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Bill of Complaint.

Filed July 23, 1915.

IN CHANCERY OF NEW JERSEY

Between

HARRY FREEDMAN,
Complainant,

and

ISAAC FINEBURG,
Defendant.

On bill for accounting and appointment of receiver, and injunction.

Bill.

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

Complaining, shows unto your Honor, your orator, Harry Freedman, of the City of Trenton, in the County of Mercer and State of New Jersey.

1. That on the twenty-fourth day of July, nineteen hundred and seven, your orator and the defendant, Isaac Fineburg, entered into articles of agreement in writing, by which your orator and the said Isaac Fineburg became partners in business under and by the firm name and style of "Trenton Scrap Rubber Supply Company," for the purpose of buying and selling scrap rubber; that said copartnership commenced on said date and was to continue from

year to year thereafter until terminated as provided in said agreement; that your orator contributed to the said copartnership the sum of Seven thousand two hundred and fifty-five dollars and fifty cents in cash and merchandise, and said Isaac Fineberg contributed the sum of Six thousand one hundred and nine dollars in cash and merchandise; that it was agreed in said articles of copartnership that at all times during the continuance of the copartnership your orator and the said Isaac Fineburg would each give their attendance and their best endeavors and skill to the prosecution of the said business; that they shall equally bear the expenses and said business and equally share the profits and gains therein; that all losses sustained in said business should be borne and paid equally between them; that it was further agreed in said articles of copartnership that there should be kept at all times perfect, just and true books of account, wherein each of the copartners should enter and set down all moneys by them received or expended in and about the said business as well as all the goods and merchandise bought or sold on account of said business, and all other matters and things appertaining to the business of said copartnership; that said books should be used in common between them, and that either should have access thereto without any hindrance of the other; that neither your orator or the defendant, Isaac Fineburg, should subscribe any bonds, sign or endorse any note of hand, accept, sign or endorse any draft or bill of exchange, or assume any other liability, verbal or written, either in his own name or the name of the firm, for the accommodation of any other persons or person, without the consent in writing of the other party, or lend any of the funds of the copartnership without such consent of the other party; that it was

further provided in said articles of agreement that upon the dissolution of the said copartnership either party may make in writing an offer to the other of the price at which he will buy the interest of the other, or sell to the other his own interest; that such other party shall thereupon within thirty days signify his election to buy or sell at that price, and if he fails to do so by notice in writing within that time, the party making such offer may within thirty days buy or sell at his own election according to his offer; that it was further provided in said articles of agreement that in case of the violation of any of the covenants and obligations by either of the parties thereto, that the other party may at his option dissolve the copartnership, by giving written notice of his election so to do, within ten days after being informed of said violation; that after the expiration of the first year of the copartnership either party may, at his election, dissolve the copartnership by giving three months' notice in writing of his intention so to do; that it was further provided in said articles of agreement that at the end of the copartnership the said copartners (in the event that no offer to buy or sell had been given) each to the other should make a true and just final account of all things relating to their partnership, and in all things truly adjust the same; that the assets remaining should be divided between your orator and the said Isaac Fineburg equally. A true copy of the articles of copartnership are hereto annexed and made a part hereof.

2. That in pursuance of the said articles of agreement and copartnership your orator and the said Isaac Fineburg engaged in business as copartners under the firm name and style of "Trenton Scrap Rubber Supply Company"; that the said partnership was continued

from year to year; that your orator and the said Isaac Fineburg, as copartners, purchased real estate located on the southerly side of Perrine Avenue, in the City of Trenton, having a frontage of one hundred and fifty feet and a depth of approximately of one hundred feet; that a siding extended from said property to the line of railroad known as the Belvidere division of the Pennsylvania Railroad Company; that upon said real estate there has been erected a four story brick building having a frontage of fifty feet and a depth of approximately one hundred feet, and an iron building seventy-two feet front, by thirty-four feet in depth, and a stable; that the value of said lands and the improvements thereon is approximately twenty-two thousand eight hundred dollars; that said copartnership business prospered; that the stock in trade consisting of all kinds of scrap rubber was on or about the twenty-second day of June, nineteen hundred and fifteen, valued at from Fifty-seven to Sixty thousand dollars; that the said copartnership also had as of that date other assets in the form of accounts receivable and cash in bank, wagons, horses, scrap metal, fixtures, office furniture, trucks, presses, etc., of a value of about Twenty-four thousand dollars, and that the debts of said copartnership were approximately Fifteen thousand dollars.

3. That your orator advanced to the partnership further contributions of capital, for which he received credit upon the books of the copartnership; that the said Isaac Fineburg on numerous occasions withdrew funds from the copartnership in excess of the moneys withdrawn by your orator; that these withdrawals were entered upon the books of said copartnership; that about two years ago the said Isaac Fineburg became interested in a corporation known as the Leicester Rubber Company, having a rubber manufactur-

ing plant at Catasauqua, Pennsylvania; that without the knowledge of your orator the said Isaac Fineburg withdrew from the funds of said copartnership the sum of Twelve thousand five hundred dollars for the purpose of paying for shares of capital stock purchased by him in the said Leicester Rubber Company; that subsequently the said Isaac Fineburg from time to time loaned, without the consent in writing of your orator, and without the knowledge of your orator, large sums of money to the said Leicester Rubber Company for the conduct of its business; that the said Isaac Fineburg, against the protests of your orator, extended for the said copartnership credit to the said Leicester Rubber Company in the matter of sales of scrap rubber to said Leicester Rubber Company, beyond the credit warranted by the standing and rating of the said Leicester Rubber Company, and against the protests of your orator; that the said Leicester Rubber Company, notwithstanding the protests of your orator, was permitted by the said Isaac Fineburg, to purchase goods to approximately the amount of Nine thousand five hundred dollars, for which the said Leicester Rubber Company did not pay, and which sum was owing to the said copartnership when the said Leicester Rubber Company was adjudged a bankrupt in the month of September, nineteen hundred and fourteen; that your orator subsequently discovered that in violation of the terms and provisions of said agreement of copartnership of July twenty-fourth, nineteen hundred and seven, hereinbefore referred to, the said Isaac Fineburg had endorsed a promissory note for the sum of Ten thousand five hundred dollars made by the Leicester Rubber Company, and that he had then used the funds of the copartnership, without the consent in writing or the knowledge of your orator, to purchase said promissory note, and that

said promissory note was in the possession of the copartnership at the time that the said Leicester Rubber Company was adjudged bankrupt.

4. That by reason of the violation of said agreement of copartnership made by the said Isaac Fineburg, your orator expressed to the said Isaac Fineburg his desire for a dissolution of said copartnership; that thereupon it was agreed between your orator and the said Isaac Fineburg that the said copartnership should be mutually dissolved; that each waived the provisions of the articles of copartnership with reference to the giving of notice of dissolution; that upon the twentieth day of April, nineteen hundred and fifteen, an arbitration agreement was made and executed between your orator and the said Isaac Fineburg, under which certain matters appertaining to said dissolution were to be submitted to arbitrators; that pending said arbitration said Isaac Fineburg requested that your orator submit to him an offer to purchase all his right, title and interest in the business of the copartnership, and in said offer to give to the said Isaac Fineburg the option to purchase the right, title and interest of your orator in said copartnership; that thereupon upon the twenty-first day of June, nineteen hundred and fifteen, your orator submitted to the said Isaac Fineburg a proposal as follows:

To Isaac Fineburg:

I hereby submit to you for your approval the following offer to purchase all your right, title and interest in and to the partnership business heretofore carried on between us, trading as Trenton Scrap Rubber Supply Company:

1. Property to be conveyed to me shall include all your right, title and interest in and to the real es-

tate owned by said partnership, and in all and singular the goods and chattels, furniture and fixtures, rubber goods and materials, stock in trade, merchandise, horses, wagons and other vehicles, book and other debts, accounts receivable, credits, contracts, assets, effects, business and good will of the said partnership heretofore carried on between us, trading as Trenton Scrap Rubber Supply Company.

2. In consideration of the conveyance to me of the above-mentioned property and effects of said partnership, I will pay you the sum of Twenty-five thousand dollars ($25,000) in manner following, that is to say:

Five thousand dollars ($5,000) in cash within five days after your acceptance of this offer or proposal;

Five thousand dollars ($5,000) in cash within twenty days after your acceptance of this offer or proposal; and the balance

Fifteen thousand dollars ($15,000) in three promissory notes, each made by me to your order, in the sum of Five thousand dollars ($5,000) payable three months after date; each of which promissory notes is to be renewed every three months upon payment to you of five hundred dollars ($500) in cash on account of the principal of each of said notes.

3. I will pay all the debts and discharge all the liabilities of the said partnership, and will, at all times hereafter, effectually keep you, and your executors and administrators, and your and their estate and effects, indemnified against all such debts and liabilities, and all actions, proceedings, costs and expenses in respect thereof.

4. Upon the consummation of said sale, as herein provided, each of us shall release and forever dis-

charge the other, his heirs, executors, administrators and assigns, from all actions, proceedings, claims and demands whatsoever, which such respective releasing party, or his heirs, executors, administrators or assigns, now has or hereafter might have had against the other, his heirs, executors, administrators or assigns, on account of the said partnership, or anything relating thereto; and I will especially release you from all claims and demands of every kind and nature, which I now have or hereafter might have against you by reason of a certain promissory note in the sum of Ten thousand five hundred dollars ($10,500), made by the Leicester Rubber Company to the order of A. DePiano, H. Bernstein and I. Fineburg and endorsed by same, of which I. Fineburg was an accommodation endorser and which note is now held and owned by said partnership; it being understood and agreed, however, that the surrender and discharge of this said promissory note, and the extinguishment of your liability as endorser, shall not deprive me of the right to collect and receive the dividends which have been declared, or which may hereafter be declared, by the Trustee in bankruptcy of the said Leicester Rubber Company, now bankrupt.

5. It is understood and agreed, that in case you desire to purchase all my right, title and interest in and to the said partnership business heretofore carried on by us, trading as Trenton Scrap Rubber Supply Company, that I will and do hereby agree to sell and convey to you all my right, title and interest of every kind and description in and to the said partnership, and all its property and assets, upon the same terms and conditions hereinbefore specified, which I have agreed to take and accept for the conveyance of all my right, title and interest in and to the said partnership.

6. This offer shall remain open for acceptance until Tuesday morning, June twenty-second, A. D., nineteen hundred and fifteen, at ten A. M.; and unless you agree to either buy or sell, in accordance with this offer, and give notice of such decision before said time, this offer shall become null and void.

7. In case you elect to purchase all my right, title and interest in and to said partnership, as hereinbefore provided, it is understood and agreed that in addition to the purchase price above named, I shall also receive all moneys which I have in the said partnership business in excess of the moneys in said business belonging to you, which moneys are to be paid to me in the same ratio or proportion, as to cash payments and notes, as the above mentioned purchase price of my one-half interest is to be paid to me under the terms hereof.

8. It is further understood and agreed, that if you elect to purchase my interest in said partnership business, that your liability to pay the debts and obligations of the said partnership, as provided herein, shall not extend to nor include any debts or liabilities greater in the aggregate than the sum of One thousand dollars not at present appearing on the partnership books of account; and that in case I purchase your interest in said partnership, my liability to pay the debts and obligations of the said partnership shall not extend to nor include any debts or liabilities greater in the aggregate than the sum of One thousand dollars not at present appearing on the partnership books of account.

Dated the twenty-first day of June, A. D., nineteen hundred and fifteen.

H. FREEDMAN.

5. That on the twenty-second day of June, nineteen hundred and fifteen, the said Isaac Fineburg accepted the offer of your orator to sell his interest in the copartnership known as the Trenton Scrap Rubber Supply Company, in accordance with the offer of your orator under date of June twenty-first, nineteen hundred and fifteen; that said acceptance was in the following form:

"June 22, 1915.

To Harry Freedman,

I do hereby give you notice that I accept your offer to sell to me all your interest &c., in the firm of Trenton Scrap Rubber Supply Company in accordance with your offer made to me and dated June 21st, 1915.

ISAAC FINEBURG."

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6. That by reason of the making of said agreement of sale the arbitration agreement between your orator and the said Isaac Fineberg was abrogated and abandoned; that the said defendant, Isaac Fineburg, paid to your orator on account of the consideration of said agreement of purchase and sale, the sum of Ten thousand dollars, and delivered to your orator three promissory notes for Five thousand dollars each, dated June twenty-sixth, nineteen hundred and fifteen, and payable three months after date; that your orator at this time presented a statement of the amount of excess which he had in the partnership over and above the interest of the said Isaac Fineburg, which statement is as follows:

To Isaac Fineburg and Scott Scammell, his attorney:

Gentlemen:

I herewith present a statement of the amount of excess which Harry Freedman has in the partnership with Isaac Fineburg, trading as the Trenton Scrap Rubber Supply Company:

1. To excess covering a period from July 1, 1912, to Jan. 1, 1915, averaging $17,522.71.	
Interest on said sum for 2 years and 6 months,	$2,628.40
2. To excess which Harry Freedman had in said business from Jan. 1, 1915, to June 22, 1915,	14,088.52
To 6 months interest on said sum,	420.74
3. To promissory note paid by said partnership for Leicester Rubber Company, for the benefit of Isaac Fineburg,	10,500.00
4. To discount on C. Edward Murray note of $2,500.00,	50.14
5. To one week's salary from June 20, 1915, to June 26, 1915,	50.00
	27,737.80

Yours truly,

H. FREEDMAN.

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7. That upon the presentation to him of the statement set forth in the last preceding paragraph the said Isaac Fineburg disputed the amount of said excess; that thereupon your orator expressed a willingness to have the amount of said excess ascertained by arbitration, provided the said Isaac Fineberg would

in the meantime secure the payment of the amount of excess found to be due to your orator by providing security for the payment thereof; that subsequently the said Isaac Fineburg, through his counsel, refused to assent to the terms of the arbitration agreement submitted by your orator, through his counsel; that in the meantime your orator discovered that the said Isaac Fineburg had taken full possession of the property, real and personal, of every kind and description, of the said copartnership, the Trenton Scrap Rubber Supply Company; that he had changed the locks upon the doors of the buildings of the said copartnership real estate; that he claimed that by virtue of the payment on account of the purchase price of the interest of your orator in said copartnership he was entitled to the full possession of all the property, real and personal, rights, credits and accounts of the said copartnership, and was the sole owner thereof; that moneys derived from the sale of the goods of said copartnership he did not deposit to the credit of said copartnership but deposited the same to his own credit.

8. That your orator contended and does contend that the terms of the offer made by your orator and accepted by the said Isaac Fineburg, provide that part of the consideration to be paid to your orator is the amount of your orator's interest in said copartnership business in excess of the interest of the said Isaac Fineberg in said copartnership business; that until said excess is paid to your orator the said Isaac Fineberg has no power, right or authority to assume control of the said copartnership business to the exclusion of your orator and conduct the same as his sole and separate business, as he is now doing; that when your orator ascertained the attitude of the said Isaac Fineburg your orator elected to rescind said option agreement of June twenty-first,

nineteen hundred and fifteen, in the event of the failure to pay forthwith the balance of the consideration, and thereupon executed and personally delivered to the said Isaac Fineburg on the fifteenth day of July, nineteen hundred and fifteen, at the office of the said Trenton Scrap Rubber Supply Company, the following notice:

To Isaac Fineburg:

You are hereby notified that under the terms of the agreement, by which you agreed to purchase all the right, title and interest of me, Harry Freedman, in and to the partnership between you and me under the trade title of the Trenton Scrap Rubber Supply Company, and you have failed to pay to me, the said Harry Freedman, the sum of Twenty-seven thousand seven hundred and thirty-seven dollars and eighty cents ($27,737.80), being the amount of excess which I, the said Harry Freedman, have in said partnership business over the amount in said business belonging to you, in the manner and within the time prescribed by said option agreement, and that by reason thereof the purchase by you of my interest in said business is not complete.

You are further notified that said sum of money is now due and unless the payment of such sum of money is made forthwith, that I will rescind said option agreement and will return, and do hereby offer to return, to you the Ten thousand Dollars ($10,000.00) paid by you in cash to me on account of said option agreement, and also surrender to you the three promissory notes given by you to me for Five thousand Dollars ($5,000.00) each on account of said purchase.

You are further notified that the property and business of said partnership does not belong to you, and that any use or disposition of said partnership

property by sale or otherwise on your part is or will be unlawful, and that I shall hold you to account for all partnership property which you have used or disposed of, or which you may use or dispose of.

You are further notified to restore all locks on the partnership premises which you have removed, and by which you have attempted to deprive me of access to said premises belonging to said partnership.

Trenton, N. J., July 15, 1915.

H. FREEDMAN.

9. That on the sixteenth day of July, nineteen hundred and fifteen, your orator went to the office of the said copartnership, the Trenton Scrap Rubber Supply Company, on Perrine Avenue, in the City of Trenton, and started to go into the office of the said co-partnership; that your orator found that the door was locked; that an employee then opened the door on a crack and stated to your orator that he would have to wait until Mr. Fineburg came in; that nevertheless your orator went into the said office and sat down, and in a few minutes the said Isaac Fineburg came in and said to your orator, "Freedman, you will have to go out, I don't want you here in this office"; that your orator said, "No, I will stay here and attend to my business"; that the said Isaac Fineburg then said to your orator, "No, you will have to go out, you have nothing to do here"; that when your orator stated that he would not go out the said Isaac Fineburg said, "I will throw you out"; that thereupon he called four men and told them to throw your orator out of the said office; that thereupon the said four men at the direction of the said Isaac Fineburg took hold of the arms and legs of your orator and threw him out of the office of the said co-partnership.

10. That later on the said sixteenth day of July, nineteen hundred and fifteen, the said Isaac Fineburg served upon your orator a notice of which the following is a copy:

To Harry Freedman:

Replying to your notice of July 15th, 1915, I beg to say that I have purchased all your right, title and interest in the property, real and personal, of the former partnership existing between you and me, and known as Trenton Scrap Rubber Supply Company, and have paid the consideration therefor in the manner provided in the agreement to purchase; further, I have at all times been, and now am, ready and willing, and do hereby again proffer to pay you any and all excess monies that you may have in the said former partnership business over and above the monies thereof belonging to me, in the same ratio and proportion as to cash payments and notes as the purchase price of your interest was required to be and was paid.

Further, I do hereby deny that you have $27,783.37, or any other sum, of monies in said former business in excess of my interest therein. To determine this issue between us I am perfectly willing to submit the question to competent arbitrators, or in the last resort, to have a court of competent jurisdiction adjudicate the question. I want you to have all that you are entitled to under our contract, but decline to accept your arbitrary determination of the fact of excess and the amount.

Further, I demand that you forthwith make, execute and deliver to me proper instruments in the law, transferring and conveying to me all of your right, title and interest in the real estate owned by the said former partnership, and in all and singular the goods and chattels, furniture and fixtures, rub-

ber goods and materials, stock in trade, merchandise, horses, wagons and other vehicles, book and other debts, accounts receivable, credits, contracts, assets, effects, business and good will of the said partnership heretofore carried on between us, trading as Trenton Scrap Rubber Supply Company.

And I do further notify you that the former partnership existing between us has been dissolved, and that inasmuch as I am the absolute lawful owner of the business, and have legal title to so much of the partnership property as has already been delivered to me, and is now in my possession, as well as the equitable title to the remaining real and personal property for which proper instruments have been herein demanded, I decline to recognize your right to give any direction respecting the whole or any part of said property, or in any manner regard the same.

Further, in the event that you decline to accede to said requests, it will become necessary for me to invoke the aid of the courts for relief.

Dated, July 16, 1915.

ISAAC FINEBURG.

11. That the said Isaac Fineburg, notwithstanding he has not paid to your orator the full consideration of said agreement, and has not received from your orator the necessary deeds, releases and instruments of transfer for the conveyance of your orator's interest in said copartnership business, is in full possession of all the partnership property, real and personal, of a value of upwards of Eighty thousand dollars, and is now selling the said merchandise of the copartnership, and collecting the accounts of the said copartnership, and depositing the funds to his own credit, and is exercising full and absolute control over the said copartnership business, not for the

purpose of winding up the copartnership affairs, but under the claim of sole ownership; that notwithstanding the partnership books show that your orator had an interest in said copartnership business in excess of the interest of the said Isaac Fineburg; that the said Isaac Fineburg now denies that your orator has any excess interest in said business and without right or authority seeks to prevent your orator from any control, supervision, or management of said copartnership business.

12. That by reason of the failure of the said Isaac Fineburg to pay to your orator the amount of his excess interest in said copartnership, and the denial of the said Isaac Fineburg that your orator has any excess interest in said copartnership, notwithstanding the entries on said books of account, and the assumption of full control over the assets of said copartnership under the claim of the said Isaac Fineburg of the sole ownership of said copartnership business, your orator claims the right to rescind said agreement for the sale of his interest in said copartnership and has elected to rescind and does rescind said agreement, and has tendered to the said Isaac Fineburg and now does tender and deposit in this court, with the clerk thereof, the sum of Ten thousand dollars, and the said three promissory notes of Five thousand dollars each, paid and delivered on account of the purchase price of your orator's interest in said copartnership.

13. That your orator charges that on account of the acts of the said Isaac Fineburg, hereinbefore set forth, that an accounting should be had between your orator and the said Isaac Fineburg respecting the affairs of said copartnership, and that in the said accounting the said Isaac Fineburg should be charged

with all the withdrawals of moneys made by him in excess of the moneys withdrawn by your orator including the withdrawals of the said Isaac Fineburg to pay for his shares of capital stock in the said Leicester Rubber Company, and for the purchase of the said note of Ten thousand five hundred dollars of the said Leicester Rubber Company; that the said Isaac Fineburg should also be charged with the value of the scrap rubber sold by him to the said Leicester Rubber Company against the protests of your orator; that the said Isaac Fineburg should account for the goods sold and accounts collected since he assumed full control of the affairs of said copartnership; and should account for and surrender the moneys deposited by him to his credit; that your orator should be given credit for the sums advanced by him to the said copartnership; that pending said accounting a receiver should be appointed to take charge of and settle the said copartnership business, and that the said Isaac Fineburg should be enjoined from the exercise of sole control over the goods, merchandise, accounts, moneys and property of said copartnership.

In consideration whereof, and for as much as your orator is without adequate remedy, without the assistance of this honorable court, where matters of this nature are particularly cognizable and relievable:

To the end, therefore, that the said Isaac Fineburg may full, true and perfect answer make, without oath, to all and singular the matters and things hereinbefore stated; and that an accounting may be had between the said Isaac Fineburg and your orator of the said copartnership business; that the said agreement hereinbefore mentioned between the said Isaac Fineburg and your orator, for the sale of your orator's interest in said copartnership, may be re-

scinded and declared null and void; that the said Isaac Fineburg in said accounting may be charged with the withdrawals made by him from the funds of the said copartnership in excess of the withdrawals made by your orator, and with the monies loaned or advanced to the said Leicester Rubber Company, without the consent in writing or knowledge of your orator, and with the value of the goods and merchandise sold to the said Leicester Rubber Company against the protests of your orator, and with the amount of monies withdrawn from the said copartnership for the said Ten thousand five hundred dollar note made by the said Leicester Rubber Company and endorsed by the said Isaac Fineburg; and that your orator may be given credit for the loans made by him to the said copartnership; and that the said Isaac Fineburg may be enjoined from exercising control over the goods, credits, property, accounts and assets of the said copartnership, and from selling the same and depositing the proceeds to his credit and from excluding your orator from the copartnership premises and from the inspection of the books of the copartnership; and that a receiver may be appointed to take charge of and wind up the said copartnership business; and that your orator may have such further and other relief in the premises as the nature of the case may require, and as may be agreeable to equity and good conscience.

May it please your Honor, the premises considered, to grant unto your orator the state's writ of injunction, issuing out of and under the seal of this honorable court, directed to the said Isaac Fineburg, enjoining and restraining him from selling or pledging the goods, merchandise, chattels, and property of the said copartnership known as the Trenton Scrap Rubber Supply Company; from collecting the accounts, notes and choses in action of the said copartnership;

from withdrawing and using the moneys of the said copartnership; and from excluding your orator from the premises of the said copartnership and from the inspection of the books of the said copartnership; and also the state's writ of subpoena, likewise issuing out of and under the seal of this honorable court, to be directed to the said Isaac Fineburg, therein and thereby commanding him to appear before your Honor, according to law and the course of this court, at a certain day and under a certain penalty therein to be expressed, then and there to answer the premises, and to stand to, abide and perform such decree as to your Honor shall seem meet.

And your orator will ever pray, etc.

FRANK S. KATZENBACH, JR.,
Solicitor for Complainant.

GEORGE W. MACPHERSON,
Solicitor for Defendant.

FRANK S. KATZENBACH, JR.,
Of Counsel with Complainant.

ARTICLES OF AGREEMENT, made this twenty-fourth day of July A. D., nineteen hundred and seven, Between Harry Freeman, of the City of Trenton, County of Mercer and State of New Jersey, party of the first part, and Isaac Fineburg, of the same place, party of the second part, as follows:

The said parties above named have agreed to become partners in business, and by these presents do agree to be co-partners together, under and by the firm name and style of "Trenton Scrap Rubber Supply Company," in the business of buying and selling scrap rubber, in the City of Trenton aforesaid, their copartnership to commence on the day of the date hereof and to continue from year to year hereafter until terminated as hereinafter named.

The said Harry Freeman hath contributed to the said co-partnership the sum of Seven thousand two hundred and fifty-five dollars and fifty cents, in cash and merchandise and the said Isaac Fineburg hath contributed to the said co-partnership the sum of six thousand one hundred and nine dollars, in cash and merchandise, to be used and employed in common between them, for the support and management of the said business, to their mutual benefit and advantage.

And it is agreed, by and between the parties to these presents, that at all times during the continuance of their co-partnership, they and each of them will give their attendance, and do their and each of their best endeavors, and to the utmost of their skill and power exert themselves for their joint interest, profit, benefit and advantage, and truly employ, buy, sell, and merchandise with their joint stock, and the increase thereof in the business aforesaid. And also, that they shall and will at all times during the said co-partnership, bear, pay and discharge equally between them, all expenses that may be required for the support and management of the said business; and that all gains, profit and increase that shall come, grow or arise, from or by means of their said business, shall be divided between them equally, share and share alike, and all loss that shall happen to their said joint business, by ill commodities, bad debts or otherwise, shall be borne and paid between them in the same proportions.

And it is agreed, by and between the said parties, that their shall be had and kept at all times perfect, just and true book of account, wherein each of the said co-partners, shall enter and set down, as well all money by them or either of them received, paid, laid out and expended, in and about the said business, as well as also all goods, wares and merchandise, by

them or either of them, bought or sold, by reason or on account of the said business, and all other matters and things whatsoever, to the said business and the management thereof in anywise belonging; which said book or books shall be used in common between the said partners, so that either of them may have access thereto without any interruption or hindrance of the other.

Neither of the said parties shall subscribe any bonds, sign or endorse any note of hand, accept, sign or endorse any draft or bill of exchange, or assume any other liability, verbal or written, either in his own name or in the name of the firm, for the accommodation of any other person or persons whatsoever, without the consent in writing of the other party; nor shall either party lend any of the funds of the co-partnership without such consent of the other party.

On the dissolution of the said co-partnership either party may make, in writing an offer to the other, of the price at which he will buy the interest of the other, or sell to the other his own interest; and such other party shall thereupon, within thirty days, signify his election, whether he will buy or sell at that price, and if he fails to do so by notice, in writing within that time, the party making such offer may, within thirty days, buy or sell at his own election, according to his offer.

In case of the violation of any of the foregoing covenants and obligations by either of the parties hereto, the other party may, at his option dissolve this co-partnership by giving the parties written notice of his election so to do, within ten days after being informed of such violation. After the expiration of the first year of said co-partnership, either party may, at his election dissolve the partnership by giving three month's previous notice in writing of his intention so to do.

At the end of their co-partnership the said co-partners (in the event that no offer to buy or sell has been given) each to the other, shall and will make a true, just, and final account of all things relating to their said business, and in all things truly adjust the same; and all and every the stock and merchandise, as well as the gains and increase thereof which shall appear to be remaining, either in money, goods, wares, fixtures, debts, or otherwise, shall be equally divided between them.

IN WITNESS WHEREOF, the parties to these presents have hereunto set their hands and seals the day and year first above written. Executed in duplicate.

HARRY FREEDMAN (Seal)
ISAAC FINEBURG (Seal)

Signed, sealed and delivered
in the presence of
Elwood W. Moore, Jr.

Answer.

Filed Mar. 25, 1916.

IN CHANCERY OF NEW JERSEY.

Between

HARRY FREEDMAN,
Complainant,

and

ISAAC FINEBERG,
Defendant.

The answer of Isaac Fineberg, to the bill of complaint of Harry Freedman:

Answer

This defendant answering the bill of complaint, says that:

1. He admits that on the twenty-fourth day of July, nineteen hundred and seven, he and the complainant entered into a co-partnership under the firm name of Trenton Scrap Rubber Supply Company, by an agreement in writing, a copy whereof is annexed to the bill of complaint filed herein.

2. Defendant admits that pursuant to said co-partnership agreement he and the complainant engaged in business under said firm name and that the same was continued from year to year until dissolved as hereinafter mentioned; he also admits that the said co-partners purchased the real estate mentioned in the second paragraph of the complainant's bill; but he denies the erection thereupon by the said firm of the buildings mentioned in the said paragraph, but alleges the truth to be that at the time of such purchase the said buildings were already erected thereon and the firm simply expended sufficient monies to remodel the same to meet the requirements of their business. And he further says that the said premises were conveyed to the said co-partnership subject to, and are still subject to a mortgage encumbrance of $9,500.

He further admits that the said co-partnership business was prosperous. He further admits the statement of the bill as to the approximate value of the real estate, and he alleges that according to an inventory made by the complainant, of the stock in trade of the said firm on June 22, 1915, the value of the same was the sum of $43,000, and that the other assets referred to in said bill, including cash in bank, were valued at $24,000. The debts of said co-partnership, however, instead of being approximately the sum of $15,000, as alleged in the bill of complaint, amounted to the sum of $23,315.58.

3. He denies the advancement to the partnership by the complainant of any specific further contributions of capital as alleged in paragraph 3 of the said bill, and also that upon numerous occasions he, this defendant, withdrew from the co-partnership funds, monies in excess of those withdrawn by the complainant. This defendant says that during the period of said co-partnership monies were from time to time withdrawn by each of said partners, but that at the end of each year of the said co-partnership business, such withdrawals, whether in excess on either side, were always equalized, and a check given to the partner proving upon such accounting, to have an excess in said business. The last settlement of this character made between them was on January 1, 1913.

4. He denies that about two years ago, he, this defendant, became personally interested in the Leceister Rubber Company, or that at that time the said Leceister Rubber Company had a rubber manufacturing plant at Catasauqua, Pennsylvania, or that he withdrew from the funds of said co-partnership, the sum of $12,500 for the purpose of paying for the shares of the capital stock of said Leceister Rubber Company purchased by him; or that, subsequently, he from time to time loaned, without the knowledge and consent of the complainant, large or any sums of money to the Leceister Rubber Company for the conduct of its business; or that he, the said defendant, against the protests of the complainant, extended for the co-partnership, credit to the said Leceister Rubber Company in the matter of sales of scrap rubber. He denies that the said Leceister Rubber Company was permitted by this defendant to purchase goods upon credit, to the amount of $9,500; he denies that in violation of the co-partnership agreement, he, the said defendant, on July 24, 1907, en-

dorsed a promissory note for $10,500 made by the Leceister Rubber Company, and that he then used co-partnership funds to purchase said promissory note without the consent or knowledge of the complainant. It is true that a note for that amount made by said Leceister Rubber Company was in the possession of the firm at the time of the subsequent bankruptcy of the said corporation, BUT, on the contrary, this defendant says that the interest in the said Leceister Rubber was the interest of the said co-partnership, and that the same was suggested and initiated by the complainant, and throughout, the transactions by the defendant for the firm, with the knowledge, consent, participation of the complainant, as to each and every of the transactions specifically mentioned and referred to in the third paragraph of the complainant's bill.

5. He denies that the dissolution of the said co-partnership occurred out of or resulted from any violations of the co-partnership agreement by this defendant, or that the suggestion of said dissolution came to him from the complainant; but on the contrary he says that said agreement to dissolve grew out of a series of disputes arising between him and his former partner, with reference to divers business matters relative to which their differences became and were irreconcilable, as a result of which it was mutually agreed that the said co-partnership should be mutually dissolved, each waiving, as alleged in the bill, the provisions in the co-partnership articles relative to notice. Defendant admits the execution of the agreement of April 20, 1915, providing for dissolution, and also for arbitration of all the matters relating to the connection of the said firm with the Leceister Rubber Company, and as to which of said partners should retain the name as well as the busi-

ness of said co-partnership, and thereafter the further submission of the question of certain expenses attending the trial of the defendant upon a criminal indictment, and whether the same should be charged as a co-partnership expenditure.

6. He admits that pending said arbitration, the complainant, after some discussion upon the subject between them, submitted to this defendant an offer to sell all of his right, title, and interest in the business of the co-partnership, or to buy upon the same terms, specifically expressed, the interest of this defendant. He admits that the copy of said option as set forth in the complainant's bill is a true copy thereof.

7. He admits that on June 22, 1915, he accepted the offer of the complainant to sell his interest pursuant to the terms of said option.

8. In pursuance of said option and its acceptance, this defendant paid to the complainant, on June 26, 1915, the sum of $10,000 in cash and delivered to the complainant three promissory notes for $5,000 each, bearing the last mentioned date, payable three months after date. Defendant denies that at the time of such payment the complainant presented to him a statement of the amount of excess which he, the complainant, alleged he had in the business of the co-partnership, above this defendant's interest in said business, a purported copy of which statement is set forth on page 8 of the said bill of complaint, amounting to the sum of $27,737.80; but on the contrary, he says that at the time of the acceptance of the said option agreement aforesaid, on June 22, 1915, by the defendant, he, the complainant, alleged his excess in said business to be between $14,000 and $15,000; and that on June 26, 1915, when the payments aforesaid were made, at the office of George W. Macpherson,

the complainant alleged the excess due to him to amount to the sum of $20,000.00, and it was not until on or about the 14th day of July, 1915, that the statement set forth on page 8 of the bill of complaint, for the sum of $27,737.80 was presented to the defendant.

Defendant upon each of said occasions, and at all times has contended to the complainant, that he, the complainant, had not nor has, any excess in said business over and above the interest of the defendant therein, and that there was due to him, as part of the purchase price of his said interest no monies other than the payments made by the defendant as hereinbefore set forth.

9. Defendant says that by reason of the dispute between him and the complainant relative to the existence of any excess due him, or if there was such excess, as to the amount thereof, it was proposed between the said co-partners that the questions be submitted to arbitration; defendant proferring himself ready to perform the award resulting from such arbitration in the manner provided by the terms of the option agreement; while the complainant insisted that in disregard thereof, the defendant should give security for his immediate performance of the award regardless and at variance with the terms of the contract between them; and it is for this reason that no disposition of these differences between them has at any time been effected, complainant thereupon made upon the defendant, demand for the payment of the sum of $27,737.80, so arbitrarily fixed by him, forthwith, alleging the same to be a part of the purchase price of the complainant's said interest in the said business.

10. It is true, as alleged in the 8th paragraph of the bill, that the complainant contended that the terms of

the offer made by him and accepted by the defendant provided that part of the consideration to be paid on account thereof was the amount of the complainant's interest in said co-partnership business in excess of the interest of the defendant therein, and that until such excess was paid to the complainant, he, the said defendant, had no power, right or authority to assume control of the said co-partnership business to the exclusion of the complainant and to conduct the same as his sole and separate business, while this defendant, as hereinbefore averred, insisted and insists, that he has paid to the complainant the entire consideration for the complainant's said interest, and thereby became vested with the equitable title to complainant's said interest, and was and is the sole and absolute owner of said business, with full right to manage and control the same, as he is now doing.

11. Defendant admits the making and service upon him of the so-called "rescission" of the said option agreement as set forth on page 10 of the bill filed herein.

12. Defendant admits that on the 16th day of July, 1915, that he required and caused the removal of the complainant from his business office, but denies that such removal was attended with any force whatsoever, and insists that such removal was entirely within the rights of the defendant.

13. Defendant admits the service upon him of the notice as set forth on pages 11 and 12 of the complainant's bill.

14. Defendant says it is true, alleged by the bill, that notwithstanding the payments aforesaid, defendant has not received from the complainant the necessary deeds, releases and instruments of transfer, for the conveyance of the complainant's interest in said co-partnership business.

Defendant also admits that he is in full possession of the former partnership property, real and personal, so purchased by him as aforesaid, and that he is now engaged in the conduct of the said business, and that he is depositing the funds arising from said business to his own credit, and is exercising full and absolute control over the said business, under a claim of sole ownership, and not for the purpose of winding up the partnership affairs, the said co-partnership having, as above stated, been dissolved, and all the interest of the complainant appertaining thereto having been purchased by and become the property of the defendant.

15. Defendant denies that the complainant is entitled to any accounting respecting the affairs of the former co-partnership, particularly specified in the 13th paragraph of the complainant's bill.

16. Defendant says that the complainant has recognized the right of the defendant to the possession and control of the said former co-partnership property, and to continue and conduct said business by himself and for his own benefit, and evidenced his understanding and intention in the carrying out of the contract aforesaid between them by coming on several occasions to the defendant's place of business and there purchasing from him articles of merchandise which were formerly the property of the co-partnership, and by the further fact that at no time since the sale of the said interest to defendant on the 26th day of June, last, has the complainant taken any interest in or participation, or attempted to participate, whatsoever, in the conduct of the said business, but has abandoned the same, and permitted the defendant to operate the same without objection; only requiring of the defendant that he should pay to him a balance which he alleges to be due to him on account of

the purchase money resulting from said alleged excess.

17. Defendant says that he is amply able to respond financially to any claim which the complainant may have relating to said excess; that he is worth the sum of $45,000 over and above all his liabilities, and that since he acquired said business, he has, in addition to the monies paid to the complainant, reduced the liabilities to the extent of $6,716.80, and has likewise, without increasing the liabilities, increased the assets to the extent of the sum of $15,000. Defendant hereby proffers himself ready and willing to pay any excess, which may be found upon inquiry, of this Court, to remain due to the said complainant, in the manner required by the said option agreement, and in the meantime, if the Court so directs, to give a bond with ample security, to guarantee the performance of the terms of the said option agreement relative thereto, in the event that such inquiry should result in finding any balance due and remaining unpaid to the complainant.

BY WAY OF COUNTERCLAIM AGAINST THE COMPLAINANT, THE DEFENDANT, ISAAC FINEBERG, says that:

That by reason of the matters severally set forth in the defendant's foregoing answer, and which he prays may be considered as if here again repeated, the defendant prays:

1. That the complainant, Harry Freedman, may answer this counterclaim, without oath, and each statement thereof.

2. That the complainant may be decreed to convey to the defendant all of his right, title and interest in

and to the real estate owned by the said former co-partnership, and in all and singular the goods and chattels, furniture and fixtures, rubber goods and materials, stock in trade, merchandise, horses, wagons, and other vehicles, book and other debts, accounts receivable, credits, contracts, assets, effects, business and good will of the said co-partnership theretofore carried on by the complainant and defendant trading as the Trenton Scrap Rubber Supply Company.

3. And shall further execute and deliver to the defendant a release and discharge from all actions, proceedings, claims, and demands, whatsoever, which he, the complainant, or his heirs, executors, administrators or assigns, now has or hereafter might have had against the defendant, his heirs, executors, administrators or assigns, on account of said co-partnership, or anything relating thereto; and to further specially release this defendant from all claims and demands of every kind and nature, by reason of the said promissory note in the sum of $10,500 made by the Leceister Rubber Company upon which this defendant was the accommodation endorser, upon a like discharge of the complainant by the defendant, as provided in the fourth paragraph of the said option agreement.

4. That an inquiry may be made under the direction of this Court of the matters relating to the said alleged excess due to the complainant, and such order made respecting the payment thereof, in the event that any excess is ascertained to exist, as to this Court may seen just, and that if the Court shall find that there is now due to the defendant any excess, by reason of his interest in the said co-partnership, that the said complainant may be decreed to pay the same to him; and that the complainant may be decreed that the said agreement between him and the defendant

relative to the sale of the complainant's interest in the said co-partnership, be specifically performed by the complainant, in the manner provided by the said option agreement.

SCOTT SCAMMELL,
Solicitor and of counsel with Deft.

Replication.

Filed January 26, 1916.

IN CHANCERY OF NEW JERSEY.

Between

HARRY FREEDMAN,
Complainant,

and

ISAAC FINEBURG,
Defendant.

On Bill &c.
Replication.

The complainant joins issue on the answer of the defendant.

FRANK S. KATZENBACH JR.,
Solicitor of Complainant.

Final Decree.

Filed June 6, 1916,

IN CHANCERY OF NEW JERSEY.

Between HARRY FREEDMAN, Complainant, and ISAAC FINEBURG, Defendant.	On Bill, &c., Final Decree.

This cause coming on to be heard before the Chancellor, upon bill, answer, cross-bill, replication and proofs, in the presence of George W. Macpherson and Frank S. Katzenbach, Jr., of counsel with the complainant, and Scott Scammell and Charles DeF. Besore, of counsel with the defendant, and the Court being of the opinion that no conduct on the part of the defendant has been shown which was so inconsistent with his obligation under the contract of purchase, set forth in the bill of complaint, as to amount to a repudiation of said contract, and to warrant a rescission thereof, and that, therefore, the prayer of the bill of complaint should be dismissed; and

The Court being further of the opinion that there is due from the defendant to the complainant, as the monies which complainant had in the co-partnership business, described in said contract of purchase, in excess of the monies in said business belonging to the defendant, the sum of $24,390.03, and that in arriving at said sum the sum of $12,500 already charged against the defendant on the books of the co-partnership, and representing the payment for certain shares

of the capital stock of the Leceister Rubber Company, should be considered an individual withdrawal from the partnership funds on the part of the defendant, and that the sum of $10,500 now charged on the books of said co-partnership to the Leceister Rubber Company, and representing the sums paid for and on account of a certain note of that amount out of the assets of the said co-partnership, should be charged to the defendant as part of his personal withdrawals, and that the difference between the defendant's withdrawals, calculated after adding said sum of $10,500 to the sums already charged on the books of said co-partnership against him, and the complainant's withdrawals as the same were charged on said books, measures the excess of the monies which the complainant had in said co-partnership business, at the time of the making of said contract of purchase, over the monies in said business then belonging to the defendant, and that twenty per cent of said sum of $24,390.03, amounting to $4,878, became due from the defendant to the complainant on June 27, 1915, and that twenty per cent of said sum of $24,390.03, amounting to the sum of $4,878, became due from the defendant to the complainant on July 12, 1915, and that on said last-named date the complainant became entitled to have from the defendant three promissory notes, each in the principal sum of $4,878, at three months, and that on October 12, 1915, there became due to the complainant from the defendant the sum of $1,500, being a payment of $500 on each of said notes, and that on January 12, 1916, there became due to the complainant from the defendant the sum of $1,500, being a payment of $500 on each of said notes, and that on April 12, 1916, there became due to the complainant from the defendant the sum of $1,500, being a payment of $500 on each of said notes, and

that the complainant is entitled to interest on each of said sums from the day when the same became due and payable, and to have delivered to him three promissory notes for $3,378 each, made by the defendant to complainant's order, at three months, and dated April 12, 1916;

It is, thereupon, on this 31st day of May, nineteen hundred and sixteen, ordered, adjudged and decreed, that the complainant's bill of complaint be and the same hereby is dismissed; and

It is further ordered, adjudged and decreed, that the agreement of purchase or option agreement of June 21, 1915, set forth in the bill of complaint in this cause, be in all things specifically performed by the said complainant, and that upon payment by the defendant to the complainant of the sum of $4,878, with interest thereon from June 27, 1915, amounting to $271.53, and the further sum of $4,878, with interest thereon from July 12, 1915, amounting to $259.-24, and the further sum of $1,500, with interest thereon from October 12, 1915, amounting to the sum of $57.25, and the further sum of $1,500, with interest thereon from January 12, 1916, amounting to $34.-75, and the further sum of $1,500, with interest thereon from April 12, 1916, amounting to $12.25, making in all, a total payment in principal of $14,256, and a total payment of interest of $635.02, and upon the making and delivery by the defendant to complainant of defendant's three certain promissory notes in the principal sum of $3,378 each, signed by the defendant as maker, and drawn to the order of complainant, dated April 12, 1916, and payable in three months after the date thereof, and the execution and delivery by the defendant to complainant of a proper instrument of release, releasing and forever discharging said complainant, his heirs, executors, administrators,

and assigns from all actions, proceedings, claims, and demands whatsoever, which he, the said defendant, or his heirs, executors, administrators, and assigns now has, or hereafter might have against him, the said complainant, his heirs, executors, administrators, and assigns, on account of the said co-partnership or anything relating thereto, except and save only such claim as said defendant may now or hereafter have against the complainant in event that said defendant's liability to pay any debts or liabilities of said co-partnership, not appearing on the partnership books of account on June 27, 1915, shall exceed, in the aggregate, the sum of $1,000, the complainant convey to the defendant, by proper deed of conveyance, duly executed and acknowledged by him, all of his right, title and interest in and to the real estate owned by said complainant and said defendant, as co-partners trading under the firm name and style of Trenton Scrap Rubber Supply Company, and in all and singular the goods and chattels, furniture and fixtures, rubber goods and materials, stock in trade, merchandise, horses, wagons, and other vehicles, book and other assets, effects, business and good will of the said co-partnership heretofore carried on by complainant and defendant, trading under the firm name and style aforesaid; and further execute and deliver to defendant a proper instrument of release, releasing and forever discharging the said defendant, his heirs, executors, administrators, and assigns, from all actions, proceedings, claims, and demands whatsoever, which he, the said complainant, or his heirs, executors, administrators, or assigns now has or hereafter might have against him, the said defendant, his heirs, executors, administrators, and assigns, on account of said co-partnership or anything relating thereto, except and save only the right of the complainant to have payment made to him of the promissory notes provided for in

said agreement of purchase, including the promissory notes hereinbefore described, in the manner in said agreement provided, namely, by the payment of the sum of $500 for and on account of the principal of each of said notes at its maturity, and the giving of a renewal note for the balance then remaining due on each of said notes, and by the payment of sums of $500 and the giving of similar renewal notes until the entire amount due on each of said notes has been fully paid; and that upon compliance by the defendant with the terms of this decree, said defendant and his sureties be released and discharged from all liability under and by virtue of the bond heretofore filed in this cause;

And it is further ordered, adjudged and decreed, that the complainant pay the costs of this suit, to be taxed, and that either party is to be at liberty to apply to this Court for further direction or relief in the premises, if occasion shall require.

