were going to erect a factory on this particular block and if they didn't start construction within a period of six months then the property would

be deeded back to Mr. Ireland. On the strength of that I signed——

Mr. Cole: Just a moment.

Q. Never mind the other part; that is all we want to know. Was it signed?

A. It was signed, yes.

Q. By whom on behalf of the Penn Motor Com-
10 pany, if you recall?

A. Hilton Sofield.

Q. As what office, what was he?

A. President of the Penn Motors Corporation.

Q. That appeared on the paper?

A. Yes.

Q. About when was it you saw this agreement?

A. About nineteen twenty—about two years ago.

Q. Who was the other party to the agreement?

A. Samuel Ireland and Penn Motors Corporation.

20 Q. Do you recall if that agreement contained anything about how the payment was to be made?

A. No.

Mr. Cole: I object.

The Court: Sustain the objection. He says “no.”

30 Mr. Cole: He doesn't remember, anyhow, but don't let him tell the rest of it by your asking him, please.

Q. Who was present at the time you saw the agreement?

A. Mr. Ireland and George Brooks.

Q. Who was George Brooks?

A. George Brooks was in the real estate business and he was endeavoring to sell this ——

Mr. Cole: Just a moment, Mr. Fox.

The Court: He was in the real estate business.

Q. Where is he today?

A. Lakewood, New Jersey, I understand.

Q. Where will he be tomorrow?

A. In this office, this court room.

Mr. Bourgeois: He is the witness I can't get for 10
today. You may cross examine.

Cross-examination.

By Mr. Cole:

Q. Are you interested in the outcome of this suit?
Yes or no.

A. Yes.

Q. What is your interest?

A. I will take the tract and develop this as part
of my tract. 20

Q. Quite necessary for you to have this piece of
land, isn't it, to properly develop your plans and
promote them? Yes or no.

A. Yes.

Q. This agreement have any date on it?

A. I don't recall the date.

Q. My question, did it have any date?

A. I imagine it did.

Q. Imagine? Don't you know? 30

A. Well, I should think it would, an agreement
of that kind.

Q. At the time you read it you were very much
interested in it, weren't you? Yes or no, please,
were you or not?

A. Yes.

Q. And you can't now tell whether it had a date or not?

A. No.

Q. In whose handwriting was it?

A. I couldn't tell that.

Q. Was it in anybody's handwriting?

A. Was it printed, do you mean?

Q. Was it in anybody's handwriting?

A. It was in handwriting.

10 Q. All of it?

A. All of it.

Q. How did it begin?

A. I can't say.

Q. How did it end?

A. I haven't got the beginning or the ending of it; the contents was all.

Q. Have you got the middle of it?

A. The contents was all that interested me, yes.

Q. Did it describe any land?

20 A. No, not that I know of, there was no descriptions there.

Q. Wait a moment. Did it describe any land? Yes or no.

A. The description, no.

Q. Say anything about a bond and mortgage?

A. No, not that I know of.

Q. Well, you saw it, didn't you?

A. Yes.

Q. Two years ago?

30 A. Two years ago.

Q. Where were you?

A. In the office, a little office on the Boulevard we had.

Q. Who brought the agreement there?

A. Mr. Brooks and Mr. Ireland.

Q. Mr. Ireland tell you that Sofield, the president of the company, had a copy of it?

- A. No.
Q. Did you ask him?
A. No.
Q. Had the agreement been recorded?
A. I don't know that.
Q. Did you look to see?
A. No.
Q. Do you know Mr. Ireland's handwriting?
A. No, I wouldn't recognize it.
Q. Was his name on that paper? 10
A. Samuel Ireland.
Q. You saw it, did you?
A. Yes.
Q. Anybody witness it?
A. Not that I know.
Q. No witness to either signature?
A. I am not positive of that.
Q. You have made a great many agreements, Mr. Fox, in your life time?
A. Some. 20
Q. Is it your practice to have them witnessed?
A. My interest in this agreement—
Q. Is it your practice to have them witnessed?
A. Usually, yes.
Q. Do you think that is necessary?

Mr. Bourgeois: I object.

The Court: Sustain the objection.

- Q. Did you scrutinize this paper to see whether it had a witness to these signatures? 30
A. No.
Q. How many sheets of paper were there?
A. Only one sheet and the sheet he had the other agreement with me, two sheets.
Q. It was all written on one side, wasn't it?

A. One side, yes.

Q. How large a piece of paper was it?

A. Well, I should say something like that, about that wide and that deep (indicating), eight by eight; wasn't a very elaborate agreement.

Q. I don't care about your characterization of it; I want to get the facts. That is all, Mr. Fox.

By Mr. Bourgeois:

10

Q. Mr. Fox, did that agreement refer to some land?

Mr. Cole: I object.

The Court: Sustain the objection.

Q. You say there was no description in that agreement?

20

A. Yes.

Q. What was there in the agreement, if anything, to designate any land?

Mr. Cole: This is not rebuttal.

Mr. Bourgeois: It is re-direct.

The Court: I will permit that.

30

Mr. Cole: It isn't re-direct, either.

The Court: I will permit it.

A. What was that question, Mr. Bourgeois?

(Question repeated.)

A. It was only the land that Ireland had turned over to the Penn Motors Corporation, so far as I knew, there was no metes or bounds to it, I don't believe they had ever had a survey on it.

Mr. Cole: I move the latter part be struck out.

The Court: Certainly.

By Mr. Cole:

10

Q. You say the land that he had conveyed to them?

A. What say?

Q. (Repeated.)

A. That Ireland, yes.

Q. That is what it said, the agreement?

A. No, I am not stating that is what the agreement said now.

20

Mr. Cole: Then I move his whole answer be stricken out.

The Court: Yes, you are entitled to that.

Mr. Bourgeois: The question was——

Mr. Cole: Wait a moment, I understand the Court has stricken it.

30

Mr. Bourgeois: Which answer, your answer?

Mr. Cole: No, the answer he gave you.

The Court: Stricken out, he said he didn't answer what was in the agreement?

Q. Has this land increased in value since 1921?

A. Oh, yes.

Q. Very much, hasn't it?

A. Yes. Through my efforts.

Mr. Cole: I ask that be stricken through his efforts.

The Court: Yes, it is not responsive.

10

By Mr. Bourgeois:

Q. To what do you attribute the increase in value?

A. Only through the developing of the ground on either side of it.

Q. Who has developed it?

A. I have.

20 Q. Now do you recall if there was any reference in that agreement to the land that it spoke about and you spoke about?

Mr. Cole: That is objected to. It is not re-direct and I think the witness ought to be required to state what was in the agreement.

The Court: It seems to be limited to what was in the agreement.

30 Mr. Bourgeois: I want to find out whether there was any reference to anything in it.

Mr. Cole: Suggestive and leading.

The Court: I will permit it.

A. The reference was, Mr. Bourgeois, that if

these people did not start improvements within a period of six months then the ground was to be turned back to Mr. Ireland and it was on the strength of that that I signed the other agreement.

Mr. Cole: I ask that be stricken out.

The Court: Let it be stricken.

Q. I want to know whether there was anything 10
in that agreement from which you could tell to what
land it referred? How did you know where the
land was?

A. Didn't know and they didn't know.

Mr. Cole: I ask that be stricken what they didn't
know. That is very comprehensive.

The Court: It will be stricken.

Q. You didn't know? 20

A. No.

CARLTON GODFREY, SWORN for complainant.

Direct examination.

By Mr. Bourgeois:

Q. Mr. Godfrey, I show you a bond and mortgage 30
—I show you the mortgage, never mind the bond
at the present time—at the bottom of which there
is a notation “record and return to Carlton God-
frey” mortgage made by Penn Motors Company to
Samuel Ireland, and ask you if you will explain
what you had to do with that transaction?

A. This mortgage was brought to my office by Mr. Fox; he handed it to me with the statement that Mr. Ireland—

Mr. Cole: Wait a minute; I object.

Q. Never mind the statement. He brought it to you?

10 A. Yes. I mailed the mortgage to be recorded. I noticed that the mortgage had not been recorded at the time it was handed to me.

Q. And that was when, about?

A. The mortgage was sent for record either the same day or soon thereafter.

Q. Now, Mr. Godfrey, it is in testimony that there was an agreement between Samuel Ireland and the Penn Motors Company, corporation, relative to a certain tract of land out on the Boulevard; was any such agreement ever produced to you?

20 A. There was not.

Q. Have you among your papers any such agreement?

A. I have not.

Q. Did Mr. Ireland ever deliver any such agreement to you?

A. He did not.

Q. I show you the bond bearing even date with the mortgage and I ask if that bond was handed to you at the same time the mortgage was handed to you?

30 A. Yes, sir; bond accompanied the mortgage.

Cross-examination.

By Mr. Cole:

Q. When did Mr. Fox bring you the bond and mortgage?

A. Either on the day that the mortgage was mailed to be recorded or else shortly before that time.

Q. Why did he bring it to you?

10

A. Mr. Ireland had spoken to me on two or three occasions——

Q. Why did Mr. Fox bring it to you?

A. What I am trying to explain to you——

Q. Not what Mr. Ireland told you, what Mr. Fox said to you?

Mr. Bourgeois? If your Honor please, he is asking a question and Mr. Godfrey has a right to answer that, if, after the answer goes in, it is not responsive, it is time to strike it out.

20

Mr. Cole: I think I have a right to have him say what Mr. Fox reported to him.

The Court: That wasn't the question.

(Question withdrawn.)

Q. What did Mr. Fox say to you when he handed you the bond and mortgage?

30

A. That Mr. Ireland had requested him to leave this bond and mortgage with me.

Q. Did he tell you that he had received those, received them from the hands of Mr. Ireland?

A. I am not clear on that point whether he did or not.

Q. What did he tell you, if anything, that he wanted done with the bond and mortgage?

A. Mr. Ireland had given me instructions what to do.

Q. I am asking you what Mr. Fox told you, if anything, as to what Mr. Ireland wanted done with the bond and mortgage?

A. I have no recollection that Mr. Fox gave me instructions, any instructions concerning any steps
10 to be taken upon the bond and mortgage.

Q. But you discovered that they had not been recorded as late as 1923, September?

A. At the time that he handed me the mortgage, yes, sir, I immediately noticed that it had not been recorded.

Q. Did he tell you to have it recorded?

A. I called attention to that.

Q. Mr. Fox?

A. No, I called attention to that.

20 Q. I say you called Mr. Fox's attention to the fact that the mortgage had not been recorded?

A. Yes.

Q. And then who suggested that it be recorded?

A. I suggested it.

Q. And you had it recorded?

A. I had it recorded.

Q. Did Fox tell you to do it?

A. I don't think he did.

30 Q. After the mortgage was returned to you pursuant to your notation what became of it?

A. It remained in, when I received it back from Mays Landing, which was some weeks later, it remained in my possession for a while and was later delivered by me, I think, to Mr. Bourgeois; that is my recollection.

Q. How long after it had been returned to you before you handed it to Mr. Bourgeois?

A. It was in my hands for quite several months.

Q. How did you come to hand it to Mr. Bourgeois?

A. My recollection is that he was called in consultation by Mr. Ireland or Mr. Fox or both.

Q. Well, do you mean that they, somebody directed you to hand it to Mr. Bourgeois?

A. Yes.

Q. Was it Mr. Ireland?

A. Quite likely.

10

RAYMOND P. THOMPSON, sworn for the complainant.

Direct examination.

By Mr. Bourgeois:

Q. Mr. Thompson, you live where?

20

A. Pleasantville, New Jersey.

Q. And you are a civil engineer?

A. Yes, sir.

Q. Did you know Samuel Ireland in his life time?

A. I did.

Q. Did you ever meet a man by the name of Sofield representing the Penn Motors Company?

A. I did.

Q. Were you ever present at a meeting in Mr. Weaver's office when the question of establishing a plant of the Penn Motors Company was discussed in the presence of Raymond Ireland and Mr. Sofield?

30

A. I was.

Q. Will you state what was said at that time, if anything, with regard to the tract of land that is

here in dispute, that is the tract of land on the Boulevard that formerly belonged to Samuel Ireland?

A. The meeting was called for the purpose of investigating or selecting, if possible, a site for this proposed factory. While we were there Mr. Raymond Ireland came in——

Q. Who was there when he came in?

10 A. Mr. Weaver, Mr. James, Mr. Sofield, some other gentleman representing, with Mr. Sofield, representing the Penn Motors Company, Mr. Cale——

Mr. Cole: I ask that statement “representing the Penn Motor Company” be stricken; that must be a conclusion of this witness.

Mr. Bourgeois: He means after “representing Penn Motor Company” that is what you mean?

20 Mr. Cole: Yes.

Mr. Bourgeois: That can come out.

A. I don't recollect any others.

Q. Do you recall who came there first, whether Mr. Ireland or whether Mr. Sofield came first?

A. I can't recall that, no.

30 Q. Tell me what was done and what was said in there at that meeting when these people were together?

A. Mr. Ireland informed us that his father——

Mr. Cole: I object. Speaking in the presence of Mr. Sofield?

A. Yes, sir.

Mr. Cole: All right.

A. Mr. Ireland informed us that his father had agreed to give the Penn Motor Company this piece of ground on the Boulevard with the provision that they build on it and use it for the purpose of their manufacturing, that is, he was to take back some kind of a mortgage making payments and interest very easy, so that they could proceed at once without any outlay of cash or capital for the purchase of the ground. This agreement seemed to be very satisfactory—

10

Mr. Cole: Wait a moment; I object.

Q. What, if anything, was said about in the event that they did not build on it?

Mr. Cole: I object, may it please your Honor; it seems that is quite leading.

20

The Court: Yes, objection sustained.

Q. What else was there in that agreement?

Mr. Cole: Not what was in the agreement, what was said.

Q. What was said with regard to the agreement?

A. Mr. Ireland said that his father gave this property to the Penn Motor Company so that they could go ahead without the outlay of any capital and that in the event that they did not use it, it would be returned to him.

30

Q. Was there anything said within what time they were to use it?

Mr. Cole: I object.

The Court: Sustain the objection.

Q. What else, if anything, was said with regard to it by Mr. Ireland?

A. I am not sure as to anything further about the time under the agreement.

Q. But it did, didn't—

10

Mr. Cole: Wait a moment. I object. The very question is vicious from the start.

The Court: Sustain the objection.

Q. What did Mr. Sofield have there, if anything?

20 A. Mr. Sofield had maps showing this proposed layout, proposed sidings of the railroad, and he discussed this proposition of being able to unload freight cars there and the advertising advantages of this site, and he said that he was satisfied with the agreement and that we need not look further for any piece of ground, that they were going to take that piece.

Cross-examination.

By Mr. Cole:

30 Q. Now you heard Mr. Raymond Ireland say that his father had made the payments and the interest in this mortgage easy so that they could handle it?

A. I didn't say the interest and payments on the mortgage.

Q. What did you say?

A. I said the payments of the transaction, the proposition as a whole.

(Former answer repeated.)

Q. Having had the stenographer read to you what you said, is that what you said?

A. Some kind of a remark might have been said, yes.

Q. No, I am asking you whether, having heard the stenographer read to you what you say Mr. Ireland said in your presence, is that what was said?

A. As near as I can recollect that is what was said. 10

Q. Is your recollection today very vivid about what was said?

A. It is, not particularly the exact words, but the import.

Q. And the import was that there was to be a bond and mortgage with easy payments and interest?

A. Yes, sir.

Q. Now when was that? 20

A. Some time in the fall of 1921.

Q. Anything said about a deed having already been made?

A. No, not that I recollect.

Q. Anything said about a bond and mortgage having already been made?

A. No, not that I recollect.

Q. What do you mean by the fall of 1921?

A. The fall is between the summer and winter, as I understand. 30

Q. What month?

A. I can't recollect.

Q. Was it October?

A. I can't recollect.

Q. Was it November?

A. I can't recollect.

Q. You don't know what month it was?

A. No, sir.

Q. How do you recollect it was fall?

A. By references that I have looked up.

Q. What references have you looked up now to satisfy you it was fall?

A. Talking with the man who was then secretary of the Chamber of Commerce as to about when he took office, about when Mr. Weaver went out of office.

10 Q. In other words you fix the time as the fall of 1921 by what somebody has told you?

A. Yes, when this meeting occurred.

JOHN WEAVER, sworn for complainant.

Direct examination.

20 By Mr. Bourgeois:

Q. Mr. Weaver, you live in Pleasantville?

A. Yes, sir.

Q. And you conduct what sort of a store there?

A. General store, department store.

Q. Do you remember sometime in 1921 a meeting being held there with relation to the Penn Motors Corporation?

A. Yes, sir.

30 Q. Will you tell the court who was present at that meeting?

A. There was Mr. Sofield was present and the man with him, I forget his name, and Mr. James was present, Mr. Thompson was present, Mr. Cale was present and myself.

Q. What was the object of that meeting? What was it held for?

A. It was to discuss this matter of locating the Penn Motors Company in Pleasantville.

Q. Do you recall if there was any statement made touching a piece of land down on the boulevard that was owned by Samuel Ireland either by Mr. Ireland in the presence of Mr. Sofield or by Mr. Sofield himself?

A. I recall Mr. Ireland stating about the piece of property, yes, sir.

Q. In the presence of Mr. Sofield?

10

A. Yes, sir; Mr. Sofield was there.

Q. What was it that Mr. Ireland said, as nearly as you can recall?

A. I can't recollect the conversation, exact words of the conversation.

Q. The substance?

A. The substance of it was that Mr. Ireland was willing to convey to him the piece of property down there on which to locate this proposed factory. As to the terms under which he was to do it I know nothing because I didn't catch that conversation referred to that. I have no recollection as to that.

20

Q. But Mr. Sofield was there at the time whatever was said?

A. Yes, sir; Mr. Sofield was there.

No cross-examination.

30

ALBERT E. JAMES, sworn for complainant.

Direct examination.

By Mr. Bourgeois:

Q. Mr. James, you live in Pleasantville?

A. Yes, sir.

10 Q. Did you live there in 1921?

A. Yes, sir.

Q. Were you present in Mr. Weaver's office sometime in the summer or fall of 1921 when Mr. Sofield was there with relation to the Penn Motors Corporation?

A. I was, yes, sir.

Q. Were you present there when he and Mr. Raymond Ireland both were there?

A. Yes, sir.

20 Q. Can you state what was said at that time either by Mr. Ireland or by Mr. Sofield—Mr. Ireland in Sofield's presence or Sofield himself with relation to the piece of land down on the Boulevard that was then owned by Samuel Ireland?