E. R. WALKER,
C.

Respectfully advised,
John H. Backes, V. C.

A true copy.

ROBERT H. McADAMS,
Clerk.

Notice of Appeal.

Filed June 12, 1916.

IN CHANCERY OF NEW JERSEY.

Between HARRY FREEDMAN, Complainant, and ISAAC FINEBURG, Defendant.	On Bill, &c., Notice of Appeal.

The defendant hereby appeals from so much of that final decree made in this court in the above-stated cause, dated the thirty-first day of May, nineteen hundred and sixteen, as adjudges that the sums to be paid by the defendant to the complainant, and the notes to be made and delivered by the defendant to the complainant in order to entitle the defendant to have the agreement of purchase or option agreement of June 21, 1915, set forth in the bill of complaint, specifically performed on the part of said complainant, are as follows, viz: the payment to the complainant of the sum of $4,878, with interest thereon from June 27, 1915, amounting to $271.53, and the further sum of $4,878, with interest thereon from July 12, 1915, amounting to $259.24, and the further sum of $1,500, with interest thereon from October 12, 1915, amounting to the sum of $57.25, and the further sum of $1,500, with interest thereon from January 12, 1916, amounting to the sum of $34.75, and the further sum of $1,500, with interest thereon from April 12, 1916, amounting to the sum of $12.25, making in all a total payment of principal of $14,256, and a total payment of interest of $635.02, and that the defendant shall make and deliver to complainant, defendant's three certain promissory notes, in the principal sum of $3,378, each signed by the defendant as maker,

and drawn to the order of complainant, dated April 12, 1916, and payable in three months after date thereof; and

As adjudges that there is due from the defendant to the complainant, the sum of $24,390.03; and

As adjudges that the monies which complainant had in the co-partnership business described in said contract of purchase, in excess of the monies in said business belonging to the defendant, at the time of the making of said contract of purchase, is the sum of $24,390.03; and

As adjudges that in arriving at said sum, the sum of $12,500 already charged on the books of the co-partnership against the defendant, and representing the payment for certain shares of the capital stock of the Leceister Rubber Company, should be considered an individual withdrawal from the partnership funds on the part of the defendant; and

As adjudges that the sum of $10,500 now charged on the books of the said co-partnership to the Leceister Rubber Company, and representing the sums paid for and on account of a certain note of that amount, out of the assets of the said co-partnership, should be charged to the defendant as part of his personal withdrawals; and

As adjudges that the difference between the defendant's withdrawals, calculated after adding said sum of $10,500 to the sums already charged on the books of said co-partnership, against the defendant, and the complainant's withdrawals, as the same were charged on said books, measures the excess of monies which the complainant had in said co-partnership business, at the time of the making of said contract of purchase, over the monies in said business then belonging to the defendant.

To the Court of Errors and Appeals, in the Last Resort in all causes.

Dated, June 10, 1916.

SCOTT SCAMMELL,
Solicitor and of Counsel with the Defendant.

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

SCOTT SCAMMELL,
Of Counsel with the Defendant.

Petition of Appeal.

Filed June 30, 1916.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between HARRY FREEDMAN, Respondent, and ISAAC FINEBURG, Appellant.	On Bill, &c., on Appeal, Petition of Appeal.

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

The petition of Isaac Fineburg, appellant in the above-stated cause, respectfully shows that your petitioner finds himself aggrieved by a final decree made in the Court of Chancery by His Honor Edwin Robert

Walker, Chancellor of New Jersey, bearing date the thirty-first day of May, A. D., one thousand nine hundred and sixteen, and filed in the office of the Clerk in Chancery on the sixth day of June, A. D., one thousand nine hundred and sixteen, wherein Harry Freedman was complainant and your petitioner, Isaac Fineberg, was defendant, in these respects, to wit:

1. That the said decree adjudges and declares that the sums to be paid by the defendant to the complainant and the notes to be made and delivered by the defendant to the complainant in order to entitle the defendant to have the agreement of purchase or option agreement of June 21, 1915, set forth in the bill of complaint, specifically performed on the part of said complainant, are as follows, viz: the payment to the complainant of the sum of $4,878, with interest thereon from June 27, 1915, amounting to $271.53, and the further sum of $4,878, with interest thereon from July 12, 1915, amounting to $259.24, and the further sum of $1,500, with interest thereon from October 12, 1915, amounting to the sum of $57.25, and the further sum of $1,500, with interest thereon from January 12, 1916, amounting to the sum of $34.75, and the further sum of $1,500, with interest thereon from April 12, 1916, amounting to the sum of $12.25, making in all a total payment of principal of $14,256, and a total payment of interest of $635.02, and that the defendant shall make and deliver to complainant defendant's three certain promissory notes in the principal sum of $3,378, each signed by the defendant as maker, and drawn to the order of complainant, dated April 12, 1916, and payable in three months after date thereof; and

2. That the said decree adjudges and declares that there is due from the defendant to the complainant the sum of $24,390.03; and

3. That the said decree adjudges and declares that the moneys which complainant had in the co-partnership business described in said contract of purchase, in excess of the moneys in said business belonging to the defendant, at the time of the making of said contract of purchase, is the sum of $24,390.03; and

4. That the said decree adjudges and declares that in arriving at said sum, the sum of $12,500 already charged on the books of the co-partnership against the defendant, and representing the payment for certain shares of the capital stock of the Leceister Rubber Company should be considered an individual withdrawal from the partnership funds on the part of the defendant; and

5. That the said decree adjudges and declares that the sum of $10,500 now charged on the books of the said co-partnership to the Leceister Rubber Company, and representing the sums paid for and on account of a certain note of that amount, out of the assets of the said co-partnership, should be charged to the defendant as part of his personal withdrawals; and

6. That the said decree adjudges and declares that the difference between the defendant's withdrawals, calculated after adding said sum of $10,500 to the sums already charged on the books of said co-partnership, against the defendant, and the complainant's withdrawals as the same were charged on said books, measures the excess of moneys which the complainant had in said co-partnership business at the time of the making of said contract of purchase, over the moneys in said business then belonging to the defendant.

Your petitioner humbly appeals from said decree of the Chancellor, as aforesaid, upon the ground that the same is wholly erroneous in the aforesaid particulars, for that the said Chancellor should have adjudged and declared by his said decree:

FIRST: That the sum to be paid in cash by the giving of notes by the defendant to the complainant in order to entitle the defendant to specific performance of the contract of purchase of June 21, 1915, is such sum as equals one-half of the difference between the defendant's withdrawals from the co-partnership business and the complainant's withdrawals therefrom.

SECOND: That at the time of the making of said contract of purchase, the amount of the moneys which complainant had in the co-partnership business in excess of the moneys in said business belonging to the defendant is measured by and equals one-half of the difference between the complainant's withdrawals from the partnership funds, and the defendant's withdrawals therefrom.

THIRD: That in calculating the amount of the defendant's withdrawals from the said partnership funds, said sum of $10,500 now charged on the books of said co-partnership to the Leceister Rubber Company, and representing the sums paid on account of a certain note of that amount out of the assets of said co-partnership, is properly so charged, and should be considered a partnership transaction, and, as such should not be counted as a withdrawal on the part of the defendant.

FOURTH: That at the time of the making of said agreement of purchase, the moneys which the complainant had in said co-partnership business in ex-

cess of the moneys in said co-partnership business belonging to the defendant, amounted to the total sum of $6,945.02.

FIFTH: That in order to entitle the defendant to have the agreement of purchase or option agreement of June 21, 1915, set forth in the bill of complaint, specifically performed on the part of the complainant, the defendant should pay to the complainant the sum of $1,389, with interest thereon from June 27, 1915, amounting to $77.32, and the further sum of $1,389, with interest thereon from July 12, 1915, amounting to $73.85, and the further sum of $1,500, with interest thereon from October 12, 1915, amounting to $57.25, and the further sum of $1,500, with interest thereon from January 12, 1915, amounting to $124.75, and the further sum of $1,167.02, with interest thereon from April 12, 1916, amounting to $9.13, making in all a total payment of principal of $6,945.02, and a total payment of interest of $342.30.

Your petitioner, therefore, prays that the said portions of the said decree of the Chancellor, hereinbefore set forth, may be, in the particulars aforesaid, reversed, set aside, and for nothing holden, and that your petitioner may have such relief in the premises as to this Honorable Court shall seem meet.

SCOTT SCAMMELL,
Solicitor for and of Counsel with Appellant.

Testimony.

IN CHANCERY OF NEW JERSEY.

Between HARRY FREEDMAN, Complainant, and ISAAC FINEBERG, Defendant.	On Bill, etc., Testimony.

Testimony taken in the above-entitled cause, at the State House, Trenton, New Jersey, on Wednesday, the twenty-ninth day of March, 1916, at 10:30 A. M.

Before: Hon. John H. Backes, Vice Chancellor.

Appearances:

Frank S. Katzenbach, Jr., and George W. Macpherson, Esqs., for the complainant.

Scott Scammell and Charles Besore, Esqs., for the Defendant.

CHARLES L. HARDING, a witness produced on behalf of the complainant, being duly sworn, testified as follows:

Direct-examination by Mr. Macpherson:

Mr. Macpherson: We ask for the production of the books of the Trenton Scrap Rubber Supply Company, namely, the cash book, ledger, note book, journal, check book and day book, and all other books. First, I ask for the ledger and cash book.

Mr. Scammell: Here they are (producing them).

Q. Mr. Harding, I am showing you some books claimed to be the cash books of the Trenton Scrap Rubber Supply Company; will you look at these books and say if they were the books given to you by Mr. Fineberg for the purpose of making an examination (ledger and cash books are shown to witness)? A. These are the cash books given to me by Mr. Fineberg.

It is admitted by counsel that Mr. Harding is a qualified accountant.

Q. I am showing you a ledger; is that the book— A. That is the ledger; these are the sheets that came out of the ledger referring to the accounts of Isaac Fineberg and Mr. Freedman and the Leicester Rubber Company; these are the sheets taken out of that ledger for those accounts (referring to separate and loose sheets).

Q. You are referring now to the account of the Leicester Rubber Company, the account of Harry Freedman and the account of Isaac Fineberg? A. I am.

Q. And this is what is called a loose-leaf ledger, isn't it? A. Yes, sir.

Q. Were those sheets in the book when you went there to examine the books? A. They were in there, and I asked to have them and they took them out for my use.

Q. Did you go through the cashbook? A. I went through the cashbook and the sales book and the invoice book from July 1, 1912, to July 1, 1915, regarding the accounts of Isaac Fineberg, Harry Freedman

and the Leicester Rubber Company. I checked every item from the cashbook and the sales book into the ledger during that period.

Q. Why did you select that period? A. Because there was a statement made on July 1, 1912, whereby their accounts were adjusted up to that time.

Q. What was the balance, if you can tell, that each partner then had in the business of this partnership? A. Thirty-one thousand some hundred dollars; I can't give the exact figures.

Q. Did you make a summary of your examination? A. I did.

Q. I am showing you a paper marked "I. Fineberg"; look at that and see what is the amount that it was found Mr. Fineberg had in the business from July 1, 1912? A. $31,148.63.

Q. I am showing you a paper marked "Harry Freedman"; is that paper made out by you? A. It is.

Q. As a result of your examination of these books? A. It is.

Q. What does that show that Harry Freedman had in the business of this partnership on July 1, 1912? A. $31,148.65, just the same amount as the other.

Q. Was there anything you found in the books that indicated at the time that amount was reached, whether any sum of money had been paid to either one or the other to equalize that amount? A. I did.

Q. What did you find? A. I found Mr. Freedman had been given two checks of $2,000 each to equalize the amount with Mr. Fineberg.

Q. That is what the books show? A. Yes.

Q. And that showed at that time until these checks were given, that Mr. Freedman had $4,000 in the business more than Mr. Fineberg? A. That is what the books showed.

Q. Do you know what, if anything, was done with those two checks of $2,000 each? A. They were

credited back; Mr. Freedman turned them back and received credit for them after this period of July 1, 1912.

Q. Can you tell when he put them back? A. I think February 11, 1913.

Q. Then, did the company have the benefit of that money, that $4,000, from July 1, 1912, to February 11, 1913? A. The checks have not been paid; the checks were outstanding; yes, sir.

Q. From April 1, 1913, up until July 1, 1915, did you make an examination of the cashbook to find how much money either one of the partners had withdrawn from the partnership, or how much money either one of the partners had put into the partnership? A. I did, from July 1, 1912.

Q. Have you made a record of the results of your examination? A. I have, sir; I have it here before me.

Q. What did your investigation disclose? Harry Freedman withdrew from the concern from July 1, 1912, to July 1, 1913—I took this up by yearly periods, from July to July—he withdrew during that time $6,702.27; he put in the two checks of $2,000 each returned back, and he had a credit of $116.80 on those two checks for the time they were outstanding—

The Court: Interest?

The Witness: Interest. Making a total of $4,116.80. He, therefore, drew out $2,585.47 more than he put in; he drew out that much more than he put in during that year.

Q. And the next? A. In the year from July 1, 1913, to July 1, 1914, he drew out $904.25; he put in $2,200; he, therefore, put in $1,395.75 more than he took out during that period. In the next period from July 1, 1914, to July 1, 1915, he drew out $11,396.48, and he put in $5,886.80; he, therefore, drew

out $5,509.68 more than he put in during that period.

Q. Now, take up this paper. A. Now, then the next one is Isaac Fineberg. I find that Isaac Fineberg drew out of the concern from July 1, 1912, to July 1, 1913, $4,473.69; he put in $625; he, therefore, drew out $3,848.69 more than he put in. For the next period, from July 1, 1913, to July 1, 1914, he drew out $16,098.46, and he put in $1,005.30; he, therefore, drew out $15,093.16 more than he put in during that period. In the next period, from July 1, 1914, to July 1, 1915, he drew out $1,703.58, and put nothing in during that period. That is the two accounts.

Q. Now, you have made a summary of that, haven't you? A. Now, the summary of the two accounts; Isaac Fineberg drew out from July 1, 1912, to July 1, 1913, $3,848.69; H. Freedman drew out during the same period $2,585.47, making a difference of $1,263.22 that Mr. Fineberg drew out more than Mr. Freedman. In the next period, from July 1. 1913 to 1914, Isaac Fineberg drew out $15,093.16; Mr. Freedman put in in excess of the amount he drew out during that period $1,395.75. In the next period, from July 1, 1914, to July 1, 1915, Isaac Fineberg drew out $1,703.58; H. Freedman drew out $5,509.58 more than he put in; so that Mr. Freedman drew out $3,806.10 more than Mr. Fineberg drew that period. Taking the total excess of Fineberg's to July, 1914, was $17,752.13. Now, in the next period it goes the other way, as Mr. Freedman drew out more than Mr. Fineberg by $3,806.10, which we take from the excess paid to 1914 of Mr. Fineberg, and it leaves $13,946.03 of Fineberg's excess up to that period. I hope that has made it clear to you.

Q. I am calling your attention to the record as shown by the cashbook and ledger of Mr. Fineberg's account, for the period from July 1, 1913, to July 1, 1914, in which you say the amount shown in the

books withdrawn by him was $16,098.46. Will you turn to that account in the book? A. (Looking at sheets.) You will notice that the footings in the ledger on July 1, 1914, was $20,572.15, and he had a credit of $3,249.85; you take the difference between them and that gives about $17,000.

Q. I want you to look at the account. Do you find a charge in there of an item of $11,100? A. I do.

Q. And do you find another item of $1,400? A. I do.

Q. Are you able to tell from the entries in the books what those two items were for? A. The item of $11,100 was entered in the cashbook immediately after a note of the Leicester Rubber Company had become due, and that $11,100 went to pay one-half of that $25,000 note that came due at that date; the $11,100 paid at that time, and the $1,400 paid October 22, 1913, make $12,500.

Q. Is there anything in the books to show that that $12,500 was for the purchasing of the capital stock of the Leicester Rubber Company? A. No, sir.

Q. Did you make an examination also of the books of the Leicester Rubber Company? A. I did of the account of the Leicester Rubber Company in the Scrap Rubber Company's books.

Q. Did you make an examination of the accounts or the books of the Leicester Rubber Company which were in the hands of Mr. Wilson as trustee in bankruptcy? A. I did, for one or two items.

Q. What were those items? A. It was in regard to this payment of $11,100 and $1,400—

Mr. Macpherson: Mr. Wilson, will you produce the books of the Leicester Rubber Company?

(Mr. Wilson announces that he has produced them. They are handed to counsel.)

New Jersey State Library

Q. You have before you the ledger of the Leicester Rubber Company? A. I have.

Q. Have you the account of Isaac Fineberg? A. I have.

Q. What do you find in the account of Isaac Fineberg with reference to the issuance of stock of the Leicester Company to him? A. I find that Isaac Fineberg is charged on August 12, 1913, with capital stock $12,312.50; at that time he had a credit of enough to make that up to $12,500. On November 12, Isaac Fineberg again is charged with bills payable; that bills payable means a note that the Leicester Rubber have given to somebody, and they have charged Fineberg with, or credited Fineberg with, $12,500, and charged it against the bills payable account in the ledger, reducing the bills payable account that much.

Q. They received from Fineberg the $12,500? A. Yes, on November 12 he is charged with $12,312.50 for the capital stock, but when he made a charge for the full amount of the capital stock, they gave him a credit which would reduce his indebtedness for capital stock that much.

Mr. Macpherson I ask for the certificate of stock.

(Mr. Scammell produces it.)

Q. Tell me what this book is (showing witness a book). A. The stock book of the Leicester Rubber Company.

Q. I call your attention to what is marked "Certificate No. 18"? A. Yes, sir.

Q. What does that show? A. It was issued to Isaac Fineberg for 197 shares of the capital stock of the Leicester Rubber Company.

Q. Is there any receipt on the stub of that book?

A. On the 11th day of August, 1913, Isaac Fineberg gave a receipt for the stock.

Q. Do you know anything about his signature? A. No, sir.

Mr. Scammell: We admit that that is his signature.

Q. I show you certificate No. 18; will you compare that?

Mr. Macpherson: I offer the certificate of stock of the Leicester Rubber Company and the book in evidence.

Said certificate and book are marked Exhibits C1 and C2 respectively.

Q. Did you examine the books of the Trenton Scrap Rubber Company with reference to the account of the Leicester Rubber Company? A. I did; I checked every item through for three years.

Q. Will you turn to the account of the Leicester Rubber Company in your book? A. I have the sheets here.

Q. For what period is that sheet? A. The first date here appears to be November 1, 1913.

Q. Will you turn to the ledger from which those sheets are taken, and, perhaps, you can tell from the other sheets that remain in the book as to what that period is. A. August, 1913.

Q. Will you just turn to the book and see whether this is a continuation? A. There are not sheets here left in the book.

Q. Is there any account of the Leicester Rubber Company prior to July, 1913; do you find in the account of the Leicester Rubber Company where any cash was advanced by the Trenton Scrap Rubber to the Leicester Rubber Company? A. I will say "Yes," but I will have to qualify it. The Leicester Rubber

Company's accounts were settled by notes, principally, and when a note came due they would pay part cash and give a new note; they would be credited with that cash and with the note, but I think, in some instances, there were payments of cash that had no reference to notes.

Q. Does that mean cash that was advanced by the Scrap Rubber to the Leicester Rubber? A. Yes.

The Court: Money loaned?

Mr. Macpherson: Money loaned.

Q. Was there any paper notes that was loaned by the Trenton Scrap Rubber to the Leicester Rubber? A. Well, I didn't go into that part of it.

Q. Can you tell what was the indebtedness of the Leicester Rubber Company to the Trenton Scrap Rubber Company at the time they went into bankruptcy? A. I can tell what the books show.

Q. That's what I mean. A. (Looking at paper.) At the time on July 1, 1915, which is the end of the periods for which I took up these accounts, the Leicester Rubber Company owed the Scrap Rubber Company $21,802.88; in that is included a note for $10,500, which was charged to the Leicester Rubber Company.

Mr. Macpherson: I call for the note of $10,500.

(Mr. Scammell produces note.)

Mr. Macpherson: I offer in evidence a note made by the Leicester Rubber Company, dated August 12, 1914, payable at the Mercer Trust Company three months after date thereof—this note being made payable to A. De Piano, Henry Bernstein and I. Fineberg, for $10,500; also, a check dated Trenton, N. J., 12/15/14, $10,500, Trenton Scrap Rubber Company to

Complainant's Witness, Charles L. Harding, Cross

I. Fineberg, Treasurer; also, the certificate of protest.

Said papers are marked Exhibit C3.

It is admitted that the notice of protest was signed and received.

Q. Was this $10,500 note which I show you, charged to Mr. Isaac Fineberg on the books of the company? A. No, sir.

Q. To whom was it charged? A. The Leicester Rubber Company, under date of December 18, 1914, the ledger says.

Mr. Macpherson: I offer in evidence the following books of the Trenton Scrap Rubber Company: the ledger and the two cashbooks from July 1, 1912, to July 1, 1915.

Said ledger and cashbooks are marked Exhibits C4, C5 and C6 respectively.

Mr. Macpherson: I offer in evidence the stock certificate book of the Leicester Rubber Company.

Said book is marked Exhibit C7.

Mr. Macpherson: I offer the loose leaf sheets of the book disclosing the accounts of Isaac Fineberg, Harry Freedman and the Leicester Rubber Company.

Said sheets are marked Exhibit C8.

CROSS-EXAMINATION by Mr. Scammell:

Q. Referring to the account of Isaac Fineberg on July 1, 1913, when you say that there was a balancing of the account, when the two checks of $2,000 each were drawn on Mr. Freedman— A. That was 1912.

Q. 1912. Please refer to that account, will you, Mr. Harding, a minute, refer to Mr. Freedman's account? A. Yes, sir.

Q. This account shows that on February 11, 1913, he was credited with these two checks of $2,000 each? A. Yes, sir.

Q. And on the same day it shows that that $4,000 was withdrawn by Mr. Freedman, does it not? A. On the same date he is charged with $3,000 paid to Mrs. White, and $1,000 in cash, on the same date in 1913.

Q. So the books disclose he immediately withdrew that $4,000 excess? A. It does; it shows he paid it.

The Court: That was in the following year?

The Witness: Yes, sir.

Q. As an actual fact, the $4,000 was immediately withdrawn? A. On the same day.

Q. The $3,000 item was for the payment of a mortgage, was it not? A. I understood so.

Q. A personal mortgage of Mr. Freedman's? A. Yes.

Q. And it had nothing to do with the partnership? A. No, sir.

Q. And the other was in the shape of cash? A. Cash.

Q. In examining these accounts, particularly the account of the Leicester Rubber Company note of $25,000, did you investigate their notebook? A. I saw it in their notebook, yes, sir; in fact, I didn't care anything about the notebook, it was the cashbook that governed me.

Q. The cashbook, however, was no more in these partnership books than a reflection of the check book and the notebook, was it not? A. The cashbook refers to the amount of cash they received and the amount of cash they paid out; that is where I took the stand; I didn't care how they got it, as long as it was properly entered and properly credited.

Q. Referring to the item of $25,000 of the bills payable— A. Bills receivable.

Q. Bills receivable from the Leicester Rubber Company; did you examine their notebook to ascertain whether or not there was such a note? A. Not particularly, because I didn't care; it is entered in the cashbook under date of August 31.

Q. I show you a book known as the "Notes and Bills Receivable of the Trenton Scrap Rubber," and ask you whether you examined that book in checking off the items appearing upon the account of the Leicester Rubber Company? A. All the way through?

Q. Yes. A. I did not.

Q. Did you examine the original entry of the charge of a credit on August 30, 1913, note $25,000? A. (Looking at sheet.) That was credited on the cashbook.

Q. You didn't examine the notebook to see whether there was a record? A. No, sir; I was controlled by the cashbook exclusively, because the cashbook is what controlled this account; I didn't pay any attention to it; it is the cashbook that governs the whole thing.

Q. You got your information, then, as to the charge of the $1,400 on October 22, 1913, as against Isaac Fineberg's account, from the cashbook? A. Yes, sir.

Q. The item of $11,100 charged on November 12, 1913, charged against the account of Isaac Fineberg, also came from the cashbook? A. Yes, sir.

Q. Eliminating the two items of $11,100 and $1,400 charged against the account of Mr. Fineberg during the year 1913, what would be the condition of the two partners' accounts for the period which you have mentioned? A. Well, Isaac Fineberg would have $12,500 less charged against him, if you eliminate that.

Q. Take your statement. A. Yes, he had $16,098 drawn out, which included the $12,500. You take

that from the $16,000, and it would only leave about $4,000, and he put in one thousand and five, and then he only drew out—

Q. Comparing that account with the withdrawals of Mr. Freedman, how would they stand at the end of the period? A. Mr. Freedman at that time had $1,395 in excess more than he drew out in that period.

Q. What is that? A. He put in $1,395 more than he drew out in that period.

Q. So that he had a credit then of $1,395 and Mr. Fineberg had a withdrawal of about $4,000? A. Yes, sir; if you eliminate the $12,500.

Q. Take the period from July 1, 1912, which is the date you say the books show a settlement of the account, up to July 1, 1914, eliminating the item of $12,500, how does that account stand?

The Court: I can make that calculation.

Q. In the account of Harry Freedman, do you find any charge there in his account for any trial expenses, or any items of expense for the trial of a case? A. Nothing of that nature that I noticed.

Q. There is nothing shown in his account in the nature of any charge for expenses for the trial of a case? A. Nothing; there is no such memoranda on the check book.

Q. How did you find these books of account as you examined them; were they properly kept, in your opinion, Mr. Harding? A. I found only one mistake in my examination, and that was a charge of $60 against Mr. Fineberg; it was charged on the cashbook and it wasn't posted to his account in the ledger.

Complainant's Witness, William M. Maher, Direct

WILLIAM M. MAHER, a witness produced on behalf of the complainant, being duly sworn, testified as follows:

Direct-examination by Mr. Katzenbach:

Q. Where do you live? A. Overbrook Avenue.

Q. In the City of Trenton? A. Yes, sir.

Q. Did you have any connection with the Leicester Rubber Company? A. Yes, sir.

Q. What office, if any, did you hold in the Leicester Rubber Company? A. Secretary, and secretary and treasurer for a period.

Q. Where did that company first start to do business? A. In Trenton.

Q. At what point in Trenton? A. On Paul Avenue.

Q. Did you subsequently remove to Perrine Avenue? A. Yes, sir.

Q. About what time did you do business on Perrine Avenue, what year? A. 1911, or the latter part of 1910, I think.

Q. How long did you continue to have a factory on Perrine Avenue? A. Three years or more, perhaps four.

Q. Who were originally interested in and stockholders of the Leicester Rubber Company up to August 1, 1913? A. Mr. De Piano, my brother, J. F. Maher, myself and Mr. Bachuliqo, from Boston.

Q. Did the Leicester Rubber Company subsequently purchase any other place of business? A. Yes, sir; the mill at Catasauqua.

Q. When was that mill purchased? A. I think 1913, in the summer of 1913.

Q. Prior to the purchase of that mill did you have any meeting with the stockholders of the Leicester Rubber Company? A. Yes.

Q. Now, will you state how you came to purchase the mill at Catasauqua? A. Well, Mr. Fineberg suggested to us that there was a good opportunity there, and he would put some money in, and we went up and looked at the mill and finally agreed to purchase it.

Q. Now, who went up to look at the mill? A. I went up on one occasion with three or four others; Mr. Fineberg was along and Mr. De Piano, and Mr. De Piano Russo.

Q. Do you recall when the mill was paid for at Catasauqua, about what date?

Mr. Scammell: That is objected to.
The Court: Objection overruled.

A. August 12, I think was the date.

Q. What year? A. 1913.

Q. August 12, 1913? A. Yes.

Q. Did you keep the books of account of the Leicester Rubber Company? A. Yes, sir.

Q. Did you have a book known as the "Bills Receivable and Bills Payable" book? A. Yes, sir.

Q. I notice here that you evidently had more bills payable than bills receivable, didn't you? A. Yes, sir.

Q. Did you mark "bills payable" over "bills receivable"? A. Yes.

Q. Have you a record in the bills payable, did you make a record of any note made by the Leicester Rubber Company, the proceeds of which went for the payment of this plant at Catasauqua, Pennsylvania? A. Yes, sir.

Q. What is the first record that you find of that note? A. August 12.

Q. What year? A. Why, that was 1913.

Q. Read from your bills payable book the maker of the note, the payee and the indorsers. A. The

Leicester Rubber Company was the maker; it was made payable to the Trenton Scrap Rubber Supply Company for $25,000 for three months, and was indorsed by J. F. Maher, De Piano and Fineberg.

Q. Did the Leicester Rubber Company get the proceeds of that note? A. Yes, sir.

Q. For what length of time was that note made payable? A. Three months.

Q. At the end of the three months will you find the record of that note, or any renewal of it; give me the history of it. A. November 12, Trenton Scrap Rubber Supply Company, renewal of $25,000 note, payment $12,500, three months; the new note is $12,500.

Q. Is there any record there as to who made the payment of the $12,500?

Mr. Scammell: That is objected to.
The Court: Objection overruled.

A. No, no record here.

Q. Well, any memoranda; what is this memoranda here: "I. F. pays"? A. That is my handwriting.

Q. What does that mean? A. Isaac Fineberg.

Q. What does the entry mean? A. The note was renewed for $12,500, and the $12,500 was supplied by Mr. Fineberg.

The Court: Are they the facts?
The Witness: Positively.

Q. Take up the next renewal or note from that notebook; do you find any entry on February 12? A. Yes.

Q. What? A. February 12, a renewal of $12,500 note, pay $1,000, three months' time, at Mechanics' Bank.

Q. And who indorsed by? A. Indorsed by the usual people.

Q. Who were they? A. Maher and Fineberg and De Piano.

The Court: Payable to whom?

The Witness: The Trenton Scrap Rubber Supply.

The Court: Who paid the $1,000?

The Court: The Leicester Rubber Company.

Q. Take up the next renewal of that note, about May 12, 1914. A. May 11; that note this time is made payable to A. De Piano, Harry Freedman and Fineberg, made to the Trenton Scrap Rubber Company, $11,500, renewed for $10,500. I have a lead pencil mark here, "Make it payable to A. De Piano, H. Berstein and Isaac Fineberg"; that was changed from the Trenton Scrap Rubber to those men.

Q. What was the date? A. May 12.

Q. What year? A. 1914.

Q. That reduced that note to what amount? A. $10,500.

The Court: Who paid the $1,000?

The Witness: The Leicester Rubber Company.

Q. Have you any further record of this note in your book here? A. No, because before the note came due the next time, the mill was destroyed and the business was taken over. I don't think there is any.

Q. Look and see on August 12. A. Yes, I guess it was renewed August 12, the mill was destroyed in July.

Q. Read the record in this notebook. A. "Leicester Rubber Company, changed from Trenton Scrap Rubber Supply"—

The Court: Describe that from your record.

The Witness: Made August 12 by the Leicester Rubber Company to A. De Piano, H. Berstein and Fineberg, $10,500, three months, in full; given to the Trenton Scrap Rubber Supply.

The Court: When did you go into bankruptcy?
The Witness: In September.
The Court: Of that year?
The Witness: Yes, sir.

Q. When did you first make the entry as to the date of May 12; that is charged to—was it at the time or subsequent thereto? A. It was subsequent to May 12; it was between May 12 and August 12.

The Court: Between the making and the maturing?
The Witness: Yes, sir; I have written it here in lead pencil.
The Court: As a memorandum?
The Witness: As a memorandum.

Q. At whose direction did you make that notation? A. Mr. Fineberg's; prior to this time J. F. Maher was identified with the company, but he had sold his interest in the company and Mr. Bernstein had come in.
Q. Who was he? A. A gentleman who put $10,000 in the company.
Q. Any relation to Mr. Fineberg? A. Yes, sir; a cousin.
Q. And that was the reason? A. And that was the reason the note was changed.

The Court: How did you come to make the change?
The Witness: Mr. Fineberg suggested it, inasmuch as Mr. Maher was not identified with the company any more and Mr. Bernstein was.
The Court: How came it that the Trenton Scrap Rubber Company was withdrawn as the payee of the note?
The Witness: Well, Mr. Fineberg usually directed what was to be done, and how it was to be done, and that was his instructions in this case.
The Court: He gave you no reasons?
The Witness: No, other than J. F. Maher had left the company.

The Court: He gave you no other reasons?

The Witness: No.

Q. I will show you this note and ask you to look at it—the note marked Exhibit C3, August 12, 1914, and ask you whether that is the note that you last read from the record of the Leicester Rubber Company? A. Yes, sir.

Q. And that was signed by you? A. Yes, sir.

Q. And is the $10,500 note referred to? A. Yes, sir.

Q. Is there any other record in the bills payable book that refers to this note, Mr. Maher? The prior renewals of this note were made payable at the Mechanics' Bank, I think; I notice this note is made payable at the Mercer Trust Company; do you know of any reason for that? A. No, I don't know of any reason.

Q. Now, Mr. Maher, as secretary of the Leicester Rubber Company, did you keep the minute book of the Leicester Rubber Company? A. Yes, sir.

Q. And the stock book? A. Yes, sir.

Mr. Katzenbach: I offer in evidence the bills payable book of the Leicester Rubber Company.

Said book is marked Exhibit C9.

Q. I show you Exhibit C7, and ask you whether that is the stock book of the Leicester Rubber Company? A. Yes, sir.

Q. Do you recall the meeting on the 11th day of August, 1913, which was the day prior to the purchase of the Catasauqua plant? A. Yes, sir; I think so.

Q. Where was that meeting held? A. In the office of the Leicester Rubber Company.

Q. Now, who were present at that meeting? A. Mr. Fineberg and Mr. De Piano, my brother and myself.

Q. At that meeting was there any issue of any shares of stock made to Mr. Fineberg? A. Yes, sir.

Q. How was that 197 shares—what was the purchase price; was there any arrangement of the purchase price at that meeting? A. Yes.

Q. What was it? A. It was arranged to be $62.50.

Q. And how was that arrived at? A. Mr. Fineberg was to put in $14,000, but when the note was made for $25,000, it was agreed that he should pay one-half of that note, and I think the amount of stock issued to him was determined by the amount of money he agreed to pay on the note.

Q. The 197 shares at $62.50 a share would be how much, $12,312.50? A. Yes.

Q. I want to know if you kept the account of Mr. Fineberg here? A. Yes.

Q. I show you a book and ask you what that is. A. The ledger of the Leicester Rubber Company.

Mr. Katzenbach: I offer it in evidence.

Said book is marked Exhibit C10.

Q. Did that ledger have an account of I. Fineberg in it? A. Yes.

Q. Upon the account of I. Fineberg, are there any entries with this 197 shares of capital stock, and if so, what are those entries? A. "August 12, to capital stock, $12,312.50."

Q. When was that paid, and in what way was it paid? A. On November 12 there is an item here, bills payable, $12,500, indicating that Mr. Fineberg paid that on the $25,000, and he receives credit in his account for it.

Q. For the $25,000 note? A. Yes, sir.

Q. Did the Leicester Rubber Company also keep an account with the Trenton Scrap Rubber Supply Company? A. Yes, sir.

Q. Is that account in the ledger? A. Yes, sir.

Q. Will you turn to it? (Witness does so.)

Q. Is there any entry upon that account with reference to the capital stock; was there any charge to the Trenton Scrap Rubber Supply Company? A. No.

Q. Was Mr. Harry Freedman ever a stockholder of the Leicester Rubber Company? A. Yes, sir.

Q. I am talking about Mr. Harry Freedman? A. No, I misunderstood you; I thought you meant Mr. Bernstein.

Q. Was Mr. Freedman a stockholder? A. No.

Q. With reference to the management of the business at Catasauqua, Pennsylvania, will you state whether or not Mr. Fineberg took any active part in the management of the business? A. He dictated the policy of the concern, and he ran the business practically; he gave all instructions and orders.

Q. Did he become an indorser on any of the paper of the Leicester Rubber Company outside of this $25,000 note? A. Yes.

Q. What paper of the Leicester Rubber Company? A. Many others.

Q. Also those that you— A. There were two notes of the Lehigh National Bank; he indorsed both those.

Q. Those are the ones you mean? A. Yes, sir.

The Court: Accommodation notes?

The Witness: Yes, sir.

Q. And the Leicester Rubber Company got the proceeds? A. Yes.

Q. And what was the character of those notes? A. I think one was $6,000 and the other $3,000.

Q. Were there any other notes that you know of, which Mr. Fineberg indorsed for the Leicester Rubber Company? A. Yes, sir.

Q. What? A. Oh, he indorsed most all notes; one particularly, that he gave to my brother.

Q. What was the note given to your brother for? A. Part payment of the purchase price of his stock.

Q. In what concern? A. The Leicester Rubber Company, and he gave notes to Richard Yeager for moulds—he indorsed those notes.

Q. What other notes do you recall? A. I think most all the accommodation notes; I am not quite sure about that; no, I don't think he did; well, those three or four notes that I know of, this $10,500, the notes of Yeager and the notes of the Lehigh Bank, and Mr. Maher.

Q. Did he guarantee— A. Yes, he guaranteed one time the carload of boxes we received and scrap from other concerns.

Q. What concerns? A. Well, I just can't think; there was one concern in New York.

Q. D. Fineberg and Company? A. I think it was.

Q. The Rubber Trading Supply Company? A. Yes, I understand he guaranteed that account.

Q. Did Mr. Freedman have anything to do with the management of this business at Catasauqua? A. Not to my knowledge.

Q. From the time you went into possession of the plant until the fire occurred, was he ever there, to your knowledge? A. No.

Q. At the time of the purchase of this plant, or just while negotiations were being conducted, did you hear anything pass between Mr. Freedman and Mr. Fineberg with reference to the purchase of this plant? A. No, sir.

Q. Did you ever hear Mr. Fineberg say whether or not Mr. Freedman ever had any interest in the plant? A. No; I knew that he didn't; I heard several conversations; it was talked of many times; one particular occasion I heard Mr. Fineberg say that he wouldn't be allowed to come in at a subsequent period if he wished to.

Q. What period do you mean? A. Well, if he made up his mind after he found out the business was a success, he wouldn't be taken in.

Q. That Mr. Fineberg said? A. Yes, sir.

Q. When? A. I can't tell just when.

Q. Where did the conversation take place? A. In Catasauqua.

Q. At the mill? A. Yes, sir.

The Court: At the time it started?

The Witness: No, perhaps during the winter; we started in August or September.

The Court: Well, at an early period?

The Witness: Yes, sir.

Q. When did Mr. Bernstein take an interest in the business? A. He came in in January.

Q. What year? A. I think 1914.

Q. Were there any notes of the William R. Thropp and Sons Company? A. Yes, sir.

Q. Were they indorsed by Mr. Fineberg? A. Yes, sir.

Q. Can you give the amount of those? A. I can by looking at the book. (Witness looks at book.) Here is one for $2,869.73, given June 19, to William R. Thropp and Sons Company.

Q. What year? A. 1914; there was one other note, I feel sure; it appears there is only one note, but I thought there were two; I only see one. Here is another note given to Thropp on June 17, 1914; it is a renewal of the $1,500 note; it is for $1,000.

Q. Did that bear the indorsement of Mr. Fineberg? A. Yes, sir.

Q. What was it given for? A. For machinery, for a book account.

Complainant's Witness, William M. Maher, Cross

CROSS-EXAMINATION by Mr. Scammell:

Q. Mr. Maher, at the time you went up to the Catasauqua plant, was Mr. Freedman with you? A. No.

Q. When did you first go up and look at this plant? A. Well, it was sometime in June, 1913, I can't tell the date.

Q. You say you never went up there with Mr. Freedman? A. No; I went up only once, and Mr. Fineberg was with me, and Mr. De Piano, and that is—

Q. You knew Mr. Freedman had been up there? A. Yes, sir; on one occasion prior to that.

Q. He told you he had gone up? A. I knew he went up; three or four of them went up.

Q. Who were they? A. My brother was along, Mr. De Piano was along, and Mr. Freedman, and I think Mr. Fineberg was along; I don't know just who it was.

Q. Did you see Mr. Freedman in the office of the Trenton Scrap Rubber Company, with reference to the purchase of this plant, when the question of the purchase of the plant was being taken up? A. No.

Q. You never talked with Mr. Freedman in their office about it? A. No.

Q. Did you ever talk with him at all about the purchase of the plant? A. I don't think so.

Q. Are you quite sure? A. I think the matter was discussed generally at our office on three or four occasions; I think Mr. Freedman—

Q. Was down there, wasn't he? A. I think so.

Q. Mr. Freedman was down in the Leicester Rubber Company's office when the question of the purchase of this plant was being discussed? A. I think he was there.

Q. How long was that before August 12, 1913? A. Sometime during June, that was.

Q. Did you know anything about negotiations which were being conducted for the purchase of that plant at that time? A. I was familiar with the circumstances of it.

Q. Did you see any of the letters which were passed between the broker, who was Mr. Leonard? A. Yes, I think I did see one or more of the letters.

Q. Where did you see those letters? A. I think I saw them in the Leicester Rubber Company's office, or, perhaps, in the Trenton Scrap office; I just forget that.

Q. You knew, however, that those letters were written by the Trenton Scrap Rubber, didn't you? A. Yes, sir.

Q. And you think you have an impression that you might have seen them in the Trenton Scrap Rubber Company's office? A. I can't tell where I saw them.

Q. Were you present at a conference held in the Trenton House with Mr. Leonard? A. No, sir.

Q. When did you actually move your business from Trenton to Catasauqua? A. I think about the first of September.

Q. The company began to operate how soon after? A. Sometime during September; I think about the middle of September, or the latter part.

Q. About the middle of September? A. Yes, sir.

Q. The operation of the company, of the Leicester Rubber Company, prior to the fire, was a successful operation, was it not? A. I don't know whether you might say so or not; there was a lot of money expended there, and we hadn't very much results from it in the way of business; we had a lot of stock made up. We sold a little stock. I think the latter months of our existence showed the sales were increasing.

Complainant's Witness, William M. Maher, Cross

Q. The operation of the company was successful up to July of 1913, when you took under consideration the purchase of this plant? A. It had been.

Q. The Leicester Rubber Company plant in Trenton was within a short distance of the Trenton Scrap Rubber Company plant? A. Yes, sir.

Q. How far away was it? A. Probably a hundred yards, or maybe two hundred yards.

Q. And you passed the Trenton Scrap Rubber in going to your office, in going to your business? A. Every day.

Q. The negotiations for the purchase of the Catasauqua plant continued for a month or so? A. Yes.

Q. Do you know whether anything was said in your presence by Mr. Freedman with respect to the purchase price to be paid for this plant? A. No; there was never anything said in my presence with reference to that.