30 A. Myself, Mr. Weaver, Mr. Thompson and Mr. Cale, I recollect those four very well, and I think Mr. Wootton came in there during the meeting, were there, and Mr. Sofield and Mr. Harry Johnson, to my best recollection was there, Mr. Harry Johnson with Mr. Sofield. We had been making every effort to try to get together a location for the Penn Motors Corporation, exhausting practically every source that was possible to do so to try to find a location to encourage the industry to come to the town. During that meeting Mr. Ireland came in and reported that after quite a little bit of conversation with his father he had induced his father

to convey to the Penn Motors Corporation, company, or was about to do that—that transaction I believe came off a day or two later—to convey to the Penn Motor Company, without any interest or anything, to start manufacturing motor trucks, to induce the corporation to come to the town. That is, as I understood Mr. Ireland's report to the committee. I was then a member of City Council acting in co-operation with the Chamber of Commerce trying to get the industry there if it was possible. 10
During that meeting Mr. Ireland came and made that report which made us all feel very happy about the proposition because we thought it was going to be an addition to the town and I remember very distinctly that Mr. Ireland made his report to the committee—or in conversation there that his father had conveyed that piece of ground to the Penn Motor Corporation with the understanding that they would erect a factory for the erection of motor trucks within the period of six months' time. 20

Q. Was there anything else said about it that you recall in reference to the conveyance of the land or the failure to build the plant within the six months?

A. Mr. Ireland made the remark that his father was willing to make that agreement and in the event of this corporation not proceeding as per agreement that the land was to be reconveyed to his father.

Q. Now you spoke of him saying that it had been conveyed, I understand you, may be I didn't; did he say it had been or would be conveyed, do you recall? 30

A. No, he said that in conversation——

The Court: He said he was willing to do it.

A. Yes, that his father was willing to do it and I think it was a few days later than that that that happened.

Cross-examination.

By Mr. Cole:

10 Q. What was the date?

A. Judge, I couldn't tell you. I know it was in the fall, it was either in the latter part of September or in October.

Q. Did Mr. Ireland say that his father was willing to agree or that he had agreed?

A. That his father was willing to agree to that in the interest of the——

Q. That is all, Mr. James, for the time being.

A. All right, sir.

20 Q. You can't fix the date?

A. I cannot, no.

Q. When did you report to council after that?

A. I reported at the next meeting of council.

Q. When was that?

A. I think it was on the following Monday night.

Q. And what Monday was it?

A. Well, as near as I can recollect that was in October, the first meeting in October, I couldn't say that truthfully without the record of city council.

30 Q. What was said about the bond and mortgage, if anything?

A. I know nothing about that.

Q. Did you hear all the conversation?

A. Sir?

Q. Did you hear all the conversation that Ireland gave in the presence of Mr. Sofield, did you hear it all?

A. All that I heard was the fact that his father——

Q. I say, but all that Mr. Ireland said when Mr. Sofield was there you heard, didn't you?

A. There was nothing said in my presence about a bond and mortgage.

Q. I am asking you, Mr. James, whether you heard all the conversation that Mr. Ireland gave in the presence of Mr. Sofield?

A. I couldn't conscientiously say that, Judge, for the reason that at a meeting that we were transferring, conversing with one and then with the other, you know. 10

Q. But you heard nothing about the bond and mortgage?

A. No, I didn't hear anything about that.

Q. Hear anything about a deed?

A. I heard Mr. Ireland say that his father was willing to convey that ground to the Penn Motor Company with the proviso that they would erect the factory. 20

Q. How much money were they to put in it?

A. There was no question so far as the money was concerned, Judge, so far as I heard.

Q. Anything said about the easy terms on which it was to be sold?

A. No, I didn't hear any of the technical points of that.

Q. To whom did you first state the conversation that you are now relating after that meeting? 30

A. To whom did I——

Q. First communicate it?

A. Why in a casual way I think I reported to the City Council verbally the transaction of the committee and I might as president of Council——

Q. You reported it to council, did you? Did you tell council just about what you are telling here?

A. Practically.

Q. As to the terms?

A. Practically.

Q. Do you know whether the minutes of council will show that?

A. No, I don't know.

Q. Have you examined the minutes to see?

A. No, I have not.

10 Q. But you reported to council; did you, practically, the same conversation you related here which took place between Mr. Ireland and those who were present?

A. I did, yes, as a member of the Chamber of Commerce.

Q. To whom did you next report this conversation after you reported it to council, if you can recall?

20 A. Don't know that I reported it to anyone else, aside from discussing it in the Chamber meeting afterwards.

By Mr. Bourgeois:

Q. Did Mr. Sofield raise any objection to the statement made by Mr. Ireland?

A. Not to my knowledge.

30 ROLLAN C. CALE, sworn for complainant.

Direct examination.

By Mr. Bourgeois:

Q. Mr. Cale, you live in Pleasantville?

A. Yes, sir.

Q. Were you present at a meeting held in 1921, either the summer or fall of that year, in Mr. Weaver's office, store?

A. I was.

Q. When the Penn Motors Corporation project was discussed?

A. Yes, sir.

Q. Mr. Sofield there?

A. He was.

Q. Who else?

10

A. There was Mr. Weaver, Mr. Thompson and Mr. James, Mr. Johnson, another associate with Mr. Sofield, I don't recall his name.

Q. Now was there anything said at that meeting about the tract of land belonging to Samuel Ireland located down on the Boulevard?

A. There was.

Q. Will you tell to the Court just what that conversation was, as near as you can recall it, I mean made by Raymond Ireland in Sofield's presence or made by Sofield himself; tell us what was said.

20

A. During that meeting it was stated there by Mr. Ireland, the question had come up originally about the location and at that meeting my recollection was that Mr. Ireland came in there, while we were looking at the plans of the proposed plant.

Q. Who had brought the plans in?

A. Mr. Sofield or the man associated with him, I don't recall his name, and Mr. Ireland stated—that we had been looking around several days previously trying to locate a suitable site—Mr. Ireland said that he had talked it over with his father and had made arrangements where his father would give them the privilege of erecting their plant on this tract of land on the meadows for the purpose of building their plant. The question came up as

30

to the question of railroad siding, seemed to be the general opinion that if any siding—

Mr. Cole: What Mr. Ireland said, Mr. Cale, please, just what he said.

A. That is what he said, he said that he had made arrangements with his father, that he was agreeable to give the Penn Motor Company the privilege
10 of building their plant on this plot of ground that he owned on the Boulevard providing that they erected their plant.

Q. Do you remember any of the details of that conversation?

Mr. Cole: I object. Let the witness state what he remembers.

Mr. Bourgeois: I am asking him to do that.

20

The Court: Yes, I will permit that question.

A. My recollection is that it was generally understood there—

Q. No, not generally understood, but what was said?

A. All right, it was stated there by Mr. Ireland
30 that his father would convey this land to the Penn Motor Company without practically any money consideration and would take back a mortgage on very easy terms, so that it would not place any additional expense, immediate outlay on account of the ground.

Q. Do you remember any other part of the conversation?

A. No, except that it was considered then to be very generous on the part of Mr. Ireland to help

out the Chamber of Commerce and the municipality in inducing the industry to come to the city.

No cross-examination.

Mr. Bourgeois: That is all we have except I would like to introduce one, possibly two, witnesses tomorrow morning.

Mr. Cole: On this same subject? 10

Mr. Bourgeois: On this same subject.

Recess taken to 1.30 P. M.

AFTERNOON SESSION.

Trial of the cause resumed at 1.30 P. M. 20

BENJAMIN R. FOX, recalled.

Cross-examination.

By Mr. Cole:

Q. From whom did you receive the bond and mortgage that Mr. Godfrey testified you handed to him? 30

A. If I gave it to Mr. Godfrey, got it from Mr. Ireland.

Q. Do you remember giving it to Mr. Godfrey?

A. Brooks and I made several trips there and Brooks saw Mr.—

Q. Just a moment, pardon me.

(Question repeated.)

A. No, I don't.

Q. Do you remember receiving it from Mr. Ireland?

A. No, I don't.

10 Q. Well, Mr. Godfrey says that he got it from you about September, 1923; assuming that to be a fact, was it before or after that that you saw this agreement?

A. Oh, it was much before that.

Q. But I understand you didn't see the bond and mortgage at the time you saw the agreement?

A. No.

20 HILTON W. SOFIELD, sworn for defendant.

Direct examination.

By Mr. Cole:

Q. Are you the president of the defendant corporation?

A. I am.

Q. How long have you been its president?

A. Since the beginning.

30 Q. And when was the beginning?

A. I think in April, 1921.

Q. Who was the secretary of the company on September twenty-eighth, 1921?

A. I think Mr. Turner.

Q. What was his first name?

A. Joseph.

Q. Is he living or dead?

A. Dead.

Q. When did he die?

A. Some time in May, 1922, I think.

Q. I show you a book which purports to be the minute book of the defendant corporation and ask you if it is?

A. It is.

Q. There is a minute of the corporation under date of Philadelphia, September twentieth, 1921, 10 signed by Joseph F. Turner, secretary; is he the Turner that is now dead?

A. Yes, sir.

Mr. Cole: I want to offer that page in evidence.

Mr. Bourgeois: Objected to as irrelevant and immaterial, self-serving declaration and hearsay so far as we are concerned.

The Court: I will permit it.

20

(Minute admitted and marked Exhibit D1, reading:

“Page 25.

“Philadelphia 1968.

“Philadelphia, Sept. 28, 1921.

“At a special meeting of the Board of directors of the Penn Motors Corporation held this day at 10.30 A. M. at 1714 North Broad Street, Philadelphia, there being present directors Hilton W. Sofield, Howard S. Sofield and Joseph F. Turner, constituting a quorum of the Board, it was resolved that this corporation do execute and deliver and the president thereof is hereby authorized and empowered to execute and deliver in its name and under its corporation seal a bond or obligation

30

made unto Samuel Ireland in the sum of nine thousand dollars, conditioned for the payment of forty-five hundred dollars, without interest, on or before the twenty-eighth day of September, 1926, or in lieu thereof to reconvey to the said Samuel Ireland certain premises by him and his wife conveyed unto this corporation by deed dated September twenty-eighth, 1921, and also execute and deliver, under the seal of this corporation a mortgage upon said
10 premises, conditioned for the fulfillment of one or the other of the agreements above set forth. Certified under the seal of the said corporation, attested by its secretary as of the above date. Joseph F. Turner, Secretary.”)

Q. Did you attend the meeting that is referred to there?

A. In Mr. Weaver's store?

20 Q. No, the meeting of the corporation?

A. Yes, sir.

Q. Do you recall where it was held?

A. No, I don't.

Q. Had you had your talk with Mr. Ireland concerning the conveyance of the property before that minute was made?

A. Yes.

Q. Was that minute the result of your talk with Mr. Ireland?

30 A. Yes.

Q. How many times were you in Mr. Ireland's home?

A. I think twice, quite sure of that.

Q. How far apart were your visits?

A. Either the second or after the first, one day after the first or not longer than two days after the first meeting.

Q. Where did you sign the bond and mortgage, where were you?

A. In Mr. Ireland's house.

Q. The acknowledgment to the deed from Ireland to the corporation and to the bond and mortgage from you to Ireland appears to have been taken by Mr. Franklin Smith; did you know him before that time?

A. I don't know Mr. Smith.

Q. Do you know who has paid the taxes on this 10 land since the deed was made to the corporation?

A. I do.

Q. Have you the bills here?

A. Yes, sir.

Q. Produce them when you get them.

(Tax bills produced.)

Q. Appear to be four tax bills, and four checks, pinned together; are they the tax bills you refer 20 to?

A. They are.

Q. And what do the checks represent?

A. Payment of these bills.

(Bills and checks offered in evidence as one exhibit.)

Mr. Bourgeois: That is objected to as immaterial and irrelevant.

30

The Court: I will permit it.

(Admitted and marked Exhibit D2.)

Q. When was your company incorporated?

A. I think April, 1921.

Q. Had it done any business before it received this conveyance from Mr. Ireland?

A. Yes, sir.

Q. Where?

A. Philadelphia and Riverton, New Jersey.

Q. Did you have a plant in Riverton?

A. We did.

Q. Was that plant existing at the time you took this deed?

10 A. No, sir.

Q. What happened to it?

A. Fire.

Q. Now is this company now operating a plant?

A. Yes, sir.

Q. Where?

A. Bridgeton, New Jersey.

Q. At the time you took this deed from Ireland did you contemplate building a plant in Pleasantville?

20 A. We did.

Q. And what intervened to prevent your doing that?

A. I was informed that the property that we had purchased was restricted so that we could never—

Mr. Bourgeois: Objected to, if your Honor please, because hearsay. He says he was informed.

The Court: I will permit it.

30 A. —informed that the restrictions on this property would not permit anything to be built other than a home or a church.

Q. Did you go to Mays Landing with anyone to verify that rumor?

A. I did.

Q. With whom did you go?

A. Mr. Wootton, real estate operator in Pleasantville.

Q. Did you see any deeds or records in the court house?

A. I did.

Q. Did you see any records showing that that was true?

A. Yes, sir.

Q. Now, did you afterwards speak to Mr. Ireland about that?

10

A. I did.

Q. Tell us what you said to him and what reply he made?

A. I told him that I was unable to build a factory on this property owing to restrictions. He said the restrictions meant nothing, to go ahead and build.

Q. How many stockholders has this corporation?

A. I would estimate one hundred and sixty.

Q. How many had you at the time the deed was made to the corporation?

20

A. I couldn't estimate that so close as the present stockholders, but I would say in the neighborhood of sixty.

Q. Are you carrying this property as an asset?

A. We are.

Q. At what value?

A. Twenty thousand dollars.

Q. Have you recently had your books audited to ascertain the financial standing of the company?

30

A. Recently did you say?

Q. Well, whenever you did have it done, if you did have it done?

A. Well, we had our books audited when we took over, when Penn Motors took over the Motor Sales and Service Corporation, which was also our corporation.

Q. Have you got a statement now to show the condition of this company as of a recent date?

A. We have.

Q. Will you produce that?

A. Of recent date or——

Q. Well, see what date you have and I will see.

A. November thirtieth, 1924.

Q. This is a balance sheet?

A. It is.

10 Q. Is it correct?

A. It is.

Q. Mr. Cole: I want to offer that.

Mr. Bourgeois: That is objected to as irrelevant and immaterial.

The Court: I will permit it.

20 (Paper admitted and marked Exhibit D3.)

30 Q. While it is on my mind, Mr. Sofield, this bill in paragraph five says that on or before the said date said corporation, through its agents, did enter into an agreement with one H. White of Absecon for the purchase of a large tract of land for the sum of eighteen thousand dollars, for which they agreed to pay two thousand dollars in cash, eight thousand dollars in stock of said corporation and execute and deliver a mortgage on the property to be purchased to seller for eight thousand dollars, and then there is a paragraph six, says that after this agreement had been outstanding for some time said corporation, through its agents, and servants, canvassed the entire locality for stock and the date of settlement arrived on said agreement of purchase and it had paid one thousand dollars by a check dated

on the day of settlement, was abandoned, payment of check was stopped and said Motors Corporation not only failed to perform or attempted to perform its said agreement. Did this corporation ever have any agreement with Mr. White?

A. Penn Motors never had any agreement with Mr. White so far as I know.

Q. Did some other corporation?

A. Yes, sir.

Q. Which corporation?

10

A. H. and H. Development Company.

Q. Have you got that agreement here?

A. Yes, sir.

Q. Is this the agreement?

A. It is.

Q. I noticed that there is a check of Hilton W. Sofield attached to the agreement, it is for a thousand dollars; is that the thousand dollars referred to in this agreement?

A. Yes, sir.

20

Q. How did you come to get the check back?

A. Mr. White returned it to me.

Q. The owner who had agreed to sell?

A. Yes, sir.

Mr. Cole: Offer the agreement and check in evidence.

Mr. Bourgeois: That is objected to as irrelevant 30 and immaterial.

The Court: Admitted.

(Agreement and check admitted and marked Exhibit D4.)

Q. Did you ever have an agreement in writing with Mr. Ireland for the purchase or conveyance of the land described in the deed that he gave you? I mean now outside of the deed and bond and mortgage, did you ever have any agreement in writing?

A. In writing?

Q. Yes.

A. No.

10 Q. It is testified that you signed an agreement in writing at his home at which time Mr. Raymond Ireland was present; did you ever sign any such paper?

A. Have no recollection of signing any such agreement.

20 Q. It is said that that agreement which you signed contained a provision that you were to reconvey this property or your corporation unless you built a plant or commenced to build one within six months from the date of the agreement; did you ever have any such agreement with Mr. Ireland, in writing or otherwise?

A. I did not.

Q. Did you, as president of this corporation, report to the meeting referred to in that minute the result of your arrangement with Mr. Ireland? Did you state to the meeting what your agreement was?

A. I did.

Q. Does the minute correctly show the agreement you had with Mr. Ireland?

30 A. Absolutely correct.

Q. Coming to the first time that you met Mr. Ireland in his home, tell us what happened, if you can recall it, what took place between you and him?

A. Mr. Ireland said that he would sell us this property for forty-five hundred dollars, which would be all mortgage, no interest bearing for five years, if we didn't use this property within that time we had

the privilege of paying the mortgage or reconveying the property.

Q. Did you ever have any other agreement than that with Mr. Ireland?

A. We did not.

Q. When was it after that that you were in his home and signed the bond and mortgage?

A. As near as I can recollect either the next day or the two days after.

Q. Do you recall now, Mr. Sofield, what time of the day it was, or night, that you signed this paper at Mr. Ireland's home before Franklin E. Smith? 10

A. I am quite sure both of my visits to Mr. Ireland's house was after dinner at night.

Q. Have you sold any stock of this corporation on the strength of the ownership of this property?

A. That was included in our assets and we talk a lot about our assets.

Q. Have you been carrying it on your books ever since you had it? 20

Mr. Bourgeois: Objected to as irrelevant and immaterial.

The Court: I will permit it.

A. We have.

Q. Now do you recall being before some committee of council of the Chamber of Commerce over in Pleasantville when Mr. Weaver and Raymond Ireland and the other gentleman who testified this morning were there? 30

A. I do.

Q. It is said that, by some of them, that at that time Mr. Raymond Ireland stated that his father either had agreed to convey or had conveyed certain property of his in Pleasantville to this corpora-

tion upon the condition that you were to build a plant or commence to build within six months and failing in that that you were to reconvey the property. Was any such statement as that made in your presence by Raymond Ireland?

A. There was no statement as to building or time limit.

Q. When did you first hear that Mr. Ireland was claiming or anyone for him that if you didn't build
10 this plant within six months that you had to reconvey the property?

A. I don't quite understand that question.

(Question repeated.)

A. Some time in 1922, I was told by my brother that Mr. Samuel Ireland called at our Broad Street office to see me. I not being there he gave my brother the message that he wanted the property
20 returned.

Q. Now your brother made that report to you?

A. Yes, sir.

Q. Do you recall what time in 1922, that was?

A. I think I have a letter or copy of a letter that I wrote to Mr. Ireland sometime in December, 1922; I can verify that by the copy of the letter.

Mr. Cole: Have you got the original of that letter, Mr. Bourgeois?

30 Mr. Bourgeois: No, we haven't.

Q. Is that the copy of the letter which you say you wrote Mr. Ireland?

A. It is.

Mr. Cole: I offer that.

(Copy of letter admitted and marked Exhibit D5.)

Q. Did you ever, after the date of that letter, have Mr. Ireland call on you personally about the matter?

A. You speaking of Mr. Samuel Ireland?

Q. Samuel Ireland, of course?

A. No, sir.

Q. Did he ever after that time make any demand on you as the president of the company either by letter or in person?

A. Not to my knowledge.

10

Q. Now did this company do anything looking toward the building of a plant on this property after you had your talk with Mr. Ireland or before for that matter?