Q. By either Mr. Fineberg or Mr. Freedman? A. I heard the matter discussed about how the money should be raised to pay for the plant.

Q. Where was that discussion? A. In the Leicester Rubber Company's office; and I knew Mr. Fineberg was making efforts to raise this money.

Q. When was that? A. In June, or, perhaps, it was on the Street; it was talked over many times, and in the Trenton Scrap Rubber Company's office, but I can't tell where that conversation took place.

Q. Did you know what they were going to pay for the plant? A. Yes.

Q. When did you know that? A. From the earliest negotiations, with the possible exception of a little to be thrown off. At first it was $25,000, then a little less, and then they cut it down lower.

The Court: How much did you cut off it?

The Witness: It was $23,000, I think.

Q. The price of $25,000, didn't you hear Mr. Freedman discuss that amount, as to whether it would be a good buy for that sum? A. I think I did on one occasion; I either heard him discuss it or heard somebody else; I can't say distinctly about it.

Q. But you are quite sure that Mr. Freedman was present when the amount of $25,000 was discussed? A. Oh, no; I couldn't say that he was present; I don't know that he was, and he may have possibly been there, too.

Q. When was it that the offer of $22,500 was given, if you know? A. Well, sometime during July or the early part of August, because the sale was consummated August 12th.

Q. Did Mr. Freedman talk to you about the Leicester Rubber Company becoming interested in there? A. No.

Q. Did you ever understand from Mr. Freedman, prior to the Leicester Rubber Company becoming interested, that Mr. Freedman and Mr. Fineberg were trying to buy this plant? A. No.

Q. Did you ever hear Mr. Freedman say that he wanted to become interested in this plant? A. No; on the contrary, I did hear him say that we would be better off to buy a plant in Trenton, or if we wanted to put up a plant, to put one up in Trenton.

Q. When was that? A. About the time the negotiations were going on.

Q. Then he knew negotiations were going on? A. Yes; he went up to this plant.

Q. And he knew the Trenton Scrap Rubber was writing letters, from what he said to you? A. Yes.

Q. And you knew that? A. Yes.

Q. He knew that, didn't he? A. I suppose so.

Q. That the Trenton Scrap Rubber was writing letters in connection with the purchase of the plant? A. Yes.

Q. And you knew the Trenton Scrap were negotiating to buy it? A. Yes.

The Court: Who is he?
The Witness: Mr. Freedman.

Q. Originally, Mr. Maher, there was some question as to what price should be paid for the stock of the Leicester Rubber Company, wasn't there? A. Yes.

Q. Didn't you claim that your stock was worth considerably more than what the understanding was, was to be paid for it? A. No; our stock was rated at $100 per share.

Q. It was worth that? A. I don't know; we figured it at that.

Q. The $25,000 note, the original note was made out in Trenton, wasn't it? A. Yes, sir.

Mr. Scammell: I ask to have this paper marked.

Said paper is marked Exhibit D1 for identification.

Q. I show you a paper, note, dated August 12, 1913, $25,000, Leicester Rubber Company note; was that the note originally given (D1 for identification)? A. I think so.

Q. Did you actually receive all of the money on that note at once? A. No; that money was turned over at various times, and in various ways, from the account of the Trenton Scrap Rubber Supply Company.

Q. And that shows upon your books how you received that? A. Yes.

Q. When did the fire take place? A. I think on the 15th of July.

Q. 1914? A. Yes; the 15th or 16th.

Q. The books of account of the company were not accessible for some little time after the fire? A. Three or four months.

Q. When the first note of May—that is, the note you have spoken of where the first change appears, you say upon the book, which is the bills receivable of the Leicester Rubber Company, you saw the first notation of the charge on that book? A. Yes, sir; made subsequent to May 12; that memorandum was put there, so that the next time this note was being renewed it was to be made out in a different form.

Q. Mr. Bernstein had not indorsed that note at that time? A. No; this is the first note.

Q. That is August? A. Yes, sir.

Q. I show you a note dated May 12, 1914, and ask you who signed that note? A. I signed it as secretary, and Mr. Bernstein.

Q. Who indorsed that note? A. Mr. Bernstein, Mr. De Piano, Mr. Fineberg.

Q. That note is drawn to whose order? A. The Trenton Scrap Rubber Supply.

Q. Then you are mistaken— A. Yes, in this one item; I see Mr. Bernstein did indorse this note. I didn't have any record as to who the indorsers were.

Q. Then, the only significance of the statement Mr. Fineberg made to you was, to place Mr. Bernstein in there instead of your brother? A. Yes.

Q. Not that the note was to be drawn to the Trenton Scrap Rubber? A. No.

Q. It was just to supply another name in the place of your brother? A. Yes, sir.

Q. Can you tell to what extent Mr. Fineberg was indorser upon notes, outside of the $10,500 note of the Leicester Rubber Company, to what amount, at the time of the fire in July, 1914; do your books show? A. They will show, but it will take some time to go over it, but I suppose about $10,500.

Complainant's Witness, William M. Maher, Re-direct

RE-DIRECT EXAMINATION by Mr. Katzenbach:

Q. Do you recall a meeting of the Leicester Rubber Company with reference to the increasing of the capital stock? A. Well, there wasn't any meeting generally, it was a matter of form, the instructions were given, don't you know.

Q. Well, now, is this a consent of the stockholders to that meeting for the increasing of the capital stock (showing witness a paper)? A. Yes, I think so; it's a waiver of notice of the meeting.

Q. Is that the signature of Mr. Fineberg; is that in the handwriting of Mr. Fineberg, his signature? A. Yes, sir.

Mr. Katzenbach: I offer the paper in evidence.

Said paper is marked Exhibit C11.

Q. I notice here a power of attorney to Harry Bernstein for the shares of the Leicester Rubber Company; is that Mr. Fineberg's signature to that? A. Yes.

Q. I show you the minute book of the Leicester Rubber Company, and ask you whether it is or not the minute book? A. Yes, sir; it is a book that the records were generally kept in.

Q. Do you know anything about the cutting out of those leaves? A. I cut them out; there was nothing on it, and I previously had these records in another book, and when we went up there I found this book, which was a good record book, but something had been written in the book, and I cut the leaves out and I used the book.

Mr. Katzenbach: I offer in evidence the power of attorney of I. Fineberg.

Said paper is marked Exhibit C12.

Complainant's Witness, William M. Maher, Re-cross

RE-CROSS EXAMINATION by Mr. Scammell:

Q. The only reason for the change of the form of the note of $10,500, on August 12th, was because you didn't know where the note was due at that time, or how the note was drawn, did you? A. I don't understand you.

Q. (Stenographer repeats the question.) A. Well, that was subsequent to the fire, and I don't know why that change was made, other than—we were notified to make this change prior to this time, but I don't know why it was, other than the fact that my brother had left the company and Mr. Bernstein came in, and it was understood that he should be responsible as well as the others.

Q. But, as you have stated before, that was the only reason for the change? A. I don't know of any other reason.

Q. Then, why didn't you draw this note the same as the May 12th one was drawn, to the order of the Trenton Scrap Rubber? A. Because Mr. Fineberg advised me to draw it that way.

Q. When? A. Sometime subsequent to May 12th. I made a memorandum in my note book.

Q. The only reason you have stated, was to have Mr. Bernstein's name appear there in the place of your brother's? A. I don't know any other reason.

Q. Why did you make it payable at the Mercer Trust Company, when the previous note was made payable at the Mechanics' Bank? A. I can't tell that; I don't know why that was.

Complainant's Witness, Emma R. Hulit, Direct

EMMA R. HULIT, a witness produced on behalf of the complainant, being duly sworn, testified as follows:

Direct-examination by Mr. Katzenbach:

Q. Miss Hulit, you are in the employ of Mr. S. D. Oliphant, Jr., referee in bankruptcy? A. I am.

Q. And you have charge of the papers in the various bankruptcy matters for him? A. I do.

Q. Have you produced here a claim made out by Isaac Fineberg against the Leicester Rubber Company, and lodged with Mr. Oliphant, as referee in the bankruptcy matter of the Leicester Rubber Company? A. I have.

Q. Will you produce it? (Witness produces paper.)

Mr. Katzenbach: I offer it in evidence.

Said claim is marked Exhibit C13.

Mr. Katzenbach: I want to read into the record this claim of Isaac Fineberg, creditor of the Leicester Rubber Company, in the sum of $819.96, sworn to on October 21, 1914, to which there is an account annexed made out on a billhead of the Trenton Scrap Rubber Supply Company, and the name of the Trenton Scrap Rubber Supply Company has been x'd out, and the name of I. Fineberg substituted, and which shows that on November 12, 1913, he advanced $12,500 in cash to the Leicester Rubber Company, and upon which there appears, under date of August 12, 1913, a credit of "By capital stock, $12,312.50," together with other items of cash, but particularly, it is introduced for the purpose of proving an admission of the purchase of that capital stock by Mr. I. Fineberg; the total charge

against the Leicester Rubber Company being $13,526.93, of which the item of $12,500, under date of November 12, 1913, is a part; the credits amounting to $12,706.97, of which the item I have already spoken of, $12,312.50, made up of the capital stock credit under date of May 12, 1913, is a part, which leaves a balance of $819.96.

This exhibit is sworn to by Mr. Fineberg, before Henry H. Wittstein, Master in Chancery of New Jersey.

Q. Now, Miss Hulit, have you another claim of the Trenton Scrap Rubber Supply Company to the Leicester Rubber Company, for a book account? A. Yes, sir (producing paper.)

Mr. Katzenbach: I offer the paper in evidence.

Said paper is marked Exhibit C14.

Q. You produce the claim of the Trenton Scrap Rubber and Supply Company to the Leicester Rubber Company, do you not? A. Yes, sir, for book account.

Mr. Katzenbach: This claim is offered in evidence. It is signed "Trenton Scrap Rubber Supply Company, I. Fineberg." It is sworn and subscribed to on October 21, 1914, before J. Irving Davidson, Commissioner of Deeds of the State of New Jersey, and is a claim of the Trenton Scrap Rubber Supply Company against the Leicester Rubber Company, for $9,186.02, consisting of various items of merchandise and cash charged to the Leicester Rubber Company by the Trenton Scrap Rubber Supply Company, and various items of credit of notes and cash, leaving the

said balance of $9,186.02. This does not include the advance of $12,500, nor the credit of $12,312.50 for stock, contained in Mr. I. Fineberg's account, as disclosed by the previous exhibit.

Mr. Scammell: No cross-examination.

Mr. Katzenbach: The claim of the Trenton Scrap Rubber Company is increased to $10,436.02 by some additions, instead of $9,186.02. Miss Hulit advises me that the change was made by sworn testimony taken on the 15th day of December, 1915.

Recess until 2 P. M.

JOSEPH F. MAHER, a witness produced on behalf of the complainant, being duly sworn, testified as follows:

Direct-examination by Mr. Katzenbach:

Q. Mr. Maher, where do you live? A. South Warren Street.

Q. Were you at any time interested in the Leicester Rubber Company? A. Yes, sir.

Q. When did you become interested in the Leicester Rubber Company? A. About two months after they organized, I think.

Q. Do you recall about the date of the organization, what year? A. I think it was 1910, somewhere about that.

Q. During the year 1913, the first part of the year, where did the Leicester Rubber Company have its place of business? A. Down in the old Taylor slaughterhouse.

Q. On Perrine Avenue? A. On Perrine Avenue, yes.

Q. Who were at that time interested as stockholders of the company? A. Mr. De Piano, my brother and myself, and later on, the two Bachuliqo brothers, from Boston.

Q. During the year 1913, did the Leicester Rubber Company acquire any other factory for the doing of business? A. That was the year they purchased?

Q. Yes; at Catasauqua. A. Yes, sir.

Q. Prior to the purchase of the Catasauqua plant, did you make a visit to that plant? A. Yes, sir.

Q. Who first spoke to you about the Catasauqua plant? A. Mr. Fineberg.

Q. And after he spoke to you about it, what, if anything, did you do? A. We finally waited for about two weeks, I think, and got into communication with the broker that had the thing in charge, and finally made a trip up there to look it over.

Q. Now, on that trip, who went on that trip? A. Mr. Freedman, Mr. De Piano, myself and the mechanic.

Q. After you came back from that trip, were you present at any interview between Mr. Freedman and Mr. Fineberg, with reference to the purchase of this plant? A. Not any more than the fact that we were all together, and talking it over.

Q. Just what was said between Mr. Fineberg and Mr. Freedman as to whether Mr. Freedman was to have an interest in the plant? A. It was conceded, at first, that Mr. Freedman was to come into it.

Q. What passed between them afterwards? A. I don't know, but about two or three weeks afterwards, Mr. Freedman began to show signs of weakening; he didn't want to come into it, and Mr. Leonard came down and wanted to close the deal, and we talked the matter over for some time, and finally he went away without closing the deal; and there was some more correspondence. Finally, the broker came down again, about two weeks afterwards, and said he came down

to close the deal up, and at that time I think he was asking $30,000 for it; so we got together in Mr. Fineberg's office, Mr. Fineberg, Mr. De Piano, Mr. Freedman and myself, and the broker. We talked the matter over, and there was some little difficulty in arranging the price; we didn't want to give the $30,000. Finally, Mr. De Piano went out, and then Mr. Freedman and Mr. Fineberg went out, and left me alone with the broker, and I said, "We will never give over $25,000 for the plant"; "Well," he said, "what will become of me?" I said, "I don't know"; and I went out and Mr. Fineberg and Mr. Freedman were out there talking, and I said to them, "I think that plant can be bought for $25,000," and that was all.

Q. What did they say? A. Mr. Freedman disapproved of it.

Q. What did he say? A. He said, "Ike, don't pay it; we have been together a good while and have made a lot of money; don't buy it." And Mr. Fineberg asked him if he didn't want it and he said, "No," and Mr. Fineberg said, "Well, I'll take it myself."

Q. After Mr. Fineberg said he would take it himself, do you know whether or not there was any agreement made for the purchase of this plant; did you see it? A. No.

Q. Were you present when it was made? A. I was not.

Q. Were you present at a meeting of the stockholders of the Leicester Rubber Company on August 11, 1913, which was the day prior to the purchase of this plant, at which Mr. Fineberg was present, and in which there was reference to capital stock being issued? A. Yes, sir.

Q. Who were present at that time, and where did it take place? A. Mr. Fineberg, my brother, Mr. De Piano and myself.

Q. And where did it take place? A. In the Leicester Rubber Company's office.

Q. And what was done with reference to the issuing of capital stock? A. I think Mr. Fineberg got his stock at that time.

Q. He took it at that meeting? A. He arranged to take it; I won't say whether he took it or not.

Q. Was Mr. Fineberg interested in any way in the Leicester Rubber Company before that meeting? A. Yes, sir.

Q. And you had an interest in the Leicester Rubber Company yourself? A. Yes.

Q. Did anything pass between you and Mr. Fineberg about that time with reference to your going to Catasauqua, and if so, what? A. Well, I didn't approve of the matter from the first, and I wanted to draw out, and Mr. Fineberg told me if I would go up for six months until they got started, he would take my stock over.

Q. Did you go up? A. Yes, sir; for six months.

Q. Did Mr. Freedman ever have anything to do with the management of that plant? A. I don't think so; no.

Q. Was he ever there directing anything? A. I never saw him there only the first day we went up, and the day after the fire.

Q. What did you mean by your stock, what did you mean? A. My stock, my shares of stock.

Q. In the Leicester Rubber Company? A. Yes, sir, and let me out of it.

Q. When did you go to Catasauqua? A. About September, in the fall sometime.

Q. What year, 1913? A. 1913.

Q. How long did you remain there? A. Six months.

Q. At the end of the six months, what occurred? A. Well, I told Mr. Fineberg the six months was up.

Q. What did he say? A. Well, we arranged to have my stock taken over.

Q. What did you get for your stock? A. Well, I got half of what I paid for it.

Q. In what form did you get it? A. I got a note for $1,500.

Q. Did you sell your stock? A. Yes, sir.

Q. To whom did you sell it? A. Mr. Fineberg was the man I done business with.

Q. Did he indorse the note? A. Yes, sir.

Q. And subsequently paid the note? A. The note is being paid now.

Q. You say at the end of the six months you spoke to Mr. Fineberg? A. Yes, sir.

The Court: Whom did you sell it to?

The Witness: I guess the Leicester Rubber Company.

The Court: You got whose note for it?

The Witness: The Leicester Rubber Company's note, indorsed by Mr. Fineberg.

The Court: For $1,500?

The Witness: Yes.

The Court: What was your share?

The Witness: About $3,000, but I was to get the balance after some little time, but I never got it.

Q. You spoke of Mr. Freedman's coming up there the day after the fire; was that due to any conversation you had with Mr. Freedman?

Mr. Scammell: That is objected to.

The Court: Objection overruled.

A. Yes, sir.

Q. Just state how Mr. Freedman happened to go up there? A. I called Mr. Freedman on the 'phone about four o'clock in the morning; I got a telephone message from my brother, that the plant was on fire, and I went to Mr. Fineberg's house about three o'clock

in the morning, and I telephoned from Dave Brand's house to Mr. Freedman; I went down to see Mr. Freedman about six o'clock, and I said, "Get your car out and we will take a trip up there"; he said, "No," it was too far for the car, but we would go up by rail; and we went up there about nine o'clock Sunday morning.

Q. Did you make any effort to get Mr. Fineberg when you got this message? A. Yes, sir; I got the message from my brother; Mr. Brand wasn't home, and Mr. Freedman told me he was up in the mountains.

The Court: Who?

The Witness: Mr. Fineberg, alone; Mr. Brand was out of town somewhere.

CROSS-EXAMINATION by Mr. Scammell:

Q. The company, Mr. Maher, the Leicester Rubber Company, agreed with you to repurchase your stock in six months from the date they moved to Catasauqua? A. Yes, sir.

Q. You entered into these negotiations with the company, and the company gave you its note, did it not? A. Yes, sir.

Q. Mr. Fineberg indorsed that note? A. Yes, sir.

Q. You say you were with Mr. Freedman at the time he went up to inspect the plant before the sale? A. Yes, sir.

Q. Did Mr. Freedman ask you to go? A. No; it was arranged among all; we were all interested.

Q. Do you mean all? A. Mr. Freedman, Mr. Fineberg and the Leicester Rubber Company were interested at the beginning.

Q. Who arranged to go to Catasauqua; who arranged the time, did you? A. No, I didn't; I don't know just who did; it was arranged among ourselves; I don't recall who arranged it.

Complainant's Witness, Joseph F. Maher, Cross

Q. Mr. Fineberg wasn't along, was he? A. Not on the first trip, no.

Q. He was not on any trip when Mr. Freedman was present with you? A. No, sir.

Q. About when was it that Mr. Freedman went up there with you? A. Well, he went up sometime in the summer; I forget exactly what date it was.

Q. About how long before it was purchased? A. It might be five or six weeks.

Q. The negotiations for the purchase of this plant were conducted by the Trenton Scrap Rubber, weren't they? A. Eventually, yes.

Q. You frequently went in their office located on Perrine Avenue, didn't you? A. Yes, sir.

Q. And your office was very close to it? A. Yes.

Q. You saw the correspondence, didn't you, between the Trenton Scrap Rubber and Mr. Leonard, the broker? A. I don't think I ever saw it; I knew of it.

Q. As a result of this correspondence, did you talk with Mr. Freedman about the price of the property? A. No, I don't think so; not as a result of the correspondence. Mr. Freedman and I had quite some talk about the place.

Q. Did he say what he thought the plant should be bought for? A. I don't recall that he did, but he objected to the price at first, and the amount of money expended to put it in proper shape.

Q. What was the price asked for it at first? A. $40,000.

Q. They actually paid $22,500 for it, didn't they? A. Yes, sir.

Q. Mr. Freedman knew all about these negotiations? A. Yes.

Q. And he talked with you? A. Yes, sir.

Q. And talked with your brother? A. Yes, sir.

Q. Also talked to Mr. De Piano about it, didn't he? A. I guess he did; we all talked together.

Q. Wasn't there a De Piano Russo? A. Yes, the mechanic.

Q. Was he present during any of these talks? A. He might have been; he was usually present; they were discussed in the office.

Q. He was the mechanic employed by the Leicester Rubber Company? A. Yes.

Q. And he went with you at the time you went up with Mr. Freedman? A. Yes, sir.

Q. What was Mr. Freedman's idea, if he expressed it, as to what he thought should be paid for the plant? A. I don't recall that he thought anything should be paid for it; he seemed to object to the purchase of the plant from the first, on the ground that it wasn't in proper shape; it was used for making rubber for suspenders, and it would take too much to put it in shape for the manufacturing of rubber mats.

Q. And shoddy? A. And shoddy.

Q. Did you make any soles and heels at that time? A. Not at that time.

Q. Did you make any canning rings? A. Not at that time.

Q. But after the plant went up there, you did start in to manufacture canning rings? A. Yes, sir.

Q. And you used a machine which Mr. Russo was the patentee of? A. Yes, sir.

Q. Was it ever discussed in the presence of Mr. Freedman, that this machine was a valuable machine and was worth considerable money, that is, that it could be operated profitably for the making of canning rings? A. That was discussed.

Q. Was it discussed before Mr. Freedman as to the advantages of this machine? A. Yes, sir.

Q. You had one of these machines operating in your plant? A. They were experimenting.

Q. At that time? A. Yes.

Q. You say Mr. Leonard came down upon two occasions? A. I think so, as I remember it; maybe three, but I think it was two.

Q. Did you see him the first time he came here? A. Yes.

Q. Where did you meet him? A. I think it was at Mr. Fineberg's office, the Trenton Scrap Rubber.

Q. At the Scrap Rubber office? A. I think so.

Q. And Mr. Freedman was present at that time? A. I think so.

Q. About when was that? A. Well, that was—

Q. Was that shortly before you closed negotiations? A. I think it must have been two months before that—five or six weeks, anyhow; I think it was hanging fire two months before we purchased it.

Q. A sort of angling to get the price down? A. To get the price down.

Q. When was it that you decided to give a price of $22,500? A. I didn't know it was purchased at that price; $25,000 was the last price I heard mentioned; I knew it was purchased for considerable under that, but I didn't know what the price was.

Q. When was the second visit of Mr. Leonard; how long was it between the first and second visits? A. It might have been two or three weeks.

Q. Where did you see him at that time? A. In Mr. Fineberg's office.

Q. Were you ever present at any interview in the Trenton House with Mr. Leonard? A. Yes, sir.

Q. When was that? A. I think the first time he came down, I think Mr. Fineberg, Mr. Freedman and I and Mr. Leonard went to the Trenton House.

Q. From the Trenton Scrap Rubber office to the Trenton House? A. No, I think it was after supper; we arranged to meet him there, if I don't mistake.

Q. As a matter of fact, didn't you and Mr. Freedman meet and then get Mr. Fineberg afterwards? A. I just forget about the circumstances, but I think I came up and met Mr. Freedman on Hanover Street, in his automobile, and I forget where Mr. Leonard came in it, but I know we all got together in the Trenton House about eight o'clock that night.

Q. By appointment? A. I think we did have an arrangement.

Q. When was the last time you met in the Trenton Scrap Rubber office, and you say that Mr. Freedman and Mr. Fineberg went out in the stock room and had a talk? A. That was when the thing came to final determination, somewhere in the middle of the summer, I guess.

Q. Was it on August 12th? A. I don't recall.

Q. About that? A. I guess it might have been.

Q. That was the day the $25,000 note was given? A. Well, it might have been somewhere about July, I guess.

Q. Who did the most of the talking at this interview at the Scrap Rubber office? A. Mr. Fineberg, I think.

Q. What was the principal subject of discussion, the price? A. The price.

Q. That was about all, wasn't it? A. That was about all.

Q. What did Mr. Freedman say about the price? A. I don't recall that he said anything; I don't recall that he said anything.

The Court: Do you mean that you don't recall anything he said?

The Witness: No, not in particular, I don't recall anything.

Q. At this time the price was $30,000? A. I think so, at that time.

Q. Then you say Mr. Freedman and Mr. Fineberg left the room and left you there alone? A. Yes, with Mr. Leonard.

Q. What was their object? A. They went out, I guess, to talk the matter over.

Q. To talk it over together? A. I suppose so.

Q. And after they came back is when Mr. Freedman said he would have nothing to do with it? A. No, sir; it was decided before they came back in the little office.

Q. It was decided where? A. Out in the stock room.

Q. Just tell us what he said. A. Well, I went out and I said to Mr. Freedman, "I think the plant can be bought for $25,000"; then Mr. Freedman began to object.

Q. What did he say? A. He said, "Ike, don't buy it, don't do it; we have been in business a good many years and made some money." Mr. Fineberg turned around to him and asked him if he didn't want it, and he said, "No." Then he said, "I'll take it myself."

Q. Is that all? A. As near as I can remember it; yes, sir.

Q. This talk you had there—did Mr. Fineberg say that he thought the plant could be bought for $22,500? A. I don't recall that.

Q. And didn't Mr. Freedman say that he thought the plant could be bought for $22,000? A. I don't recall that; $25,000 was the lowest price I heard.

Q. Did you ever hear any discussion between Mr. Fineberg and Mr. Freedman when the price of $22,500 and $22,000 was being discussed? A. I did not.

Q. When Mr. Freedman went up with you after the fire, was there any discussion between you as to whether you had any insurance on the place? A. I think I asked Mr. Freedman just what insurance there was on it.

Q. What did he say? A. He said he thought there was only $10,000 insurance on it.

Q. What did you say to him? A. I said it was too bad there was no more insurance on it.

Q. And what did he say? A. He said he thought it was.

Q. He thought it was too bad? A. Yes.

Q. Did he speak to you about any loss? A. No, I don't recall that he did; we talked about the insurance on the plant.

The Court: Was it a total loss?

The Witness: Almost; yes, sir.

Q. Did he say anything to you about what he thought the loss was going to be of the Trenton Scrap Rubber? A. I don't recall that he did, no.

Q. He did not? A. I don't think so.

HARRY BERNSTEIN, a witness produced on behalf of the complainant, being duly sworn, testified as follows:

Direct-examination by Mr. Katzenbach:

Q. Where do you live, Mr. Bernstein? A. I lived, before I went up to the rubber mill—before the time I was at the rubber mill, I lived in Trenton.

Q. Where do you live now? A. In Trenton.

Q. Did you ever live at Catasauqua, Pennsylvania? A. Yes, sir.

Q. When did you go there? A. I moved up there sometime around May.

Q. What year? A. 1914.

Q. Prior to moving up there in May, 1914, did you become interested in any way in a corporation known as the Leicester Rubber Company? A. I did.

Complainant's Witness, Harry Bernstein, Direct

Q. How did you happen to become interested in the Leicester Rubber Company? A. I met Mr. Isaac Fineberg one day and told him I would like to invest some money in a good business, and this proposition was brought forward.

Q. What did he say? A. He said to me he had got a rubber mill up there, and that he wanted me to take charge of it and be the manager up there.

Q. Where was this rubber mill? A. In Catasauqua.

Q. Did you go there? A. Yes, sir.

Q. Whom did you go up there with? A. I went up there with Mr. Fineberg and a man by the name of Elwell.

Q. When you got up there with Mr. Fineberg, what, if any, investment did you make in the Leicester Rubber Company? A. $10,000.

Q. That was in the form of what, cash? A. I invested cash money.

Q. And you received shares of stock? A. Yes, sir; for the cash money.

Q. Who were those interested in the Leicester Rubber Company besides yourself, that you know of at that time? A. At that time I didn't know of anybody, until I found out.

Q. Whom did you find out were interested? A. Ike Fineberg, Billy Maher, Joseph Maher and the two Bachuliqos from Boston, two brothers, and myself.

Q. What office did you take? A. Treasurer.

Q. Are you the Harry Bernstein who indorsed a note of $10,500? A. I indorsed one of the notes.

Q. For $10,500? A. I think that's what it was.

Q. Who managed the concern when you were up there, who came up there, if anybody, and gave instructions as to what to do? A. Mr. Fineberg gave directions as to what to do.

Q. Who controlled the company? A. At the time, I didn't know who had control of the company until I went up there.

Q. When you went up there, whom did you find had control of the company? A. I didn't get any information from anybody, only from—

The Court: After you took charge, who controlled the policy of the company?

The Witness: Mr. Fineberg.

Q. Did Mr. Fineberg ever make any statement to you as to who controlled the majority of the stock of the corporation after you became a stockholder; what, if any, talk did you have with him? A. Once there was a remark made that him and I had the controlling interest in the business.

Q. Who said that? A. Mr. Fineberg.

Q. When did the fire take place at Catasauqua? A. July 18, 1915.

Q. Was it 1915 or 1914? A. 1914, shortly after I moved up.

Q. Now, do you know Mr. Harry Freedman? A. I know Mr. Freedman.

Q. Had you known Mr. Freedman before you took this interest in the Leicester Rubber Company? A. I did.

Q. Did Mr. Freedman ever go to Catasauqua while you were there, and prior to the fire? A. He did not.

Q. Did you ever hear that he had any interest, or see anything by which he had any interest in that business? A. I didn't hear of anything.

Q. How frequently did Mr. Fineberg come there? A. He come up quite often, he come up there about every week, sometimes every two or three weeks, different times quite often.

Q. Do you recall after the fire of the company's making or drawing up any document with reference

to the assets of the company; after the fire do you remember going to the office of William H. Schneller, an attorney-at-law? A. Yes, sir.

Q. I show you a paper that I will ask to have marked, and ask you whether you signed that paper?

Said paper is marked Exhibit C15.

A. That's my signature.

Q. Was that signed by Mr. De Piano in your presence, and by Mr. Maher? A. They were all present at the office.

Q. The office of whom? A. Mr. Schneller.

CROSS-EXAMINATION by Mr. Scammell:

Q. Was Mr. William Maher up at the plant in Catasauqua while you were there? A. He was.

Q. Was Mr. De Piano there? A. Mr. De Piano was there.

Q. Working there? A. Working.

Q. Was De Piano Russo there? A. Yes, sir.

Q. And working in connection with the company? A. Yes, sir.

Q. The factory of the company was under whose charge at Catasauqua? A. When I went up there?

Q. Yes. A. I don't know whose charge it was under when I went up there.

Q. Well, after you went up there? A. I was supposed to have charge of it.

Q. What connection did Mr. Maher have with it? A. He was the secretary, in the office.

Q. Did he keep the books? A. Yes, sir.

Q. Did he carry on the correspondence? A. Yes.

Q. Who superintended the purchases? A. Through orders.

Q. What did you do up there? A. Shipped and received, shipping clerk mostly.

Q. You were the shipping clerk? A. Yes, sir.

Q. And Mr. Maher was the bookkeeper? A. Yes, sir.

Q. Was there anyone else in active charge of the plant besides you two? A. Around the place?

The Court: Who were the head men up there in charge?

The Witness: There was no head men.

Q. There was no head man in charge? A. No.

Q. Who were the head men? A. When Mr. Fineberg told us what to do—

The Court: No; up there, who had the running of the place?

The Witness: There was no running of the place, to tell the truth.

The Court: Who were the men who didn't work with their hands; who were the men that worked with their heads instead of their hands; who did the head work?

The Witness: There was no head work, coming down to fine points.

ANTONIO DE PIANO, a witness produced on behalf of the complainant, being duly sworn, testified as follows:

Direct-examination by Mr. Katzenbach:

Q. Mr. De Piano, were you a stockholder of the Leicester Rubber Company? A. Yes, sir.

Q. Did you occupy any official position in that company? A. President of the company.

Q. When did you first become interested in the Leicester Rubber Company? A. I don't remember that; it was about six or seven years ago.

Q. About when was it? A. I can't say exactly, about six or seven years ago, probably longer, I don't know.

Q. Do you recall when the Leicester Rubber Company had a plant on Perrine Avenue in this city? A. Yes.

Q. About how many years ago was that? A. Well, I moved up in Catasauqua in 1913.

Q. It was just before you moved to Catasauqua? A. No, we were there three or four years before that.

Q. After you went up to Catasauqua, who were employed by the Leicester Rubber Company, and who were stockholders? A. Myself, Joe Maher, Will Maher, and the two Bachuliqos, from Boston.

Q. Now, do you recall the purchase of the Catasauqua plant at Catasauqua—the purchase of that mill? A. Yes, sir.

Q. Who first spoke to you about that? A. Mr. Fineberg.

Q. And after he spoke to you about it, what did he say to you? A. He had a kind of a booklet that told you all about the plant, how many mills, and showed the picture of the building.

Q. What did he say to you, if anything? A. Well, he asked me to go and look at it, so I went up, and Mr. Freedman and Joe Maher and Piano Russo.

Q. After you went up there to Catasauqua to look at it, what occurred then, after that? A. Why, I think they asked a big price for it, and we didn't want it at that big figure.

Q. A big price was asked for it? A. Yes, sir; and we didn't want it.

Q. Do you know of any negotiations being conducted with anybody; who was the man who wanted to sell it to you? A. Leonard.

Q. Did Leonard ever come down here to Trenton? A. Once; I think probably twice; I am not sure. Once I am sure.

Q. And probably twice? A. Yes.

Q. After Mr. Freedman and Joe Maher went up to Catasauqua to look at the plant, what, if anything, did Mr. Freedman say about taking an interest in it? A. Well, Mr. Freedman said if the plant was in Trenton it would be all right, but he didn't care to move up there; he had a nice house and children in school here, and he didn't want to break up; and Mr. Fineberg said unless he moved up there, he couldn't have any interest.

Q. After these negotiations took place, did you ever go to any lawyer's office with reference to the drawing of an agreement for the purchase of the plant? A. When we closed the agreement?

Q. Yes. A. Judge Macpherson.

Q. This same Judge Macpherson sitting here? A. Yes, sir.

Q. Who went with you? A. Fineberg, myself and Leonard.

Q. And you went to Judge Macpherson's office? A. Yes, sir.

Q. When you got to Judge Macpherson's office, what did you do? A. We agreed on a price first, and then we went on down to Judge Macpherson's to draw up a bill of sale and give him $500 deposit.

The Court: Do you mean an agreement of sale?

The Witness: Yes, sir.

Q. You went with Leonard to Judge Macpherson's office? A. Yes, sir; and Mr. Fineberg.

Q. Was any paper drawn up there? A. Yes.

Q. Did that have any reference to this Catasauqua plant? A. Yes.

Q. Who signed that agreement of sale? A. Myself personally and Mr. Fineberg.

Q. Mr. Fineberg, how did he sign? A. Personally.

Q. Who did you make the agreement with? A. Leonard, I think.

Q. When you got this agreement in Judge Macpherson's office, was any money paid? A. $500.

Q. Who paid that? A. Mr. Fineberg.

Q. About what time was that agreement made; when was it? A. I think we took thirty days' time on the agreement, and the payment was made on the 12th day of August, 1913; I guess it was the 12th day of June.

Q. The 12th day of June or July? A. Oh, I mean to say July; yes, sir.

Q. You say it took thirty days? A. Yes, sir; I think it was.

Q. How much were you going to pay for the plant? A. I think we offered $22,500 and when Leonard come down, I think we give $500 more; I think it was $23,000, the whole thing.

Q. How did the Leicester Rubber Company pay for that? A. We raised money with a note; Mr. Fineberg raised the money with a note.

Q. Before you finally got the money, did you make any efforts to get it? A. Yes; we tried everything.

Q. Finally, what was the note; how much was the note that you made for it? A. $25,000.

Q. Where did you get that note discounted? A. At the Mechanics'.

Q. Do you know who the indorsers were on the note? A. Yes.

Q. Who? A. Fineberg, myself and Joe Maher.

Q. When you got the money, what did you do with it; where did you take it? A. Why, I think Mr.

Fineberg got a certified check, and I went up there, I think a certified check for $21,000, or something. We held back, I think, $1,500 on account the boilers were in bad shape and we purchased everything in good condition, and he kept back some money; I think we bring a check up there for $21,000.

Q. Whom did you give the certified check to? A. Mr. Leonard, of Catasauqua; he was there, but there was other people present, Mr. Moore of the Lehigh National Bank, and a lawyer from Allentown; I can't tell you his name.

The Court: Diefendorfer?

The Witness: Yes, sir.

Q. Who had the check up there; did you have it, or who? A. Mr. Fineberg had it.

Q. He went up, too? A. Yes, sir.

Q. You went up to Leonard's office and turned over the check and got the deed for the property? A. Not right away; the deed had to be recorded, or something.

Q. You didn't bring the deed away with you, but it was handed to you? A. Yes, sir.

Q. Now, just before you went up there, do you remember any meeting down in the Leicester Rubber Company's office when there was any stock bought by anybody? A. Yes.

Q. When was that, with reference to this purchase of this Catasauqua plant? A. I couldn't say exactly; I guess one or two days before I went up there.

Q. Who were there at that meeting? A. Joe Maher, Billy Maher, myself, and Fineberg.

Q. What was done with reference to the sale by the Leicester Rubber Company and the purchase by Mr. Fineberg of any capital stock at that meeting; what took place? A. Took half interest in the business.

Q. Who did? A. Mr. Fineberg.

Q. What, if anything, was given to him; what was the price of that half interest which was fixed on? A. First, we agreed that he had to pay $100 a share, before he changed his mind on account of his moving up there; it would cost $10,000 to move up there—

Q. What was paid for this stock? A. 62 1/2; either 62 1/2 or 67; I think it was 62 1/2.

Q. Was there any stock issued—did you sign any stock that night? A. Yes, sir.

Q. Who was it issued to? A. Mr. Fineberg.

Q. Then, after that, do you know whether Mr. Fineberg paid for the stock or not; what do you know about that? A. When this $25,000 note come due, Mr. Fineberg, I think he paid one-half.

Q. What for? A. For the stock.

Q. Now, when did you go up there—did you go up there to Catasauqua? A. The first time?

Q. No; did you move up there yourself? A. Yes, sir.

Q. When did you go? A. Some time in October, I think.

Q. In October? A. Yes, I think so, 1913.

Q. Between the time the deed was handed to you and October, did you go up there from Trenton to Catasauqua? A. Yes; I used to stay there every week; I used to come home every week, I mean to say.

Q. Did Mr. Fineberg come up there? A. Yes, sir.

Q. How often did he come up? A. Sometimes every week and sometimes every two weeks, and three weeks sometimes, just according.

Q. When did he go up there? A. Like I said—

Q. When he went up there, what did he do with reference to the running of the plant? A. Nothing much; he used to take care of the office; I used to do that myself.

Q. Who gave instructions as to how the plant was to be run; who was the boss? A. Mr. Fineberg was the whole boss all the time.

Q. Did you have occasion to borrow any money up there, the Leicester Rubber Company? A. Yes, sir.

Q. Did you have to get any indorsers? A. Yes, sir.

Q. Did Mr. Freedman come to Catasauqua during the time the plant was in operation up there? A. No, sir; after the fire he come up there once.

Q. He came up there once after the fire? A. The same day the fire was.

Q. Now, did he have anything to do with the operation of the plant at all? A. Absolutely not.

Q. Did he have any interest in the business? A. No, sir.

Q. Did the Leicester Rubber Company buy materials of the Trenton Scrap Rubber Supply Company? A. Yes, sir.

Q. Did you ever have any conversation with Mr. Fineberg, in which Mr. Fineberg said anything in reference to Mr. Freedman's attitude with reference to the scrap rubber that was being sold by the Trenton Scrap Rubber Supply Company to the Leicester Rubber Company? A. About credit?

Q. Yes. A. Yes; Mr. Fineberg told me several times that Mr. Freedman didn't want to send no stuff up there, so we began to buy elsewhere; we bought of D. Fineberg.

Q. D. Fineberg & Company of New York? A. They used to be, yes, sir; now they are at Chelsea.

Q. Now they are in Boston? A. Now they are in Boston; they were in New York at that time.

Q. Did Mr. Fineberg guarantee the account of D. Fineberg & Company for what materials you bought?

A. I am not sure about that; I suppose he did, because he paid them after the fire, I think, $150 out of the company's money.

Q. Do you know anything yourself about the guarantee at all? A. I am not sure about Fineberg, but I know several other accounts that were guaranteed by him.

Q. Did the Leicester Rubber Company, after it got up to Catasauqua, Pennsylvania, buy a great deal more or have shipped to it a great deal more from the Trenton Scrap Rubber Company than you used to buy when you were on Perrine Avenue? A. Yes, sir.

Q. What, about, did you have credit for down on Perrine Avenue? A. Oh, probably $1,500; I am not sure, $1,000 to $1,500, or probably $2,000; I don't know.

Q. What did the account run up to when you got up to Catasauqua? A. I couldn't say that; I guess it was around $10,000. I wasn't bookkeeper—but there was a lot of stuff come up there.

The Court: Was any of the amount of this $10,000 of credit included in the items given us by Mr. Harding?

Mr. Katzenbach: No, sir; this had no relation to the $10,500.

The Court: And none of Mr. Harding's figures has any such relation?

Mr. Katzenbach: No, sir.

CROSS-EXAMINATION by Mr. Scammell:

Q. You are interested now with Mr. Freedman, are you not? A. Yes, sir.

Q. And connected with him in business? A. Yes.

Q. You are both interested in the American Rubber Manufacturing Company, are you not?

Q. Operating the plant which was the same plant occupied formerly by the Leicester Rubber Company? A. Yes, sir.

Q. You have talked this matter over with him? A. No, sir.

Q. While the plant was at Catasauqua, who ordered the scrap rubber? A. I did.

Q. You signed the orders to the Trenton Scrap Rubber Supply Company? A. We wrote a letter to Mr. Fineberg; Mr. Maher used to write the letter; I told him what I want.

Q. And send it to Mr. Fineberg at the Trenton Scrap Rubber Supply Company? A. Yes, sir; personally.

Q. Did they render you statements of your account of purchases? A. They used to send the bill.

Q. Upon the regular billheads of the Trenton Scrap Rubber Supply Company? A. Yes, sir.

Q. Then your accounts were kept from those bills? A. Yes, sir, I suppose so. Mr. Maher used to take care of the books.

Q. You would buy the different items of scrap included in the order? A. Yes, sir; I used to tell him what I want, and Mr. Maher ordered it.

Q. And you got that from your experience in knowing what to order from this particular mill? A. Yes, sir.

Q. You were in charge of the manufacturing at Catasauqua? A. Yes, sir.

Q. And you were likewise in charge in Trenton here? A. Yes, sir.

Q. When you first went up; when was it you first saw this book showing the plant which was for sale? A. A few days before we went up.

Q. Where did you see Mr. Fineberg; when you saw this, where was he? A. I am not sure. I think

it was in his office, I am not sure; either our office or his office, I am not sure.

Q. Neither Fineberg nor Freedman, at that time, had any interest in the Leicester Rubber Company, did they? A. No; we used to do business together.

Q. Except to sell you scrap rubber? A. Yes, sir; that's right.

Q. You say a few days after that Mr. Freedman went to Catasauqua with you? A. Yes, sir.

Q. And Joseph Maher and Piano Russo? A. Yes, sir.

Q. Did you ask Mr. Freedman to go? A. Well, we talked the matter over with Mr. Fineberg and Mr. Freedman, and we went up.

Q. Where was that talk? A. I couldn't say; either in our office or the Trenton Scrap, I couldn't say which; we talked several times before we did go up.

Q. What did Freedman say about buying the plant? A. Well, we didn't go up there to buy; we come up there to look at it.

Q. What did he say about going up there to look at it? A. He said: "Come up"; I never did much business with Freedman; Mr. Fineberg and I used to do business. I used to do business with Mr. Fineberg.

Q. Mr. Fineberg was the active man in the Trenton Scrap? A. Yes, sir.

Q. He did all the business? A. I did business with Mr. Fineberg myself.

Q. This talk took place in their office on Perrine Avenue, you say? A. No, I won't say that; I am not sure.

Q. As a result of what was said in that office, Freedman and the rest of the party went up to Catasauqua; is that right? A. The only objection Mr. Freedman put up that day was about moving up there;

he didn't care to move. He said: "The plant is worth the money, but I don't care to move."

Q. Who suggested that he move? A. Mr. Fineberg.

Q. What was said? A. Mr. Fineberg said: "Mr. Freedman can't have any interest up there unless he moves up there."

Q. To live? A. Yes.

Q. What did Mr. Freedman say? A. He used to keep quiet; he said he didn't care to move up there; if it was in Trenton, he would give $10,000 more and buy the plant.

Q. But that was only on the question that he didn't care to move up there? A. Yes, sir; that's the reason we bought the plant in our name; Joe Maher didn't want to move up there.

Q. That was only on account of Mr. Freedman's going up there to live; he didn't want to move up there? A. No.

Q. He had no objection to buying the plant? A. He said the plant was worth the money—

Q. What price was spoken of at that time? A. I think they asked $30,000, I think; I am not sure, and Mr. Freedman said the plant was worth the money.

Q. How did he know? A. He come and saw the machinery.

Q. Where? A. He came up there.

Q. I am talking about something that was said by Mr. Freedman to you the first time you talked this matter over; I am not talking about when he came back. A. Mr. Freedman said: "We'll go and look at it, anyhow; no harm done."

Q. Was there anything said at that meeting about Freedman going up there to live? A. Yes.

Q. What? A. Mr. Fineberg said: "If we buy the plant, you will have to move up there."

Q. And what did Mr. Freedman say; did he say he would move up there? A. No.

Q. At the first interview? A. No, sir; Mr. Freedman didn't say anything first.

Q. He did not? A. No; after I come back Mr. Freedman said he won't move up there.

Q. But before he went up there he agreed to move up there? A. No, sir; not that.

Q. What did he say? A. Nothing, as far as I know.

Q. Didn't Mr. Fineberg say to Mr. Freedman: "If we become interested in this plant, you have got to move up there and look after it"? A. Yes, sir.

Q. And didn't he tell him: "I have got plenty to do here to run this business, and you haven't got much to do, but if we get an interest in this plant, you got to go up there and live there"? A. Yes, sir.

Q. What did he say? A. He won't move up there.

Q. But he did go up and look at the plant? A. No; that was before.

Q. He didn't go up there afterwards? A. No; it was before.

Q. Before what? A. That was before they went up there.

The Court: Was the moving business spoken of before you went up there, or afterwards?

The Witness: Afterwards, but there was something said then, also, that if they bought the plant, he would have to move up there.

Q. That was the understanding? A. Yes, sir.

Q. How did the Leicester Rubber Company become interested in this matter? A. I was interested in the Leicester Rubber Company, and the agreement was turned over to the Leicester Rubber Company, and we got the deed for the Leicester Rubber.

Q. Was it to be a joint enterprise between the Trenton Scrap and the Leicester Rubber Company? A. No, sir.

Q. Are you sure about that? A. Positive.

Q. You went up there early in June, 1913, was it? A. Yes.

Q. Who arranged for the appointment for you to go up there and meet Mr. Leonard? A. Mr. Fineberg.

Q. Did he write a letter? A. Yes, sir.

Q. You saw the letter? A. I think he called him on the telephone, too.

Q. Didn't you see the letter arranging with Mr. Leonard how you were to go, and where? A. I don't know.

Q. It was written on the Trenton Scrap Rubber paper, wasn't it? A. I think it was.

Q. And dictated right in the office while you and Mr. Freedman were there? A. I am not sure about that.

Q. You went up there, and when you came back you reported, did you, to Mr. Fineberg, and William Maher was there; did he go up with you? A. No; Joe Maher went up with us the first time; when Mr. Fineberg went up, he come up.

Q. And he came back and made a report as to the plant? A. Yes, sir.

Q. What did Mr. Freedman say about the price? A. The price didn't stand in the way; the only trouble, he didn't care to move and break up his family or home, or something.

Q. That was one of the conditions of Mr. Fineberg's offer? A. Yes.

Q. That if the Trenton Scrap Rubber became interested, he was to go up there? A. I don't know anything about the Trenton Scrap; I was talking to Mr. Fineberg.

Q. They were one, weren't they? A. I suppose they were. I was doing business with Mr. Fineberg—not to my knowledge.

Q. Where did this second interview take place after you had been up and inspected the plant, whose office did you go to and what did you say with respect to the value and advantage of buying that plant? A. We got home pretty late that night; I couldn't say that; I don't remember what office. We talked it over a hundred times.

Q. But Mr. Freedman was there, and Mr. Fineberg and Joseph Maher and yourself? A. Yes.

Q. Wasn't there a dispute between Mr. Fineberg and Mr. Freedman, in your presence, as to whether $22,000 should be given for the plant, or $22,500? A. I can't recollect that.

Q. When Mr. Leonard came down here, wasn't the only dispute the amount of $500 between the offer which had been made and the amount that Leonard wanted? A. Yes, sir.

Q. Only $500? A. Yes.

Q. Didn't Mr. Freedman say he thought the plant could be bought for $22,000? A. I don't remember that.

Q. At this time, however, Mr. Fineberg, Mr. Freedman, and yourself were talking about Mr. Freedman's going up there to live; there was no stock interest of Mr. Fineberg in the Leicester Rubber Company, was there? A. No, sir.

Q. When Mr. Leonard came down here and saw you, you were present with Joseph Maher, Mr. Freedman, and Mr. Fineberg; and at that time Mr. Fineberg had no stock interest, did he? A. No, sir.

Q. He had no stock interest in it when he gave the check for the $500, did he, as the first payment? A. No, sir.

Q. And wasn't that stockholders' meeting held about two weeks afterwards, two weeks after the first payment on account of that property? A. You mean the $500 was paid?

Q. Yes. A. Probably so. I think it was a few days before we made the full payment for the plant, and we took thirty days, I think.

Q. After the deposit money was paid on account of this plant, Mr. Fineberg hadn't agreed to take any stock, had he? A. Yes.

Q. When? A. That's why he give the deposit. We bought it personally because Joe Maher didn't want to go up there, so we bought it personally, and we had a bill of sale.

Q. Then you had an understanding between Fineberg and yourself; is that what you mean? A. Yes, sir.

Q. Then you had an understanding between Fineberg and yourself that you were going to buy this plant alone, you two? A. We closed the deal with Leonard because Freedman ran out; he said: "Don't figure me in."

Q. Ran out of where? A. Out of the office.

Q. The Scrap Rubber office? A. Yes, sir; Freedman ran out, so we went down to Judge Macpherson's and we bought it personally.

Q. Who did? A. Me and Mr. Fineberg.

Q. That was about two weeks before this stock transaction took place when you issued this 197 shares to Mr. Fineberg? A. Oh, no, it was longer than that; I think it was only a couple of days; I think it was only one or two days before we went up there to pay for the plant; it was close to four weeks.

Q. When the $500 was paid there was no understanding about Fineberg being interested in the Leicester Rubber Company at that time? A. Well, my intention was, and his intention, also, because the

only way we bought them that way, on account that Mr. Maher and Mr. Freedman run out, and didn't want to have nothing to do.

Q. Up to that time Mr. Freedman and Mr. Fineberg, and yourself had agreed to buy this plant, hadn't you; hadn't you fixed the price on it? A. Not with Freedman.

Q. Didn't Freedman say what the plant could be bought for, and he would be willing to go in on it? A. No; he didn't want the plant at any price.

Q. That was only because Mr. Freedman made a condition that if he ever bought it, he would have to go there to live? A. That's all; he didn't want to go up there.

Q. Wasn't this 197 shares, this certificate of stock, "Exhibit"—how much did you pay for your stock? A. First, I paid 62 1/2.

Q. This certificate "C1," wasn't that delivered to Mr. Fineberg up in Catasauqua? A. No, sir.

Q. Where was it delivered to him? A. Leicester Rubber Company, at the foot of Perrine Avenue; that is, I signed that at the foot of Perrine Avenue; where it was delivered, I don't know.

Q. You don't know when this paper was handed to him? A. I am pretty sure it was handed to him August 11.

Q. You think it was? A. Yes; I signed the stock after we had a meeting, and Mr. Maher was the bookkeeper; if he turned it over a day later, I don't know.

Q. You say that when the $25,000 note was made, before that time you were trying to raise this money to buy this plant somewhere else? A. Yes, sir.

Q. In other words, you were going to buy the plant without Mr. Fineberg's interest— A. No; what I mean, we tried Mr. Fineberg to give us small notes, $5,000.

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Q. Go on. A. The Leicester Rubber Company, we tried every way and Mr. Fineberg had tried all over, and didn't know how we could get it; we didn't want to get it in one sum. He give us a note of $5,000 to discount at the Mercer Trust; we couldn't put it there—

Q. Was that all you had to raise in order to pay for the plant? A. No; we needed $25,000.

Q. Where were you going to get the balance? A. I think Mr. Fineberg tried the First National Bank for five or seven thousand dollars, and then the Mechanics'; we didn't want to raise it all in one sum.

Q. You didn't want to raise it— A. Not me, but Mr. Fineberg.

Q. Didn't you go with him? A. Yes, I think to the Mechanics'.

Q. And in order to raise this money, you made a statement, didn't you, as to what you were worth to the Mechanics' Bank, so as to raise this money? A. Yes.

Q. Well, you say you were trying these different ways to raise that $5,000, either at the Mercer Trust or the First National Bank? A. Between those thirty days we tried everything we can do.

Q. What was the understanding, that the note would be made by your company? A. We destroyed about a half a dozen notes; Mr. Fineberg used to make out a note here and there, and any way he wanted; I couldn't tell you about that.

Q. The note was to be made to the Trenton Scrap Rubber? A. No; I don't quite understand that.

Q. You don't know anything about the note transaction? A. No. The Trenton Scrap was going to give the Leicester Rubber Company a note.

Q. You say the Trenton Scrap Rubber agreed to give their note to the Leicester Rubber Company?

A. The notes was changed so many times I can't tell you.

Q. When the $25,000 note was given by the Trenton Scrap Rubber, you say the note came due and $12,500 was paid on it? A. I don't know; I signed no note; I was told.

Q. You don't know how it was paid or anything about it? A. I know Fineberg had paid a half.

Q. You don't know actually; he didn't give his check for it, did he? A. I couldn't tell you how he paid it.

Q. Mr. Freedman was up at the plant after the fire? A. The same day.

Q. He came with Mr. Maher? A. Yes, sir.

Q. Did he inquire what the loss was? A. He only said: "You are so smart without insurance," and I walked away from him; I was disgusted; he said: "You are so smart."

Q. Did you have a talk with Mr. Fineberg after you made the affidavit in this cause attached to the bill, or an affidavit in this cause, did you have a talk with Mr. Fineberg at his office? A. What affidavit?

Q. When Mr. Fineberg said: "Why did you state some of the facts you did in your affidavit," and didn't you say to him that the reason you did it was because you had to protect yourself, that you were interested in Mr. Freedman? A. No, sir.

HARRY FREEDMAN, the above-named complainant, being duly sworn, testified as follows:

Direct-examination by Mr. Macpherson:

Q. Mr. Freedman, you are the complainant in this cause? A. Yes, sir.

Q. And you have been associated with Mr. Fineberg in business? A. Yes, sir.

Q. In what business? A. Scrap rubber.

Q. How long have you been engaged with him in such business? A. Since 1907.

Q. You had articles of partnership between you? A. Yes, sir.

Mr. Macpherson: Here are articles—

Mr. Scammell: We will admit they are the articles of co-partnership.

Q. After you had formed this partnership with Mr. Fineberg, did you acquire any property in Trenton? A. Yes, sir.

Q. And where was that property? A. On Perrine Avenue.

Q. What was the value of the real estate, about?

The Court: What difference does it make here, Judge? I don't think it makes any difference, does it?

Mr. Macpherson: I quite agree with you.

Q. You knew of the Leicester Rubber Company? A. Yes, sir.

Q. Do you recall meeting any of the people representing the Leicester Rubber, concerning the purchase of the property at Catasauqua? A. Yes, sir.

Q. Whom did you meet with reference to a property at Catasauqua? A. I met—he was talking in our office.

Q. Who? A. Me and Mr. Fineberg and another man; they saw a picture in some kind of a book, and he said: "There's a plant cost $87,000 and could be bought cheap"; and it said in the book about different parts, how the machinery is laid out, and Fineberg says to me: "Why, here, there's a mill; you could buy it for nothing, nearly; it cost $87,000." I said:

"What kind of a mill is it," and he said he knew the people, a fellow named O'Brien, or some kind of a name, and that's all that was said at that time, and Mr. Fineberg was talking about some of the stockholders of the Leicester Rubber Company, and he said: "How would you like to buy a mill?" It probably took us two weeks we were talking together, and he said: "Wouldn't you mind to go up there to see the mill up there?" I said: "Well, it wouldn't hurt me to look at it; I can go." And he made some kind of a talk between it, and we went up there, Mr. De Piano, Mr. Maher, and Mr. Piano Russo, we went up there to Catasauqua.

Q. About what time was this? A. I think it was in June.

Q. 1913? A. 1913.

Q. And you went up there? A. Yes, sir.

Q. And when you came back what did you say to Mr. Fineberg? A. I said the mill looked a pretty good thing, according to my knowledge, but I wouldn't want to buy a mill if I couldn't be there; I wouldn't invest any money that I couldn't take my own care of the mill.

Q. Was anything said about your going there? A. Before I went the first time we were talking about going there, but when I came back, I said: "Nothing doing; I am making a living here, and I don't want to go there."

Q. Then what? A. Then there was nothing said; Mr. Fineberg was talking to some of the stockholders of the Leicester Rubber Company, the way you would talk in an office, and I think that fellow Leonard, whatever his name is, come around one time to the Scrap Rubber office, and he was talking about selling the plant a little cheaper, and all kind of talk he was saying, and keeping on. I made up my mind then, I don't want to move; I have nothing to move

for. I had a sick mother and small children going to school, and I said I would stay here in Trenton until my children finished school; I make a living here and I don't want to go there.

Q. Did you tell Mr. Fineberg that? A. Yes, sir.

Q. Then what followed after your telling Mr. Fineberg that? A. Mr. Fineberg, I think, went over there and looked at it and took an expert, I think; I think he took Mr. Thropp, and he said to me: "That row of mills on one shop cost $27,000, besides the building and the boilers and the engine," and some other machinery there, and so many acres of land was there. I said: "I don't care what it is; I don't want to be bothered with it."

Q. Then did you have any talk with him after that? A. We was talking that way in business together in the Scrap Rubber for so many years; we was talking about business, buying and selling.

Q. I am talking about the purchase of this plant. A. That didn't lay in my mind after that; I didn't bother with it.

Q. Do you remember Mr. Leonard coming to Trenton at other times? A. I think he did.

Q. Did you see him at your place? A. Yes, sir.

Q. Did you have any talk with him then? A. I went over and met Mr. Leonard; I think he was in the Trenton House; he called us up on the telephone and said he was in the Trenton House and he come here to some kind of a meeting of the Elk Lodge, or maybe he had that for an excuse or something.

Q. You went around there? A. We went around there.

Q. Did you discuss the purchase of the plant there? A. No; I didn't talk to him about buying; Mr. Joe Maher was talking to him.

Q. Do you know whether there was any agreement made between anyone with this Mr. Leonard with

reference to the purchase of this property? A. Why, I don't know; I didn't bother, and they used to kind of hide himself from me; whatever they talked was all in secret between Mr. Fineberg and Mr. De Piano; they wouldn't tell me anything.

Q. Did you know of any agreement having been made with Mr. Leonard, or anyone else, with reference to the purchase of this property at Catasauqua? A. They was talking in our office; I told Mr. Fineberg not to be bothered on it; I said: "Don't buy it, Fineberg." He said: "You and Joe Maher you get together; you don't know really a good thing; you don't know where a good thing is." He said: "If you bought it, if you don't want it, I'll buy it myself," and he raised his hands that way; he went away, Mr. Leonard, and Mr. De Piano went away with him.

Q. Did you hear afterwards that they had made an agreement with Mr. Leonard for the purchase of the property? A. I heard they bought it; I didn't know how, or what, or when.

Q. Did you ever have any interest or hold any stock in the Leicester Rubber Company? A. No, sir.

Q. Did the Trenton Scrap Rubber Supply Company ever own any stock or have any interest in that company? A. No, sir.

Q. Did Mr. Fineberg; did he ever have any stock in that company? A. Yes.

Q. How much stock did he have? A. Well, I learned now he had 197 shares, whatever you call it.

Q. Did you know, of your own knowledge, when that stock was acquired by him from the Leicester Rubber Company? A. I don't know the date.

Q. Did he talk with you about using the money of the Trenton Scrap Rubber for the buying of that stock? A. No, sir.

Q. Did you know he had used the Trenton Scrap

Rubber money for the buying of that stock? A. After that?

Q. I mean at the time the money was paid. A. For the stock?

Q. Yes. A. The time he paid for the stock I didn't know a thing, but after, I learned, I think—one time I was looking over the books, and I saw an entry Fineberg was charged with $12,500, and I said to the girl: "What is that?" and she said: "Mr. Fineberg paid for the stock."

Q. Did you speak to Mr. Fineberg after that about it? A. No, sir.

Q. Do you know whether, after Mr. Fineberg had acquired this interest in the Leicester Rubber Company, whether he loaned them any more money or not? A. I think he did, but I can't tell how much and how.

Q. This note of $10,500 that has been referred to, was that note, to your knowledge, discounted for the use and benefit of the Trenton Scrap Rubber Supply Company? A. Not that I know of.

Q. When did you first know of this note of $10,-500? A. Paid?

Q. When did you first learn of this note of $10,-500? A. Why, on March, some time in March I learned that it was paid.

Q. March of what year? A. 1915.

Q. Have you since learned when that note was paid by Mr. Fineberg or the Trenton Scrap Rubber? A. Why, in March.

Q. You say you learned it then? A. Yes.

Q. I am asking you now when you learned the time it was paid, if it was paid? A. Well, I asked the bookkeeper and she said it was that way made out, why we were short in money, and when I know we had a loan in the Mechanics' Bank about $15,000—

Q. You are not answering my question. I am asking you this, I am showing you this exhibit and here is a check, and it is dated "Trenton, 12/15/14," that would be December 15, 1914, signed "Trenton Scrap Rubber Supply Company, I. Fineberg, Treasurer"; that check was paid and it was for the payment of this note. Now, at that time did you know that the money of the Trenton Scrap Rubber had been used for the payment of that check? A. Yes, after Miss Nelson give me that note.

Q. I am asking you, on December 12th when this check was drawn, this was drawn December, 1915, rather, 1914—when that check was given on that day, December 15, 1914, did you know on that date that this money, this check, had been given by Mr. Fineberg for the payment of this note? A. No, sir.

Q. Where were you at that time? A. I was in the west.

Q. On what business? A. I went out to buy scrap rubber, as occasionally I used to go traveling.

Q. Then you first learned of this from the bookkeeper, did you? A. Yes.

Q. What, if anything, did you say to Fineberg? A. I said to Fineberg: "Why, Mr. Fineberg, I see you paid $10,500 note, and you never charged your account with it."

Q. What did he say? A. He said, "Yes, I did," angry like that, "but I feel like the Trenton Scrap Rubber should stand for that note." I said, "Why, that wasn't the obligation of the Trenton Scrap Rubber; the Trenton Scrap Rubber didn't use that money; that was your own affair; the Trenton Scrap Rubber has absolutely got nothing to do with this; you used that note." He says, "Well, I feel like it, the Trenton Scrap Rubber should stand that."

Q. Was that note charged to his account in the Trenton Scrap Rubber? A. No, sir.

Q. It is in evidence that there was a note given by the Leicester Rubber Company for $25,000 that was indorsed by De Piano and Mr. Maher and Mr. Fineberg and the Trenton Scrap Rubber; when did you first learn that that note was endorsed by the Trenton Scrap Rubber Company? A. I don't know a thing; I didn't know nothing about that $25,000.

Q. When did you first hear about that? A. I don't know it until Mr. Fineberg started to tell me about the arbitration, how that $10,500 note made from the original of $25,000; I heard then, but in my transaction I didn't know where that come from or how that was; if that was given of $25,000 or $10,000 or $5,000, I didn't know a thing.

Q. Then, when you heard of that; you spoke of arbitration? Was that what led to the arbitration? A. Yes, sir.

Q. You first heard of this $25,000 note after you had taken up this matter of arbitration? A. Yes, sir.

Q. And the matter of this $10,500 note, as to whether or not that should be charged to Mr. Fineberg, that was a matter taken up for arbitration? A. Yes.

Q. And were there articles of arbitration drawn between you and Mr. Fineberg? A. Yes, sir.

Q. And arbitrators were appointed? A. Yes, sir.

Q. And it was during that time that you learned of the history of this $25,000 note? A. Yes, sir.

The Court: Aren't all these details of the agreement merged in the writing?

Mr. Macpherson: I don't wish to put on the record unnecessary matter.

The Court: I don't think it is relevant at all, but if you think it is, or if you think it will help you on final argument, I will allow you to put it in.

Q. Now, you have said that this note of $10,500 was one of the matters that led to this arbitration. There were articles of arbitration entered into between you and Mr. Freedman? A. Mr. Fineberg.

Q. How long did these arbitrators have the matter under consideration? A. I think about a couple of months.

Q. Did they make any award? A. No, sir.

Q. It is in evidence, or your bill recites—

Mr. Scammell: Objected to.

The Court: Objection sustained.

Q. While this matter was in the hands of the arbitrators, did you receive any message from Mr. Fineberg with reference to your interest in the Trenton Scrap Rubber? A. Yes, sir.

Q. From whom; who brought you the message? A. Mr. Gordon.

Q. And after you had received this message from Mr. Gordon, did you see Mr. Fineberg? A. Yes.

Q. How soon? A. Probably fifteen or twenty minutes or a half an hour.

Q. What did you say to him then? A. I said to him, "Fineberg, do you want to sell out your interest in the Trenton Scrap Rubber?" He said, "Yes, if you make me an offer of $25,000, it will take me about twenty minutes to decide if I will let you have it or not."

Q. Do you recall what date that was? A. It was on June 21st.

Q. Did you make him an offer that day? A. Yes.

Q. With reference to the meeting of the arbitrators, what date, with reference to June 21st, had they fixed for their next meeting? A. Well, they didn't have that meeting that day, but they were supposed to have a meeting the next day.

Q. Did you know they were going to have a meeting on the day after you had made this offer? A. Yes.

Q. When you got this word from Mr. Fineberg, whom did you see with reference to drawing up a paper? A. I went over to Judge Macpherson's office, and he was out of town; then I went up to Mr. Harry Heher's office.

Q. And did he draw a paper that you wanted? A. I asked him if he would draw me up a paper and make an offer to Mr. Fineberg, and he said, "Yes."

Q. Did he do that? A. Yes, sir.

Q. Did you see Mr. Fineberg about it? A. Yes, sir.

Q. Where? A. I went to look for him in the M. & F. Tire Company, but I found him on his way up to the office.

Q. Did he go with you up to Mr. Heher's office? A. Yes, sir.

Q. Did Mr. Heher submit to him the paper that had been prepared? A. Mr. Heher read to him the paper, whatever he had, and he said a little change should be made; he explained what he wants; he said, "What is fair to one is fair to the other; if Freedman makes me an offer for $25,000, there is no doubt in my mind I will not buy if I don't want it, but I will put it in, anyhow; if I want to buy Mr. Freedman's interest in the Trenton Scrap, so I could buy it for $25,000"; and I instructed Mr.—

Mr. Scammell: That is objected to.

The Court: Objection overruled.

A. I told Mr. Heher he should put it in, the clause that Mr. Fineberg wants; if he wants to buy me out for $25,000, he should put it in that way, plus my excess what I had.

Q. Then the paper was drawn? A. Yes, sir.

Q. And signed by you? A. Yes, sir.

Q. And given to Mr. Fineberg? A. Yes, sir.

Q. And when did you next hear from Mr. Fineberg? A. They made it up he should let us know the next morning at ten o'clock.

Q. The following morning did you hear from him? A. Yes, sir.

Q. What was done? A. He accepted my offer of $25,000—

The Court: Who accepted your offer?

(No answer.)

Q. What was done by either you or him? A. He went from there over to the arbitrators.

Q. Had there been a meeting set for there? A. Yes, they was waiting for us.

Q. What was done? A. We went into the Mechanics' Bank, and we found the arbitrators, and Mr. Fineberg showed him that paper.

The Court: And called it off?

The Witness: Yes.

Q. Then was anything said about the excess in your offer to sell in this option agreement there was reference to excess; was anything said as to the amount of this excess? A. Not at that time.

Q. Was anything said as to the amount of the excess? A. We couldn't tell that night.

Q. At the time that this paper was signed, when you were in Mr. Heher's office, was anything said with reference to the excess? A. Yes; he will pay the excess, whatever is coming to me.

Q. About the amount? A. No, sir.

Q. And the next day when you were at the arbitration, was anything said by Mr. Fineberg what the excess was? A. No, sir, Mr. Fineberg didn't say, and I didn't say.

Q. Was there any dispute with reference to excess after the paper was signed; were there papers after this option agreement had been made—was there any conference between you and Mr. Fineberg, or between you and your counsel, in the presence of Mr. Fineberg, with reference to submitting this question of the amount of excess to arbitration? A. Yes, sir.

Q. Was it the understanding between you and Mr. Fineberg, and your counsel and Mr. Fineberg and his counsel, that articles of arbitration upon this question of excess should be prepared? A. Yes.

Q. Do you know whether such articles were prepared? A. Yes, sir.

Q. And do you know whether they were submitted to Mr. Scammell or Mr. Fineberg? A. Yes, sir.

Q. Do you know whether they were accepted or rejected?

Mr. Scammell: Objected to.

The Court: Objection overruled.

A. That was rejected.

Q. Do you know whether Mr. Scammell, representing Mr. Fineberg, then prepared a counteragreement for arbitration of this question of excess? A. Yes, sir.

Q. Do you know what happened to that? A. Yes, sir.

Q. What? Was it accepted or rejected? A. Rejected.

Q. Then after that was rejected what, if anything, did you do; do you recall, after this option agreement was made, of the meeting in my office where the money was paid? A. Yes, sir.

Q. Who was present at that time? A. Mr. Fineberg and Mr. Scott Scammell and Judge Macpherson and myself, and I think Mr. Gordon was there.

Q. At that time, had the statement showing the excess or claim of excess which you had made, been given either to Mr. Scammell or Mr. Fineberg? A. Yes, sir.

Q. With reference to that date, when was it? A. That was a day before we accepted the money.

Q. And at the time that the money was accepted, was there anything said with reference to the security that should be given for the payment of these notes?

Mr. Scammell: We object to this conversation; this conversation materialized into a written offer.

The Court: Objection sustained.

Mr. Macpherson: We ask leave to amend the bill, to allege that there was an agreement made at that time between Mr. Fineberg and Mr. Freedman and Mr. Scammell and myself, that security would be given for the payment of these notes, and that interest would be paid on the notes.

The Court: The motion is denied. You do not show any consideration for the making of the agreement.

Mr. Macpherson: The consideration would be the cessation of litigation and the amicable settlement of their partnership affairs.

Q. Was there anything said at that time about the payment of interest on these notes or the notes that should be renewed?

Mr. Scammell: That is objected to for the same reason, and for another reason, that the offer which was made by Mr. Freedman and his counsel was formulated in the form of an agreement; in other words, it was reduced to writing, and it seems to me that the best

evidence on what their offer was would be that agreement.

The Court: Objection overruled.

A. Yes, sir.

Q. What was it?

Mr. Scammell: Objected to.

The Court: Objection overruled.

A. Mr. Scott Scammell said, "We will pay interest on the note and we will give you security," and the Judge asked him, in the words he said, "Why don't you have that; have an understanding or something"; he said, "There is two witnesses."

Q. What's that, that was said—well, then the money was paid? A. Then the money was paid and the notes was accepted.

Q. And the receipt given? A. Yes, sir.

Mr. Macpherson: I ask for that receipt.

(Counsel produces the receipt.)

Q. Is that you signature? A. Yes, sir.

Mr. Macpherson: I offer the receipt in evidence.

Said receipt is marked "Exhibit C16."

Q. When did you next hear that Mr. Fineberg denied that there was any excess? A. After the paper to rescind the contract was signed, he threw me out of the office; he served me with another paper in the afternoon—

Q. Well, before the service of this paper by you of the rescission of the contract, had you heard from him in any way with reference to the excess that you claimed to have in the business? A. When the arbitration—when we wanted to make up papers for the arbitration?

Q. After the option agreement had been signed, and after these papers that were drawn up for arbitration had been drawn up but not signed, when did you hear from him in any way that he denied that there was any excess and refused to pay any excess? A. Why, when he brought it over, that paper signed by the arbitration for that excess, instead of arbitration he put it in like a bill of sale of the property and the merchandise, and we told him we would not sign it, and he said, "Well, there is no excess."

Q. You have already said that there were articles of agreement for arbitration on this question of excess that was sought to be made between you two? A. Yes, sir.

Q. And that the papers prepared were not satisfactory to either side? A. No, sir.

Q. Now, when did you hear from him that there was no excess, or that he would refuse to pay any excess, if he did?

The Court: I don't think there was anything said about refusing; it was said that there was no excess.

Q. When did you first hear that Fineberg claimed there was no excess? A. When they made it at the second arbitration, kind of brought it out he wouldn't pay no excess.

Q. Now, what was said; do you recall? In what way did he bring it out? A. He refused to sign; he refused to give us security on that note on that excess, and we didn't sign the paper, and he was supposed to give us security; he said he would give a mortgage on his house and some other good indorsements, and after he refused that, he wouldn't sign any arbitration; he said he wouldn't give any security, and there is no excess.

Q. From what he said, did you understand that he denied that he owed you any excess?

Mr. Scammell: Objected to.
The Court: Objection sustained.

Q. Have you told us all he said in regard to this excess? A. Yes, sir.

Q. There was a great deal said about excess, wasn't there? A. Oh, yes.

Q. Didn't Mr. Fineberg say to you that "There isn't any excess, and I won't pay you any excess"?

Mr. Scammell: That is objected to; I think it is too leading.
Mr. Macpherson: I will withdraw the question.

Q. Do you recall whether Mr. Fineberg said to you anything about there being no excess, and that he wouldn't pay it and you would have to go to court and sue him for it?

Mr. Scammell: Objected to.
The Court: Objection overruled.

A. Yes, sir.

Q. What was it that Mr. Fineberg said? A. He said he didn't owe me any excess and he bought the plant off me, and he paid me for it, and he throwed me out of the office.

Q. And did he say anything about your having to go to court, or anything of that kind? A. Yes.

Q. What did he say? A. "If you think any excess is coming to you, you go and look for it; I am the sole owner of the plant."

Q. Mr. Freedman, referring to your dealings with the Leicester Rubber Company, your firm had been dealing with the Leicester Rubber Company before they went to Catasauqua? A. Yes, sir.

Q. And about what was the volume of that business and the line of credit that was extended to them before they moved to Catasauqua? A. Sometimes we used to buy three or four hundred dollars' worth; their credit was from $1,000 to $1,500.

Q. When they moved to Catasauqua, what difference was there in that business?

The Court: What do you mean? Their credit was $1,000 or $1,500.

Mr. Macpherson: They used to have their notes and open book accounts.

Q. Was there any increase in the business after they moved to Catasauqua, with reference to their purchases? A. Considerable.

Q. How much would they owe you? A. Well, I think I asked the bookkeeper once, and she told me about six or seven thousand dollars on open book account, besides notes and stuff they got.

Q. Did you speak to Mr. Fineberg about it? A. Yes, sir.

Q. What did he say to you or you to him? A. I said, "Fineberg, what's the use to send goods up there; why, I don't get any money; might as well keep the goods here." He said, "Well, if they are not good for it, I am good for it; I am good for every dollar I send up there"; then I didn't bother any more.

Adjourned until Thursday, March 30, 1916.

IN CHANCERY OF NEW JERSEY.

Between HARRY FREEDMAN, Complainant, and ISAAC FINEBERG, Defendant.	On Bill, &c., Testimony.

Second day.

Testimony taken in the above-entitled cause, at the State House, Trenton, New Jersey, on Thursday, March 30, 1916, at 10 o'clock A. M.

Before Hon. John H. Backes, Vice Chancellor.

Same appearances as before noted.

HARRY FREEDMAN resumes the witness stand.

Cross-examination by Mr. Scammell:

Q. Mr. Freedman, how long have you been in this country? A. About twenty-seven or twenty-eight years.

Q. How long have you been in business in Trenton? A. About fourteen years, thirteen or fourteen.

Q. Before you entered into the co-partnership agreement in writing with Isaac Fineberg, you had been in partnership with him about a year and a half? A. Something like that.

Q. And after that time you entered into an agreement in writing? A. Yes, sir.

Q. You had a place of business on South Broad Street in this city, did you not?

Mr. Katzenbach: That is objected to.

The Court: Objection sustained.

Q. Your business was profitable up until July of 1913, was it not? A. The business was profitable even to 1915.

Q. You knew that? A. Oh, yes.

The Court: What has this got to do with the case; is it preliminary to something?

Q. When did you first learn that the Leicester Rubber Company was interested in buying a plant at Catasauqua? A. It was sometime in the summer of 1913.

Q. Was it in May? A. I think it was in June.

Q. How was the matter first brought to your attention that there was a plant for sale at Catasauqua? A. Mr. Fineberg showed it to me.

Q. Showed you what? A. Showed me some kind of a book; it showed the dimensions and whatever its opportunities was, and it seems to me he was more familiar with the plant than I was—some kind of a book.

Q. It was all set out in this book? A. Something like that.

Q. Was this book a publication showing the condition of the rubber industry— A. I think it was some kind of a building showing in there; it was some kind of a book.

Q. You saw this book? A. Yes, sir.

Q. It was handed over to you to examine? A. We all examined it.

Q. You mean just you and Mr. Fineberg were examining it? A. I think several of them in the office; I can't remember exactly who it was—several of them in the office. Mr. Fineberg kind of knowed who it was; he said, "There's a plant for sale, and it

cost around $87,000, and it could be bought very cheap."

Q. Did he see that in the book? A. Not about the price, but he kind of heard of it; I don't know how he knew it.

Q. None of the Leicester Rubber people were in the office at this time, were they? A. Maybe they was.

Q. Can you recall? A. Can't recall what it was three years ago, a lot of nonsense of talk, a little advertising; it was nothing serious to think of it.

Q. Not at that time? A. Not at that time, no.

Q. When did you first seriously consider it? A. I never did.

Q. You never seriously considered going up there to live? A. No, not seriously.

Q. Did you consider it at all? A. Before we went we talked it over.

Q. With whom did you talk it over? A. With Mr. Fineberg.

Q. You two talked it over? A. Yes, sir.

Q. What did you say? A. He said that plant could be bought cheap, and if one of us could go and live up there, "Why, I think it would be a pretty good thing." I says, "Well, that's such a big bargain; it's a matter of little expense, four or five dollars. I'll go over there"; and I didn't know much about the mill, and I didn't know how he got Mr. De Piano and Mr. Maher; there was nothing said about partners, nothing more than before we looked at it, and me and Mr. De Piano and Mr. Maher, and they had their own machinist to examine it. I went over there and looked at it. It wasn't exactly what we want, and we was supposed to make a reclaiming plant.

Q. Whom did you talk that over with? A. Mr. Fineberg.

Q. Your idea was that you wanted to get interested in a reclaiming plant? A. Yes, sir.

Q. How long did you have that idea? A. Mr. Fineberg brought me a dozen of that kind, Mr. Fineberg brought me several ideas. One time Mr. Fineberg brought me an idea we should put it in in our own plant here in Perrine Avenue, two or three mills; he said Mr. Oakley, from the Essex Rubber, said we could make $100 a week by grinding stuff. I kept it away; and another time he said—

Q. But you had a fixed idea, however, before you went to see the Catasauqua plant, that your partner —you and Mr. Fineberg, might become interested in a plant? A. Before I looked at it.

Q. Who suggested that you go up there and live? A. The suggestion was made between us that way, before we looked at it; he said, "If you go to live up there, and if we should buy that, and if you should go to live up there," he said, "still you can draw a salary or something from the Trenton Scrap, the same up there, and you can live up there." Then I went.

Q. It was the understanding, really, between you. that you were to be the man that was to go up there and look after that plant? A. It was nothing said what to do; it was said if we should buy it.

Q. It was conditioned upon if you should buy it? A. Yes, sir.

Q. And if you should not buy it, you wouldn't go there to live? A. Positively not; I had a business.

Q. You went there in June? A. I think so.

Q. And you came back and reported to Mr. Fineberg about the plant? A. Yes, sir.

Q. Had you had any experience in running a plant? A. No, sir.

Q. Then, if you decided to go up there and live and become interested in the plant, you would have to

have some active man who knew about a rubber plant, to grind this material? A. I suppose so, yes.

Q. Did you expect to employ anybody from the Leicester Rubber Company? A. That wasn't talked at that time; just to look at it and see what it is.

Q. Why did you get Mr. De Piano and the rest of the men to go up there? A. They know all about it, and they was neighbors of ours.

Q. You were asking them to go for the purpose of getting their expert opinion as to the value of this plant? A. Any information to find out.

Q. But with the idea, however, that the Trenton Scrap was to become interested, and not the Leicester Rubber? A. It wasn't mentioned, the Trenton Scrap, or either Freedman or Fineberg or anybody else, it wasn't mentioned, never.

Q. Who did you go to see from the Leicester Rubber? A. Probably it took a month before we went there; there was a plant for sale, and everybody, if they are a bargain, especially in our race—if it is old rags, or anything—they will buy it, if it is a bargain, to make money. You can buy broken needles and make money out of it.

Q. You thought you could make money out of it? A. Yes, sir.

Q. And that's the reason you went up there? A. Yes, sir.

Q. Did you see Mr. Leonard up there? A. Yes.

Q. And you went out and examined the plant carefully? A. Yes.

Q. And you came back and gave the result of your examination and information to Mr. Fineberg? A. Yes.

Q. As a result of that visit, Mr. Fineberg wrote some letters to Mr. Leonard about that plant, didn't he? A. Maybe he did.

Q. Don't you knew he did? A. I never dictated any mail.

Q. You read the mail? A. Yes.

Q. You saw the letters coming in every day? A. A good many of them.

Q. You saw carbon copies of the ones that went out? A. No, I never examined them; that's Mr. Fineberg's work. If it is necessary I would look; maybe I did or not; it wasn't such serious that I should examine it; Fineberg has a better education than I have.

Q. You examined those letters in which you were interested, didn't you? A. I wasn't interested; I know what Fineberg done was all right; he knowed what to dictate.

Q. You had perfect confidence in him? A. Yes, I had confidence in him.

Q. Do you remember Mr. Fineberg receiving a telegram from Mr. Leonard, arranging for an interview at the Trenton House? A. Maybe he did, but I can't exactly tell you if I remember or not; maybe he did.

Q. Aren't you sure? A. I can't tell you if I remember that or not.

Q. I show you a telegram of the Western Union Telegraph Company, dated the 23rd, Trenton Scrap Rubber Supply Company, and ask you if you recall receiving that telegram? A. I can't tell you; maybe I did receive the telegram; I can't tell you exactly.

Q. Will you say you didn't receive that telegram? A. I don't know I didn't receive it, maybe the Trenton Scrap Rubber received it.

Q. You are a member of the Trenton Scrap Rubber? A. Yes, but a good many telegrams is received which I don't know anything about.

Q. You were interested at this time, however, in the purchase of this Catasauqua plant? A. Which time was that?

Q. Upon the receipt of the telegram from Leonard, dated June 23rd? A. Was that after I went up there, or before?

Q. I don't know. A. I go there in June sometimes; I know it wasn't snow on the ground.

Q. You went there before you saw Mr. Leonard at the Trenton House in Trenton? A. Yes, sir.

Q. And this telegram says that Leonard was a guest of the Trenton Lodge that night, staying in the Trenton House; so you had been there before this telegram was received? A. Yes.

Q. You were still at that time interested in the purchase of this plant? A. I wasn't interested; the time I come back I said, "The plant is probably worth the money, any money what you pay for it, but for me to break up my business here, I don't care to go; I am making a living in the Trenton Scrap and making money more than in the rubber mills, and I don't want to go and look for butter if I get bread and butter here."

Q. Did you tell Mr. Fineberg that? A. Yes, sir.

Q. When you came back? A. Yes, a dozen times.

Q. You told him that more than once? A. Yes, sir, a dozen times.

Q. You went down to the Trenton House and had a talk with Leonard, didn't you? A. Yes, sir.

Q. Why did you go there? A. The man was there; I went up there in Catasauqua and he treated me nice and everything, and it's my duty when a man comes in my town I treat him just as well if he do business or not; he treated us nice; he paid for our supper, and he took us automobile ride, and showed his city, and he was all right; and if a man comes in your town you got to come back with him yourself as well as he did.

Q. And that is the only reason? A. I took him out and showed him Trenton in the automobile.

Q. That night? A. That night, yes.

Q. How long a time did you spend at the Trenton House? A. Oh, I don't know, maybe—it was in the evening, maybe two hours, or an hour and a half, or three hours; I don't know exactly.

Q. The principal question was the buying of this plant? A. Joe Maher was—I never talked about the price with Leonard; Joe Maher used to do the talking.

Q. Neither you nor Mr. Fineberg talked about the price? A. I don't think so, that Mr. Fineberg was talking about the price.

Q. Mr. Fineberg was not? A. I don't think so.

Q. He was not interested in the plant then? A. I don't know, but he didn't talk about the price.

Q. He didn't express any interest in the buying of this plant? A. The first thing it was too big a price at that time; they asked, I don't know—

Q. Who said it was too big a price? A. The people what knowed it.

Q. Did you? A. Well, I said, "It's no bargain," too.

Q. Didn't you say that you thought if you could buy it for $25,000, it would be a good buy? A. He said at that time he would sell it for $25,000.

(Stenographer repeats the question.)

A. We were talking about $25,000.

Q. Please answer that. (Stenographer repeats the question.) A. I didn't say anything.

Q. Did you say that? A. I didn't say anything.

Q. Do you mean that you didn't say that? A. Yes, sir.

Q. When did Mr. Leonard leave town? A. I don't know.

Q. When did you last see him; was it that night; did you leave him at the Trenton House? A. Yes, sir.

Q. You didn't see him the next day? A. No.

Q. And when he left town you had not, neither you, Mr. Fineberg nor Mr. Maher, decided to buy the plant, had you? A. I don't know.

Q. Had you decided to buy the plant? A. No, sir.

Q. Were you with Mr. Leonard pretty much all the time that evening? A. Yes, sir, I was there.

Q. He went away without any definite offer, didn't he? A. I don't know exactly how it was; he went away.

Q. You hadn't bought the plant at that time? A. No, sir.

Q. Do you recall that there were some letters sent to Mr. Leonard after that visit at the Trenton House from the Trenton Scrap Rubber; were there letters sent to Mr. Leonard to Catasauqua after he left there, on this June 23rd visit? A. Maybe they did.

Q. Don't you know they did? A. I can't tell.

Q. You heard letters being dictated, didn't you, to Mr. Leonard? A. Maybe they did, yes.

Q. And you recall that the Trenton Scrap Rubber received some letters from Mr. Leonard? A. I guess they did.

Q. You recall the letters, don't you? A. I couldn't tell you whether I recall the letters or not, but maybe they received the letters.

Q. I show you a letter in the paper of Leonard and Company, Catasauqua, Pennsylvania, addressed "Trenton Scrap Rubber Supply Company, 35 Perrine Avenue, Trenton, N. J.," dated July 10, 1913, signed "Frank E. Leonard, Manager." Do you remember seeing letters come, that is, letters of Leonard and Company having that red diamond on it? A. I couldn't tell you; I remember some letters coming, seventy-five or fifty letters, maybe, I do; you know you can't—

Q. Look at that letter (handing witness a paper), and see if you don't recall that letter coming to the Trenton Scrap Rubber office? A. I can't tell you whether I remember it or not.

Q. "Replying to your letter of the 9th inst., beg to say the price of $22,500 is impossible, but I will take the matter up with the bank this afternoon, and then see Father Rainery and see if I can get them to make any reduction in what I am now bound to take for it. I will run over to Trenton Friday from Philadelphia, between ten and eleven o'clock; see you personally and let you know just what can be done. Please arrange to have your people meet at the time stated. Respectfully yours, Frank E. Leonard, Manager"—A. Was that when he was in the Trenton House?

Q. No, it was sent from Catasauqua, Pennsylvania. A. That was a different time.

Q. Yes; do you remember receiving that letter? A. I don't remember anything about the correspondence; Mr. Fineberg used to correspond like that.

Q. Do you recall Mr. Fineberg talking with you about this letter, and saying they had refused the offer of $22,500? A. Maybe we was talking in the office; I don't know; maybe we was talking.

Q. Didn't he tell you that? A. Maybe he did.

Q. What did you say in reply to his statement? A. I didn't say anything.

Q. Didn't you tell him that you thought the plant could be bought for $22,000? A. I didn't say anything when I heard him talking about that; it seems to me Mr. Fineberg had all kinds of transactions with the Leicester Rubber, and it seems to me he was hiding himself, that I shouldn't hear whatever they was going to do, or whatever they intend to do, and all such things; I don't know.