A. I don't quite understand that.

(Question repeated.)

Q. This is, did the company do anything intending to build the plant?

20

A. Oh, yes; we had the plans drawn and specifications.

Q. What else did you do? Well, did you try to sell any stock?

A. Oh, yes.

Q. Where?

Mr. Bourgeois: Objected to as irrelevant and immaterial.

30

The Court: How can that be relevant?

Mr. Cole: I want to show, may it please your Honor, that they spent money upon the faith of having a title that they could build upon.

The Court: Sustain the objection to this question.

Q. Did you endeavor to obtain bids for building the plant?

A. We did.

Q. From whom?

A. I can't just recall the names of the contractors, but I think four or five different ones; Mr. Abbott has copies of the letters, I think.

10 Q. Now I notice, according to the certified copy

Mr. Cole: I want to offer at this time a certified copy of the deed from Ireland to the Penn Motors Corporation.

(Certified copy admitted and marked Exhibit D6.)

20 Q. I notice that the deed appears to have had \$4.50 of stamps on it. Do you know who put the stamp on that deed?

A. I do not.

Q. Did you put it on?

A. Don't recall it.

Q. Do you recall now whether that deed had any stamp on it at the time it was handed to you?

A. No, I couldn't say that.

30 Q. There are statements in this bill that stock of this company was sold to people in the neighborhood of Pleasantville upon false and fraudulent statements; very general, but did you yourself make any false statements to sell any stock?

A. I did not.

Q. Did anybody in your presence, representing the corporation, make any false statements?

A. Did not.

Q. Now there is a suggestion here in paragraph

nine of the bill that you sold five hundred dollars worth of this stock to John Weaver upon some false representation, did you?

A. I did not.

Q. It says that thereafter Weaver could secure from said corporation neither the stock nor the return of his money; what is the fact about that?

A. Mr. Weaver bought five hundred dollars worth of stock on the installment plan and I think paid one hundred and twenty-five or one hundred and fifty 10 dollars down, never paid the balance, and his stock, of course, has never been issued.

Q. Are you ready to deliver it to him when the balance is paid?

A. I have and also notified Mr. Weaver to look our plant over to see if he wanted to pay the additional.

Cross-examination.

By Mr. Bourgeois:

20

Q. Mr. Sofield, hadn't there been made in Mr. Weaver's presence, before he took that stock a number of times, a statement by you that this plant was to be started within six months, the building of it?

A. Our intentions to start —

Q. I didn't ask you that; I asked you if that was not the fact?

A. Not to my knowledge, not six months, no stated time.

Q. He just hauled off and subscribed five hundred 30 dollars worth of stock?

A. No, sir, if you will permit me to say what I think happened in that case I will be very glad to say it.

Q. I want to know just the facts in answer to the questions I ask you.

A. What is the question?

Q. My questions was whether or not you had not said to Mr. Weaver on many occasions, at least one or more occasions, before he subscribed for the stock, that you were going to build that plant down there, start it within six months?

A. Not to my knowledge any specified time.

Q. Did he ever make demand on you for the repayment of the one hundred and twenty-five dollars?

10 A. Not to my knowledge.

Q. Did you ever repay it?

A. Never have.

DEFENDANT RESTS.

COMPLAINANT'S REBUTTAL.

20 JOHN WEAVER, recalled.

Direct examination.

By Mr. Bourgeois:

Q. Mr. Weaver, will you explain to the Court the circumstances under which you subscribed for the five hundred dollars worth of the Penn Motors Company stock?

30 Mr. Cole: I object to that. If he wants to contradict the witness, he can do it by specific questions.

The Court: Yes.

Q. Did Mr. Sofield say to you at the time and before you actually subscribed for the five hundred

dollars worth of stock that they were going to build a building on that piece of ground at once or within six months?

A. He said so various times, numerous times, that they were going to build on that property.

Mr. Cole: Wait just a moment. That is not a contradiction. Pardon me, I ask he be asked the specific question, and get a yes or no answer.

10

The Court: Yes.

Mr. Bourgeois: I am trying to ask that specific question.

Q. Whether or not Mr. Sofield said to you at the time you subscribed for the stock or immediately before it that they were going to build a building on that property immediately or within six months?

Mr. Cole: That is not a contradiction, immediately or within six months; it was six months; he wasn't asked—I don't care, go ahead.

20

A. It was said to me frequently—I don't know that six months was mentioned, but it was said to me that the building was to be built and that at once.

Mr. Cole: May it please your Honor, I ask that be stricken; it is not a contradiction.

30

The Court: I will permit it to remain.

Q. Did you subscribe for the stock?

A. I subscribed for the stock, yes, sir.

Q. How much did you pay on account of it?

A. One hundred and twenty-five dollars.

Q. After you paid the first one hundred and twenty-five dollars, what happened then?

Mr. Cole: How is this rebuttal?

Mr. Bourgeois: This is rebuttal but not contradiction.

Mr. Cole: How is it rebuttal?

10 Mr. Bourgeois: They are things you brought out, the question about that.

The Court: I will permit it.

A. They demanded the next payment on account of the stock, I think if I have the man's name correct, Mr. Vernon, who was working then for the Penn Motors Company, I think that was his name, Vernon he came and demanded the second payment.

20 Mr. Cole: Wait a moment, is that rebuttal?

The Court: I think so.

Mr. Cole: A stranger to the transaction.

The Court: No, I will permit it.

Q. What did you say to him?

30 A. I said not until after the building being commenced would I pay any more payments.

Q. Did you ever pay any more?

A. Not any more.

Q. Did you make any demand, either yourself or through Mr. Garrison, for the return of that money, do you recall, that you had paid?

A. Not that I recall.

No cross-examination.

Mr. Bourgeois: That is all except I have two witnesses tomorrow morning.

Mr. Cole: May I not have counsel state on the record what he expects to prove?

The Court: Yes.

Mr. Bourgeois: I expect to show by one of these witnesses he has seen that agreement and knows its contents and I expect to show by the other witnesses, if I produce him at all, testimony regarding the meeting in Mr. Weaver's office similar to what we had this morning. 10

(Letter head of Samuel Ireland offered and admitted in evidence, marked Exhibit C3.)

Mr. Cole: I want to introduce a balance made by the auditors as of March thirty first, 1921. 20

Mr. Bourgeois: That is objected to as immaterial.

The Court: I will permit it.

(Paper admitted and marked Exhibit D7.)

(Adjournment taken to December 18, 1924, 9.45 30 A. M.)

Atlantic City, N. J., December 18, 1924.

(Trial of the cause resumed at 9.45 A. M.)

GEORGE S. BROOKS, sworn for complainant.

10 Direct examination.

By Mr. Bourgeois:

Q. Mr. Brooks, you live where?

A. Pleasantville.

Q. Did you know Samuel Ireland in his life time?

A. Yes, sir.

Q. Do you know Benjamin R. Fox?

A. Yes, sir.

20 Q. Did you endeavor to negotiate a sale of same land from Fox to, I mean from Ireland to Fox?

A. Yes, sir.

Q. When, about, was that?

A. The latter part of October, 1922.

Q. Now do you know the land where the Penn Motors Company have a deed for or for which they have a deed?

A. Yes, sir.

30 Q. What land was it you were endeavoring to negotiate between Ireland and Fox?

A. Section A on plan of Map, Shumway lots.

Q. That is the one, is it?

A. Yes, sir.

Q. During the negotiations or your conversation or interview with Mr. Ireland did you see an agreement?

A. I did.

Q. Between Ireland and the president of the Penn Motors Company .

Q. Did you have any occasion or opportunity to read it?

A. Yes, sir.

Q. Do you recall the substance of it? Can you tell the substance of it?

A. I can tell the substance of it, yes, sir.

Q. Will you tell the Court what it provided?

A. It provided for the—Mr. Ireland agreed to 10
allow the Penn Motors Company the use of this
block of land provided they put up a building with-
in six months and that, furthermore, he agreed to
take back a mortgage for a period, I think, of five
years without interest, that if the building was not
put up in six months or the erection or commence-
ment of the erection of the building was not com-
menced within six months they would reconvey the
land.

Q. On how many different occasions did you see 20
that agreement?

A. Three or four, three at least I know.

Q. And where were you when you saw it?

A. The first time I saw it was in Samuel Ireland's
home, in his little office.

Q. Did you ever see it in the presence of anybody
other than Mr. Ireland?

A. Yes, sir; because I induced Mr. Ireland to bring
it down to this party.

Q. Who was the party?

30

A. Benjamin R. Fox.

Q. Do you recall on what sort of a paper it was
written?

A. It was written on his letter head, the same as
the agreement between Fox and Ireland.

Q. Do you recall if it were signed?

A. Yes, sir.

Q. Who signed it?

A. Samuel Ireland first and then the Penn Motors Company by Scofield or Sofield, or some name like that, as president thereof.

Cross-examination.

By Mr. Cole:

10 Q. When before today have you told anyone about having seen this agreement?

A. Couple of days ago.

Q. Who did you tell?

A. Mr. Bourgeois and Mr. Fox. Mr. Fox knew it.

Q. When before that, did you tell anybody?

A. Oh, about, occasion came up about a year ago when Sam Ireland—Raymond Ireland asked me to go to Bridgeton with him to see this man Scofield.

Q. You saw it as late as a year ago?

20 A. No, sir; I didn't see it as late as a year ago. I spoke about it.

Q. When was the last time you saw it?

A. About four or five days after my first interview, after I first saw it in Samuel Ireland's hands in his office and held it in my own hand.

Q. Give us the year and month?

A. I beg pardon.

Q. Give us the year and month?

A. In 1922, the first week in November, it was the
30 first Sunday in November.

Q. 1922?

A. Yes, sir.

Q. You then saw it in Mr. Ireland's hands?

A. Yes, sir.

Q. Of course the six months had then expired, hadn't it?

A. I beg pardon?

Q. The six months you are talking about had then expired?

A. Appeared it had at the time I saw it.

Q. Don't you know it had?

A. I am pretty certain it did because the question came up.

Q. Where were you then?

A. In Mr. Ireland's office; in his home.

Q. How did you know that this paper was signed by Mr. Sofield? 10

A. It was my business to look and see because it had reference to the agreement.

Q. I know, but how do you know Mr. Sofield signed it?

A. I don't know, that is his signature was right there, somebody had to ——

Q. How do you know it was his signature?

A. I couldn't say that.

Q. What you mean to say is, you saw the name Sofield? 20

A. I saw the name Penn Motors Company, Sofield, or Scofield, whatever it was, president, and Samuel Ireland, above that.

Q. Have any witness?

A. Yes, there was one on the side of it.

Q. Who?

A. I don't recollect that.

Q. But the agreement provided that in case the building was not begin within six months from when? 30

A. Why this agreement—this agreement seemed to be dated about eight or nine months, maybe a little more, previous to the time Mr. Ireland dictated the agreement of sale between Benjamin Fox and himself.

Q. I say the agreement you say you saw in Mr.

Ireland's home provided that the building was to be begun or completed within six months from when?

A. From the time of the date of that agreement.

Q. What was the date of it?

A. It must have been about eight months previous to the time I saw it.

Q. Don't you remember the date it bore?

A. I don't remember the date it bore.

Q. What was to happen in case the building was
10 not begun or concluded or finished by that time?

A. The Penn Motors Company agreed to reconvey the property back to Mr. Ireland without cost to them.

Q. Had that in it too, did it?

A. Yes, sir, had that into it.

Q. The agreement describe the property?

A. I beg pardon.

Q. Did the agreement describe the property?

A. As block A on Shumway tract of lands, meadow
20 boulevard, something like that.

Q. What is your business?

A. Real estate and builder.

Q. Pleasantville?

A. Pleasantville, Lakewood, and all.

Q. Are you interested in having Mr. Fox get this property?

A. I was interested on behalf of Mr. Ireland, no other interest.

Q. Are you interested now in having Mr. Fox get
30 it?

A. Not in the least.

Q. Any commission coming to you for the sale of it in any way?

A. There is, yes, sir, the regular commission.

Q. To Fox?

A. No, sir; from the Ireland estate.

Q. I say from the sale from Ireland to Fox?

A. If it comes to me, yes, sir.

Q. So that you are interested in having this transaction set aside so that Fox could get this land, aren't you?

A. It is immaterial to me which way it goes.

Q. You know Ireland was under contract to sell to Fox, don't you?

A. He was at that time, certainly I know it.

Q. Mr. Fox is here in court, isn't he?

A. Yes.

10

Q. Don't you know that that fight is really to get this title in Mr. Fox?

A. Certainly I know it.

Q. And you are interested in getting a commission?

A. If I get it all right; if I don't, all right.

By Mr. Bourgeois:

Q. Mr. Brooks, just one question that you suggested to me; you spoke about being over with or over to Bridgeton to see Sofield or somebody? 20

A. I didn't go over; Mr. Raymond Ireland requested whether I couldn't go over with him and I couldn't get away that day.

By Mr. Cole:

Q. Have you stated all there was in the agreement? 30

A. All that I can remember, Mr. Cole.

Q. Can't remember anything else?

A. I beg pardon, there was also a part of that there at the bottom that in the event of the building being up that Mr. Ireland was to take back a mortgage for five years for forty-five hundred dollars without any interest.

Q. Is that all?

A. That is all I saw.

THOMAS B. WOOTTON, sworn for complainant.

Direct examination.

10 By Mr. Bourgeois:

Q. Mr. Wootton, did you know the Penn Motors Company and Mr. Sofield?

A. Yes, sir; I knew Mr. Sofield.

Q. Did you have occasion to go to Mays Landing with Mr. Sofield for the purpose of making a search or examining some titles?

A. Yes, sir.

20 Q. What property did you go over there to examine?

A. Why primarily a half block leading in on the boulevard about a square and a half or two squares from Franklin Avenue.

Q. Who was the owner of that property or who were the owners?

A. There were about five owners, one of them being Charles S. Adams.

Q. Now Mr. Sofield with you?

A. Yes, sir.

30 Q. Did you examine the deed to it?

A. Yes, sir; I showed him at least one of the deeds on that half block.

Q. At that time, what was the interest or what was the object of examining the deeds to that block at that time?

Mr. Cole: I object. How is this material?

Mr. Bourgeois: I am going to show finally this man knew about these restrictions before he entered into the agreement with Ireland and I am doing it for the purpose of showing what this was,

The Court: I will permit it for that purpose.

(Question repeated.)

A. The object was to determine for Mr. Sofield 10 whether there were restrictions on that particular property as would permit or prevent him from building the kind of factory which he proposed to build.

Q. Where there restrictions there?

A. Yes, sir.

Q. And did you show them to him or read them to him?

A. We read the deed or the copy of the deed from one of the record books including the restrictions.

Q. Now after that was done, was any conversation 20 had with you by Mr. Sofield relative to any other tract of land?

A. We talked at the same time about a tract which had been offered by Mr. Ireland.

Q. And what was said about that tract?

A. Mr. Sofield said that among other tracts he was offered was one offered by Mr. Ireland farther out on the boulevard, that Mr. Ireland had offered to convey it for a consideration that would not require cash, and, as I recall it, that he would take back 30 either stock, a large purchase money mortgage, or both, in payment of the consideration and that he felt favorably inclined to that block because of the terms. Do you wish my conversation with Mr. Sofield at the same time?

Q. Yes.

A. I told Mr. Sofield that I thought the block was

covered by the same original restrictions as the entire tract was under the original or West Atlantic Land Company and that on the prints of the Atlantic Land Company map are spots of water there that might have prevented the construction in the center of that particular block and we looked up that, read Mr. Ireland's deed, as Mr. Sofield testified yesterday.

Q. And that had the restrictions in it?

A. Yes, sir.

10 Q. Did you afterwards learn or know that he entered into an agreement with Mr. Ireland?

A. I understood from Mr. Sofield and from Mr. Ireland that he had completed an arrangement by which he would use that land but I didn't know whether—that is I didn't see a written agreement.

Q. When was that, if you can recall?

A. Well, it was in the, I think, the early fall of 1921.

Q. Do you know the date, or month?

20 A. Well, I can only check my memory on the time as it having been the time when the Penn Motors had just located in Pleasantville, I think they had a temporary shop in the old trolley car barn and that I was meeting with Mr. Sofield at a restaurant there quite often, but I—and it was about the same time that he was having conferences with the men interested in Pleasantville and having him locate there.

Q. But at that time he had not concluded any agreement with any of the properties, is that the idea?

30 A. Not the time we went to Mays Landing, because —

Cross-examination.

By Mr. Cole:

Q. Mr. Wootton, how do you know he had not concluded any agreement?

A. Because he was talking with me at that time in anticipation of closing one.

Q. Now do you know what month it was?

10

A. I think it was September.

Q. What time in September?

A. I couldn't place the date any more accurately than that.

Q. Have you any means of fixing that date definitely?

A. I might locate by an office journal my trip to Mays Landing on that day.

Q. You haven't that with you, of course?

A. No, I don't have.

20

RAYMOND IRELAND, SWORN.

Direct examination.

By Mr. Bourgeois:

Q. Mr. Ireland, Mr. Sofield stated yesterday that there had been no request, as I recall, on him to re- convey the property; did you ever, after this agree- ment had been entered into between him and your father, have any transaction or negotiation with him looking toward the reconveyance of that property to your father? 30

A. I did.

Q. Will you state what it was and when it was?

A. I went to Philadelphia on one occasion —

Q. In what year?

A. It was about, I would say it was a year or so after he had signed the agreement with my father.

Q. When with relation to the time that your father entered into this agreement to convey to Fox, if you know, before or after?

A. It was right after.

10 Q. You went to Philadelphia and what did you do?

A. I went to Philadelphia at their office on Broad Street and Mr. Sofield was, so I was informed —

Mr. Cole: May it please your Honor, that is a part of their case to show that some demand was made. If he simply wants to show that Mr. Sofield was wrong when he said no demand was made and one was made I don't object to that, but I certainly object to going into a conversation with Mr. Sofield
20 who is not here, I think.

The Court: Yes, he is sitting beside you.

Mr. Cole: I didn't know it. This is a part of their case.

The Court: Technically that is so. I will permit it, however.

30 A. I was informed by Mr. Sofield's brother that he was out of town, he was at some factory, I don't know what factory. Asked me if I could leave him any message and I told him I had come up there with regards to the letter —

Mr. Cole: This is not with Mr. Sofield.

Q. Don't tell what you said to the other man except you wanted him to tell Mr. Sofield something.

Mr. Cole: Mr. Sofield admitted that; he admitted all the letters.

A. He admitted my father's letter.

Q. You didn't find him there?

A. I didn't find him there.

Q. You came home without seeing him?

10

A. Yes.

Q. What happened after that?

A. I went back after that and I saw Mr. Hilton Sofield himself and I asked him if he had ever done anything with regards to turning it, and he said no, he would take it before the board, and I came back; I didn't hear from him for a long while, so I located him in Bridgeton; I went to Bridgeton; I saw Mr. Hilton Sofield; he asked me to have a letter sent to him by an attorney and he would turn it over to the board and see what he could do. Mr. William I. Garrison sent them a letter. I think he told me that they would meet on Wednesday; on Wednesday I called at Philadelphia and he was in Bridgeton; I went to Bridgeton again and I saw Mr. Sofield and he said he didn't receive the letter.