Q. You were in the office there? A. I was in the office.

Q. And Mr. Fineberg was in the same office? A. Yes, sir.

Q. And these letters with Leonard and Company and the Trenton Scrap Rubber, were all in the files in your office there, weren't they? A. I guess they did.

Q. And the letters written by the Trenton Scrap Rubber to Leonard and Company were also in the files? A. Yes, sir, I guess so.

Q. You could have seen those letters? A. I guess I could; it wasn't locked.

Q. And you knew there was a question of whether the Trenton Scrap Rubber was going to be interested in this plant, didn't you? A. It was no question put up; it was no question of the Trenton Scrap Rubber; the Trenton Scrap was no corporation; it was Freedman and Fineberg, and Mr. Fineberg could be interested, and Mr. Freedman—

Q. Had you and Mr. Fineberg talked at this time about whether it was advisable to have the Trenton Scrap Rubber interested in a manufacturing plant; had he talked with you at this time about it? A. I can't exactly tell when he was talking to me, but he was talking.

Q. Wasn't there some question as to whether it would be advisable to have the Trenton Scrap Rubber known to be interested in a manufacturing plant? A. No, sir, it wasn't mentioned, the Trenton Scrap Rubber.

Q. Because you were selling scrap rubber to other manufacturing plants; wasn't that discussed? A. You mean—

(Stenographer repeats the question as follows):

"Q. Wasn't there some question as to whether it would be advisable to have the Trenton Scrap Rub-

ber known to be interested in a manufacturing plant, because you were selling scrap rubber to other manufacturing plants; wasn't that discussed?" A. No, sir.

Q. When was the second visit of Mr. Leonard to your office in 1913? A. I don't know the date.

Q. About how long after the visit to the Trenton House? A. I didn't keep no track; I don't know.

Q. Was it about a week or two weeks? A: Maybe so.

Q. Do you recall the fact that he was there? A. I recall, yes, sir.

Q. At the time he came there, you and Mr. Fineberg were together in the office with your clerks? A. Yes, sir.

Q. There wasn't anyone there from the Leicester Rubber Company then, was there? A. The last time, do you mean?

Q. Yes. A. I think some of them was there.

Q. Was Mr. De Piano there? A. I think so.

Q. Mr. Joseph Maher? A. I think so.

Q. During all of the talk that passed, or the conversations that took place between Leonard and all the rest, you were present all the time, were you, you and Mr. Fineberg? A. Not all the time.

Q. Did you go out with Mr. Fineberg while Mr. Leonard was there, and talk together? A. No, sir.

Q. Now, just tell what took place at that interview about the purchase of the Catasauqua plant. A. At that time?

Q. Yes. A. Well, Mr. Leonard come around and was talking to Mr. Fineberg.

Q. What did he say, to the best of your recollection? A. Mr. De Piano was talking, and I think Mr. Joseph Maher was talking.

Q. What was said? A. They was trying to buy the plant.

Q. Were they saying anything about the price? A. They was dickering about the price.

Q. What figures were mentioned? A. I can't tell you exactly.

Q. About? A. I didn't push my nose in then; I was out of it.

Q. How long had you been out? A. I wasn't interested in that plant from the time I come back. The first time I went out, it wasn't interesting to me; probably we was talking together in the office as a friend, that's all, but my own personal interest I declined right away.

Q. You knew that the Trenton Scrap Rubber had written a letter to Mr. Leonard to come down at this time, didn't you? A. I used to see Mr. Fineberg write letters—

Q. You knew that the Trenton Scrap Rubber had written a letter to Mr. Leonard to come down to your office, didn't you? I am referring now to the last interview, the last time Mr. Leonard was there. A. I can't recollect that letter.

Q. Well, you knew that Mr. Leonard came there in response to some notice that Trenton Scrap Rubber had sent him; didn't you? A. Maybe I did.

Q. And you say that at this time the Trenton Scrap Rubber had no interest in buying this plant? A. Never had any interest, the Trenton Scrap Rubber—I didn't.

Q. Have you detailed all that took place at this interview with Mr. Leonard on his last visit to Trenton when he was in your office with Mr. De Piano and Mr. Maher; have you told everything? A. What should I tell him?

The Court: Have you told us all you remember?
The Witness: All I remember.

Q. You knew that day, however, that the plant was bought? A. Oh, yes.

Q. How did you get that information? A. I saw Mr. Fineberg and Mr. De Piano went out of the office, and I said he should not implicate me in it, and he went out and bought it for himself.

Q. Did you know how much they paid for it? A. I think twenty-two or twenty-three thousand dollars, something like that.

Q. Did Mr. Fineberg tell you that? A. Yes, I guess he did.

Q. Did he tell you about a deposit of $500.00 being made on it? A. Yes.

Q. Did he tell you where they went to have the agreement fixed up? A. He didn't tell me all the details.

Q. Did he tell you about when the balance of the purchase price had to be paid? A. He didn't tell me anything what it is going to be, but I used to hear him talk with the rest of them.

Q. The Leicester Rubber Company had a credit with the Trenton Scrap Rubber of about $1,000 or $1,500? A. $1,000 or $1,500.

Q. You knew the Leicester Rubber Company had no money to pay $22,500 for the plant, didn't you? A. That's none of my business.

Q. You knew that? A. I don't know whether they had it or not.

Q. How was it you fixed a credit of only $1,000 for the merchandise of the Leicester Rubber Company? A. We didn't fix no credit.

Q. Didn't you say you did? A. I said the utmost they owed us was from $1,000 to $1,500.

Q. You considered them good for that? A. We always take a chance.

Q. You knew that the Leicester Rubber Company didn't have $22,500 in cash to pay for any plant, didn't you? A. Well, yes, I did know it.

Q. Did Mr. Fineberg have the cash to buy the plant at that time? A. I guess he had.

Q. You mean by that, that his interest in the Trenton Scrap Rubber was sufficient to raise $22,500? A. Yes, sir, $40,000.

Q. Did you know he was going to withdraw any moneys out of his share to pay for the plant? A. That was the custom, when anybody wants to draw money, he used to draw it, no objection, as long as he charged himself, that's all.

Q. Did you look at the books to see the charges on the books? A. Sometimes the girl used to tell him.

Q. Did you look for yourself? A. Once in a while on a page—

Q. You examined the books, didn't you? A. My page and Mr. Fineberg's page, I used to look at that.

Q. How often would you examine these pages, Mr. Fineberg's and your own, quite often, didn't you? A. Oh, maybe every month.

Q. And if there was anything on these different pages that you didn't understand, you would ask about it, wouldn't you? A. I asked the bookkeeper.

Q. Didn't you ask Mr. Fineberg? A. I used to ask the bookkeeper more than Mr. Fineberg; suppose I was charged with something, I would ask her what it is.

Q. And if there were any charges on his account that you didn't understand, you would ask the bookkeeper? A. Yes, sir, I used to ask the bookkeeper, and she used to tell me pretty near exact.

Q. You knew that a check for $500.00 had been given to Leonard and Company on account of the purchase price of this property? A. Yes.

Q. I direct your attention to Sheet No. 1 of I. Fineberg's account, and I show you a credit of Septem-

ber 23, "Cash, Leonard and Company, $500"; you saw that item upon the books? A. I can't tell you exactly what it was, but it is charged to Mr. Fineberg.

Q. Did you see that item on the books the next month after it was entered, that is, in October of 1913; you said you examined these personal accounts of Mr. Fineberg and your own monthly? A. Yes.

Q. Now, that item is on September 23; you saw it then, the next month after that, didn't you? A. I can't recall exactly what it was now, but it was at that time, but it was charged.

Q. It was there at that time, wasn't it? A. I suppose so.

Q. Do you notice on the same account, the same sheet, on July 31 of the same year, a credit on that account or a charge on that account, "July 31, Leonard & Company, $500"? A. Well, what is that?

Q. You saw that charge there; he was first charged on July 31? A. Then he brought it back, that $500.

Q. He got credit for the $500 he paid to Leonard & Company? A. He brought it back; ain't that what it means?

Q. Just answer the question? A. I don't know.

Q. I direct your attention to Sheet No. 1 of the Leicester Rubber Account No. 2, under date of September 23, 1913, "Cash given Leonard Company. $500." You saw that charge which was made? A. That's the Leicester Rubber Company; I never looked at anybody else's account; I don't know anything about it.

Q. Didn't you examine these books of account in the Trenton Scrap Rubber? A. I told you awhile ago, me and Mr. Fineberg's accounts I used to look through the two leaves—

Q. Didn't you examine the books of account of the Trenton Scrap Rubber Company? A. All the books.

Q. Yes? A. No, sir.

Q. Didn't you and your son used to go over these accounts together and check them up? A. No, sir.

Q. Didn't the bookkeeper complain about your getting the different accounts all dirty by thumbing them over and examining them?

Mr. Katzenbach: That is objected to.

The Court: Objection overruled.

A. I never—

Q. Didn't they? A. Not to me.

Q. They never said a word to you? A. Not to me.

Q. Wasn't it your practice, Mr. Freedman, after the bank book was balanced and the vouchers were returned from the bank, wasn't it your practice to examine each of the vouchers as they came back? A. When I was home I used to look at it.

Q. (Stenographer repeats the question.) A. Sometimes I did.

Q. Wasn't it your practice to examine them all the time? A. No, sir.

Q. You did it, however, when you were home? A. When I think of it, when I see them I went over them.

Q. Didn't you go all over the checks and the notes that were returned with the balances each month? A. I said I used to look at it.

Q. Say "yes" or "no." A. Every month do you mean, or sometimes?

Q. All the time? A. Not all the time, no.

Q. The only time you didn't was when you were away? A. When I was away, or I didn't think of it, or was not feeling well, or anything like that; I used to do it sometimes, yes.

Q. When you were away, didn't they put the vouchers in a certain place in the office for you to examine when you came home? A. No, sir, not for me.

Q. When you came home and you then examined the vouchers, you went over all those you had not previously examined, didn't you? A. What is this?

Q. When you came home you would look over all the vouchers which had been in while you were away and subsequent to the last examination of the checks? A. No, sir.

Q. When was the last time you examined the check vouchers? A. I can't tell you exactly when it was.

Q. Well, the check vouchers were placed in a certain receptacle in the office, weren't they, in a certain place in the office you kept them all? A. The bookkeeper used to file it.

Q. You knew where they were filed? A. No, sir.

Q. You never knew where the checks and note vouchers were filed? A. It was filed in the back room in the file, but whenever I wanted it, she gave it to me.

Q. You knew where they were? A. Yes.

Q. Is that where you went when you examined the checks and notes? Where did you examine them? A. If I was in the office I would look at it when she got them from the bank.

Q. When the bank book was balanced in October, 1913, did you examine the checks and vouchers? A. I can't recollect that.

Q. Will you say you did not? A. I can't recollect; I don't know whether I did or not.

Q. You don't know whether you did or not? A. I don't think so.

Q. What makes you say you don't think you did? A. I didn't have it in my mind that I recollect, at that time; I couldn't say "yes" and I couldn't say "no."

Q. Did you have a note book in the office where you kept a list of the notes you received from your customers? A. Yes, sir.

Q. Did you ever examine that? A. No, sir.

Q. Why not? A. That was Mr. Fineberg's duty, he used to look after that.

Q. He looked after all the notes? A. All notes, all deposits, and all money, and I don't believe if you will find five little small checks signed by me; he attended to the financing business, and I attended to the other.

Q. It was understood that that is the way you would run your business? A. Yes, sir.

Q. And that is the way you had been doing for nine years? A. Yes, sir.

Q. You say you didn't look at the note book? A. I saw the note book, but if I wanted to know in it any different idea, you know Mr. Fineberg or the bookkeeper used to tell me if I asked him for it.

Q. A note of $25,000 was a considerable sized note for this company, wasn't it? A. Well, it would make any difference to me whether it was a big size or not; I didn't worry over it.

Q. It didn't worry you? A. Not a bit; I am not the one to give the money for it, and I didn't look.

Q. Then, when you saw it on your books, you didn't bother your head about it? A. I didn't see it on the books, neither I don't know if I ever saw it on the books or not.

Q. I show you a notes and bills payable book of the Trenton Scrap Rubber, and direct your attention to an item marked "8/12/13, drawer Leicester Rubber Company"; in whose favor, it is marked "Trenton Scrap Rubber Supply Company, ditto, I. Fineberg, A. De Piano, Joseph Maher, Mercer Trust Company, payable three months, $25,000," and at the end is marked "Mech." I ask you whether you ever saw that entry upon the note book of the Trenton Scrap Rubber? A. I can't recollect; I never examined these books.

Q. You didn't see that entry, then? A. I don't recollect that I see any of that account.

Q. When was the first time you saw that entry? A. I didn't see it at all.

Q. You never have seen it, except as I have just shown it to you now? A. Yes, sir.

Q. When was the first time that you saw this note of $25,000, marked "Exhibit C9"? A. I don't think if I ever saw that note.

Q. Never, until I have just shown it to you now? A. Maybe I did, but I never took any notice to be interested to see it.

Q. This was a note drawn to the order of the Trenton Scrap Rubber Supply Company? A. Well.

Q. And had that company's indorsement on it? A. Well.

Q. And you were not interested in the note? A. No, sir, why should I be interested?

Q. Why weren't you interested? A. It wasn't my affair.

Q. You knew the note was given then? A. I don't know how it was given, how it was done; I didn't attend to it.

Q. But you knew the note was given? A. I don't know how it was, if it was given or not given, I don't know.

Q. Why do you say that the note was not your affair? A. Certainly, it is not my affair; it was customary whenever we wanted to borrow money in the bank, that is the way Fineberg told me, but Mr. Fineberg told me if we should indorse the note both, I. Fineberg and H. Freedman, and I should indorse it in the back, and he should indorse it, then we didn't have to have any indorsement, and if we should sign to borrow money, we should do it that way. I didn't indorse the note for $25,000 and it wasn't my affair.

Q. Weren't there a number of sums borrowed from the bank upon Mr. Fineberg's indorsement alone? A. Well, it was done that way when I was away, and he had to have a renewal or money, they used to take his word for it that I will come and I will indorse it, or something like that; it used to be done that way.

Q. The Leicester Rubber Company, after it went to Catasauqua, bought considerable merchandise from you, did they not? A. Yes, sir.

Q. You superintended the different shipments which were made to the Leicester Rubber Company, didn't you; that was your department? A. Quite a good bit of it, yes.

Q. Nearly all the shipments were prepared under your supervision? A. Yes.

Q. Then you knew how much stock was being shipped to the Leicester Rubber Company? A. Pretty near.

Q. Did you know how the Leicester Rubber Company was paying for their purchases? A. Yes.

Q. How did they pay? A. They used to send us a note.

Q. Were you in the office when the notes came? A. Part of the time, yes.

Q. You knew they gave you notes then? A. Yes.

Q. Did you examine the note book to see how many notes they had given you? A. No, sir.

Q. You, of course, knew how much material you were shipping to them? A. I know it went out a good bit.

Q. And didn't you examine their account to see how much they had purchased from your company? A. I did do it once.

Q. When was that? A. I can't tell exactly when it was, sometime during that year.

Q. What year? A. That year when they went to Catasauqua.

Q. Was it the year they had the fire? A. It was the year 1914.

Q. How long before the fire did you examine their account? A. I can't tell exactly.

Q. About how long? A. Maybe three months, or something like that.

Q. Where was their account kept? A. If I want to know, the bookkeeper used to tell me, and Mr. Fineberg used to tell me himself.

Q. I am showing you Sheet No. 1, headed "Leicester Rubber Company," the same being from the ledger of the Trenton Scrap Rubber Company, and ask you whether that is the account that you examined to see— A. I can't tell you; I didn't say I examined it; the girl used to tell me, or Mr. Fineberg, what we got; I never examined the bills when it was paid, because none of them that is paid were never examined; but I looked at the open account.

Q. This ledger account was the open account, was it not? A. I don't know.

Q. What open account do you mean? A. Not paid.

Q. That would appear on the ledger, would it not? A. I guess so; I didn't examine any; I asked the bookkeeper or Mr. Fineberg.

Q. Do you mean to say you didn't go to look at the books of your company to see how much material the Leicester Rubber Company owed for? A. What?

Q. Do you mean to say that you didn't examine the account of the Leicester Rubber Company on your books to see how much money they owed you? A. No, sir, I never examined it, except if I wanted to know, they used to tell me.

Q. How did you know how much money they owed

you? A. Well, didn't I see a lot of goods going out and no money coming in?

Q. You saw the notes coming in? A. Well, notes didn't come in very much neither.

Q. Did you know whether they were paying their notes? A. They used to renew them and pay them.

Q. You saw those notes, didn't you? A. When they come in?

Q. Yes? A. Sometimes I did and sometimes not.

Q. Didn't you see the renewal note which came in for the $25,000 note which they had given? A. No, sir.

Q. That note escaped you? A. Positively.

Q. It got away from you? A. Yes, maybe they got it away so I couldn't see it.

Q. You didn't see it? A. No, sir.

Q. Who do you mean got it away so you couldn't see it? A. They used to play secret on me.

Q. Who? A. Mr. Fineberg or any of the stockholders of the Leicester Rubber Company when they used to come in in the Trenton Scrap Rubber office and look in the door and go in the back room and do whatever they want, hiding and signing and—

Mr. Scammell: That is objected to, and I move that that portion be struck out.

The Court: I will let it stand.

Q. Who was it that kept these notes away from you? A. I suppose Mr. Fineberg.

Q. Did your girls in your office, your clerks, keep these notes away from you? A. I don't know; I didn't see it.

Q. Didn't you ask them to show you the account of the Leicester Rubber Company? A. Yes, sir.

Q. Didn't they show you that account? A. Whenever I asked them they did.

Q. Didn't they show you that account? A. Yes, sir.

Q. And you saw on that account, under date of August 30, 1913, the first entry, "August 12, 1913, note $25,000," didn't you? A. I tell you I never examined the books myself—

Q. (Stenographer repeats the question.) A. No, sir.

Q. Why didn't you see it? A. I didn't see it.

Q. Didn't you want to see it? A. I wasn't interested in that.

Q. But you saw that there was an entry upon your books of account? A. I did not.

Q. You remember the fire up at the Leicester Rubber Company plant? A. Yes.

Q. You went up there to see the wreck, did you not? A. Yes, sir.

Q. After you came back, did you have a talk with Mr. Fineberg about the fire? A. Oh, we was talking it was a fire, yes.

Q. Didn't you ask anything about what the loss was? A. He asked me.

Q. What did he say to you? A. He said to me three days after the fire, "Mr. Freedman, we are in partners so long and I lose all I have, indorsed a lot of paper; I want you you should help me out to help to pay up the debts and stay together in business, because if not, I will sell my last coat to pay up my debts."

Q. What did you say to him? A. I said to Mr. Fineberg, "Don't be so disgusted; we started on nothing in business; you stay where you are; we will make money, if you attend to business and attend to this rubber business and you pay off your debts. I won't make no distinction to stop you from signing your notes; you will sign your checks just the same if you

have a hundred thousand dollars or ten thousand dollars in there." I was trusting to his honesty.

Q. Did he tell you how much the loss was? A. No, sir.

Q. Did he tell you anything about there being a note in the bank which would have to be taken care of? A. He never told me anything at that time, no.

Q. When was the time he mentioned there was a note in the bank that would have to be taken care of, the note of the Leicester Rubber Company upon which the Trenton Scrap Rubber was indorser? A. The Trenton Scrap Rubber was no indorser, it was a casher; they cashed the notes.

Q. When did you know they cashed the notes? A. I think there come a protest note.

Q. And that was your first information? A. Yes, sir.

Q. That was the first time you knew the Trenton Scrap had cashed the note of the Leicester Rubber Company? A. I don't know how it was, but I know it was a protested note by us cashing the note.

Q. What did you say to Mr. Fineberg about it? A. Nothing; he was supposed to take care of it himself.

Q. You knew he was going to take care of it? A. That didn't make any difference.

Q. The Trenton Scrap Rubber had to take care of it? A. Certainly.

Q. You knew that at the time you received the notice of the protest? A. He was going to take care of it, how, I don't know.

Q. Didn't he tell you how? A. Not exactly how he was going to do.

Q. What did he say to you he would do with it? A. We didn't have no discussion whatever on it.

Q. But the understanding was, that the company would do something to take care of the note? A. I didn't attend to that part.

Q. The only reason then, that you didn't bother your head with it, was because Mr. Fineberg looked after the finances of the Trenton Scrap Rubber Company, and you left it up to him? A. Yes, sir.

Q. Do you know how he made provision for its payment? A. No, sir.

Q. You know the note was paid though? A. I know it; the first I heard of it was sometime in March.

Q. But you had a notice of protest— A. That was a few months before.

Q. It was in November? A. Well, in November, that was a few months before.

Q. But you knew in November, 1914, that the note had been protested? A. Yes, sir.

Q. And you also knew then that it had been paid? A. I thought I know that.

Q. Well, it was paid then? A. I guess not.

Q. When was it paid? A. I know now, I find it out, in March.

Q. In March, 1915? A. Yes, sir.

Q. How did you find it out? A. It is a long story to tell.

Q. Did you find the note in the checks and vouchers? A. No, sir.

Q. How did you find it out? A. Why, on December, I think it was, the market on rubber was very cheap and me and Mr. Fineberg said, "There is a good time now to buy a lot of rubber, the market is very low."

The Court: Strike that out and let the question be answered.

Q. As a result of your talk with Mr. Fineberg, about the rubber market and going into the market to buy, the subject came up about this note? A. No, sir.

Q. Did you find out that you had considerable paper in the bank and that you couldn't avail yourself of your ordinary resources to borrow money? A. I find it out, we had no money, and I could go out on the road to buy goods, and we put some stock in the Jefferson Storage, and we are supposed to borrow $15,000 on that, and we had some shares from the Empire Rubber, and Mr. Fineberg sold that shares to General Murray, something like $1,000 less than it cost us; and I left on the 13th day of December, and I bought a lot of stock in the west, and I come back and the goods started to come in—

Q. When did you come back? A. Two weeks after I left.

Q. You came back early in January, 1915? A. Something like that. After I used to be back, I never bothered with the business, because I didn't know what it was done, and the drafts coming in if the goods were bought; and I saw Mr. Fineberg is trying to borrow notes of individual people, charging notes, trading notes; I says—that was bought in March, I said to Miss Nelson, "What is done; we borrowed $15,000 in the Mechanics'. Bank, and we sold that shares; we should have a little over $22,000," and I think we had Mechanics' shares.

Q. They were in Mr. Fineberg's name? A. Yes, sir, Mr. Fineberg consulted with me before he bought it.

Q. All right; go on? A. Then I asked Miss Nelson, and she said, "I don't know; we only got so much in the bank," she says, "That note was paid." I said, "What note?" She says, "That $10,500 note." I said, "Was it charged to Mr. Fineberg?" and she

says, "It was charged to the Leicester Rubber Company." I says, "This has got nothing to do with the Leicester Rubber, that is Mr. Fineberg's affair and he indorsed that." Then the argument started; that's the way it was.

Q. Then you went to see Mr. Fineberg? A. Yes, sir.

Q. Mr. Fineberg wasn't present when this talk took place with Miss Nelson? A. No, sir.

Q. He came in shortly after that? A. Yes.

Q. You didn't talk this matter over right in front of the bookkeeper? A. I don't recollect exactly; I talked it over with him.

Q. You talked it over right after this talk with Miss Nelson? A. Maybe it was the same day, and maybe the second day, but it was after.

Q. What took place at that interview? A. I told Mr. Fineberg that note is his affair, and he should charge himself with that note, $10,500, and he told me he said he feels like it the Trenton Scrap Rubber should stand for that note, and he would pay all his personal indorsements what he owes some other people.

Q. Did he say how much that was? A. No.

Q. About how much? A. I don't know.

Q. Was that all that was talked about? A. Oh, we talked more than that; we was talking a year right after it.

Q. This was in March, 1915? A. Well, it's 1916 now, that's a year.

Q. You didn't talk about this matter for a year? A. More than a year; I talked today about it.

Q. That was the only question discussed in this talk with Mr. Fineberg; that was the only thing you talked about, that is, this $10,000 note and his personal indorsements; was that all you talked about with him and he with you? A. Is that all?

Q. Is that all? A. Yes, that's all.

Q. You are sure about that? A. Yes, sir.

Q. Wasn't something said about your expenses of a trial which had taken place here, in which you were indicted for larceny and receiving stolen goods? A. That is a little later.

Q. Wasn't it talked over? A. Yes.

Q. What did he say to you about this? A. The expenses should be charged to Mr. Fineberg, because he was the instigator of that.

Q. He said— A. I said, the expenses should be charged to Mr. Fineberg personally, because he was the original of that, and he knows that, and I suffered for what he done, and—

Q. What did Mr. Fineberg say about these expenses? A. We paid it.

Q. No, about arbitrating, was there anything said about arbitrating? A. That was coming when we went to dissolve partnership.

Q. When you were talking about this $10,500 note with the Leicester Rubber Company, didn't he also talk about these expenses of this trial, didn't he, when you had the row with Mr. Freedman about this note didn't he talk to you about these expenses? A. That was before the trial, it was no expenses.

Q. You had two trials? A. Yes, sir.

Q. You had had the first trial? A. Yes.

Q. And paid the expenses? A. Yes.

Q. And didn't Mr. Fineberg say that the question of those expenses would also have to come up? A. Not on the first trial.

Q. He didn't discuss those then? A. Not that I recollect of it.

Q. As a result of this talk, however, you agreed to dissolve? A. Yes, sir.

Q. And what were you going to do, submit the matter to arbitrators? A. Yes.

Q. And what questions did you agree to submit to the arbitrators?

Mr. Macpherson: That is objected to, the articles will speak for themselves.

The Court: Objection overruled.

Q. Didn't you agree to submit the question of these expenses to the arbitrators? A. Yes, sir.

Q. And you also agreed to submit all matters in connection with the Leicester Rubber Company to these arbitrators, did you not? A. That note, do you mean?

Q. Yes, all matters? A. Yes.

Q. The question of the stock? A. I guess all matters was put in the arbitration.

Q. The question of the stock that Mr. Fineberg held in the Leicester Rubber Company? A. Yes, sir.

Q. And the $10,500 note? A. Yes.

Q. And also the question of the expenses of the criminal trial? A. I guess everything was in there.

Q. Who were the arbitrators that you agreed to submit this to? A. Governor Stokes and Mr. Servis, Mr. Oakley, of the Essex Rubber, and Mr. Simon Gerson and Mr. Rosenthal.

Q. You produced witnesses before these arbitrators, and they had several hearings, didn't they? A. Yes, sir.

Q. And you produced the different witnesses to them as your witnesses? A. Yes.

Q. And Mr. Fineberg produced his witnesses? A. Yes, sir.

Q. All the matters you had against Mr. Fineberg in connection with the Leicester Rubber Company and his stock, you produced all the testimony you had? A. I don't know if I had it all or not; it took so long.

Q. The arbitrators were about ready to report, were they not? A. Yes, sir.

Q. Who first came to see you about your buying Mr. Fineberg's interest out? A. Mr. Joseph Gordon.

Q. You are interested with him in the American Rubber Company? A. I wasn't at that time.

Q. I mean now? A. Yes, sir.

Q. You are associated together in that company? A. Yes, sir.

Q. Before the matter was closed with the arbitrators, didn't you have a talk with Mr. Fineberg, at which time you agreed that you would each go your way until the arbitrators had settled the matter, you would buy and sell on your account, and he would buy and sell on his account? A. He made that suggestion, but I didn't.

Q. You agreed to it? A. I had to agree; he had me by the neck at that time.

Q. You mean by that, that this loss had occurred? A. Oh, there was no loss. He said, "There, sign the agreement; if I am going into Mercer Court and you will get jailed," because I cleared him.

Q. You were convicted in the Mercer Court? A. Yes.

Q. At the May term, 1915? A. Yes.

Q. For larceny and receiving goods? A. Yes.

Q. And you agreed in April, 1915, April 20, I believe that is the date, to submit this matter to arbitrators? A. Yes, sir.

Q. And at the same time you agreed to each do business on your own individual account at that time? A. I didn't agree to anything; that's what Mr. Fineberg dictated to yourself; I didn't know anything.

Q. As to the terms of the arbitration agreement, that was prepared mutually between you? A. I went

up in your place and Mr. Fineberg dictated and you wrote it out.

Q. After it was all written out, you read it over, didn't you, Mr. Freedman? A. Maybe somebody read it over to me; I guess there did.

Q. Didn't you read it over in my office? A. No, because you brought it fixed up; maybe you read it over to me.

Q. Didn't you at that time refuse to sign the arbitration agreement until, as you said, you had consulted your attorney? A. I didn't sign in your office; I signed it in Governor Stokes' office.

Q. Joseph Gordon came to you with respect to the buying of Mr. Fineberg's interest? A. Mr. Gordon was sent to me.

Q. You didn't see Mr. Fineberg with Mr. Gordon at the time Mr. Gordon came there, did you? A. Both together?

Q. Yes? A. No.

Q. The only information that you had that Mr. Gordon came from Mr. Fineberg was his statement, was it not? A. Yes, that's what he said.

Q. When did Mr. Gordon first come to see you; how long before you prepared your offer to Mr. Fineberg? A. The same day.

Q. In the morning? A. I think it was around eleven o'clock.

Q. About eleven o'clock in the morning? A. Yes, sir.

Q. Did you see Mr. Fineberg then after eleven o'clock? A. Yes, sir.

Q. Where did you find him? A. I think I started to go to dinner; it was nearly twelve o'clock, and I met Mr. Fineberg, I says, "Mr. Fineberg, you want to sell me your interest in the Trenton Scrap Rubber," he says, "Yes, if you will make me an offer

of $25,000 it will take me twenty minutes to decide, and I want it in writing."

Q. He told you he wanted anything you had to offer him, in writing? A. Yes; it wasn't in the office, but it was in the shed; I had my automobile there; that's the words he was talking.

Q. Did you say you would put it in writing? A. Yes.

Q. And did you afterwards put it in writing? A. I went to my counsel.

Q. Judge Macpherson? A. Yes, sir.

Q. And you say he was away? A. Yes.

Q. You then went to Mr. Heher's office? A. Yes, sir.

Q. And you told him what to do, didn't you, to prepare an offer? A. Yes, sir.

Q. And you told him to prepare this offer at that time? A. Yes, sir.

Q. And he prepared that, according to your instructions? A. The first one, yes.

Q. Is that right? A. The first one.

Q. I show you a paper addressed to Isaac Fineberg, and dated June 21, dated the 21st day of June, 1915, signed "H. Freedman," and ask you whether that is the offer which you prepared or had Mr. Heher prepare for you? A. I think so.

Q. You had completed this offer down to paragraph 5. Please examine this; this offer was completed down to paragraph 5, when you went to find Mr. Fineberg (showing witness a paper)? A. Yes.

Q. From 5 on, it was not; paragraph 4 was the last paragraph? A. When he made it I wasn't alongside of it, I was far away, and Mr. Heher's stenographer was making that paper.

Q. After Mr. Fineberg came back to Mr. Heher's office with you and Mr. Gordon, then there was some

more writing upon this offer before you signed it? A. Yes.

Q. And the additional part was with respect to his purchasing your interest? A. Yes, sir, Mr. Fineberg made me the suggestions.

Q. Now, you had gone all over with the arbitrators, all these different charges on the books of the company about the Leicester Rubber Company, before this offer was made? A. I think they only had that $10,500 note in the arbitration.

Q. And you had the whole account; these accounts here, the Leicester Rubber Company and all these papers, you had them all down there for their examination? A. I didn't see that; I only had three pages, my account and Mr. Fineberg's account and that stocks and bonds page, that's what I recollect we had there.

Q. That is all you had? A. That is all we had.

Q. They had the bookkeepers there and all the accounts? A. I didn't see our bookkeeper there.

Q. Wasn't Mrs. Davis down there as a witness? A. I think she was a witness to the arbitrators for that shares' business, if she made that entry on the books for the shares.

Q. That was the shares of Isaac Fineberg in the Leicester Rubber Company? A. Yes, sir.

Q. The $10,500 note, which is referred to in this offer of yours, is the same $10,500 note of the Leicester Rubber Company that we have been talking about? A. Yes.

Q. You knew all about it at the time you made this offer? A. Yes, sir.

Q. Now, Mr. Freedman, the next morning you received the acceptance of the offer from Mr. Fineberg? A. Yes, sir.

Q. And on Saturday, the 26th of June, 1915, you went to Mr. Macpherson's office? A. Yes.

Q. Mr. Fineberg and Judge Macpherson and yourself were there before I came there; you got there before I was there, didn't you? A. Yes, sir.

Q. And Mr. Fineberg telephoned to me from Judge Macpherson's office to come down there? A. Yes.

Q. You had had considerable discussion, had you not, with Mr. Fineberg and Judge Macpherson as to what sort of an agreement should be entered into about arbitrating? A. Yes, sir. .

Q. And hadn't Judge Macpherson prepared an agreement for you to sign, and which you refused to sign, before I came there? A. What? I can't recollect that kind of an agreement.

Q. You can't recollect that? A. No.

Q. You received the notice of acceptance at Mr. Heher's office the next morning, didn't you? A. Yes, sir.

Q. What day was that? A. The following day, I guess that was the 22nd.

Q. It was the Saturday morning, the 26th, when you went to Judge Macpherson's office? A. Yes, sir, that's right.

Q. How did you happen to go there to Judge Macpherson's office on this Saturday morning? A. That was made up.

Q. You agreed with Mr. Fineberg that you would meet at Judge Macpherson's office? A. Yes, sir.

Q. And do you recall that Judge Macpherson had prepared an agreement between you and Mr. Fineberg concerning arbitration—let me ask you this first; on the day that Mr. Fineberg came to Mr. Heher's office and gave you the notice of acceptance, did you then discuss that question of excess? A. In Mr. Heher's office?

Q. Yes? A. Maybe I did.

Q. What was said by you to Mr. Fineberg; tell what occurred, will you? A. Well, that morning

when Mr. Heher give me the acceptance, we had to be there at ten o'clock at the arbitration, and I went over to the arbitration in the Mechanics' Bank, and we found the arbitration there; and Mr. Fineberg handed to the arbitration that agreement, that paper, and the arbitration says then, "We are ended," or whatever it was; "and if you want to that we should act on the excess, you will have to give us another paper; this paper is discharged"; and they went away.

Q. Didn't they say, didn't the arbitrators say, that you had better go to an attorney and have a new paper drawn? A. Yes.

Q. Did Mr. Fineberg suggest the name of an attorney to draw that paper; did he suggest my name? A. I suppose I did.

Q. Did you suggest my name? A. No.

Q. What did you say? A. "I am going to Judge Macpherson's."

Q. And Mr. Fineberg wanted to come to me? A. I suppose so.

Q. Did you after that go down to Judge Macpherson's and talk with him about having an agreement to submit the matter of the excess to the arbitrators? A. Yes.

Q. Didn't you refuse to sign that agreement? A. No, sir.

Q. Was there anything said before the arbitrators, or give us fully what was said by you before the arbitrators after Mr. Fineberg had presented this paper showing that certain other matters which you had agreed to submit to the arbitrators, were at an end; was there anything said by you to him or he to you about the amount of any excess? A. I don't know what we was talking there; we was talking about the excess, and we didn't have the exact amount.

The Court: Why didn't you agree between yourselves?

The Witness: Why, he didn't want it; he wanted arbitration.

Q. What was the excess that you claimed; did you say to him what excess you claimed you had? A. I made it that week after he accepted to buy out my shares, and I had two pages, two leaves, and I went over to the bookkeeper and figures it out, and if you recollect, on Friday, the day before we accepted the money, Judge Macpherson took a statement to you showing twenty-seven thousand one hundred dollars for my excess, and he refused to take it. Then, the next morning you come around bringing us the $10,000 and the $15,000 note, and if we wanted to go to arbitration we should make up the papers. Then Judge Macpherson made up the papers, and Mr. Fineberg didn't want to sign it, or Mr. Scammell, I don't know who it was.

Q. When you left the arbitrators, did Mr. Fineberg go with you to Judge Macpherson's office? A. I don't know.

Q. When you went to the bookkeeper, was Mr. Fineberg with you? A. No, sir.

Q. Did you bring this statement up to my office, or did you give your statement to Judge Macpherson? A. I give according to my knowledge, according to what the bookkeeper give me to the best of his knowledge, he made up that statement and I give that to Judge Macpherson and he took it over to your office and you wouldn't accept it.

Q. Did you go with him to my office? A. No.

Q. Then, how do you know? A. I took Judge Macpherson's word; I take his word any time.

Q. Did he tell you? A. Certainly, he did.

Q. That's your information? A. That's all I want; I take his word any time.

Q. Did you see Mr. Fineberg and talk to him between these visits, between the time that you were

with the arbitrators and Saturday morning? A. Maybe we was talking, I can't recollect exactly what it was going on; you know what it was, one what was one way and the other the other way, a lot of talk and it didn't amount to anything.

Q. Nothing was decided about the excess until Saturday morning? A. Saturday morning.

The Court: Are the exchange propositions here?

Mr. Scammell: Yes, sir.

Q. When we first met in Judge Macpherson's office, don't you recall that Judge Macpherson said that your offer, which had been accepted by Mr. Fineberg, didn't contemplate certain important things, that is, as to when deeds should be delivered for your interest in the real estate, and a bill of sale for your own interest in the personal property; didn't he say something about that? A. When the money will be paid?

Q. No. Didn't he say that your option, which had been accepted by Mr. Fineberg, didn't cover those particular points? A. I think it says something about it, it says in twenty days after; I think it mentioned that way; in five days after you have to give me so much money, and in twenty days after you should give me so much money for the excess and the balance of the money coming to me at that time on the twenty days. When was that accepted, in July or August?

Q. It was accepted in June and you made your offer on June 21; it was accepted on the 22nd day? A. Then, about the 15th day of July should be paid the balance, twenty days after; that was the way we made it.

Q. Didn't Judge Macpherson say that there was nothing in the agreement which provided that you should give a deed for your interest in the real estate

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and a bill of sale for the personal property; didn't he say something about that? A. I can't recall that about that.

Q. Didn't he say he thought there ought to be a new agreement? A. Maybe he did.

Q. And did he have a paper there which comprised, or rather, contained these terms as to the delivery of the deed for your interest in the property and your interest in the personal property; didn't he have a paper drawn and ask you to sign it? A. I don't remember that.

Q. I show you a paper which appears to be an article of agreement made between you and Isaac Fineberg, dated the blank day of June, and I ask you whether that was the paper which Judge Macpherson had in loose sheets in his office? A. I don't know anything about that paper; I don't think if Judge ever read to me a paper like that; I don't know anything about it; I don't recollect any papers like that.

Mr. Scammell: I offer the paper in evidence. Said paper is marked Exhibit D2.

Q. Judge Macpherson submitted, however, to you, a paper which you refused to sign, did he not, about submitting the question of excess to arbitration? A. Yes, sir.

Q. Didn't you refuse at that time to submit the question of excess to the same arbitrators; didn't you refuse to allow that? A. I did.

Q. You objected to their having anything further to do with the matter? A. Yes, I wanted new arbitrators.

Q. And didn't Mr. Fineberg say to you, that they had gone all over this matter, and it seemed to him that they could decide this question better than anybody else, and quicker? A. Well, whatever he said, maybe it's right.

Q. Something to that effect? A. Something about that.

Q. Didn't he try to get you to consent to submit this question of excess to the same arbitrators? A. Yes.

Q. And you refused, didn't you? A. Yes, sir.

Q. When you brought up the question of interest on these notes, didn't Mr. Fineberg say to you that if you would consent to submit this excess question to the same arbitrators to get it over quickly, that he would agree to pay you interest on these notes; didn't he tell you that? A. It wasn't that way.

Q. Didn't he say that? A. No; you said it; Fineberg didn't say anything.

Q. Didn't you ask for interest on your notes? A. Yes, sir.

Q. And didn't I say then, that if you would agree to submit this matter to the same arbitrator, that we would pay you interest on these notes? A. I don't know what it is said, but you said—

Q. Didn't I say that to you? A. You said Saturday when you accepted the money—

Q. That's the day I am talking about? A. You said you personally promised, and there is two witnesses, you will pay the interest on the notes.

Q. Didn't I say to you, that if you would agree to submit the question of the excess to the same arbitrators, in order to get rid of it quickly, that we would pay the interest on these notes? A. I don't remember.

Q. Didn't you ask to have the matter put in writing? A. What matter?

Q. The question of the submission to arbitrators of the payment of interest? A. Yes, sir.

Q. And then it was said that you had two witnesses; I said you had two witnesses about the interest, "but

I want you to decide whether you will agree to submit the question of excess to these arbitrators"? A. I don't know; I instructed the Judge to make out arbitration papers.

Q. After this talk? A. Yes, sir.

Q. After all this talk and after you had refused to submit the matter of excess to these arbitrators, didn't Mr. Fineberg say, "Then I withdraw all my offers about payments of interest or anything else, until you decide to submit this question to arbitrators"? A. That was later.

Q. That was later? I mean on this Saturday morning? A. No; Mr. Fineberg said, "You can take the money; the time is short, here is the money and here is the notes, and that's the best I can do."

Q. Didn't he say to me, "What do you advise me to do, Mr. Scammell"; didn't Mr. Fineberg say that to me, about what he should do, inasmuch as you hadn't agreed to submit the question of excess to arbitrators? A. Well, we was talking a lot of things there, and Mr. Fineberg got up at last and said, "Here's the money; here's the money; you can take it or leave it."

Q. Didn't you ask Judge Macpherson what you should do? A. Yes.

Q. You did ask him? A. Yes, sir; we went out in the other room.

Q. When I first went into Judge Macpherson's office, there was somebody else sitting in the room, wasn't there? A. I think Mr. Gordon was there.

Q. Mr. Gordon was in the room? A. I think he was.

Q. Do you remember my asking who that was and what he was doing there? A. I don't remember; maybe you did.

Q. And do you remember my saying that he should go out of the room while we were dealing with this matter? A. I don't remember.

Q. You remember he went out? A. I don't remember; I know there was a crowd over there.

Q. After the money had been paid to you and you had made the receipt, which is already in evidence, you had Judge Macpherson prepare an agreement, did you not? A. Yes, sir.

Q. And sent it down to me for the purpose of approving it? A. I think so, yes.

Q. That agreement contained your suggestions as to what you were willing to do? A. I suppose so.

Q. Is that the paper? A. I can't tell you.

Mr. Scammell: I offer the paper in evidence. Said paper is marked Exhibit D3.

Q. I show you a paper dated the blank day of July, made between you and Mr. Fineberg, which was an agreement, in which is referred the submission of the matter of excess; do you recall Judge Macpherson submitting to you this paper for examination, or a copy of it? A. I don't recall, maybe he did.

Mr. Scammell: I offer the paper in evidence. Said paper which is a copy of D3, is marked Exhibit D4.

Q. Referring to the charge of $12,500, charged against the account of Isaac Fineberg, being stock in the Leicester Rubber Company, did you direct that charge to be made against his account? A. No, sir.

Q. Did you direct any charges to be made in either your account or his account? A. My account I used to.

Q. Never any as to his? A. If they would ask me, but very seldom they asked me for it.

Q. Did you ever direct any charges to be made to his account? A. To the girl?

Q. Yes, direct the girl? A. If she would ask me, probably I would.

Q. Did she ask you? A. The girl?

Q. Yes, the girl? A. Very seldom.

Q. Were you ever asked about this $12,500? A. No, sir; I am sure of that.

Q. Did you ever direct any charges to be made in the expense account? A. Yes.

Q. Did you direct the girl to charge the expenses of this criminal trial against the expense account? A. Yes, sir.

Q. When you agreed to arbitrate the question of expenses, wasn't it understood that there was to be no charge against the expenses account until that question was decided? A. It wasn't nothing to do about it.

Mr. Macpherson: That is objected to.
(Stenographer repeats the question.)
(Question withdrawn.)

Q. You all agreed, Mr. Freedman, to submit the question of expenses of the criminal trial to the arbitrators? A. Yes, sir.

Q. Now, didn't you agree with Mr. Fineberg, that pending the arbitrators' decision, there would be no charge made in the expense account until that question had been decided? A. No, sir.

Q. Didn't you, as a matter of fact, after that, after you had agreed to submit the question of expenses, direct the bookkeeper to charge some trial expenses to the open account on the books of the company? A. Yes, sir; I did.

Q. And didn't Mr. Freedman object to that? A. No, sir.

Q. Didn't he tell you he understood that matter was left for arbitration? A. No, sir.

Q. He didn't say that to you? A. No.

Q. As a matter of fact, you did make some charges or direct the bookkeeper to charge certain expenses to the account after the arbitration? A. Yes, sir.

Q. Did you ever talk with Mr. Glassman—do you know Mr. Glassman, of this city—about your going to Catasauqua to live? A. Yes, sir.

Q. Did you ask him to find out about obtaining certain kosher meat for you? A. No, sir.

Q. Did you ever ask him about making an arrangement for your family to go up to Catasauqua to live? A. I did talk to him something about it, but not in that way.

Q. You were rather intimate with Mr. Glassman, weren't you? A. Yes, sir.

Q. You used to go to his store a great deal? A. Yes.

Q. What did you say to him about going there to live? A. That was before I went there to look at the plant even; I said, "There's a rubber mill to buy, and I am going to look at it and look how it is to live in Allentown; I don't believe I was in Allentown before—"

Q. When was that? A. I don't know; sometime in the summer.

Q. Did you see him right after the fire of the Leicester Rubber Company? A. I used to see him quite often; I can't tell the dates, because it is not so remarkable.

Q. Did he ask you whether there was any insurance on the property? A. Maybe we was talking about it.

Q. Didn't he tell you he heard there was no insurance on the plant, and he knew you were interested

in it and was sorry to hear it if such was the case? A. No, sir.

Q. Didn't he ask you how much your loss was in this plant?

The Court: Mr. Scammell, don't you think you have gone considerably beyond this case?

Q. Didn't you tell Mr. Glassman that the stock of the Leicester Rubber Company was in Mr. Fineberg's name, and now was your chance to get from under and get out? A. No, sir.

Q. You didn't say anything of that character? A. Nothing of the kind.

Q. Or words to that effect? A. No, sir.

Q. You know Mr. Small, of the firm of Freedman and Small? (No answer.)

Q. You are quite intimate with him? A. Yes, he was a partner of my brother.

Q. Did you ever talk to him about your interest in the Leicester Rubber Company? A. No, sir.

Q. You never discussed that question with him? A. No, sir.

Q. Did you ever discuss with him about the loss which had occurred up at the Leicester Rubber Company? A. I can't recollect that.

Q. You didn't discuss the question with him? A. No.

Q. Did Mr. Small ever advise you not to leave Trenton to go up to Catasauqua to live? A. He advise me?

Q. Yes? A. No, sir.

Q. Did he ever talk to you, and did you say to him at any interview that you had after the loss up at the Leicester Rubber Company, that the stock was in Fineberg's name and now was your chance to get from under? A. I never had such a talk with him.

Q. Never? A. No, sir.

Q. Nothing of that character? A. No.

Q. You never had such an interview? A. No, sir.

Q. You never said the stock was in Mr. Fineberg's name, did you? A. No.

Q. And didn't you say to him that you now had a chance to get from under? A. Never.

Q. Did you say to Mr. Glassman last week, did you tell him that it was not necessary for him to come to this trial, and it would be just as well for him to go away? A. No, sir.

Q. Did anything of that kind happen? A. I told him what he said in his statement; I said I never told him anything; all of that about charges and to get out, and that is manufactured evidence.

COMPLAINANT RESTS.

BENJAMIN SMALL, a witness produced on behalf of the defendant, being duly sworn, testified as follows:

Direct-examination by Mr. Scammell:

Q. Where do you live? A. Philadelphia.

Q. Do you know Harry Freedman, the complainant in this cause? A. Yes, sir.

Q. How long have you know him? A. Oh, I guess I know Mr. Freedman for the last seven or eight years, but very intimate with him for the last four years.

Q. Did he ever talk with you with reference to becoming interested in the Leicester Rubber Company? A. Yes, sir.

Q. Where did he talk to you?

Mr. Katzenbach: That is objected to.

The Court: The objection is overruled.

A. At Mr. Freedman's residence.

Q. In Trenton? A. Right in Trenton here.

Q. About when was this, do you know? A. Oh, I can't recollect that, that would be impossible, but it was just at the time when they purchased the mill.

Q. State to the Court what transpired and what was said at that interview? A. He said that they purchased the Catasauqua Rubber mill, which he intends to go out to Catasauqua to stay there. I said, "How are you going to leave this business here?" He said, "I am going to leave it to Mr. Fineberg." I said, "I wouldn't leave no business to anybody in the world, if I couldn't take care of it myself"; I said, "I wouldn't stay in business and then go away"; and finally, he decided he wouldn't go. The second time I said, "What did you do?" and he said, "We have purchased the mill and we decided to have Mr. Fineberg to take care of it two or three days a week at Catasauqua"; and I made the same remark as I did before, and we went further along the line, about the financial end of it. He said, "I have purchased the mill, and we have turned over the entire stock in Mr. Fineberg's name"; I said, "Mr. Freedman, what made you do that; I wouldn't do anything like that"; and he said, "I think I could trust Mr. Fineberg; I was with him a number of years; and we have a partnership and we handle enough capital, more than is involved in the Leicester Rubber, and I know him to be absolutely straight."

Q. When again did you have a talk with him; did you have a talk with him after the fire? A. Yes; he come into our office in Philadelphia.

Q. Did he discuss the question of the fire? A. Well, he looked very downhearted, and I could see he was downhearted. I said, "What's the matter with you?" and he said something happened to him which don't look very good. I said, "What has happened?" I knew the fire happened, but didn't want to hurt his feelings. He said, "Didn't you hear that we burnt down?" I said, "Yes"; I said, "That ain't going to put you out of business there"; he said, "No, not me, but I may be able to put somebody else out." I said, "What?" and then he said, "You know the entire stock is in Mr. Fineberg's name, and I got an opportunity now to clear myself absolutely"; I said, "Mr. Freedman, you don't mean to tell me you are going to do that to your partner?" He said, "When I got a rope around my neck"—he said that in Hebrew—he said, "I am going to clear myself."

Q. What did you say to him as to that? A. I haven't discussed that matter any more; it just hurt my feelings on account of acting that way, and I haven't talked a word further.

Q. Did you see Mr. Freedman after that? A. Yes, I met him, I think it was the end of July or the middle of August; I can't remember that, of 1915, in Atlantic City at his store; a tire store he has got there; whether it was in July or August I can't recollect that exactly.

Q. Was there anything said there in connection with the Leicester Rubber Company or his interest in it? A. No; but we had spoken about the Trenton Scrap Rubber Supply Company.

Q. Was there anything then said about his selling out his interest in the Trenton Scrap Rubber Supply Company? A. Yes, sir.

Q. What was it? A. He told me he sold the interest of the Trenton Scrap Rubber Supply Company to Mr. Fineberg, and, of course, I said, "How did

you get along, Mr. Freedman?" and he said, "Oh, I got along all right; I got what I could out of the business, and I am going to get what I can more out of him." I said, "What do you mean?" He said, "I am going to get back on him with a case," he said, "for the capital he had paid off of the Leicester Rubber Company." I said, "How can you do that?" He said, "I can take the books in court and show my name didn't appear at all on there."

Q. What did you say? A. Not at all, I didn't answer a word.

Q. Did you see him at all in Trenton after that? A. Yes, about a month ago, probably five weeks ago.

Q. Did he say anything to you in connection with this property? A. Not a word.

Q. Or appearing as a witness? A. No, Mr. Freedman never knew I was going to be a witness today.

CROSS-EXAMINATION by Mr. Macpherson:

Q. Mr. Small, how long have you known Mr. Freedman? A. I know Mr. Freedman for the last seven years, but for the last four years I know him very intimately.

Q. And you visited him at his home? A. Yes, sir.

Q. In Trenton? A. Yes, sir.

Q. And you stayed with him all night with him at his house? A. No, sir; I don't think I ever stayed at his house.

Q. You are interested in business with his brother? A. I used to be.

Q. Aren't you now? A. No.

Q. The first time Mr. Freedman spoke with you about the Catasauqua plant was where? A. In Catasauqua.

Q. Where did the conversation take place? A. At Mr. Freedman's residence.

Q. In Trenton? A. In Trenton.

Q. Who was present? A. I don't recollect; I don't know; I don't think anybody was present except me and Mr. Freedman.

Q. Where did it take place? A. At his residence.

Q. Whereabouts in his residence? A. I don't know exactly what room it took place in.

Q. Give us your best information? A. The parlor if I am not mistaken.

Q. Have you any hesitancy or doubt about it? A. That would be hard to answer.

Q. Well, you remember what he said? A. I do.

Q. But you don't recall in what part of the house it was? A. I think in the parlor, I think that; probably the parlor or the dining room; I can't tell.

Q. You had been there for how long? A. A couple of hours, I guess three or four hours, probably.

Q. Had you taken a meal with him? A. Yes, sir.

Q. Was this before or after? A. After the meal—

Q. It was in Mr. Freedman's house? A. Yes, sir.

Q. Were any members of his family present? A. There was members of his family, but not when we were talking, I don't think there was.

Q. What time of the day was it? A. In the evening, about seven o'clock, I guess it was about half-past seven.

Q. Are you guessing, or are you certain about it? A. I am next door to certain; I couldn't exactly tell the minute, but I could state the hour, probably I can state the time.

Q. What time did you have supper? A. I recollect I got there after supper, and they made for me something special.

Q. How are these rooms connected, the dining room and the parlor? A. I don't know whether that would be very necessary for me to explain; I have been there several times.

Q. Do they connect? A. Yes, they are straight rooms, they connect together.

Q. You didn't have to leave the dining room and go out in the hall? A. No.

Q. You go from one room to the other? A. Yes, sir.

Q. Are there any folding doors? A. I don't think there are any doors.

Q. Just an open way? A. Yes, sir.

Q. And curtains? A. Yes.

Q. About what time of the night was it? A. I said it was between seven and half-past seven, and probably eight.

Q. I understood you to say you didn't arrive at his home until half-past seven, and that they had finished their meal and prepared one for you? A. I said I had my meal between half-past seven and seven.

Q. And when did the conversation take place? A. The conversation took place about half-past eight or so.

Q. You had been there an hour? A. I had been there a couple of hours.

Q. You had talked over other matters, hadn't you? A. Well, this is the only, practically, matter talked about that night.

Q. Why did you say "practically matters?" A. I hadn't come there to his residence to speak about any other matters.

Q. You went there just for that purpose, then? A. No, sir; only to see Mr. Freedman.

Q. What did he say; who started that conversation? A. Mr. Freedman.

Q. What did he say? A. He said to me that they purchased a rubber mill in Catasauqua, called the Leicester Rubber Company.

Q. Do you know what month it was? A. No, sir.

Q. Do you know what year it was? A. Yes.

Q. What year? A. 1913.

Q. You don't know what month it was? A. No, sir.

Q. Do you know whether it was in the summer or in the spring? A. Undoubtedly it was in the fall, if I am not mistaken, yes, sir.

Q. It was in the fall? A. Yes.

Q. Of 1913? A. Yes, sir.

Q. Do you recall what part of the fall? A. No, sir.

Q. Do you know whether it was before or after Thanksgiving, or don't you know what Thanksgiving Day is? A. I don't know what Thanksgiving Day is, at all.

Q. Was it before or after Christmas? A. Yes, sir; if it was after Christmas, it would be 1914.

Q. Was it before Christmas? A. Yes.

Q. What did he say to you? A. Just what I said.

Q. Well, what? A. That they purchased the mill in Catasauqua.

Q. Who? A. Mr. Freedman and Mr. Fineberg.

Q. And didn't he say anything about anybody else having any interest in it? A. Yes.

Q. Why did he say, then, that he and Mr. Fineberg had bought it, if somebody else had an interest in it? A. They were supposed to finance the matter.

Q. Who bought the property? A. I don't know; of course, I didn't know the other people that was interested, and, therefore, he couldn't explain it to me.

Q. Did he tell you? A. Yes, he told me some people, it was mechanics, they were interested with him, that's all.

Q. Did he mention anybody by the name of Mr. Maher? A. I don't know; no, sir, I don't know the names.

Q. He didn't mention any other names? A. He mentioned a party by the name of Tony, which I seen Mr. Tony several times here, but I don't know him outside of saying "Hello" to the party.

Q. Well, whether you know him or not, it wouldn't make any difference to your remembering him? A. Mr. Freedman said, "You know one of them is Tony; you recollect him."

Q. How did this conversation start? A. Oh, not at all; it just surprised me that they purchased the rubber mill.

Q. Did he tell you how much they paid for it? A. I think about $500, he was arguing by himself that evening; he said that if Mr. Fineberg had left him to do it, he could have got it for $500 less. I said, "What is $500 to $25,000 capital?" he hadn't told me what was the minimum, but he said $25,000.

Q. He told you $25,000 they paid for it? A. Yes, sir.

Q. He said he and Fineberg were going to finance it? A. Yes.

Q. Did he tell you how? A. No, sir.

Q. Did he tell you how much money they had put in it? A. $25,000.

Q. Did he tell you how they got the money? A. No, sir.

Q. Did he tell you whether anybody else had contributed any part of the money? A. No, I didn't ask him that.

Q. And I didn't ask you that; did he tell you? A. No, sir.

Q. You are now telling us all that took place, or you want to tell us all that took place at that time? A. Yes, sir.

Q. He didn't tell you about how much money he put in? A. About $25,000.

Q. Did he tell you how they would raise the money? A. No, sir.

Q. Did he tell you as to what they got for the money? A. They got a mill for the money, that's what he told me.

Q. You said something about some stock? A. What kind of stock?

Q. I don't know; you said he had turned over some stock; what do you mean? A. I said that the stock that he purchased—they have purchased a mill, and Mr. Freedman said he was going to leave Trenton and go to Catasauqua, and I advised him I wouldn't leave the business which I had worked up for ten years on it and go to Catasauqua.

Q. You say this was in the fall of 1913? A. I can't recollect the date when it was, the month; I have been in Trenton here probably five hundred times since then.

Q. Why should he talk to you about giving up here and going to Catasauqua, when the mill had already been purchased? A. Yes, sir.

Q. It had been? A. Yes, sir.

Q. And he then spoke about his going to move there? A. Yes.

Q. And you told him not to move there because he had a fixed place in Trenton? A. Yes, because he got a business here in Trenton.

Q. That was in the fall; you are sure about it? A. Not sure; I said it was around the fall, I guess it was —I will almost swear.

Q. What do you mean by saying you will "almost swear"? A. Because I can't make a statement; I recollect when I left his house that evening that I felt chilly.

Q. And is that the only reason? A. That's the only reason for saying it, whether it was in the fall.

Q. Is that the only reason you have for saying it was in the fall? A. Yes, I felt chilly.

Q. But you would not swear it was before Christmas? A. Yes, it was before Christmas.

Q. And it was after the summer time? A. I think it was; I can't recollect when it was when that occurred.

Q. Try to recollect, and let us have it over again when it was, as definitely as you can? A. I will not make any statement to that effect.

Q. Then you want to withdraw your testimony that it was in the fall of 1914? A. I don't believe I will.

Q. You have done the best you could? A. I have done the best I could; I think it was in the fall.

Q. You spoke of some stock; what did he do about stock? A. What stock?

Q. I don't know; didn't you say that Mr. Freedman told you that they bought this mill, and that the stock was given to Mr. Fineberg? A. Yes; he bought it on Mr. Fineberg's name, and turned the entire stock over from the Leicester Rubber Company in Mr. Fineberg's name.

Q. You are sure about that? A. Absolutely.

Q. Was that at that conversation had at his home? A. Yes, sir.

Q. The same time? A. The same time.

Q. Did he tell you how much stock? A. No.

Q. Did he tell you that they had bought all the stock of this company? A. Of this company, yes,

he told me. I didn't ask him any questions; he told me he turned it over to Mr. Fineberg's name, in fact, it was bought in Mr. Fineberg's name, and I asked him the question why he did that, and he said, he is very trustful to Mr. Fineberg.

Q. And that's the time he told you he was going to move up there to live? A. Yes.

Q. Is that all he told you? A. That's all he told me.

Q. You didn't talk any more about it that night? A. No, sir.

Q. Did he tell you anything about—he didn't say anything about how much stock it was? A. No, sir.

Q. He didn't tell you whether anybody else had any stock in it or not? A. I recollect he said Tony had some stock, but I don't know what he had, I didn't ask him.

Q. When he told you that a man by the name of Tony had some stock, you didn't come back at him and say, "I thought you said all the stock was purchased by you and Fineberg, and that you had turned it over to Fineberg," did you? A. No, I didn't want to go in that deep; I took it for granted.

Q. That seemed to be a little different than when he told you he had all the stock and it was turned over to Fineberg, and then to tell you that Tony had some stock? A. He couldn't turn over the other part of the stock to Fineberg.

Q. Then he turned over all the stock to Fineberg which he, Freedman, owned? A. No; he said the stock which Mr. Fineberg owned to turn it over to Mr. Fineberg's name; it was practically purchased in Mr. Fineberg's name.

Q. He didn't tell you how he turned it over? A. No.

Q. Did he tell you when he was going to move up there? A. No; that was decided for him not to move.

Q. That's the way it was? A. Yes; he was going to move, then he decided not to move.

Q. Not that night? A. No.

Q. That was a matter that he was going to speak about later? A. Yes, sir.

Q. Did he tell you he had already moved, or made arrangements for moving? A. That evening, but later on—

Q. I am confining you to what took place that night; I am asking you whether he said to you that night that he was going to move up there? A. Yes, sir.

Q. You remember that very well? A. Yes.

Q. And you advised him against doing it? A. Not to do it.

Q. And your advising him against doing it is what now refreshes your memory, that you are quite certain? A. Yes.

Q. When was the next time you met Mr. Freedman? A. Oh, well, I met him several times; we went to Pittsburgh together on a certain time.

Q. I am asking you when, after that meeting in his home, did you again meet him when any matter or thing was referred to about this mill at Catasauqua? A. About four or five weeks; I saw him lately in Philadelphia.

Q. Did you talk about the mill again? A. We started it, but not very far.

Q. What did you say at all? A. I don't recollect; we were going on the car, I said, "How did you make out?" and he said, "It's all decided for me not to go, and Mr. Fineberg is going to take care of it three or four days a week."

Q. Where was this, on the street car? A. Yes, in Philadelphia.

Q. What street car, what line? A. The Fifth, what they call Strawberry Mansion Line.

Q. Did you get on the car together? A. Yes.

Q. Where did you get on? A. Fifth and South.

Q. Fifth and South Streets? A. Yes, sir; he started out for our office, but I met him before he got there.

Q. And your office is in that vicinity? A. Yes, sir; on Fifth Street.

Q. You were then heading towards what? A. Towards the Pennsylvania station.

Q. On Broad Street? A. Yes, sir.

Q. And you sat together in the car? A. Yes.

Q. And it was during that going in the car that he told you he had concluded not to go? A. Yes, sir; decided not to go there any more.

Q. Are you able to tell what day of the week that was? A. No, sir.

Q. Are you able to tell what month it was? A. No, sir.

Q. You can tell what year it was? A. Yes.

Q. Can you tell what time of the year it was? A. It was around the fall; I recollect it was around the fall, because it was chilly without a coat.

Q. What now is in your mind that makes you think it was in the fall? A. It was cold.

Q. Who started the conversation about this business? A. I did.

Q. What did you say to him? A. I said, "Mr. Freedman, how did you decided about that mill; what are you going to do?" He said, "I decided not to go there; I decided for Mr. Fineberg to take care of it up there two or three days a week."

Q. When you said to him, "What have you decided about that mill," the mill had already been purchased, hadn't it? A. It had been purchased.

Q. Then what was there to decide about the mill? A. Whether he was going to go or not.

Q. Then you asked him, not what they had decided about the mill? A. Yes, that is the way I spoke; I asked the man those words, "What did you decide about the mill; how are you going to do"; that is the way I said it, and he told me that's the way they decided.

Q. When you said that, was that all in one question? A. Yes, sir.

Q. And then it was that he said to you he was not going up there? A. No; he decided to stay here, he was going to take an active part here, and Mr. Fineberg was going up two or three days a week.

Q. Then, when did you meet him again? A. Several times; about 50 times I met him, probably 500 times; I can't tell.

Q. And of all these 500 times, these two occasions remain very clear in your mind? A. And other occasions together with it.

Q. When did you next speak with him about this mill business? A. I used to speak to him quite often, and one time I met him he said, "I wouldn't take $10,000 for my share in that mill."

Q. Why didn't you tell that in your direct-examination? A. I didn't think it was necessary; I didn't think it is necessary, only you led me to it; I haven't got anything against Mr. Freedman.

Q. Did you tell Mr. Fineberg and his counsel that— A. No, sir.

Q. What? A. Not a thing.

Q. Did you tell either one of them that Mr. Freedman said to you that he wouldn't take $10,000 for his interest? A. No, sir.

Q. Now, you spoke of a conversation you had with Mr. Freedman after the fire? A. Yes, right in our office it was.

Q. Do you know when that was? A. It was last year.

Q. Can you fix the time? A. When it comes to the time, I wouldn't swear to it; if I go away from here, from the court, and you ask me next week, I wouldn't be able to tell you.

Q. Are you able to tell whether it was spring, summer, fall, or winter when the conversation you had with Mr. Freedman after the fire took place? A. Let me see if I could be able to. It was during the winter, I think it was.

Q. Do you remember how late in the winter it was? A. No, I don't.

Q. Was it after Christmas? A. I believe it was after Christmas; I believe it was after Christmas; I can't swear for the time.

Q. Had you, before he said anything about it, had you learned in any way that this mill had been burned? A. I knowed the mill was burned; his brother was telling me about it.

Q. Who broached the subject? A. Mr. Freedman did.

Q. How did he start it? A. He come in downhearted—

The Court: Tell us how he started it.

The Witness: I knew what had happened. He said: "What do you think had happened to me?" I said: "What had happened"—

By Mr. Macpherson:

Q. All right; this was last winter, you mean? A. A. Yes, last year it was.

Q. Do you mean 1914 and '15? A. Around '15 it was; it couldn't be this year.

Q. When was it? A. Last year.

Q. Then a year ago last winter? A. I guess around Easter it was.

Q. Did any conversation along this line ever take place between you and Mr. Freedman? A. I guess so; I guess it did. It was three or four times, and then we spoke right along about it; we used to ship goods to these people.

Q. After the fire I am speaking of now; you think it was about Easter? A. Yes, sir; I can't tell the time.

Q. It was either in the winter or towards Easter? A. Yes.

Q. And he came in downhearted? A. Yes, sir.

Q. And you knew what was the matter with him? A. Yes, his brother told me as soon as I arrived in town; I wasn't home, and his brother said: "What do you think has happened to the Trenton Scrap people?" I said: "What happened?" He said: "The Leicester Rubber Company burned right clear down."

Q. Your brother told you that? A. His brother.

Q. How long had he told you that before you saw Mr. Freedman, when he spoke to you about it? A. He told me, I guess, something like today, and the next day or the next two days, Mr. Freedman come in the office.

Adjourned until Friday, the 31st day of March 1916, at 10:30 A. M.

Defendant's Witness, Simon Gerson, Direct

IN CHANCERY OF NEW JERSEY.

Between

HARRY FREEDMAN,
Complainant,

and

ISAAC FINEBERG,
Defendant.

On Bill &c., Testimony.

Third Day.

Testimony taken in the above-entitled cause, at the State House, Trenton, New Jersey, on Friday, the thirty-first day of March, 1916, at 10:30 A. M.

Before Hon. John H. Backes, Vice-Chancellor.

Appearances:

Frank S. Katzenbach, Jr., for the Complainant.
Scott Scammell and Charles Besore, Esqs., for the Defendant.

SIMON GERSON, a witness produced on behalf of the defendant, being duly sworn, testified as follows:

Direct-examination by Mr. Scammell:

Q. Mr. Gerson, where do you live? A. Trenton.

Q. Do you know Harry Freedman, the complainant in this cause? A. I do.

Q. Do you know Isaac Fineberg, the defendant? A. Yes, sir.

Q. How long have you known Mr. Fineberg? A. Oh, ever since he was a little boy, I think.

Q. Were you one of the arbitrators selected by Mr. Freedman to represent him in a certain arbitration between himself and Mr. Fineberg? A. Yes, sir.

Q. Did Mr. Freedman come to see you in connection with the arbitration matter? A. Yes, sir.

Q. Just what did he say to you in connection with it? A. That was sometime, I think, in May.

Q. What year? A. 1915; it is the time he had the trouble in court, coupled with the trouble of the dissolution with Mr. Fineberg; he come to me in the evening and spent about three hours probably. He was very much distressed at the time, and asked me whether I would be one of the arbitrators for him. I said: "I will." I consented.

Q. After that time did he come to see you about the arbitration matter and discuss any proposition with you with respect to going into business with him? A. I can't recollect very well whether it was the same evening or another evening he called on me and made a proposition to me whether I would be willing to buy out Mr. Freedman and go in with him.

Q. Was this after you had consented to act as arbitrator? A. Yes, sir.

Q. What did he say to you with reference to this matter?

Mr. Katzenbach: That is objected to.

The Court: I will admit it, but you may move to strike it out later if it is not admissible.

A. He asked me whether I would be one of the arbitrators, and I did consent to arbitrate for Mr. Freedman.

Q. After you had agreed to become an arbitrator, did he make any proposition to you about going into business with him? A. Well, the suggestion he made to me whether I would buy him out, and he made a

proposition to me to buy out Mr. Freedman; I said: "I don't care to do it," that was my answer.

Q. How many meetings, about, was it that the arbitrators had in connection with this matter? A. If I am not mistaken, there were four.

Mr. Katzenbach: That is objected to as immaterial.

The Court: I will let it stand.

Q. Four meetings? A. Yes, sir; I think at the fifth meeting, when they convened at the meeting, Governor Stokes told me we were legislated out. It seemed they had dissolved those, or something of the kind; that is the language he used. I expected to come in with the arbitration in the morning.

Q. Had the arbitrators reached any decision at that time? A. We had not at that time; we probably would have reached a decision that morning.

Q. Had you given out any word to Mr. Fineberg or to Mr. Freedman as to what the decision of the arbitrators was going to be?

Mr. Katzenbach: That is objected to.

The Court: Objection overruled.

A. Why, we would not be honest arbitrators if we would give it.

Q. You had not? A. I had not.

Q. I show you a paper purporting to be articles of agreement for the submission to arbitration of matters connected with Harry Freedman and Isaac Fineberg, and ask you whether that is your signature as a subscribing witness to that? A. Yes, sir; I witnessed it.

Mr. Scammell: I offer it in evidence.

Said paper is marked "Exhibit D 5."

Q. Was there any understanding, outside of this agreement, as to certain expenses or costs of the criminal trial of Mr. Freedman?

Mr. Katzenbach: That is objected to as immaterial.

Mr. Scammell: I will withdraw the question.

Q. What was said by Mr. Fineberg and Mr. Freedman to you, if anything, with respect to the submission of the expenses of the criminal trial? A. The suggestion was made by Mr. Freedman, if my memory is right, that the expenses of the trial of the Ajax Rubber Works was to go in before the arbitrators, too. Governor Stokes seriously objected to that; the understanding was, that myself and Mr. Rosenthal, separate from the other arbitrators, were to arbitrate that. I think my memory is right on that.

Mr. Katzenbach: No questions.

HYMAN E. ROSENTHAL, a witness produced on behalf of the defendant, being duly sworn, testified as follows:

Direct-examination by Mr. Scammell:

Q. Mr. Rosenthal, you live in Trenton? A. Yes, sir.

Q. You know Mr. Freedman and Mr. Fineberg? A. Yes.

Q. Were you one of the arbitrators in the dispute between Messrs. Freedman and Fineberg? A. Yes, sir.

Q. Who selected you; who came to see you? A. Mr. Fineberg met me on the street, and he asked me

if I am willing to be one of the arbitrators; I said, "I will; I am willing, provided Mr. Freedman is satisfied"; and the next day Mr. Freedman asked me the same thing, and I said, "Yes; yes, I am willing."

Q. You met with the arbitrators on several occasions? A. Yes, sir.

Q. Were you present at the time when Mr. Freedman and Mr. Fineberg discussed before the arbitrators the question of submitting the expenses of a criminal trial? A. Yes, sir; this question they brought up, and it wasn't in the arbitration papers, and Governor Stokes said, being a criminal affair, he wouldn't interfere with it. I made the suggestion, I said, "Governor, if you don't mind it, I and Mr. Gerson will look into it, if Mr. Fineberg and Mr. Freedman is satisfied, we will adjudge this matter as arbitrators"; and they both were satisfied.

Q. Did the arbitrators reach any decision in connection with this matter? A. No.

Q. Did you, on your part, disclose anything that would indicate that you had reached a decision as to the matters submitted to you, the arbitration matters? A. Yes, sir.

Q. Did you reach a decision? A. No, not exactly; we were ready the next day to reach a decision.

Q. Did you tell anybody what your decision was going to be? A. No, sir.

Q. Mr. Freedman and Mr. Fineberg appeared before the arbitrators? A. Yes, sir.

Q. And told their stories? A. Yes, sir.

Q. Did they have the bookkeepers there? A. Yes, sir.

Q. And certain notes in connection with the Leicester Rubber Company? A. Yes, sir.

Q. The whole matter? A. Yes.

Mr. Katzenbach: No questions.

Defendant's Witness, William W. Coney, Direct

WILLIAM W. CONEY, a witness produced on behalf of the defendant, being duly sworn, testified as follows:

Direct-examination by Mr. Scammell:

Q. Mr. Coney, where do you live and where do you work? A. I live at the present time at 40 Tyrell Avenue.

Q. Where are you employed? A. The Trenton Scrap Rubber Supply Company.

Q. Do you know Mr. Freedman, the complainant, and Mr. Fineberg, the defendant in this case? A. Yes, sir.

Q. What part of the business of the company do you work in, what department? A. I started as shipping and receiving clerk, but I have charge of the tires now.

Q. Were you present in May and June of 1915, in the plant of the Trenton Scrap Rubber? A. Yes, sir.

Q. Did you assist in making an inventory of the stock on hand? A. Yes.

Q. Who superintended that work? A. Mr. Fineberg gave me instructions as to the laying up of the goods; Mr. Freedman he also assisted.

Q. Who had the sheets there making up the different items of the stock on hand; who worked with you? A. There were two men working with me.

Q. Who were they? A. A man by the name of Martin, I don't know his last name, he's a Slavish fellow, and Joseph Newman.

Q. Was Mr. Freedman there? A. Yes, but he didn't write on the sheets at all.

Q. He wrote on the sheets? A. No, sir.

Q. Who did write on the sheets? A. I and those other two men.

Q. How long were you in taking stock?

The Court: Mr. Scammell, has this anything to do with the case?

Mr. Scammell: I am trying to show that Mr. Freedman was getting together an account of stock after the articles of dissolution and the submission; the charge in the bill is that he didn't know how much they shipped to the Leicester Rubber Company, although in his testimony he said he did.

The Court: That is long after the Leicester Rubber Company plant burned. If you can point out to me how I can consider the testimony, you may put it in.

Q. Were the shipments made to the Leicester Rubber Company prepared by—who were they prepared by? A. The orders were given to me originally.

Q. By whom? A. By Mr. Fineberg.

Q. Who made up the different shipments? A. I started to make them up, but Mr. Freedman interfered, and I became irritated.

Q. How often would he supervise and superintend the shipments, Mr. Freedman? A. I couldn't say on that; I think it was about two-thirds of the time; in fact, all of the time when he was in Trenton.

Q. When did you finish stocktaking in 1915? A. I think it was around the first of June.

Q. 1915? A. 1915.

Mr. Katzenbach: No questions.

FLORENCE NELSON, a witness produced on behalf of the defendant, being duly sworn, testified as follows:

Direct-examination by Mr. Scammell:

Q. Miss Nelson, you are the bookkeeper at the Trenton Scrap Rubber? A. Yes, sir.

Q. How long have you worked for the Trenton Scrap Rubber? A. Going on six years.

Q. At the time you went there, who was the bookkeeper of the company? A. Miss Sheeley.

Q. Her name is now? A. Davis.

Q. She left there how long ago? A. Two years the latter part of this May.

Q. Since about how long have you been working on the books of the company? A. Well, I used to assist a little, and when she left, I took the books.

Q. Do you know whether or not Mr. Freedman can read and write? A. I think so.

Q. Have you ever seen him reading? A. I have seen him reading the mail.

Q. Have you ever seen him write? A. Yes, sir.

Q. Did you ever receive any letters from him when he was away? A. I have received postal cards.

Q. You have? A. Yes, sir.

Q. Do you know whether Mr.—did you ever see Mr. Freedman examining the books of account, the ledger and the cash book of the company? A. Well, I don't just remember whether I did or not.

Q. Did you ever see him examining the vouchers or checks when they were returned from the bank? A. Yes.

Q. How often? A. Well, every time they come back.

Q. Was it a practice of his when the bank book was balanced, to either check off with you or read over the check vouchers and notes as they were returned from the bank? A. Yes, he used to look at them himself.

Q. Examine them himself. What would he do; you say he would look at them? A. If there were any checks he didn't just know about, he would ask what they were.

Q. How did he know; did he examine each individual check? A. Yes, sir.

Q. Did he examine the notes? A. Yes, sir.

Q. And did he ever ask you about any of the notes that he didn't know about? A. I wouldn't just say about notes; I don't just remember about that. He has asked about checks that he didn't know about.

Q. Did you ever have any instructions from Mr. Fineberg not to give him any information?

Mr. Katzenbach: That is objected to.

A. No, sir.

Q. Did you at any time refuse to give him any information? A. No, sir.

Q. Do you recall whether Mr. Freedman asked you at any time to give him a list of the Leicester Rubber Company notes? A. Yes, sir.

Q. About when was this? A. I don't just remember that.

Q. About how long ago? A. I really couldn't say.

Q. Was it before the fire? A. Well, I don't know that either.

Q. Was it before Mr. Fineberg and Mr. Freedman had any discussion or any differences? A. I think it was afterwards.

Q. It was afterwards? A. Yes, sir.

Q. Did he ever ask you about the condition of the Leicester Rubber Company's account? A. Yes.

Q. When? A. At different times.

Q. During the running of the account? A. Yes, sir.

Q. Did you tell him what its condition was? A. Yes, sir.

Q. Did he ever ask you about any different items upon the Leicester Rubber Company's account? A. I don't remember any particular item.

Q. He knew from what you told him the condition of that account from time to time? A. Yes, sir.

Q. Did you ever give him a list of the notes of the Leicester Rubber Company? A. Yes, sir.

Q. How often? A. Well, I remember one time that I did, but I wouldn't say it was any more than once or not.

Q. On that occasion, was it after they had their dispute? A. I really couldn't say.

Q. Do you recall now—or was this list typewritten? A. Yes, sir.

Q. And were all the notes of the Leicester Rubber Company set forth on this list? A. Yes.

Q. Do you know whether Mr. Freedman looked over the books of account generally, all the books, the ledger and other books? A. I really couldn't say.

Q. Did you ever complain about any dirty marks on the ledger and other books? A. I, myself, didn't, no.

Q. Did you ever hear Mrs. Davis complain to Mr. Freedman about these marks? A. I think she did.

Q. How long has it been since she left? What did she say to Mr. Freedman, that you heard, about these marks on the books, to the best of your recollection? A. Well, she was rather particular about the books, and she didn't want them soiled; that's all I remember.

Q. What did she say to Mr. Freedman? A. Oh, I couldn't say what she said.

The Court: Do you know why she complained to him?

The Witness: She wanted the books to look real neat and not have finger prints.

The Court: What did Mr. Freedman have to do with the finger prints?

The Witness: I don't know; only she knew he had been looking at them.

CROSS-EXAMINATION by Mr. Katzenbach:

Q. Miss Nelson, have you any postal cards with you written by Mr. Freedman? A. No, I have not.

Q. When you saw Mr. Freedman looking at a paper, of course, you couldn't tell whether he was actually reading it or not, could you? A. I could the letters he looked at.

Q. You say when he looked at a letter; were these typewritten letters that he looked at? A. Mostly.

Q. How would you know that Mr. Freedman looked at a typewritten letter that he had read it? A. Sometimes Mr. Fineberg was away, Mr. Freedman would read the letters and tell us what prices to quote.

Q. The list of notes of the Leicester Rubber Company you say you wrote out for Mr. Freedman? A. I think so.

Q. And did you write that on the typewriter, Miss Nelson? A. I think I did.

Q. Well, would you be able to recognize it if you saw it? A. I think so.

Q. I show you two papers, which I will ask to have marked, and I will ask you to look at those and tell me if those are the lists you refer to? A. It looks like it; I think it is.

Mr. Katzenbach: I offer the papers in evidence.

Mr. Scammell: We have no objection.

Said papers are marked Exhibits C17 and C18 respectively.

The Court: Is the Leicester Rubber Company's account, as shown on the ledger, self-explanatory; is it in detail?

Mr. Katzenbach: Yes, sir, as to cash and notes.

The Court: And merchandise?

Mr. Katzenbach: Yes, sir, and merchandise.

The Court: Is it all self-explanatory.

Mr. Katzenbach: Yes, sir.

RE-DIRECT EXAMINATION by Mr. Scammell:

Q. These statements include, Miss Nelson, only the open account of the Leicester Rubber Company? A. Yes, sir.

Q. And do not include the list of notes? A. Yes, sir, but I thought I did make up a list of nothing but notes.

Q. You gave these in addition to notes? A. I think so.

RE-CROSS EXAMINATION by Mr. Katzenbach:

Q. Miss Nelson, these refer to notes, do they not? A. Yes, sir, but I mean I took it from the book that we kept the notes in, and just gave him the record of notes and nothing else upon that slip; we had bills receivable, and I took each note from that and gave him a record of the different notes.

Q. But this statement you made up shows the charges of merchandise? A. This is the account; the other was just a record of the notes straight.

RE-DIRECT EXAMINATION by Mr. Scammell:

Q. That list included the $10,500? A. I think so.

RE-CROSS EXAMINATION by Mr. Katzenbach:

Q. Miss Nelson, you said that the list of notes included the $10,500 note? A. I think so.

Q. To what account had that been charged, the $10,500 note? A. I don't really remember that.

Q. You don't? A. No.

LAURA SWETNAM, a witness produced on behalf of the defendant, being duly sworn, testified as follows:

Direct-examination by Mr. Scammell:

Q. You work at the Trenton Scrap Rubber Company? A. Yes, sir.

Q. You are the assistant of Miss Nelson? A. The stenographer.

Q. How long have you worked for the Trenton Scrap Rubber? A. Two years this coming June.

Q. Have you seen Mr. Freedman at the plant, either reading or writing, in your presence? A. Reading.

Q. Do you know that he can read? A. Yes, sir.

Q. Have you seen him examining the check vouchers and notes after they have been returned from the bank? A. Yes, sir.

Q. How often have you seen him doing that? A. At the end of every month.

Q. Just what; what did he do? A. He was going through the checks or the vouchers, and if he didn't know what they were, he would ask.

Q. How often was your bank book balanced? A. At the end of every month.

Q. Did you ever see him examining the books of account, the ledger and cashbooks? A. I seen him examining the ledger.

Q. Did you assist in making up the stock account in June, 1915? A. Yes.

Q. I show you a number of sheets, yellow sheets, indicating certain articles, and ask you whether those are the stock sheets you refer to? A. Yes, sir.

Q. Who assisted in preparing the different amounts, the items of stock or notes? A. I don't know what you—do you mean the prices?

Q. Yes? A. Mr. Freedman.

Q. Did he give you the prices? A. He wrote them down; they are his figures, except the extension. This top one was, I believe, figured in his household.

Q. Are any of the figures upon any of those sheets in the handwriting of Mr. Freedman? A. Yes, sir; the prices are and the figuring there.

Q. And some of the totals are, aren't they? A. Yes, sir.

Q. When were those sheets made up, do you know?

The Court: What is the purpose of this?

Mr. Scammell: The complainant says he couldn't read nor write, and that he didn't understand.

CROSS-EXAMINATION by Mr. Katzenbach:

Q. Miss Swetnam, is there anything on that inventory in the shape of writing made by Mr. Freedman? A. Figures.

Q. Only figures? A. Yes, sir.

JESSE HENDLER, a witness produced on behalf of the defendant, being duly sworn, testified as follows:

Direct-examination by Mr. Scammell:

Q. Mr. Hendler, where do you live? A. At the American House.

Q. You know Mr. Freedman and Mr. Fineberg? A. Yes, sir.

Q. Do you remember an incident occurring in their office in connection with a plant at Catasauqua, Pennsylvania? A. Well, I remember that sometime in June I had occasion to be there—

Q. What year? A. 1913—Picking up a magazine called "The India Rubber World," and it had an advertisement of a rubber plant for sale; and it was very singular that I had spoken to some people who were interested in that plant, some two or three years prior; I knew something about it. I mentioned the fact to Mr. Fineberg; he was sitting alongside of me. Mr. Freedman was in the office at the time, and I thought no more about it at the time, and sometime later, I was questioned by Mr. Fineberg and Mr. Freedman as to the merits of the plant.

Q. When was that? A. About a week or two, I should judge.

Q. What was said? A. I had learned then that they were corresponding—

Mr. Katzenbach: Objected to.

Q. Did they tell you what had been going on since— A. Well, it seemed from the tone of their conversation that they were negotiating, that they were thinking of buying the plant.

Mr. Katzenbach: That is objected to; he is telling simply what the tone of the conversation was.

The Court: Well, I suppose it is the fact; I will let it stand.

Q. What took place at this conversation between Mr. Freedman, Mr. Fineberg and yourself about the purchase of this plant? A. Why, I don't remember that we had any conversation collectively.

Q. What did Mr. Freedman say to you about it? A. He asked me about the merits of it; I told him I was told there was some seventy or eighty thousand dollars put in that plant originally, and the asking price was either thirty or thirty-five thousand dollars; I said Mr. Burns who was originally connected with it, he thought it was a gift, and Freedman told me sometime after, he thought it would be a good buy at $25,000.

Q. Did you ever have a talk with Mr. Freedman after that? A. Oh, it was some time after that; five or six weeks, and the place was purchased while I was in the hospital; I was down sick.

Q. Did you see Mr. Freedman after you came out, and talk to him about this plant? A. He said he didn't desire to be interested in it, because he wouldn't live up there.

Q. Did you see him after you came out of the hospital? A. This was right there, just in that time.

Mr. Katzenbach: No cross-examination.

MARTIN M. GLASSMAN, a witness produced on behalf of the defendant, being duly sworn, testified as follows:

Direct-examination by Mr. Scammell:

Q. Mr. Glassman, where do you live? A. 227 North Broad.

Q. How long have you known Mr. Freedman and Mr. Fineberg? A. About six years.

Q. Have you known Mr. Freedman intimately during that time? A. Well, I have known Mr. Freedman intimately for the past five years.

Q. Did he come to your place of business very often? A. Yes, sir; when he was in town he used to come to the store very often.

Q. Did he ever talk to you about his connection or interest in a plant up at Catasauqua? A. Yes, sir.

Q. When first did he talk to you about it? A. Why, he come into my store, it was a summer day, it was very hot; he come in the back there, and took off his coat.

Q. What year was this? A. 1913, and he says, he come around the table there, and he says to me, "I am going to be a neighbor of your parents"; my parents live in Allentown, and that is near to Catasauqua. I said, "How is that?" He said, "Fineberg and I are going to buy a mill up there, and I was up to see it, and it looks very good"; and he further went on and said, "How about do the Jewish people do for kosher meat; how do the Jewish people in Catasauqua have kosher meat? My mother is with me." I said, "My father, he is a Rabbi in Allentown, can arrange to have your kosher meat brought to you with the baker, as he does other people that live there." That was the first time.

Q. Did he ask you to make any inquiries? A. Only when he moved up there, that I would have my father make arrangements with him to get this meat sent to him by way of the baker.

Q. Can you fix about the month this was that you talked to him in the year 1913? A. Well, I couldn't exactly fix the month, but it was some time in June or July; it was very hot, I know, that day.

Q. How often did you go up to Allentown? A. Why, in the summer time I used to go up every Sunday; I used to drive up in the car and go up Saturday night and come back Sunday.

Q. Did you do that in July of 1914? A. Yes, sir.

Q. Did you know that they had a fire and that the plant was burned? A. I happened to be in Allentown the day after the fire, yes, sir; I was there Sunday.

Q. When you came back did you see Mr. Freedman? A. I met Mr. Freedman in front of the Mercer Trust Company, and he says to me: "I guess you heard about the fire." I says: "Yes, Freedman, I was up there; and is that right that there is no insurance on the plant?" He said: "No, we didn't have any insurance on it." He said: "We only had a small insurance on the buildings." I said: "You and Ike are going to be heavy losers." "Well," he said, "I should worry; the stock was all originally in Mr. Fineberg's name, and I am going to make him stand the loss."

Q. What did you say to him? A. I couldn't say very much; I don't exactly remember what I said to him when he told me that.