20

Q. He said he did or did not?

A. He said he did not receive a letter and why didn't I send it? I said that Mr. Garrison had sent it, I was sure, and he said well, it wouldn't make any difference, we didn't meet anyhow, the directors didn't meet, and we have another meeting," I think he said on the following Wednesday. I said, "All right, I will see that you get a letter." I came back, went to Mr. Garrison and asked him if he sent the letter and he stated he did. And I asked him then to write another letter and I would take it personally

30

to Mr. Sofield and I would know that he got it. He wrote another letter and I went down and got Mr. Fox to go over with me, went over to Bridgeton, went up to Mr. Sofield's office, Mr. Sofield was there with some of his men, and we came down and sat in Mr. Sofield's car out in front of the office. We went over the transaction and something was said between Mr. Sofield and myself that he got a little hot under the collar, got out of the car, and said "we can fight as
10 good as you can" and he got out of the car, shook hands with Mr. Fox, he said there was no hard feelings between Mr. Fox and he, and I still had the letter in my pocket. I said to Mr. Fox "I better give this letter to him," so I got out of the car and went over to Mr. Sofield and handed him the letter.

Q. What did he do with the letter?

A. He opened the letter and read it over.

Q. During any of these conversations which you had or came in contact with Mr. Sofield did he ever
20 contend there was no such agreement he should convey?

A. He never said there was no agreement until the last time I told him there was an agreement; he said there wasn't and we couldn't produce it.

Q. Mr. Fox was there, you say?

A. Mr. Fox was with me, yes, sir.

BENJAMIN R. FOX, recalled.

Direct examination.

By Mr. Bourgeois:

Q. Mr. Fox, were you present with Mr. Ireland at Bridgeton on one occasion to see Mr. Sofield?

A. I was.

10

Q. Will you say what took place there?

A. Mr. Ireland and I went up to Mr. Sofield's office. They have an office upstairs. Went up and saw him. He had a number of salesman there and he asked us to come down. We went in his car. Mr. Ireland then asked him about the return of the deed for this property and they seemed to get into words very quick, and Mr. Sofield jumped out of the car and he says, "We can fight as well as you can, if that is the attitude you take," and he shook hands with me and apologized for his manner and Mr. Ireland got out of the car then and gave him the letter and he stood on the sidewalk, and he stood there, the three of us, and Mr. Sofield read the letter.

20

Q. Make any remark after he read the letter?

A. No, I don't think he spoke to either of us after that.

No cross-examination.

TESTIMONY CLOSED.

30

NOTICE OF APPEAL.

(Filed January 16, 1925.)

IN CHANCERY OF NEW JERSEY.

10

Between

MARGARET IRELAND, EX-
ecutrix,*Complainant,*

and

PENN MOTORS CORPORA-
TION, a corp., &c.,*Defendant.*On Bill, &c.
Notice of Appeal.

20

*To Bourgeois & Coulomb, Esqs., Solicitors of Com-
plainant:*

The defendant hereby appeals from so much of the order made in this court on the 17th day of December, 1924, as decrees that complainant has a cause of action on the written agreement set forth in the bill of complaint, and transfers the cause to the New Jersey Supreme Court, Atlantic County Circuit, for trial, to the Court of Errors and Appeals in the last resort in all causes.

Dated January 9, 1925.

ALBERT C. ABBOTT,
Solicitor for Defendant.

Notice of Appeal

99

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

C. L. COLE,
Of Counsel with Defendant.

[ENDORSED]

Service acknowledged this 13th day 10
of January, 1925.

Bourgeois & Coulomb,
Solrs. for Complainant.

20

30

PETITION OF APPEAL.

(Filed Jan. 15, 1925.)

NEW JERSEY COURT OF ERRORS
AND APPEALS.

10

Between

MARGARET IRELAND, EX-
ecutrix,*Complainant-
Respondent,*

and

PENN MOTORS CORPORA-
TION, a corp., &c.,

20

*Defendant-
Appellant.*On Bill, &c.
Petition of Appeal.

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

30 The petition of Penn Motors Corporation, a corporation, &c., the appellant in the above stated cause, respectfully shows that your petitioner finds itself aggrieved by an order made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date the 17th day of December, 1924, wherein the said Margaret Ireland, Executrix, was complainant, and Penn Motors Corporation, a corp., &c., was defendant, and from so much thereof that decrees that complainant

has a cause of action on the written agreement set forth in the bill of complaint, and transfers the cause to the New Jersey Supreme Court, Atlantic County Circuit for trial, when it should have dismissed the bill. And your petitioner humbly appeals from that part of said order of the said Chancellor upon the ground that the same is erroneous. Your petitioner therefore prays that the said order of the said Chancellor may be, in the particulars aforesaid, reversed, set aside and for nothing holden. And that your 10
petitioner may have such relief in the premises as to his honorable Court shall seem meet.

ALBERT C. ABBOTT,
Solicitor for Defendant.
C. L. COLE,
Of Counsel.

[ENDORSED] 20

Service acknowledged this 13th day
of January, 1925.

Bourgeois & Coulomb,
Solrs. of Respondent.

30

ANSWER TO PETITION OF APPEAL.

Formal answer to petition of appeal.

has a copy of action on the writ of habeas corpus
 forth in the bill of complaint, and transfers the same
 to the New York Superior Court. (Article 10, § 1)
 Court for trial when it should have dismissed the
 bill and set aside the writ of habeas corpus from the
 part of said order of the said Superior Court. Your petition
 grounds the petition in error. Your petition
 therefore prays that the said order of the said Court
 be set aside and the writ of habeas corpus be set aside
 and the writ of habeas corpus be set aside. And that you
 be restored to the possession of the premises as
 to his household and shall have costs.

Answer of Appeal
 Superior for Defendant
 C. J. O'Connell
 Of Counsel

20

[Answer]

Service acknowledged this 18th day
 of January, 1925
 Bourgeois & Goulet
 Solicitors for Respondent

20

ANSWER TO PETITION OF APPEAL

Answer to petition of appeal
 of the respondent
 in the above entitled case

OFFICE SUPPLY CO.

BALTIMORE

Faint, illegible text, likely bleed-through from the reverse side of the page. The text is mirrored and difficult to decipher.

end of five years, by a reconveyance.

Consideration of the entire facts would indicate that such was the agreement and that it was a reasonable agreement between them. Mr. Ireland was interested in Pleasantville. If it was not so testified, it is generally known, being interested to a large extent in real estate in that city. He, with many others, were desirous that industries should be brought to the city. He was willing for the sake of having that industry there, to forego any present receipt of cash or of interest for the deferred payment for his land provided it was so used. Of course, if it was not used for that purpose, there would have been no interest in Mr. Ireland divesting himself of this property and placing it in another without consideration, because although the mortgage is the consideration for the conveyance, the terms of that mortgage provide that payment of it could be by a reconveyance. That would be reasonable if the building was placed thereon. If the building was placed there in the six months and they endeavored to make a profitable business and failed, if it is reconveyed to Ireland, of course, any buildings built thereon would become a part of the real estate, therefore there would be a consideration in Ireland for a reconveyance of this property at the end of five years.

Comment has been made as to the fact that this defendant company paid the taxes, an examination of the tax bills and checks show they paid no taxes upon these premises until this very agitation arose; that after Mr. Ireland, Jr. had called upon them demanding a return, they after that date and after, as was testified to, the lawsuit was invited or he said to him he would fight, them, and as one of the elements, perhaps, taxes are paid, and an examination shows that they were not paid until after that time. The fact that this company immediately or at least after the conveyance placed this property upon the

trial balance of their company as an asset of ten thousand dollars, for which they did not pay a cent, is an indication that at least they had obtained something for nothing and something of a considerable and great value.

Those are the facts as I find them, generally speaking, but I am in serious doubt as to how this court can grant any relief in this matter. It seems to me quite clear under the circumstances as I find them, finding, as it is admitted, no fraud in the matter, and not finding that this contract was to become a part of either the deed or the mortgage, it seems to me quite clear that this is a matter that the law courts have original jurisdiction and unless counsel desires to cite some cases or authorities to show me that I am wrong upon that Point, I will have to advise a decree dismissing the bill, but in such form that it will not prevent the complainants from bringing their action in the law court. If counsel desire to attempt to convince me --

MR. BOURGEOIS: I am not very enthusiastic over being able to find the case but I would like to have a couple of days to see if I can.

THE COURT: This matter will be continued until next Tuesday for that purpose.

- - - - -

Faint, illegible text at the top of the page, possibly bleed-through from the reverse side.

OFFICE SUPPLY CO.

BATHING

Faint, illegible text in the middle section of the page.