Q. Did you say anything further to him? A. Well, he got in his car and drove away; I didn't say anything more; no.

CROSS-EXAMINATION by Mr. Katzenbach:

Q. How long have you known Mr. Fineberg, Mr. Glassman? A. I have known him for about six years.

Q. Intimately? A. Well, I couldn't—yes, I could say intimately.

Q. Intimately enough to ask him to indorse your notes? A. Yes, sir.

Q. And he is an indorser on your notes? A. He used to indorse notes for me; yes.

Q. Is he still an indorser on them, or did he have to pay them? A. He didn't have to pay any notes at that time, no.

Q. Did he ever have to pay any notes? A. Here lately he did; yes, sir.

Q. Because he indorsed for you? A. No, sir.

Q. Why did he have to pay them, then? A. Because he cashed a note for me, and I couldn't pay them; there was a note indorsed—

Q. You couldn't say whether he paid it? A. I don't know whether he paid it or not, but he secured for it.

Q. So that you know him quite well? A. Not any more than I do Mr. Freedman at that time.

Q. Did Mr. Freedman indorse any notes for you at any time? A. No, but he lent me money.

Q. And you paid him back? A. All the time.

Q. What business are you engaged in at the present time? A. In the Trenton Drug Sundry Supply.

Q. Where is the business located? A. At my residence, 227 North Broad.

Q. Where was this store that you say Mr. Freedman took his coat off in when he asked you about kosher meat? A. 171 South Broad Street.

Q. How long were you in business at 171 South Broad Street? A. From 1911 to 1914.

Q. What became of that business; was that the same kind of a business? A. No, sir; that was clothing and furniture business.

Q. What happened to that? A. I moved that to 145 South Broad.

Q. When did you make a change of business and for what reason? A. For to better myself.

RE-DIRECT EXAMINATION by Mr. Scammell:

Q. Did Mr. Freedman, when he lent you money, lend you money from the Trenton Scrap Rubber? A. There was a couple of times that I went to the Mechanics' Bank and drew the cash; I don't know whether he had an account there or not; I was under the impression that it was the Trenton Scrap Rubber Supply Company's check.

ARTHUR H. WOOD, a witness produced in behalf of the defendant, being duly sworn, testified as follows:

Direct-examination by Mr. Scammell:

Q. Mr. Wood, you are the cashier of the First National Bank of this city? A. Yes, sir.

Q. How long have you known Isaac Fineberg? A. About ten years.

Q. Have you had occasion to have considerable business transactions with him? A. Yes.

Q. Do you know his general reputation for truth and veracity? A. I do, yes.

Q. What is it?

Mr. Katzenbach: That is objected to at this juncture, and it is irrelevant.

The Court: I will allow it, subject to being struck out later on.

Q. Do you know what Mr. Fineberg's reputation is for truth and veracity? A. His reputation is good for truth and veracity.

Defendant's Witness, William H. Servis, Direct

CROSS-EXAMINATION by Mr. Katzenbach:

Q. Do you know Mr. Freedman's reputation for truth and veracity? A. Yes, I know how he is regarded.

Q. How is he regarded? A. I think his reputation is regarded as good.

RE-DIRECT EXAMINATION by Mr. Scammell:

Q. How long have you known Mr. Freedman? A. Three or four years.

WILLIAM H. SERVIS, a witness produced on behalf of the defendant, being duly sworn, testified as follows:

Direct-examination by Mr. Scammell:

Q. Mr. Servis, you are a resident of the City of Trenton? A. Yes, sir.

Q. Do you know Messrs. Fineberg and Freedman? A. I do.

Q. In what business are you? A. The rubber manufacturing business.

Q. With whom? A. With the Hamilton Rubber Manufacturing Company.

Q. What is your position there? A. I am vice president of that company.

Q. You were chosen as one of the arbitrators to arbitrate the differences between Messrs. Fineberg and Freedman? A. I was.

Q. And you held several meetings concerning matters which were submitted to you? A. Yes, sir.

Q. Concisely state just what those matters were; in connection with the Leicester Rubber Company?

A. Yes, sir, in connection with the Leicester Rubber Company; the purchase of the stock by Fineberg and Freedman, or whoever it was, by the company, the Trenton Scrap Rubber Supply Company. The question seemed to be, so far as I could understand, between Mr. Fineberg and Mr. Freedman.

Q. Did the arbitrators reach any decision? A. No.

Q. Did you, as one of the arbitrators, disclose to either Mr. Freedman or Mr. Fineberg, or to anyone else, anything that would indicate that you had decided this matter? A. No.

Mr. Katzenbach: No questions.

Recess until 2 P. M.

After recess.

ADA DAVIS, a witness produced on behalf of the defendant, being duly sworn, testified as follows:

Direct-examination by Mr. Scammell:

Q. You were the bookkeeper for the Trenton Scrap Rubber Company for several years? A. I was.

Q. When was it that you left the Trenton Scrap Rubber? A. In June, 1914.

Q. The books of account, the note books and other account books in the office were kept by you, were they not? A. They were kept by me, and sometimes they had writing of Mr. Fineberg's in them.

Q. Referring to the accounts of Mr. Fineberg and Mr. Freedman, beginning with Mr. Freedman's account of October 21, 1910, please state how far down your handwriting appears in the several entries in that account, to what date? A. My handwriting appears down as far as April 30, 1914.

Q. On which side? A. On the credit side.

Q. On the debit side? A. On the debit side down as far as February 3, 1914.

Q. Are all the entries on that account from the period which you have mentioned, in your handwriting? A. Yes, sir.

Q. Take the account of Isaac Fineberg, starting with November 30, 1910, and state whether from the beginning and to what period the entries on that account appear in your handwriting? A. Practically all of them are mine, but I note in some places that they are Miss Nelson's.

Q. Where does Miss Nelson's entries begin? A. There is one here November 30, 1913, "David Lewis, $37.50," which is not my handwriting, and another one—

Q. They are all in your handwriting, except—the sheet you are referring to is sheet No. 2? A. Sheet No. 2, yes, sir; and I notice there is another one here that I mislooked; the one I noticed first is November 30; there is one of November 11, it is "Exp. J. R. M. C., $19.03," November 11; and from that date on they are not my handwriting.

Q. I am sure you want to be correct; aren't you mistaken? A. Yes, sir; I am; 1914, I didn't notice that; let me rectify that. I see November, 1914; I said 1913. You see that would be after my time; I left in June.

Q. Did you go back and do some work from time to time? A. No, I didn't go back; that was after my time.

Q. This is sheet No. 1? A. Yes, sir (examining it). This is my handwriting.

Q. All of the debits and credits on sheet No. 1 of the account of I. Fineberg are in your handwriting? A. Yes, sir.

Q. Sheet No. 2 begins— A. 1913; I left in April; after April 23rd there is no more of mine.

Q. April 23, 1914, is on sheet No. 2 of I. Fineberg's account? A. Yes, sir.

Q. And is the last charge on that account in your handwriting? A. Yes, sir.

Q. All of the credits to October 31, 1913, upon the credit side (indicating)— A. I call this the credit and this the debit (indicating).

Q. Are all the entries upon the debit and credit side of the account of I. Fineberg contained in sheets Nos. 1 and 2, from the opening entry in 1910 down to June of 1914, when you left their employ, in your handwriting? A. Yes, sir.

Q. Is the fact as above, which I have just covered in my previous question, the same with reference to the account of the Leicester Rubber Company contained on sheets Nos. 1, 2 and 3?

The Court: Isn't this the fact: that all the entries were made by this lady as the bookkeeper during her term of office, with the exception of one or two?

Mr. Scammell: Yes, sir.

A. There is one here of May 11, 1914, which is not mine. It says, "Note due of $500"; also another one of May 11, interest of $400, which is not mine. There is one May 11, interest due, 13 cents.

Q. In whose handwriting is that? A. It looks like Miss Nelson's. Another one here of May 16, 1914, "Cash, R. M. Jaeger," which is not my handwriting.

Q Whose is it? A. Miss Nelson's. There is one of May 11, "Note due, $500," which is not my handwriting; that would be all right, because I left the first of June, around the 5th. On the other side there is one of May 11, "Note of $400," which is not my handwriting.

Q. Is that the corresponding entry to the one you mentioned above made by Miss Nelson, the $400 note, do you mean? A. No; that is just interest on that side; there's one May 11, "cash $106," which is not my handwriting.

Q. That is Miss Nelson's handwriting? A. It looks to be; there's a note after that—

Q. Do you find Mr. Fineberg's handwriting upon either of the sheets of the account that you have before you of the Leicester Rubber Company? A. No.

Q. Did you ever see Mr. Freedman examine the vouchers when they were returned from the bank? A. He looked them over sometimes.

Q. How often? A. I don't know just how often; whenever he seen fit to.

Q. Did you have a place where you kept the vouchers, the checks and old notes which were returned from the banks? A. I did.

Q. Did Mr. Freedman know where they were? A. He did, and if he didn't know where they were, he would ask me.

Q. And would you go get them for him? A. When he asked me for them.

Q. How often had he asked you for them? A. That I don't remember.

Q. A good many times? A. Quite a few times.

Q. Did he ever go over the check list which was returned with the vouchers with you and note them while you were checking them off? A. When I was checking them off, if he saw any he had doubts of, he would ask me what they were, and I would tell him.

Q. Was that an incident of frequent occurrence? A. Not so frequent.

Q. But upon several occasions? A. Upon several occasions.

Q. Do you know whether Mr. Freedman examined your books of account? A. That I couldn't say; I have seen him looking over the ledger, but I don't know just what accounts he was examining.

Q. Did he understand handwriting? A. He understood more printing than handwriting.

Q. Have you ever seen him read? A. Yes, sir.

Q. Ever saw him write? A. A little.

Q. Did he ever ask you any questions about any accounts upon the books? A. Yes, sir.

Q. What accounts? A. That I couldn't just recall; I know there have been several he has asked me if he had doubts of it.

Q. Did he ever ask you anything about the Leicester Rubber Company account? A. I would go over it with him; he would ask me and I would tell him what he wanted to know.

Q. Did he look it over when the Leicester Rubber Company had a plant at Catasauqua? A. Who with?

Q. You. A. Yes, sir.

Q. He went over that account as it appeared on these sheets Nos. 1, 2 and 3, just as it appears there? A. Yes, sir.

Q. Did he ever ask you any questions about the entries on that account? A. Yes.

Q. Do you recall now what entries? A. No, sir.

Q. Do you recall his saying anything about any entries in connection with the Leicester Rubber Company account? A. I don't recall any.

Q. Did he ever ask you to explain anything in connection with the Leicester Rubber account? A. Yes.

Q. Can you recall what it was? A. He asked me how much they owed us, and I would tell him.

Q. Was that while the plant was up in Catasauqua? A. Some of the time, and some not of the time.

Q. Some of the time when they had the plant right here? A. Yes, sir.

Q. Did you ever prepare for him a statement showing the condition of the Leicester Rubber Company's account? A. I prepared a statement for the Leicester Rubber Company, showing how much they owed us, and I sent it to them.

Q. Did Mr. Freedman see any of those papers? A. He could see them if he wanted to; I don't know whether he did or not; I don't recall.

Q. Did he ever ask you to make him a list of notes that the Leicester Rubber Company owed to the Trenton Scrap Rubber? A. I don't remember.

Q. In connection with an entry upon the account of Isaac Fineberg, under date of October 22, 1913, Mechanics' National Bank, $1,400; is that in your handwriting? A. Yes, sir.

Q. Do you recall who directed you to make that entry? A. I do not.

Q. Referring to the entry of November 12, 1913, "Cash, $11,100," do you recall who directed you to make that entry? A. I do not.

Mr. Katzenbach: Have you the check for $11,100, the item of November 12, 1913?

Mr. Scammell: No, we haven't that check.

CROSS-EXAMINATION by Mr. Katzenbach:

Q. Now, Mrs. Davis, this cash book would show these two entries that you have spoken of, would it not, of $1,400— A. Yes, sir.

Q. Now, is there an entry on the cashbook of October 22, the Mechanics' National Bank, charge, I. Fineberg, $1,400? A. Yes, sir.

Q. I show you a note that has been marked in evidence here, and ask you whether that is the $1,400 which is credited on this note? A. Yes, sir.

Q. Now, under date of November 12, 1913, in the cashbook is this item: "Cash, charge I. Fineberg, $11,-500"? A. Yes, sir.

Q. Now, would there be a check that would represent that amount, or how was that amount withdrawn, in what way? A. There would be cash, yes, a check to that effect, $11,100; it is marked "Cash"; there would be a check drawn to "Cash" for $11,100.

Mr. Katzenbach: Will you let me have that check, please?

Mr. Scammell: We don't know of any such check.

Q. Is there a check—from the record in the book, would there be a check of $11,100? A. There would.

Q. State why there would be a check of $11,100? A. There would be a check of $11,100 because it was entered as "Cash," and there was nothing entered in the cashbook without there was a check for it.

Mr. Katzenbach: Will you let me have the check for $11,100?

Mr. Scammell: We haven't it now; we will have to look for it.

Q. How did you come to make the entry? A. I was instructed by Mr. Freedman or Mr. Fineberg, and most generally I was instructed by Mr. Fineberg in what way to do it. If Mr. Freedman was in the office at the time, I would ask him, and if Mr. Fineberg was in the office, I would ask him.

Q. Is there any way by which you can refresh your recollection as to who instructed you to make these two entries of October 22 and November 12, 1913? A. I couldn't recollect who told me to make the entries. They wouldn't be there if I was not directed to do so, unless I had a check or something to that effect to show I must enter it.

The Court: Would they have been entered by you in the regular course of business, without instructions?

The Witness: Not unless I knew who to charge it to.

Q. Do you think you would be able, after seeing the stub of the check book and the check, do you think you would be able to tell who had directed you to make the entries? A. I might be able to if I seen the stub of the check book, I might be able to tell. It was customary at the end of the month, if I didn't have any record or any checks being in at the time and checks given out that I had no record of, if at the end of the month if I had no record of them, I would ask about them.

By the Court:

Q. So that you could charge them up? A. So that I could charge them up.

Q. In your stub book? A. Yes, sir.

RE-DIRECT EXAMINATION by Mr. Scammell:

Q. The entry of October 22, Mechanics' National Bank, charge I. Fineberg $1,400, is entered in the regular order of the dates on the books? A. Yes, sir.

Q. The entry of November 12 of $11,100— A. The other entry is a little out of order.

Q. The entry of November 12 does not follow the regular order of the dates of the entries in the book? A. No, it is out of order; it is entered after the date it should be.

The Court: Indicating what?

The Witness: It should have been entered the 12th, and it was entered after the 20th.

Q. Indicating that you must have waited for information as to where that was to be charged? A. Yes, sir.

The Court: Can you explain to me why $1,400 was paid on this $25,000 note before it came due?

The Witness: No, I can't.

RE-CROSS EXAMINATION by Mr. Katzenbach:

Q. Will you examine these two check books and say whether they are the check books that were in use by the Trenton Scrap Rubber Company in the months of October and November, 1913, and if you recognize them as such? A. Yes, sir, these were the check books in use during October and November, 1913.

Q. Was that the check book of the Mechanics' Bank? A. Yes, sir.

Q. These items referred to, of $1,400 and $11,100 were cash from the Mechanics' Bank, were they not? A. They were checks issued on the Mechanics' Bank.

Q. One was under date of October 22, 1913; will you find if there is any stub of that date or thereabouts? A. Here is one, favor of Mechanics' National Bank, "charge I. Fineberg, $1,400."

Q. In whose handwriting is that? A. My handwriting.

Q. Does that refresh you as to who directed you to do it? A. No, but I must have been directed by Mr. Fineberg, otherwise it would not have been made out.

Q. Do you find under date of November 12, any check for $11,100; do you know anything about the check which corresponds with that stub? A. I made it out.

Q. You did? A. I must have made it out, because it is in my handwriting.

By the Court:

Q. At the time you made the entry on the stub? A. Yes.

Q. Will you also turn to the stub of November 12, 1913, or thereabouts, for an item of $11,100? A. You see this is under date, really, of November 20th; now, then, this was written in pencil; I must not have made that out at the time; I must have had a notice when I checked up or after, from the bank, that there was $11,100 drawn, because this is in pencil. Anything I have in pencil was checks that I didn't have a record of until I got notice.

Q. This says, "Cash, I. Fineberg"; is that your handwriting? A. Yes.

Q. But there is no stub of a check of that date? A. No; there must have been a check issued and I got a record of it after.

Q. So does that at all refresh your recollection as to who instructed you with reference to it? A. I wouldn't say positively, but I must have been instructed by Mr. Fineberg, otherwise, I don't think it would have been here.

Q. Then, you are positive that the $11,100 check is not in your handwriting? A. I wouldn't say positively, but it must not have been, because it is here in pencil, and all records here in pencil were made out not by me, but I was notified of it after, and I had the record in the stub in order to keep my balance straight.

By the Court:

Q. They are memoranda entries instead of check stubs? A. Yes, sir.

RE-DIRECT EXAMINATION by Mr. Scammell:

Q. Did you ever make any entries or charges in the books of account by the direction of Mr. Freedman? A. Not that I can recollect, unless for expense accounts on the road.

Q. Your only information that you have that Mr. Fineberg directed you to make this charge, is from the notice on the check stub? A. Yes, sir.

Q. You don't recall, however, that he actually gave you that instruction? A. Not positive, but he must have done, or it wouldn't have been there.

Q. Did Mr. Freedman ever tell you to make any charges to Mr. Fineberg's account? A. Not that I can recollect.

By the Court:

Q. Is the entry on the stub of this check book the first entry made of the items? A. It must be, because the books were balanced every month, that is, the cash book was balanced.

Q. Did the entry upon these stubs, then, precede all other entries of the same items in your system of bookkeeping? A. Yes, sir.

Q. The entry on the stub is simply a memorandum to guide you in carrying out your bookkeeping system? A. Yes, sir.

Q. In the carrying on of your affairs, was it your practice to charge up either against Mr. Fineberg or Mr. Freedman, any items charged against one by direction of the other? A. The expense accounts.

Q. I mean in the check stub book; in the carrying on of your bookkeeping system was it your practice to charge on the check stub an entry by one of the partners by direction of the other, or did you ever do such a thing? A. The expense account.

Q. By way of checks? A. Yes, that were incurred on the road.

Q. And only those? A. Only those.

HARRY HEHER, a witness produced on behalf of the defendant, being duly sworn, testified as follows:

Direct-examination by Mr. Scammell:

Q. Mr. Heher, you are a practicing attorney? A. Yes, sir.

Q. And had some professional transactions with Harry Freedman on or about June 21, 1915? A. I did.

Q. You prepared for him a certain option agreement, did you not? A. I did.

Q. Who came to see you about preparing this option? A. Mr. Freedman and Mr. Gordon.

Q. Joseph Gordon? A. Joseph Gordon.

Q. At that time was Mr. Freedman a client of yours? A. No, not a client; I had represented him in a criminal proceeding in conjunction with Mr. Kafes; I hadn't done anything else that I now recall.

Q. He told you the object of his visit to your office? A. Yes.

Q. Can you recall about when he came to your office? A. As I recall it, about a quarter to six.

Q. On the 21st of June? A. The 21st of June.

Q. 1915? A. Yes, sir.

Q. And in response to his instructions you prepared a certain option paper? A. I prepared it after supper; he said it was urgent that it be prepared that evening, and I told him I would meet him at nine o'clock and have it ready at that time, and shortly

before nine o'clock he and Mr. Gordon came into my office.

Q. He gave you the instructions as to what was to be included in this option? A. Yes, sir; he gave me the instructions.

Q. I show you a paper purporting to be an option agreement, which you prepared, and ask you whether that was the paper which you prepared for Mr. Freedman? A. Yes, sir; that's the paper.

Q. Was that paper fully prepared at the time that you showed it to him at nine o'clock? A. No, it was not complete; I had prepared an offer comprising all the paragraphs of this paper, including the fourth paragraph.

Q. But it was complete up to that point, according to his instructions to you to prepare it? A. Yes; that included down to paragraph 4; I prepared just what he told me to prepare.

Q. What did Mr. Freedman do, go out to find Mr. Fineberg? A. Yes; I told them there ought to be some time limit in which this offer was to be accepted or rejected, and he said Mr. Fineberg would let him know in twenty-four minutes, I think he said. He said he saw Mr. Fineberg at the M. & F. Tire Store near Stockton Street on State. He left my office, and this Mr. Gordon remained, and in a few minutes Mr. Freedman returned with Mr. Fineberg, and said he met him in front of the post office.

Q. What went on at your office? A. When Mr. Fineberg came in, he took the paper which had been prepared down to and including paragraph 4—it had not then been signed—and without saying anything he went into my private office and used the telephone. I don't know what number he called; he was unable to get the party, and in a minute or so he came back and said he tried to get Mr. Scammell but was unable to locate him, and after studying over the paper for three

or four minutes, well, he made some changes here; he said the $11,500 note hadn't been accurately described, and he made some changes which appear in his handwriting in pen in paragraph 4; and after doing that he said, "What is fair for one is fair for the other," or something to that effect. He said, "I think I ought to have the right to purchase your interest on the same terms you agreed to purchase mine." Well, he and Mr. Freedman and Mr. Gordon talked it over for a time, and finally, Mr. Freedman said that was agreeable to him, provided he received in addition to the consideration of $25,000 all the excess moneys which were coming to him from the business, and Mr. Fineberg said he was willing to enter into an agreement containing that provision. When I found that they had come to an agreement, I told them the words "excess money" were rather indefinite and uncertain, and that they ought to stipulate the amount of the excess money. Mr. Fineberg said they couldn't tell what they amounted to, but that the books would show. I asked them if they could approximate the amount; they said, "No," and whatever the books showed the excess to be was the amount of money that was to be paid over; but I think before that I then dictated the remaining paragraphs from paragraph 5, on, to the stenographer, at the machine, and when we came to paragraph 7 to "invested," I used the word "invested"; I understood them to mean Mr. Freedman had invested more money in the concern than Mr. Fineberg, and when I used that word, Mr. Fineberg interrupted and said that wouldn't be correct. I don't recall what words he used, but I understood him to mean that the word "invested" would not include the excess moneys coming to Mr. Freedman; in other words, that the excess moneys of Mr. Freedman would not be included in those words; I then struck that off and said: "Receive all moneys

which I have in the said partnership business in excess of the moneys in said business belonging to you."

Q. It was then Mr. Fineberg suggested that you strike out "invested," because that would not cover the situation? A. No, but he said that word was not correct and it wouldn't convey the meaning they intended. When he said that, Mr. Freedman apparently agreed with him; he entered no objection. I saw from what Mr. Fineberg said, that the word would not give Mr. Freedman the excess money coming to him; I realized that was for his benefit, and so I changed it.

Q. Didn't you ask them to fix the amount of what they claimed? A. Yes, sir; that it might result in litigation and be the cause of considerable trouble; I realized such a thing might happen, and that it was safer to state the amount so there couldn't be any dispute, and both of them said the books would show the excess money, and then they said whatever that was would be the amount which should be paid. I asked them if they couldn't approximate the amount, and told them it would be advisable to have something definite in writing, and they said whatever the books would show would be the amount. At that time I didn't know anything about their difficulties or books or what they were referring to when they said "excess moneys."

Q. They didn't tell you they were arbitrating? A. Not that night, but I knew there had been an agreement of arbitration, and that several hearings had been held, because sometime prior to that, during the criminal proceedings, I think we tried to get a postponement of the trial one day because of an important hearing before the arbitrators on the day scheduled for the trial; but I didn't know anything about the nature of the difficulties.

Q. You didn't know whether it was in connection with the Leicester Rubber Company matter? A. No; I didn't know what they were arbitrating; I had never seen the agreement and had never attended any of the hearings nor represented either of the parties in the proceedings.

Q. Mr. Freedman then signed the option? A. Mr. Freedman then signed the option while we discussed the question of time. Mr. Fineberg said that he would be unable that evening to give his answer. I think he said he wanted to consult with you; and we then discussed the question of time within which this option should be exercised. I explained to Mr. Freedman that it was in effect at that time an option, and he said he didn't care as long as the excess money was paid to him, and he fixed the next morning at ten o'clock for him to let us know.

Q. Mr. Freedman signed the option? A. Mr. Freedman signed the option in my presence.

Q. Is that his signature? A. That is his signature.

Mr. Scammel: I offer the paper in evidence. Said paper is marked Exhibit D10.

Q. The next morning Mr. Fineberg came to your office at the time appointed? A. Yes, sir; about twenty minutes of ten, and served a notice of acceptance typewritten on one of your small letterheads. I told him I didn't think I was the attorney of Mr. Freedman to accept service of the notice, but he insisted on leaving it; I told him he could. Mr. Fineberg left my office in about five minutes, and Mr. Freedman came in in about five minutes or ten minutes, about ten minutes to ten, and then I handed the paper to him.

Mr. Katzenbach: No cross-examination.

Defendant's Witness, Isaac Fineberg, Direct

ISAAC FINEBERG, the above-named defendant, being duly sworn in his own behalf, testified as follows:

Direct-examination by Mr. Scammell:

Q. Mr. Fineberg, where do you live and what is your business? A. I live at 302 Bellevue Avenue, Trenton, New Jersey, and I am in the scrap rubber business.

Q. How long have you known Mr. Freedman? A. Twelve or thirteen years, I guess; ever since he has come to Trenton.

Q. Before you entered into the articles of co-partnership, were you in partnership with Mr. Freedman? A. Yes, sir.

Q. In the same scrap rubber business? A. Yes, sir; about a year and a half before we drew up our partnership papers.

Q. When first did you learn of the Catasauqua plant? A. It was sometime in May, 1913; there was an advertisement in the "India Rubber World," and Mr. Freedman at that time was in trouble with the Ajax-Grieb plant, and he took very little active interest in the business, and he suggested the buying of this plant, and in answer to that advertisement in the "India Rubber World," I wrote a letter, and in return I got a booklet describing the plant, giving photographs and pictures of it.

Q. What did you do with Mr. Freedman; did you go over it together? A. Mr. Freedman and I went over it together, and we discussed the matter of purchasing the plant, and Mr. Freedman seemed to be very favorable towards buying it; and I said to Mr. Freedman—he first suggested going up there to see it, he brought that up—and I said, "If you have no intention of moving up there, don't go up there; if you don't intend to move up, it's no use of going up

there." He said, "If it looks good to me; I'll go up if it looks good to me." Then, a short time afterwards, Mr. Freedman made a trip up there, I think in company with Joseph Maher, I don't know whether De Piano was there or not, but I think De Piano Russo went up with them; he said it was a good plant. I said, "What do you think it is worth; what do you think the plant's worth?" and he said, "That's hard to tell, but" he said, "if we can get it for $20,000, go ahead and buy it, it's a good buy." I said, "Will you move up there if we decide to take it?" And he said he would. I said, "What are you going to do about your mother?" And he said, "I can get kosher meat for my mother from Mr. Glassman's father, who is a Rabbi"; I said, "I will get in correspondence with Leonard & Company of Catasauqua, and inquire after that"; and I got several letters.

Q. Considerable correspondence passed between you? A. Yes, sir.

Q. Were there any letters written by the Trenton Scrap Rubber Company? A. Yes, sir.

Q. And the first visit Mr. Freedman made up there, was that arranged by letter? A. Yes, sir.

Q. Written by the Trenton Scrap? A. Written by the Trenton Scrap Rubber Supply Company on their letterhead, addressed to Leonard & Company, and Mr. Leonard, of Leonard & Company, at Catasauqua, at a certain place in Catasauqua, I can't recall exactly the place—

Q. When was the plant actually bought, Mr. Fineberg; will the books of account show? A. If I am not mistaken as to this, I think we give a deposit sometime in July, but the deed was not actually transferred, I think, until sometime in August; I am not sure about these dates, but I feel certain about July and August.

Q. When first did you see Mr. Leonard, the broker for this plant? A. Mr. Leonard sent us a telegram one day; I think I got a copy of it, that he was going to be a guest at the Trenton House, of a lodge, that he was going to be a guest of a certain lodge at the Trenton House; he wanted us to meet him at the Trenton House. I didn't know Mr. Leonard at all, and Mr. Freedman took me up there and introduced me to Mr. Leonard.

Q. Who else was there? A. I think Joe Maher was also there at the time; whether De Piano was there, I don't know, but I know positively Joe Maher was there.

Q. What took place there? A. Just discussing the price of the plant; he suggested $30,000.

Q. Who did? A. Mr. Leonard; he first asked thirty or thirty-five thousand dollars, but we got him down to $25,000. Mr. Freedman said to buy for $25,000, but I felt that I could get him to sell for a little less than that; I thought I could buy it for a little less, on account that he was anxious to sell to get his brokerage fee out of it; and I was there with him, I guess, three-quarters of an hour, about. Then I left him in company with Mr. Freedman; I went away, and left him in company with Mr. Freedman.

Q. What did Mr. Freedman say to you in respect to the price at that interview? A. Nothing; I didn't meet Mr. Freedman until the following day in the office. I didn't see him again that night at all; I left him with Mr. Leonard. They jumped in the machine and went away somewhere, I don't know where they went, and that's the last I saw them; I went home.

Q. When was it that you had a talk with Mr. Freedman about—this interview with Leonard & Company occurred about when, Mr. Fineberg? A. It occurred either in the month of May or June; I think

it was in June; I am not sure about it; we had a lot of correspondence in May and June, and it was either one of those two months when I met him at the Trenton House, which was the first time I ever met him; I think it was June; I am not certain.

Q. I show you a telegram, dated June 23, signed "Frank E. Leonard," addressed to the Trenton Scrap Rubber Supply Company, and ask you whether that is the telegram that you mean? A. Yes, it's dated June 23rd, and addressed to the Trenton Scrap Rubber Supply Company.

Q. Where was that received? A. At the office of the Trenton Scrap Rubber Supply Company.

Q. Did Mr. Freedman know about this telegram? A. Yes, sir. In answer to this telegram he brought me to the Trenton House and introduced me to Mr. Leonard, because I had never seen him before. Yes, he knew about it. I had never met Mr. Leonard before.

Q. Did considerable correspondence pass between the Trenton Scrap Rubber and Mr. Leonard between that time and when he came down here finally? A. Yes, sir.

Q. Was that correspondence upon the letterhead of the Trenton Scrap Rubber? A. Yes, sir.

Q. Do you know whether Mr. Freedman knew that these letters were being written to Mr. Leonard? A. Yes, sir; he heard them dictated when he was in the office, and when he wasn't in the office he read the mail at the close of the day, so he would know exactly what was going out.

Q. Just state what took place in July or whenever the matter was closed, when Mr. Leonard came to your office? A. Mr. Leonard came to our office sometime in July; I don't know the exact date, and wanted to close the deal; he still stuck to his bargain of $25,000, but I felt sure that I could get it for $22,500,

and Freedman said I would never get it at that price; but feeling that he was anxious to sell in order to get his commissions out of it, I stuck to my bargain; I said I would only give him $22,500, and when he came down here he asked $23,000; and finally he took us up for $22,500; then he said, "No," he would only give $22,000. Mr. Maher come in about that time, and we left Mr. Maher talking to Mr. Leonard, and Mr. Freedman and I went out in the warehouse, and at that time was the first intimation he made to me that he wouldn't go to Catasauqua on account of the condition of his mother. He told me he didn't care about going for the present on that account, but he might go later. I said, "What are you going to do; I can't buy the stock in the Trenton Scrap; it would look bad; and they will be competitors, and they won't do business with us; I can't buy it in the Trenton Scrap name." He said, "You buy it in your name"; he said, "will you do that?" I said, "Yes," and that's when he throwed his bluff, "Well, I don't care to become interested in the Leicester Rubber Company." That was at that time understood. We didn't want any of the people to know that the Trenton Scrap Rubber was interested; at first, it was understood that Freedman only would be interested, and then, on account of not being able to go up there, it was understood that the stock be issued in my name. We didn't even want Mr. Maher to know anything about it or anything in connection with the Leicester Rubber Company.

Q. How did the Leicester Rubber Company come to be interested in it? A. At that time we had to have somebody to take full charge of that plant, and this man, Piano Russo, was considered a good mechanic, and as they had a good business we took them in with us at Catasauqua.

Q. Did you discuss that phase of the matter with Mr. Freedman? A. Yes.

Q. And was this prior to this, this talk you had when you closed the sale? A. Prior to closing the sale, yes.

Q. Where did you close the bargain, at the Trenton Scrap Rubber Company? A. Yes, at the Trenton Scrap Rubber Company, but the deposit for the purchase of the plant was made in Judge Macpherson's office, and I think A. De Piano represented the Leicester Rubber Company.

Q. When was it, to the best of your recollection, that the plant was actually bought? A. Sometime in August.

The Court: It was August 12th, wasn't it?
Mr. Katzenbach: August 12, 1913.

Q. Where did you close the purchase of the property? A. In the Trenton Scrap Rubber office, but the deposit was made at Judge Macpherson's office.

Q. Well, now, after you went to Judge Macpherson's office, did you go back to the plant and discuss the question with Mr. Freedman? A. Yes, I simply told him that I had given the deposit money.

Q. What did he say? A. "All right," that's all.

Q. When was it that the plant of the Leicester Rubber Company was actually moved there, if you know? A. The latter part of August or around the first of September, sometime around that time.

Q. Go ahead. A. We immediately began to make arrangements to move there as soon as the deal was closed, but nothing was done until sometime in September, I think.

Q. Did you discuss with Mr. Freedman just how the money was to be raised to pay for the plant? A. Yes, sir; I told him we would have to raise money.

Q. What did you say? A. I told him there would have to be $25,000 raised in order to make the purchase, and we didn't feel as if we ought to draw the

money out of the business at that time; so I had some preferred stock in the Empire Rubber; I had five shares of Mechanics Bank stock, and that was in my own name, although it was a company affair; we had some merchandise in the warehouse, and on the strength of that we could borrow $25,000. The Leicester Rubber Company made a note payable to the Trenton Scrap Rubber Company for $25,000, and I indorsed it and A. De Piano and Harry Bernstein.

Q. Did you discuss with Mr. Freedman this $25,000 note? A. Yes, sir.

Q. And how you were going to raise it in the bank? A. Yes, sir.

Q. After the note was given, which is "Exhibit C9"—I ask you if that is the note originally given? A. Yes, sir; the Leicester Rubber Company, $25,000. This money was to be used for the purchase of the plant.

Q. What was to be done with this money? A. It was to be turned over to the Leicester Rubber Company for the purchase of that plant.

Q. How was that note to be paid? A. At maturity half was to be paid to obtain a half interest in the Leicester Rubber Company, and the balance of it was a note given to us, payable to the Trenton Scrap Rubber Company for $12,500, payable three months after date, with the same indorsements, and it was an accommodation of the Leicester Rubber Company for $12,500.

Q. Were these transactions duly entered up upon the books of account of the company? A. Yes.

Q. Did you at any time attempt or in any way try to cover up these transactions? A. No, sir; the accounts were right there and Mr. Freedman examined the accounts most every day and saw them, and not only that, but we discussed the accounts many a time.

Q. I show you the account of the Leicester Rubber Company, sheet No. 1, and ask you whether the entry upon that account of "August 30, 1913, note $25,000," is the note which you have just now referred to? A. Yes, sir.

Q. And in whose handwriting is that? A. The bookkeeper.

Q. Who is she? A. Mrs. Davis, Miss Sheeley it was at that time, now it's Mrs. Davis.

Q. This note was also set forth in the bill book of the company, wasn't it? A. Yes, sir.

Q. There was no attempt on your part to cover up that entry? A. No, sir.

Q. There was no attempt—

The Court: Well, there is nothing of that kind in the case, is there?

Q. When that note came due, what happened to the $25,000 note? A. The Leicester Rubber Company give us a renewal for $12,500, and the other $12,500 was used to pay for one-half interest in the Leicester Rubber Company, the shares of stock.

Q. Was that charged to your account upon the books? A. $12,500 was charged to my account, as we agreed upon.

Q. Who directed that charge to be made to your account? A. I can't remember whether I did or Mr. Freedman; one of us surely did; if it wasn't myself it was Mr. Freedman; either one of us always did give those directions. I don't remember that I ever did—

Q. Did the Trenton Scrap Rubber have considerable correspondence between it and the Leicester Rubber Company? A. Yes, sir; we did a great deal of corresponding, and the Leicester Rubber was conducted in our office in Trenton; I did a great deal of

New Jersey State Library

the work in our office, a great deal of the corresponding.

Q. Was Mr. Freedman present when this all went on? A. Yes, sir.

Q. This correspondence? A. Yes, sir.

Q. And did he talk to you about the condition of the Leicester Rubber Company, as to how it was making out, or anything about it? A. No, because he knew as much as I did about the Leicester Rubber Company.

Q. Where was it, Mr. Fineberg, that you received the certificate of stock from the Leicester Rubber Company? A. I either received it in Trenton or Catasauqua, I think I rceived it at Catasauqua, I am not sure—but I received it, anyhow, and it was placed in the safe together with the Trenton Scrap Rubber Supply Company papers, the same as any other papers.

Q. Was that stock there during all the time after this purchase, up to the time of the arbitration matter? A. Yes, sir.

Q. Where was the stock kept, Mr. Fineberg? A. In the safe of the Trenton Scrap Rubber Supply Company.

Q. Accessible to Mr. Freedman? A. Yes.

Q. Were there any other papers in this compartment in the safe that belonged to the company? A. Yes, there was insurance company papers, and there are some of Mr. Freedman's old papers in there yet.

Q. His personal papers? A. Yes, sir.

Q. I show you a file of correspondence between Leonard & Company and the Trenton Scrap Rubber Company, and ask you, beginning with the date of June 6, 1913, and continuing down to 8/11/1913, are these all of the letters received by your company and the letters written by you, that you could find in connection with this transaction? A. Yes, sir.

Q. Were those different letters received by the Trenton Scrap Rubber in the regular course of business? A. Yes.

Q. And those are all you can find? A. Yes, sir.

Q. And the replies thereto, sent to them? A. Yes, sir.

Mr. Scammell: I offer that file in evidence, and also the telegram of June 23rd.

Said file of letters and telegram are marked "Exhibits D6" and "D7," respectively.

Q. How often, Mr. Fineberg, did you go to the plant of the Leicester Rubber Company, at Catasauqua? A. Once a week, and sometimes once in two weeks, just when I had time to go. I didn't have much time, I was busy here in Trenton; just when I had time to go there; I had planned to go there twice a week, but I couldn't get away always from the business. Sometimes I—

Q. What was the price which was paid for the stock of the Leicester Rubber Company? A. Either $62.50 or $62.75, I think it was $62.50.

Q. Did you discuss the question of the price to be paid with Mr. Freedman? A. Yes, sir.

Q. What, originally, did the Leicester Rubber Company want you to pay for the stock? A. $100 a share.

Q. What was said by you to Mr. Freedman, or by Mr. Freedman to you, about the price to be paid? A. Mr. Freedman said that the price the stock might be worth, that would be lost by a moving proposition, and the shares wouldn't be worth more than 62 1/2, which was the price De Piano originally paid for the shares.

Q. After your discussion with Mr. Freedman, did you, or was that the price that you agreed on? A.

Yes, and the Leicester Rubber Company agreed to that price.

Q. The original of this $25,000 note came to the company's office in due course? A. Yes, sir.

Q. Were entries made upon your books of account showing that? A. Yes, every renewal was entered on the books the same as any other notes we received.

Q. After the plant was purchased, do you recall having a conversation with Mr. Freedman in front of your office, about his going up to the plant? A. That was some time afterwards.

Q. About how long? A. Two or three months, about two months, I guess.

Q. State what took place at that interview. A. Mr. Freedman—there's a telegraph pole in front of our stable, and he stood there; I think it was some time in September or October. I went up to him and said to him, "Have you decided to do anything about moving to Catasauqua?" I said, "I can't pay much attention to it; I have work here in regard to our business"; I said, "I can't leave this; we got too much money at stake." He said, "I don't know yet"; I said, "Well, I'm tired of asking you this question, and I won't ask you any more about it"; he said, "After awhile I might move up, but I don't care to move up now"; and I said, "I won't talk to you again about this." I didn't care about discussing it. In fact, we have been in business close to ten years, and I can never mention the day when we have discussed the business after six o'clock, and outside of this one time, or possibly, one or two other times, I have never met Mr. Freedman after six o'clock—possibly there would be one or two other times, but I don't remember it.

Q. At the time of the fire, when the Catasauqua plant was burned, where were you? A. Up at the

Rip Van Winkle House, up at Pine Hill in the Catskill Mountains.

Q. How did you get notice of the fact that there was a fire? A. Mr. Freedman sent me a telegram.

Q. Have you tried to get a record of the telegram? A. Yes, I have, and I can't get one. It said, "Come home at once; factory on fire." But the Western Union claim they destroy all copies after a year, and I tried to get one, but I couldn't; they destroy them after a year.

Q. Did you come right home? A. Yes; I left there Sunday afternoon and got in Trenton on Sunday night.

Q. When did you see Mr. Freedman? A. Monday morning.

Q. When did he go to the plant? Had he been to Catasauqua then? A. I think he was there on Sunday; he told me he was up there, and I took it for granted he was up there Sunday.

Q. What did he say, and what did you say to him about the fire? A. There was nothing said at all. I felt bad about it, in fact, I cried; I never cry over any business transactions or anything of that kind, but it hurt my feelings so that I cried. Mr. Freedman and I went in the office; we went back there, and he said, "Well, don't leave that worry you; we started with nothing, and we'll soon make it up"; and after that, nothing was said.

Q. Did you sit down and discuss the question of the amount of loss? A. Mr. Freedman said, "How much do you think the loss will be?" and I said, "I don't know; I'm too much upset to think about it"; He said, "How much do you think?" We put down $22,000, and then there was $25,000, and there was a note of $10,500, and the stock subscription $12,500, and an open account of seven or eight thousand dollars, making it around $30,000, and I was indorser

personally on notes to the extent of twelve or thirteen thousand dollars, that I indorsed for the benefit of the Leicester Rubber Company, so that they could obtain credit and moneys, and we only thought the dividend would be approximately ten per cent, and we figured the loss would be $35,000 or $40,000 at that time; it did amount to a little more than that; but that's what we figured at that time.

Q. What did he say about that loss? A. He didn't say anything at all; he said, "Don't worry, we started with nothing, and if we work hard we will soon make it up."

Q. Did you, at that time, take off your coat, and say that if it took the shirt off your back, you would sell it to pay the last debt? A. I never took the coat off; I might have made the statement that if it took the shirt off my back I would pay the last debt.

Q. Was anything said by you that you personally would assume this loss? A. No, sir.

Q. Did anything of that character occur, or was anything of that character said, which would convey that meaning? A. No, sir.

Q. Did Mr. Freedman, at this interview, say anything to you which indicated to your mind that you were personally to stand that loss? A. No, sir.

Q. What was the date of the Leicester Rubber Company fire?

The Court: July, 1914.

A. It was on a Saturday night, yes.

Q. At the time of the fire, Mr. Fineberg, what was the amount due on the renewal of the $25,000 note? A. $10,500.

Q. I show you Exhibit C3, which is dated August 12, 1914, and ask you whether that is the renewal of this $25,000 note in the sum of $10,500; I ask you whether that note is a part renewal of the original $25,000 note? A. Yes, sir.

Mr. Scammell: I offer this in evidence.

Said paper is marked Exhibit D8.

Q. That note was in the bank drawer—what bank? A. The Mechanics' National Bank.

Q. And it was discounted at the time of the fire? A. Yes.

Q. Did you discuss with Mr. Freedman after this interview in the back room of your plant, did he discuss with you as to what should be done with that note? A. That discussion didn't take place until sometime afterwards.

Q. About when was it? A. Sometime in November.

Q. When did the note come due? A. That was August 12th; they couldn't make a payment on it, and they renewed it in full, and at that time we didn't have the records and didn't know how the note was made out, so instead of making it out as it was made out before, we just made it to A. De Piano, and Bernstein and—

Q. And that was how the change came to be made? A. Yes; because we had no records as to how it was made out before.

Q. The original note of $25,000 had Joseph Maher's indorsement on it, didn't it? A. Yes.

Q. The $10,500 note— A. Had Harry Bernstein's indorsement.

Q. When was that change made? A. After the Leicester Rubber Company had purchased Mr. Maher's stock; of course, Harry Bernstein, who became interested, substituted Mr. Maher's name.