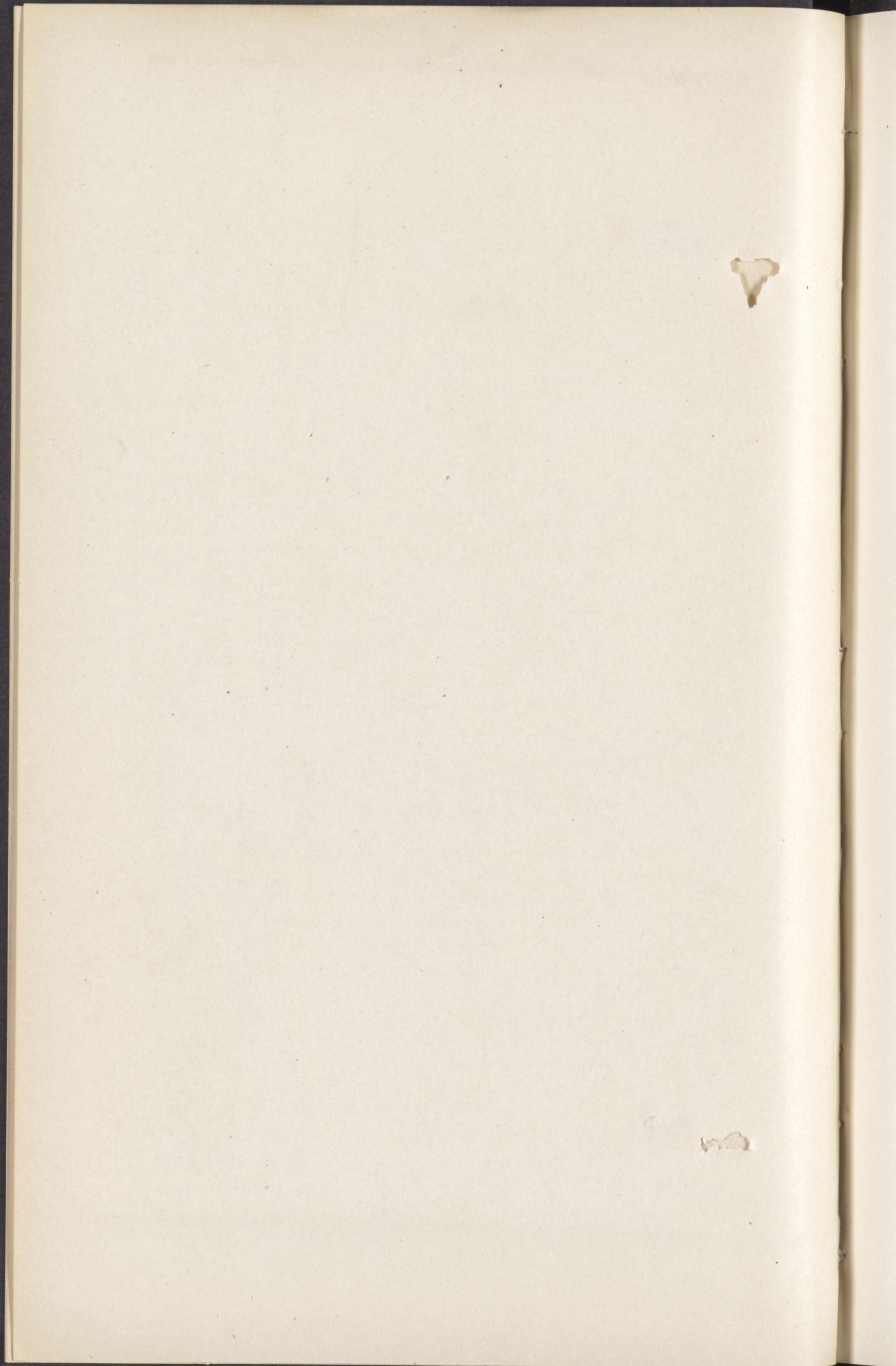
Faint, illegible text in the lower middle section of the page.

Faint, illegible text at the bottom of the page.

OFFICE SUPPLY CO.

BALTIMORE





NEW JERSEY COURT OF ERRORS AND
APPEALS.

Between

MARGARET IRELAND, Executrix, &c.,
Complainant-Respondent,

and

PENN MOTORS CORPORATION, a corporation, &c.,
Defendant-Appellant.

ON APPEAL.

BRIEF OF COMPLAINANT-RESPONDENT.

The bill in this cause was filed during the lifetime of Samuel Ireland, who was a party to an agreement to transfer a tract of land in Atlantic County to Penn Motors Corporation, upon certain conditions. The agreement was reduced to writing, but had been lost, and could not be produced upon the trial.

The bill was founded on fraud upon the part of the Penn Motors Corporation. The evidence of the fraud, insofar as complainant was concerned, rested in the breast of complainant, alone.

Just prior to the hearing, the complainant, Samuel Ireland, died. His wife was substituted as party-

complainant, and the case was heard before Vice-Chancellor Ingersoll, to whom it had previously been referred.

At the hearing, testimony was produced which satisfied the Vice-Chancellor that there was an agreement in writing between the parties, signed by both parties, and that by the terms of said agreement, Penn Motors Corporation agreed to re-convey said premises to complainant, Samuel Ireland, in the event that the Penn Motors Corporation should fail to erect a building upon said lands within the period of six (6) months from the date of the deed to Penn Motors Corporation. It was admitted that no such building had been erected.

Upon the argument, it was urged by solicitor for defendant that the remedy, as disclosed by the testimony was at law and not in the Court of Chancery.

The Court took this view, and entered an order transferring the cause to the law court. From this order, defendant-appellant prosecutes this appeal.

The Transfer of Causes Act (P. L. 1912, p. 417), as amended by Act of 1915 (P. L. 1915, p. 39), provides that no civil cause or matter pending in any of the courts mentioned which had not jurisdiction of the subject matter shall be dismissed for that cause only, but the cause shall be transferred with the record to the proper court.

The amendment of 1915, provides: Such transfer may be made at any stage of the proceedings, and upon, or without, application, and subject to rules, &c."

In the case at hand, the Court of Chancery had jurisdiction of the subject matter, which was fraud. It had jurisdiction of the parties by reason of process served upon the defendant. The issue tendered by complainant's bill *prima facie* conferring juris-

diction upon the Court of Chancery in this particular cause, and that upon the trial of the cause, by reason of the death of complainant, Samuel Ireland, there was no evidence of fraud in the transaction, but it appeared to the satisfaction of the Court that complainant had a valid claim against the defendant in a court of law. In other words, as the cause stood upon the taking of the proof, the suit was cognizable in a court of law, but not in a court of equity, and the Vice-Chancellor thereupon made the order transferring same to a court of law.

There is nothing in the Transfer of Causes Act which indicates the time at which failure in the jurisdiction of the Court must appear. The only test is whether or not at the time of the trial, the Court was without jurisdiction to determine the matter, and in the case at hand, there being no jurisdiction in the Court to determine the matter at the time the hearing took place, it is submitted it was entirely within the jurisdiction of the Court of Chancery to transfer said cause to the law court, which would have jurisdiction of the matter which had been submitted to the Court of Chancery.

The Transfer of Causes Act does not provide for a transfer only in cases whereby the pleadings the wrong court has been selected. Such a provision would have been no advantage over the old law which required a dismissal and a new suit. For the purpose of avoiding the delay and expense in such matters, the Transfer of Causes Act was enacted, and such a situation as appears in this case is within the direct terms of the act, which provides that the "Transfer may be made at any stage of the proceedings."

It was conceded upon the argument, and is conceded here, that at the time of the filing of the complaint, assuming complainant, Samuel Ireland,

had lived and his testimony had been available, the court of equity would have had jurisdiction not only to have heard the matter, but to have determined it. But, death intervened, and proof of fraud was thereby impossible by complainant, and the trial showed that the Court of Chancery had not jurisdiction to determine the matter, and it is submitted that a want of jurisdiction in a court of a transfer of causes action which justifies a transfer to another court means lack of jurisdiction to determine the cause, not simply lack of jurisdiction to hear the cause, because jurisdiction of the subject matter, jurisdiction over the parties, and an issue may confer *prima facie* jurisdiction to hear a cause upon the Court, but, if upon the hearing it appears that from the evidence submitted, the Court is without jurisdiction to determine the matter, then within the transfer act, the Court is without jurisdiction and transfer should be made.

That this is the intent of the act is indicated by paragraph 1 of the original act of 1912, which says:

“But the cause or matter shall be transferred with the record thereof and all papers filed in the cause, for hearing and determination to the proper court.”

Respectfully submitted,
BOURGEOIS & COULOMB,
Sols. for and of Counsel with
Complainant-Respondent.

INDEX

	PAGE
Amended Notice of Appeal	1
Petition of Defendants	2
Answer to Petition of Appeal	17
Bill of Complaint	18
Amended Answer to Bill of Complaint in Suit to Foreclose a Mortgage	28
Replication	46
Order of Reference	46
Case	47
Final Decree	182
Conclusions	185
Notice	192
Affidavit of Frank Hendrick	193
Telegram Telephone to Western Union	226
Copy of Answer to Telegram	227
Affidavit of Dorothy W. Binkely	227
Order Denying Application for New Trial ...	229

TESTIMONY FOR COMPLAINANT

Ralph L. Kilby:	
Direct	49
Cross	54
William H. Zabriskie:	
Direct	66
Cross	68
Morgan Holloway:	
Direct	82
Cross	83

TESTIMONY FOR DEFENDANTS

John H. Himmelman:	
Direct	84, 115
William Zabriskie:	
Direct	89, 116

had lived and his testimony had been available, the court of equity would have had jurisdiction not only to have heard the matter, but to have determined it. But, death intervened, and proof of fraud was thereby impossible by complainant, and the trial showed that the Court of Chancery had not jurisdiction to determine the matter, and it is submitted that a want of jurisdiction in a court of a transfer of causes action which justifies a transfer to another court means lack of jurisdiction to determine the cause, not simply lack of jurisdiction to hear the cause, because jurisdiction of the subject matter, jurisdiction over the parties, and an issue may confer *prima facie* jurisdiction to hear a cause upon the Court, but, if upon the hearing it appears that from the evidence submitted, the Court is without jurisdiction to determine the matter, then within the transfer act, the Court is without jurisdiction and transfer should be made.

That this is the intent of the act is indicated by paragraph 1 of the original act of 1912, which says:

“But the cause or matter shall be transferred with the record thereof and all papers filed in the cause, for hearing and determination to the proper court.”

Respectfully submitted,

BOURGEOIS & COULOMB,

*Sols. for and of Counsel with
Complainant-Respondent.*