Q. And then you say the note of August 12, 1914, was renewed in full? A. Yes, sir.

Q. That made that note come due November 12, 1914? A. Yes, sir.

Q. Did you discuss with Mr. Freedman as to how you were going to pay that note? A. Yes, sir.

Q. About when was it, and where did that discussion take place? A. The note went to protest on November 12th, and we always made it a habit to not leave any protested paper in the bank, for fear it would go against our credit, and it was either the last of November or the first of December, sometime during that time, I told Mr. Freedman I didn't think we could afford to draw much money out of the business, and he suggested putting merchandise in the storehouse, against which we borrowed $15,000, and I was supposed to pay this $10,500 note in full. Before the payment of this note Mr. Freedman went on the road, and he was buying up some merchandise, and I didn't think it was very wise to pay off the entire amount, so instead of that I only paid either $7,000 or $7,500, and renewed it for either $3,000 or $3,500, and when he returned from the road, I told him I didn't pay off the entire $10,500, but only $7,000 or $7,500, whichever it was; I said, "That note is down at the bank; go down and indorse it"; and he went down to the bank and indorsed that note.

Q. I show you a note, dated December 15, $3,000, made by the Trenton Scrap Rubber Supply Company, signed by you as treasurer, and indorsed: "H. Freedman, Isaac Fineberg"; is that the note that was indorsed by Mr. Freedman? A. Yes, sir.

Q. Is that a renewal? A. Yes, sir.

Q. How long was it that the $10,500 note remained on protest?

The Court: From November 12 to December 15.

A. Yes, sir.

Mr. Scammell: I offer the note in evidence.

Said note is marked Exhibit D9.

Q. When was the account of Mr. Freedman and the account of yourself usually settled; how often? A. Every time we took account of stock.

Q. You took account of stock in July, 1912? A. Yes, sir.

Q. When next did you take account of stock after that? A. January, 1914.

Q. Did you have a discussion with Mr. Freedman in January, 1914, about the condition of the business? A. Yes.

Q. State, please, what took place at that time? A. Mr. Freedman and I went over the accounts and the accounts showed a difference of four or five thousand dollars, although, according to the other matter, it would be about sixteen or seventeen thousand dollars, but we deduct that twelve thousand dollars, Mr. Freedman—

By the Court:

Q. Wasn't that charged up to you? A. Yes, and decided how much difference he had, and it was about four or five thousand dollars. I told Mr. Freedman that he could draw it out at that time, but he preferred not to; I said, "Why, why do you prefer not to?" and he said, he intended opening up a tire store in Atlantic City. He didn't close the deal until the end of the year. At that time he opened up the store and drew out four or five thousand dollars in merchandise to offset that.

Q. Did that, then, close up your account at that time? A. We were about even; there might have been about a hundred dollars or so.

Q. Did you close your accounts on the books? A. No, sir.

By Mr. Scammell:

Q. Where, in the account of Harry Freedman does it show he made the withdrawals of four or five thousand dollars? A. March 9th he gave the Braender Tire—I feel certain that is 1915; he didn't rent the store until the fall, and the first withdrawal then was February 23rd of $314.98; the next one was March 9th. We gave a check to the Braender Tire and Rubber Company, $3,000, for merchandise they were to ship to Mr. Freedman, and we charged it to his account.

Q. To his store in Atlantic City? A. To his store in Atlantic City, but the amount they shipped exceeded $3,000; that is, $823.29.

The Court: What $4,000 are you talking about?

Mr. Scammell: Not the $4,000 of July, 1912, which was given to Mr. Freedman in two checks of $2,000 each.

A. (Continued.) Then the Braender Tire and Rubber Company, $823.29; then they drew a draft on us for that amount and we paid it and charged it to Mr. Freedman's account.

Q. Were there any other charges in connection with the Atlantic City store? A. Yes, sir, several other charges, and he also shipped some goods to the Cut-Price Auto Tire Company, in Trenton, which my brother is in, and his account was credited for that amount, and the Cut-Price was charged for it.

Q. What was the total amount of merchandise charged to his account, which was paid for by the company, as of the January, 1914 settlement? A. I will have to figure this up—between $4,700 and $5,000, all told.

Q. And that was the amount that you estimated to be the difference in his favor, and that was on January 1st, 1914? A. Yes, sir, the approximate amount.

Q. Excluding the stock subscription? A. Yes, sir.

By the Court:

Q. As of that account, was the $12,500 charged to you, and being so charged, did it result in this difference to Mr. Freedman? A. No, sir.

Q. In this settlement was there any discussion about this $12,500?

Mr. Katzenbach: I object to the word "settlement"; it doesn't appear that there was any settlement.

By Mr. Scammell:

Q. In this adjustment? A. We never took into consideration the $12,500, because it was not a personal liability on my part.

Mr. Katzenbach: I move to strike that out.
The Court: Strike it out.

Q. Did you say anything to him, or did he say anything to you about this entry of $12,500 at this time you were taking account of stock? What was said about the item of $12,500? A. There was nothing said at all, it wasn't considered.

Q. In making your adjustment, did you put down the figures? A. Yes, sir.

Q. How did you arrive at this difference in the amount? A. Just taking the difference in the account and deducting $12,500, that's the way we arrived at it.

Q. Did Mr. Freedman say anything, or object to the deduction of this amount of $12,500?

Mr. Katzenbach: I object to the question.
The Court: Objection overruled.

A. No, sir, he did not.

Q. When first did Mr. Freedman say anything to you that indicated to your mind that he considered

this investment in the Leicester Rubber Company your personal affair? A. Didn't consider that until our trouble; I think it was March or April of 1915.

Q. How did that question come up and where was the discussion? A. The discussion was in our office.

Q. How did it start, and what was the occasion for it? A. I think some vouchers were returned from the bank, and in them was the charge of $1.30 to Hildebrecht's, for a luncheon I had with a man by the name of Cummings. It was a business transaction; he was a business man and I had been to luncheon with him to Hildebrecht's and Mr. Freedman objected to that charge. I said, "That's a business transaction; I went out with this man to luncheon; we already had business." He said, "No, I didn't derive any benefit out of it"; I said, "It was a business transaction." The reason for that was, I had always previously paid out of my own pocket for that kind of thing, and I never charged the company with the expense, but I thought I would do it thereafter. He objected to that, and then he said, "How about this $10,500?" I said, "You know what that is; that's the note with the Leicester Rubber Company; you knew that before you went away"; and he said, "You ought to stand for that, for that $10,500"; and I said, "How do you figure that out"; I said, "I can't see that"; he said, "Well, we will arbitrate it"; I said, "Well, while you are doing this, we will leave everything to the arbitration, and the Ajax-Grieb trial as well"; he said, "All right." I said, "I will let you choose your own arbitrators; you can choose anybody you want," and he said, "Well, I want Mr. Gerson and Mr. Rosenthal," and I said, "Yes, and who else do you want?" And he chose the others, and I said, "Will you let me suggest one?" and he said, "Yes," and I said, "I will suggest Governor Stokes." And

this was perfectly satisfactory, and it was satisfactory to let the arbitrators arbitrate everything; and we started to arbitrate, and I think the papers were not drawn up. As to the arbitration, I left Mr. Freedman dictate his own questions to you in your office when you were drawing up the paper as to what he wanted to arbitrate, and he told you in my presence; and I had nothing to say about what he wanted in those arbitration papers.

Q. This paper marked Exhibit D5, is the arbitration agreement which was prepared by me at the suggestion of Mr. Freedman and yourself? A. Yes, sir.

Q. When that paper was prepared, what did Mr. Freedman say when I requested that he sign it; do you remember anything that took place? A. He said he wanted to take it up with his attorney before he would sign it.

Q. What was said by you and by Mr. Freedman about the business of the Trenton Scrap Rubber, what would happen to the business while this question was being decided? A. Right after our discussion there was merchandise coming in, and I said to Freedman, "You and I will never straighten out as long as we are doing business; we have got to stop doing business; that's the only way." I said, "I will sell anything to the Trenton Scrap Rubber Supply Company that I could; anything they have I will go out and buy and sell"; I said, "I would sell anything that the company has got; on the other hand, you go and buy and sell as you want to, but our business has quit right here"; and I left it in the hands of Mr. Freedman to have full charge of—

Q. Were the stock sheets prepared by him and under his direction? A. Yes, they were prepared by him and they were taken home by him for one or two days, and he set his own prices here; I believe I set some of the prices, but almost all of it, almost all of

the figuring was done by somebody in his house, or himself, I don't know whether it is his son's or his daughter's writing; but that was up to June 1, 1915.

Q. And these are the sheets which were prepared by him? A. Yes, sir.

Q. Do you know what that total amount of stock was? A. The total amount of this, together with merchandise, we had at the Ironclad building and our main warehouse—we had some merchandise in the yard and some in the storehouse—and the total was fifty-six or fifty-seven thousand dollars.

By the Court:

Q. All of your personal property? A. Just the merchandise alone; the real estate was between twenty and twenty-three thousand dollars—that's what it cost us.

Q. What did you estimate the value of your concern at in all sorts of property, the gross assets, on June 21st? A. Eighty or ninety thousand dollars, I guess.

Q. You can't get any nearer to it than that? A. I think we have a statement off the books as to that.

By Mr. Scammell:

Q. Did you ship any goods out between June 1st and June 22nd? A. Yes, sir.

Q. About what amount? A. Approximately, about $22,000; the books will show exactly.

Q. Did you draw up a statement showing the condition of that merchandise account on June 22nd? A. Yes, sir; merchandise June 21st was $56,203.22. We shipped out from June 21st to June 27th, $21,-966.48.

Q. The amount of stock on hand June 22nd— A. The amount of stock on hand June 22nd, was $34,107.-67.

Defendant's Witness, Isaac Fineberg, Cross

Q. What was the value of the real estate as carried upon the books at that time?

By the Court:

Q. Give me the assets and liabilities as of June 22nd. A. The assets and liabilities as of June 22nd, $34,107.67; I gave you that before. Accounts receivable, $22,779.20; cash in bank and on hand, $6,538.20; horse, wagons and fixtures, $1,500; real estate, $22,800, allowing $800 for depreciation, $22,000 real estate, making a total of $84,924.97. The liabilities against that was a mortgage on the real estate of $9,500; notes payable, $20,216.89; accounts payable, $3,298.59, making a total liability of $33,015.48. Deducting that from the assets leaves a surplus of $51,909.49.

CROSS-EXAMINATION by Mr. Katzenbach:

Q. Mr. Fineberg, you say that the merchandise was $56,203.22? A. Yes, sir.

Q. Now, on that date, what accounts receivable did you have? A. On June 1st?

Q. Yes. A. I can't recall just now, but I can easily explain. This is June 22nd, is the time of the dissolution and the time I got this record.

Q. Now, you said that the inventory of June 1st showed $56,203.22 of merchandise? A. Yes, sir.

Q. Now, you state that on June 22nd there was $34,107.67 stock— A. Yes, sir.

Q. And the accounts receivable were $22,000 and something? A. Yes, sir.

Q. Now then you had sold $22,000 worth of merchandise between June 1st and June 22nd? A. Yes, sir.

Q. Well, now, what on June 1st, were the accounts receivable? A. I can't recall that just now, but I can explain that condition.

By the Court:

Q. Did you have no bills receivable on June 1st? A. Yes, it was around the same.

Q. How much? A. Around twenty or twenty-two thousand dollars.

Q. Then you certainly have made a mistake, haven't you? A. No; the notes payable at that time were considerably more, and the money was used for paying off notes, the notes and accounts payable would be twenty or twenty-one thousand dollars more; in other words, on June 1st the notes payable were over $30,000, and the accounts payable were considerably more.

Q. If you had $56,000 worth of merchandise on the first of June, and some $20,000 of bills receivable, you would have Seventy-six thousand dollars worth, wouldn't you? A. Yes, but the liabilities—

Q. Oh, yes, but you had assets? A. Yes, sir.

RE-DIRECT EXAMINATION by Mr. Scammell:

Q. Mr. Fineberg, was there any understanding between you and Mr. Freedman as to any charges or entries being made upon the books with reference to any expense item at the time you had this talk, in which you agreed to submit the matter to arbitration? A. Yes, sir.

Q. What was that? A. The expense item of the Ajax-Grieb trial.

Q. What did you say to Mr. Freedman with respect to any entry being made on the books, or charges made on the books? A. Right after the trial he gave out checks to Mr. Heher and Mr. Kakes—

Defendant's Witness, Isaac Fineberg, Re-direct

Q. Did you have any understanding with Mr. Freedman about any entries being made, or any withdrawals being made for expense items on account of this trial? A. No withdrawal on account of the expense, no entries were to be made on the books until after the arbitrators decided whether that was company expense or Freedman's personal expense.

Q. Did he agree to that? A. Yes, sir.

Q. Did he afterwards issue some checks for payment of his expenses of that trial? A. Yes, sir.

Q. And did he direct them to be charged to the item of expenses upon your books? A. Yes, sir.

Q. Do you know when those entries were made? A. I think the day of the trial, or the day of the sentence.

Q. Look at the expense items. A. (Witness looks at the books.) Under date of May 14.

Q. What year? A. 19—

Q. What was the total of those items? A. $862.-14.

By the Court:

Q. What year? A. 1915.

By Mr. Scammell:

Q. Did you attend before the arbitrators and submit the testimony you had concerning the matters in dispute? A. Yes, sir.

Q. All of the matters connected with the Leicester Rubber Company were submitted to them? A. Yes, sir.

Q. And your books of account? A. Yes, sir.

Q. Did you at any time, Mr. Fineberg, have any knowledge from the arbitrators as to the manner, or know which way they were going to decide this issue between you? A. No, sir.

Q. Did you ever state to Joseph Gordon, or anyone else, that you knew how they were going to decide it? A. No, sir.

Q. Mr. Fineberg, what did you do with Mr. Freedman, after you had been at Mr. Heher's office, where did you go with Mr. Freedman from there? A. We went down to the arbitrators at the Mechanics' National Bank.

Q. What transpired there between you and Mr. Freedman in connection with this offer? A. We went there to the arbitrators about the excess money Mr. Freedman claimed; I claimed there was nothing due him; I showed that option agreement to Governor Stokes in the presence of the other gentlemen, and he said, "We can't do anything now under those articles of agreement; you had better go to your attorneys to draw up new papers, setting forth exactly what you went to arbitrate regarding your excess money, and the five of us will consent to arbitrate it"; and we walked out. No, at the same time Freedman said to Governor Stokes, "Let's tear up that paper and draw up another one."

Q. What paper? A. The option agreement. I said, "No, let us go to Scott Scammell and draw up more arbitration papers"; he said, "No, I want to go to Judge Macpherson"; I said, "All right, that's good enough for me."

Q. Did he draw up any papers? A. We went down there and he said to return in about an hour and he would do it.

Q. What was the result? A. We went back in about an hour and he prepared them, and Mr. Freedman refused to sign the papers.

Q. Why? A. He preferred breaking that option agreement to signing any papers, and Judge Macpherson and Mr. Freedman was left in the room

and I sat out in the other room, and when Judge Macpherson came out and was walking through, I said, "What have you done?" He said, "I haven't done anything, and if Mr. Freedman doesn't make up his mind pretty soon, I will throw it up altogether."

Q. Did he draw up any papers, or were any signed? A. No, he refused to sign it; Judge Macpherson went to Harry Heher's office, and he said, "I'll break that option agreement, even if I have to get Katzenbach to do it." I think Judge Macpherson went to Mr. Heher's office.

Q. On Saturday morning, June 26, did you go by appointment to Judge Macpherson's office? A. Yes, sir.

Q. Before going there, did you try to find Mr. Freedman, or did you have an appointment to meet him there at Judge Macpherson's office? A. I had an appointment to meet him.

Q. Tell us what transpired at Judge Macpherson's office. A. I went to Judge Macpherson's office with the intention of presenting the cash money of $10,000 and $15,000 in notes.

Q. Did you have them? A. Yes, sir, the cash money and gold notes, three five thousand dollar notes. I walked in—Mr. Freedman was also there—and I said I was ready to tender this money, and Mr. Freedman spoke of excess money. I said, "I don't think there is any due you, Mr. Freedman, but I will gladly arbitrate, or, if you don't want to do that, I am willing to do anything; you can go to law; I am willing to do anything to get this matter settled quickly." He said, "How about security for these notes?" I said, "You didn't offer me any security," and he said he wanted interest, he wanted the interest paid, and I said, "You didn't pay me any interest"; I said, "If you are willing to arbitrate this matter with the same arbitrators that are ready to report now, I will not

only give you interest on these notes, but I will give you an indorser for the notes, or security, a mortgage on my home or on the property on Perrine Avenue; I will give you most anything if you settle it right away." He said he wanted those things, and I said, "You didn't offer me any such conditions"; he said, "I know, I am good for it, you are not"; and he wanted me to put some merchandise away as security for these notes or any excess money, and I said, "No, I won't do that"; I said, "I'll put up merchandise as an act of good faith to arbitrate"; but he wanted it to stay there all the time, and also he wanted a mortgage on the personal property, the merchandise in my warehouse; and I said, "That would tie me up and I couldn't do any business; I can't do that."

Q. What did he say about—did you suggest the names of the arbitrators, the same arbitrators? A. I said, "the same arbitrators." He said, "No, I won't have these same arbitrators; I am afraid of Stokes; he might have influence over the other arbitrators"; he was afraid of Governor Stokes on account of Stokes acting on my part; he said his influence might have more effect. On that matter I got kind of sore, and I said, "I'll call off any proposition I made to you as to the payment of interest or security for the notes"; I said, "Here is your $10,000 in cash and $15,000 in notes"; I said, "In offering this money it is not to apply on account of any excess money you might claim is due you; it is for payment in full, as per my option agreement" offered to me by Mr. Freedman; "I am willing now to go to court, or to arbitrate, or anything else you want to, to ascertain if there is any excess money due you"; and Judge Macpherson at that time drew up a receipt—no, first he said to Mr. Freedman, "Do you want to accept this money?" He said, "Shall I, Judge?" He said, "It's up to you," and he accepted it; then Judge drew up a

receipt which said, "On account of money," and I said, "That's not right, and you put in the words, 'In accordance with the option agreement,' so it would complete it"; and then we left.

Q. This is the paper you refer to "C16"? A. Yes, sir. These words, "In accordance with," you put them in there.

Q. Had they at that time presented any statement showing the excess? A. No, sir; not until about July 15; I never knew what excess he claimed, but I was willing to let the arbitrators decide it.

Q. Were you ready to pay it? A. If any excess was due him, I was ready to pay him, in accordance with that agreement.

Q. I show you "Exhibit D4," and ask you whether, when "Exhibit D4" was shown to you, was it not when I first showed you that agreement that you first knew of this statement of excess, amounting to $27,737.80?

Mr. Katzenbach: That is objected to as leading.

Mr. Scammell: Question withdrawn. I ask to have this paper marked.

Said paper is marked "Exhibit D11 for identification."

Q. When with reference to "D4," did you see the statement which I have just had marked D11? A. July 15.

Q. In response to Exhibit D4, which I have just shown you, did I prepare at your direction, an agreement offering to arbitrate this matter? A. The way that come about, you called me up on the telephone and said Judge called you up and I said I didn't want to arbitrate the matter, and as an act of good faith, I said that I would be willing to arbitrate, and as a

surety that I would arbitrate, I would put $20,000 worth of merchandise in the storehouse.

Q. And, in accordance with that offer, did I not prepare an agreement and submit it to Judge Macpherson, covering those terms? A. Yes, sir.

Q. I show you a paper; please examine it and see whether that is not the original agreement which I prepared, in which you offered to arbitrate, and in which is the pledge of $20,000 of merchandise as security for your good faith? A. Yes, sir.

Mr. Scammell: I offer that in evidence.
Said paper is marked "Exhibit D12."

Q. Judge Macpherson refused to accept that? A. Yes, sir; he objected.

Q. Take Exhibit D11 and please explain the first item of excess claimed by Mr. Freedman.

Mr. Katzenbach: That is objected to as immaterial.

The Court: I think it is not material, but if you think you can throw any light upon the subject, go ahead.

Q. Mr. Fineberg, in addition to the amount invested in the Leicester Rubber Company, did you have any indorsements upon other paper than the $10,500? A. Yes, sir.

Q. To what extent? A. Approximately $13,000.

Q. Was the question as to the responsibility of the Trenton Scrap Rubber as to this amount of indorsement, likewise taken up by the arbitrators? A. Yes, sir.

Q. And one of the questions submitted for their—
A. Arbitration.

Q. So that you had a responsibility outside of these items here, of about $12,000? A. Yes, sir.

Q. After your understanding to submit to arbitration, did Mr. Fineberg buy any stock from you or make any purchases of material from you? A. On the 22nd, after I bought Mr. Freedman's rights in the company, he purchased goods from me personally, yes, sir.

By the Court:

Q. Goods of the former co-partnership? A. No, sir.

Q. Goods which were dealt in by the co-partnership? A. Yes, sir.

Mr. Katzenbach: I object to that as immaterial, and ask that it be struck out.

The Court: I will not strike it out.

Q. What goods did he buy from you? A. Auto tires.

Mr. Katzenbach: That is objected to.

Q. When did he buy them? A. Right after the purchase, right after I purchased the interest of Mr. Freedman.

Mr. Katzenbach: That is objected to; I must say that I am at a loss to understand this at all.

By the Court:

Q. What were they? A. New auto tires that he purchased for his Atlantic City store; we dealt in new auto tires as well as scrap rubber, and he bought those auto tires from me for his Atlantic City store.

CROSS-EXAMINATION by Mr. Katzenbach:

Q. What is your age? A. 32.

Q. Where were you educated? A. Trenton.

Q. What schools of Trenton? A. The Trenton public schools.

Q. The High School? A. Yes, sir, the High School.

Q. And you are a graduate of Rutgers, aren't you? A. Rutgers College.

Q. You are? A. Yes, sir.

Q. What time did you become engaged in business with Mr. Freedman, about how many years ago? A. I was engaged in business about eleven years ago, and I was in business about four or five months when I met Mr. Freedman, for myself.

Q. And then you continued without partnership articles for some time, and then made partnership articles under date of July, 1907? A. Yes, sir.

Q. And when you started out in 1907, who kept the books of the Trenton Scrap Rubber Supply Company? A. I believe I kept them myself; I won't say sure, but I think I did.

Q. And then Mrs. Davis, who was Miss Sheeley, came to your employ? A. Yes, sir.

Q. What did she first do? A. Stenography.

Q. And then did you instruct her in bookkeeping, so that she subsequently became bookkeeper? A. I instructed her the best I knew how.

Q. I am not finding fault with the instruction; you did instruct her? A. Yes, sir.

Q. Your end of the business was the office end, was it not, more than to go out and buy the scrap? A. My end of the business was all ends.

Q. You took charge of the books, didn't you? A. Yes, sir.

Q. And you took charge of the bank accounts? A. Yes, sir.

Q. And you attended to the correspondence of the firm? A. Yes, sir.

Q. And you largely conducted the sales of scrap rubber, did you not? A. Both purchases and sales.

Q. Did you travel much on the road, or did Mr. Freedman do most of the traveling? A. The first two years I did the traveling.

Q. After the first two years he did it? A. Mr. Freedman did a lot of the traveling, most of the traveling we done out west, and during the time we were in business he has made approximately fifteen or sixteen trips, although he made several local trips to Philadelphia.

Q. During the years 1912, '13 and '14, Mr. Freedman made a number of trips to the west, didn't he? A. About an average of three trips a year.

Q. And they would last how long? A. Anywhere from a week to ten days; I think on one or two cases it lasted two weeks.

Q. You produced some correspondence with reference to the purchase of the plant at Catasauqua? A. Yes, sir.

Q. These letters, which are carbon copies of letters sent by you to a firm known as Leonard and Company, were all dictated by you, were they not? A. I believe every one of them was.

Q. Can you find any that were not dictated by you? A. I don't think there is any before I look.

Q. Just look, so that we can be certain about it. A. There isn't any here, for I dictated all the correspondence.

Q. And the replies that were received from Leonard and Company were letters that were opened by you and read by you? A. Most of the letters would be opened by Mr. Freedman first, for he would go to the post office to get the mail.

Q. Did you dictate all the answers to these letters with reference to this mill at Catasauqua? A. Yes, sir.

Q. Now, do you recall the visit of Mr. Leonard to the City of Trenton? A. Yes.

Q. How many visits did he make to the City of Trenton? A. Two that I know of.

Q. And on one of those visits, the first one, where did you meet him? A. At the Trenton House.

Q. After that, did you personally go to Catasauqua to inspect this mill? A. Yes, I believe I did, yes.

Q. And you met Mr. Leonard there? A. Yes.

Q. And on that occasion Mr. Freedman was not with you, was he? A. No, sir, he was not.

Q. When did you next see Mr. Leonard in the City of Trenton? A. In the office of the Trenton Scrap Rubber Supply Company.

Q. About what day was that? A. I don't know about, but I think, it was in the month of July, I believe; I think it was July.

Q. And on that date who were in the office of the Trenton Scrap Rubber Supply Company? A. Mr. Freedman, myself and Mr. Leonard, and Mr. Maher came in.

Q. Was Mr. De Piano there? A. I don't think so, but perhaps he was; I won't say sure; I don't think he was; it might possibly be he was there.

Q. Did Mr. Freedman and yourself go out of the office of the Trenton Scrap Rubber Company to talk about this matter? A. Yes, sir.

Q. You talked in the stock room? A. In the warehouse, and we left Mr. Leonard and Mr. Maher alone.

Q. So that Mr. Maher and Mr. Leonard were left in the room? A. Yes, sir.

Q. Now, then, at that time, what, if anything, did Mr. Freedman say to you? A. Mr. Freedman said at that time that he couldn't very well afford to move up to Catasauqua, and he wanted me to take charge of the place—

Q. Did he say he wouldn't go up there? A. He said he couldn't go at that time, but would arrange to go up later.

Q. Then why was it after that, that you went—did you go to the office of Judge Macpherson? A. Yes, sir.

Q. Who went with you? A. Mr. De Piano.

Q. Anybody else? A. Mr. Leonard.

Q. Now, then, this agreement was drawn up, was it not, at the office of Judge Macpherson on that day? A. Yes, sir.

Q. And that agreement was drawn between you and and Mr. De Piano, of the one part, was it not? A. Mr. De Piano represented the Leicester Rubber Company.

Q. Wasn't the agreement drawn between you and Mr. De Piano, of the one part? A. Yes, sir.

Q. And Leonard and Company, of the other? A. Yes.

Q. You paid $500 down to bind the bargain, as they say? A. Yes, sir.

Q. That was what you paid it for, to bind the bargain? A. Yes.

Q. That $500 was charged to your personal account upon this ledger of the Trenton Scrap Rubber Supply Company? A. Yes, sir.

Q. Now, then, after that date in July, how many days did you have before you had to make the final payments on this mill? A. I think it was thirty days, or a month, that was given, or five weeks—I think thirty days.

Q. Thirty days? A. Yes, sir.

Q. Assuming that the agreement was made July 12, 1913, when would the thirty days expire? A. About August 12.

Q. Now, then, do you recall a meeting with Mr. De Piano, Mr. Joseph Maher, Mr. William M. Maher and

yourself, down at the office of the Leicester Rubber Company on Perrine Avenue in this city, on or about August 11, 1913? A. No, sir.

Q. You don't recall a meeting down in the office of the Leicester Rubber Company on August 11, 1913? A. No, sir, I do not.

Q. Where was it that you made your agreement for the 197 shares of capital stock? A. That was done up in Catasauqua, I believe.

Q. At Catasauqua? A. Yes, sir.

Q. And who were present at the meeting when you agreed to pay $62.50 for this 197 shares of stock? A. I don't know who was present; I don't think I was there.

Q. You don't think you were there? A. No, sir.

Q. How could that agreement be arrived at by which you were to pay $62.50 for 197 shares of stock, if you were not there? A. At first they had agreed to issue about 160 shares at $100 a share. Mr. Freedman tried to explain that on account that it was a moving proposition, they would lose $10,000, and the shares would only be about $62.50 a share.

Q. Haven't you any recollection of being at a meeting at Catasauqua, Pennsylvania, or at the office of the Leicester Rubber Company on Perrine Avenue in the City of Trenton, or any other place where there were present Mr. Joseph Maher, William Maher, Mr. De Piano and yourself? A. Only at the time they agreed to issue these shares at $100 a share; that's the only time I remember.

Q. When was that? A. That was at the start; I never accepted.

Q. Were you present at any time when you agreed to take them at $62.50 a share? A. I don't think I was present; no, sir, I don't think I was present; that happened at Catasauqua, Pennsylvania. I doubt very

much whether I was present, because we talked that matter over verbally.

Q. Then you were never present at a meeting of the two Mr. Mahers and Mr. De Piano, at which it was agreed that you were to take a half interest at $12,500? A. Yes.

Q. Where was that? A. In Trenton, before they moved up there.

Q. Where did the meeting take place? A. The Leicester Rubber Company's office.

Q. What was the date of the meeting? A. I can't recall that.

Q. You recall attending the meeting, then? A. Yes.

Q. Just what took place at that meeting when you bought this stock? A. They agreed to issue that stock, half of the stock of the company, to either myself or the Trenton Scrap Rubber, for the consideration of $12,500.

Q. Do you recall testifying in this case before Mr. Oliphant, in the case of the Leicester Rubber Company; do you? A. Yes, sir, I remember testifying.

Q. Do you recall testifying on November 16, 1914, as follows: "Mr. Fineberg, you were a stockholder of this company (meaning the Leicester Rubber Company)? A. Yes, sir. Q. How much stock did you hold? A. $12,500 worth. Q. Paid-up stock, treasury stock? A. What do you mean by treasury stock? Q. Never been issued to anyone else. A. Not that I know of. Q. Did you know what the par value of the shares was? A. I know at that time it was little over $60,000; I paid $62.50; I paid a little more than the par value at that time. Q. How did you come to buy them? A. Through Mr. De Piano and Mr. Maher. Q. Did you attend a meeting of the company? A. I was present at the time I bought my shares; I was present and Mr. De Piano and both the

Mahers. Q. Tell us what took place when you bought this stock. A. At that time I told them if I took any interest at all, I would want to take half-interest, and I asked them what the half-interest would amount to, and they told me $12,500. I told them at that time I didn't have any money, but I would give a note—they needed money at that time. Then the company issued a note, and I indorsed and discounted at the Mechanics' National Bank because of my personal obligation; and when the note came due I paid it off in full, so my stock was paid in full; and I didn't owe the company any money"; do you recall that testimony? A. Yes, sir, I do.

Q. You recall that? A. Yes, sir.

Q. And that is correct, is it not? A. It is wrong there in reference to that $12,000.

Q. Did you so testify under oath? A. I believe I did.

Q. You do recall making this agreement for stock? A. That was not Trenton; I didn't get the stock at all; they were up in Catasauqua; I didn't get it until they were up in Catasauqua.

Q. You got the stock in Catasauqua? A. Yes, sir.

Q. And the receipt to Isaac Fineberg was signed in the stock book? A. Yes, sir.

Q. You remember that? A. Yes.

Q. You also remember that you put these certificates in the safe of the Trenton Scrap Rubber Supply Company? A. I did; at that time I didn't know where they were.

Q. What did you do with the certificates of stock? A. I think it was up in Catasauqua, and when I come to Trenton, I put it in the safe.

Q. How long was it in the safe? A. Until here a short time ago.

Q. You say you put it in the safe? A. Yes, sir.

Q. Who did? A. I did.

Q. And that was the safe down in the office? A. Yes.

Q. Now, then, how long did you know it was in the safe? A. Why, I forgot about the stock, and I didn't find it until here the other day when Mr. Scammell asked me if I could find the stock certificate.

Q. Didn't you say it had been in the safe the entire time? A. Yes; I only found it a short time ago; I knew it must have been there all the time.

Q. You didn't know where it was? A. Not until I looked for it.

Q. Then you were mistaken this morning when you said you did know where it was? A. I don't think I said that positively.

Q. Didn't you make this statement; didn't you testify on November 16, 1914, as follows, with reference to this certificate, before Mr. S. D. Oliphant, Referee: "Q. Were the certificates issued to you? A. A long while afterwards. Q. Have you got those certificates? A. If I have, I don't know where they are; but if I look for them, I believe I can find them"; is that correct? A. Yes, sir, it is.

Q. Now, then, Mr. Fineberg, that was not the first time you testified under oath with reference to this certificate; you remember testifying before that Referee on November 6, did you not? A. Yes, sir.

Q. Did you testify as follows: "Were you a stockholder, or are you a stockholder of the Leicester Rubber Company? A. Yes, sir. Q. How much stock did you have? A. $12,500. Q. And that you purchased from the company? A. Yes, sir. Q. What is the par value of it? A. I think the par value is $100. $62.50 is what I paid. Q. How did you pay this? A. Paid cash for it. Q. At the time of its issuance? A. Not at the time of its issuance; we issued a note, which I paid in full. Q. You gave the company a note? A. The company issued a note at that time for

$12,000, of which $12,500 was my obligation, and I paid that myself. Q. The books show that, do they? A. I believe it does; if it doesn't it should show." That is true, isn't it? A. Yes, sir, it is.

Q. Mr. Fineberg, after you entered into this agreement on July 12, and after you had had this meeting at which you agreed to take these shares of stock, did you then pay for the plant at Catasauqua? A. It was paid for in August.

Q. What date in August? A. I don't know; I think August 12th was the right date; I won't say sure; I think August 12th.

Q. Who went to Catasauqua to buy that plant? A. I think the Mahers, I am not sure about this, but I know De Piano and the Mahers and myself.

Q. Who carried the money? A. I think there was a certified check for twenty-one or twenty-one thousand five hundred dollars.

Q. And who carried the check? A. I did.

Q. You had had that certified at the Mechanics Bank? A. I think it was, yes.

Q. And that was a part of the proceeds of this $25,000 note? A. Yes.

Q. And you were indorser upon that note? A. Yes, sir.

Q. And you continued to be an indorser on that note until it was reduced to $10,500? A. Yes.

Q. And that is the note of which this $10,500 is the remnant, which was paid on December 15, 1914? A. Yes, sir.

Q. Now, before going up there to Catasauqua, did you have any talk with Mr. Joseph Maher? A. I don't remember.

Q. That is, to pay for the plant? A. I don't remember any conversation, unless it was to the effect that he didn't care much about moving, and I told him if he went up there for about six months, we could

possibly arrange to take the stock off his hands at that time.

Q. Did you make such an arrangement yourself with Mr. Maher, to see that the stock was taken off his hands? A. That is, the Leicester Rubber Company would; I think I did.

Q. He didn't care to go up there? A. He didn't care to do it.

Q. At the end of the six months, the Leicester Rubber Company bought his stock? A. Yes, sir.

Q. And gave a note? A. Yes.

Q. And you personally indorsed that note? A. Yes, sir; I think it was renewed on one or two occasions.

Q. You indorsed all the renewals, did you not? A. Yes, sir.

Q. Who paid the note? A. The note isn't paid yet; I gave him my note; that is, I was guarantee on the indorsement; I wanted to avoid a lawsuit; I gave him a note for it.

Q. When did you give him your note? A. I guess about three months ago.

Q. So that you have the note of the Leicester Rubber Company, then, in your possession? A. No, I haven't; I think Oliphant has it; it hasn't been settled up, but they intend to return it.

By the Court:

Q. Did you give your note for the full amount? A. No, it was figured approximately 30%; I told him I would give him a check for the difference. We figured about 30% dividends; that would bring it down to $950. I give my note for $900, and if there was any difference coming to him, I would give him my check.

By Mr. Katzenbach:

Q. You figured what the possible percentage might be, and then, to make up the full amount, you gave him your personal note? A. Yes, sir.

Q. And that is the way that was done? A. Yes, sir; I feel certain I give him my personal note.

Q. When you got up to Catasauqua and the Rubber Company was started up there, did you interest your cousin, Mr. Harry Bernstein, in taking any of the stock of the Rubber Company? A. Mr. Bernstein told me he wanted to become interested.

Q. Did you take him up there with you on any occasion? A. I don't think he went up there until he became interested.

Q. With whom were the negotiations with Harry Bernstein conducted? A. With me.

Q. As a result of that, he put $10,000 in cash into the concern? A. Yes, sir.

Q. And he took stock for his $10,000? A. Yes, 62 1/2 a share.

Q. So that you and he had the controlling interest in the Leicester Rubber Company after that? A. It would appear that way, yes.

Q. Now, then, did you go to the Lehigh National Bank and become acquainted with the banking officers up at Catasauqua? A. Yes; Mr. Maher introduced me.

Q. The result of that introduction was, that the Leicester Rubber Company borrowed some $10,000, did they not? A. Anywheres from eight to ten thousand dollars; I don't know exactly.

Q. And that was in the form of promissory note, was it not? A. Yes, sir.

Q. And did the bank request that there be any indorsers upon that paper? A. Yes, sir.

Q. And who became indorsers upon the paper at the Lehigh Bank? A. I think all of us, De Piano, Bernstein and myself, and Maher.

By the Court:

Q. Yourself personally? A. Yes, sir.

By Mr. Katzenbach:

Q. And is that paper still, or is the remnant of it, still at the Lehigh Bank? A. Yes, sir.

Q. At Catasauqua? A. Well, it's either up there, or they filed them with Oliphant.

Q. They have got it, and your personal indorsement is upon that? A. Yes, sir.

Q. Mr. Fineberg, in the purchase of supplies for the Leicester Rubber Company, did you have any negotiations with the William R. Thropp and Sons Company? A. Yes, sir.

Q. You conducted these negotiations for machinery, didn't you? A. Yes, sir; I conducted a great deal of negotiations.

Q. You had negotiations with them? A. Yes.

Q. What amount of money did the Leicester Rubber Company become indebted to the Thropp Company for? A. I don't remember.

Q. Approximately $8,000 or $10,000? A. No, it might have been three or four.

Q. Did you indorse any notes of the Thropp and Sons Company in payment? A. Yes, I think I did. Mr. De Piano, Mr. Bernstein and myself indorsed either one note or two notes.

Q. For Thropp and Sons Company for this machinery they furnished to the Leicester Rubber Company? A. No, that was in settlement of some of the bills; I didn't guarantee Thropp's account; any notes the Leicester Rubber Company give them, I would indorse.

Q. You indorsed notes in payment of the merchandise which they sold to the Leicester Rubber Company? A. Yes.

Q. Did you personally guarantee the account of the Leicester Rubber Company with the Rubber Trading Company? A. I did.

Q. Did you purchase any lumber over in Newark at any place? A. I didn't, they purchased it up there direct, and they wouldn't ship unless someone guaranteed the account.

Q. And they sent word to you? A. They sent word to Trenton, and I don't know whether I personally guaranteed or the Trenton Scrap.

Q. Don't you recall testifying that you personally guaranteed? A. Possibly I did.

Q. Do you know of any claim of the Trenton Scrap Rubber Company that Mr. Freedman and yourself and the Leicester Rubber Company personally guaranteed? A. I can't recall, unless it was D. Fineberg, of New York.

Q. You say you didn't testify before Mr. Oliphant as Referee that you personally guaranteed the account of D. Fineberg and Company? A. I won't say that.

Q. Have you paid the account of D. Fineberg and Company? A. No; no settlement has been made yet.

Q. Have they written any letters to you with reference to the matter? A. I can't recall receiving any for some time, perhaps they did; I know there has been an open account with them in dispute for some time.

Q. Of the Leicester Rubber Company? A. No, of the Trenton Scrap Rubber.

Q. D. Fineberg and Company are merchants of Boston? A. Yes, sir.

Q. Will you say you didn't personally guarantee the account of the Leicester Rubber Company with D.

Fineberg and Company? A. I can't make that positive statement.

Q. Will you state any account of the Leicester Rubber Company that the Trenton Scrap Rubber Company guaranteed? A. Not that I can remember; there might possibly be one or two accounts, but I can't remember.

By the Court:

Q. The question is, did the Trenton Scrap Rubber Company guarantee any of the accounts? A. I can't remember.

By Mr. Katzenbach:

Q. Now, Mr. Fineberg, this note of $25,000 that was made and discounted at the Mechanics National Bank came due in November, did it not, about November 12, 1913? A. Yes, sir.

Q. At that time $12,500 was paid on it, was it not? A. Yes, sir.

Q. And you are familiar with the entries that were made with reference to that, both on the books of the Leicester Rubber Company and of the Trenton Scrap Rubber Company, are you not? A. Not of the Leicester Rubber Company, but I am of the Trenton Scrap Rubber.

Q. Didn't you ever examine the entries of the Leicester Rubber Company? A. The only time I examined those entries was at the time of the bankruptcy.

Q. Now, then, when that note come due, $12,500 was paid upon it by you? A. No, $1,400.

Q. Well, that was credited upon the note of October 22nd? A. Yes.

Q. And that was charged to you on the books of the Trenton Scrap Rubber Company? A. Yes, sir.

Q. Now, the $11,100 under date of November 12, 1913, was charged to you, to your knowledge, on the

books of the Trenton Scrap Rubber Supply Company? A. Yes, sir.

Q. Did you pay the $12,500, which was a little in excess of the amount you agreed to pay for the stock, was it not; that made up that $12,500, and it was a little more than you agreed to pay for this stock? A. I thought that the amount I was going to pay for that stock was $12,500.

Q. And you were gratified to learn afterwards that it was only $12,312.50? A. Yes, sir.

Q. You had made a calculation of what 197 shares would be? A. Mr. Maher figured that out, and it was approximately right.

Q. The matter of $187.50 was too trifling to bother about? A. No; it was actually made, and it was a whole lot, but I understood they were giving me $12,500 in stock.

Q. But they really did better by you than that? A. No; that was at $62.50 a share.

Q. Mr. Fineberg, the books of the Trenton Scrap Rubber Company contained a stock and bond page, did they not? A. Yes, sir.

Q. Have you got a stock and bond page there? A. I think I have it here, I am not sure; it is there in the ledger (looking among papers); I got it.

Q. Now, there was an account then known as the stock and bonds account? A. Yes, sir.

Q. And this is the ledger sheet of the stock and bonds account? A. Yes, sir.

Mr. Katzenbach: I offer it in evidence.

Said sheet is marked Exhibit C19.

Q. Now, Mr. Fineberg, on this stock and bonds account, when the Trenton Scrap Rubber Company purchased any stock or any bonds, they entered it upon the stock and bonds account, didn't they? A. Yes, sir.

Q. And this shows an item of the purchase of Mechanics National Bank stock? A. I believe so.

Q. And of Empire Rubber and Tire Company stock? A. Yes, sir.

Q. And shows what prices were for it, in cash? A. I think it shows the total amount given for it in cash.

Q. It shows what the charges for the stock were and what amount you received for it, does it not? A. Yes.

Q. In the instance of this payment of $1,400 and $11,100, under the two dates of October 22 and November 12, 1913, that was not charged on the book in the stock and bonds account, was it, of the Trenton Scrap Rubber and Supply Company? A. No, sir, it was not.

Q. And those cash entries went as charges to you upon your personal account? A. Yes.

Q. Mr. Fineberg, how often did you used to go to Catasauqua after August 12, 1913, for the purpose of looking after this business up there? A. About once a week or once every two weeks; once I didn't go up for three weeks. When I had time I would go up there.

Q. Did you attend to the correspondence up there? A. When I was up there I did, yes, the same as in Trenton; I attended to the correspondence from the Trenton office.

Q. You answered some letters of the Leicester Rubber Company in Trenton? A. Yes; we did write quite a few letters of the Leicester Rubber Company in Trenton.

Q. Have you copies of any of those letters you wrote? A. I think I got a few.

Q. All right; produce them, then?

By the Court:

Q. How were they copied? A. Carbon sheets.

By Mr. Katzenbach:

Q. The letters were carbon sheets? A. Yes, in the files of the Trenton Scrap Rubber.

Q. Were the copies of any letters you wrote for the Leicester Rubber Company in books or on sheets, yellow sheets? A. Yellow sheets, and the person who wrote the letter.

Q. And the person who dictated them? A. Yes.

Q. Do you recall that there was a meeting to be held to increase the capital stock of the Leicester Rubber Company? A. I do.

Q. You consulted with Mr. Bernstein, William Maher and De Piano about increasing that capital stock? A. Mr. Maher called my attention to the fact that we would have to increase it to conform with the law, as there was more stock issued.

Q. You talked that over up there at Catasauqua? A. I think it was.

Q. And as a result of that talk, it was proposed to hold a meeting, was it not, for the purpose of taking action on that increase? A. Yes, sir, I authorized Mr. Bernstein.

Q. You authorized your cousin to vote your shares of capital stock? A. Yes, sir.

Q. And that is your stock there? A. Yes.

Q. Exhibit C12? A. Yes, sir.

Q. You also signed a waiver of notice of the meeting? A. Yes, sir, I remember that.

Q. Signed "I. Fineberg, 197 shares"? A. Yes, sir.

Q. And this is that paper, that is your stock? A. Yes.

Q. The business was running along in June, 1914, and then you were going to increase your capital stock—was it not? A. Mr. Maher took charge of that; I don't remember.

Q. Now, the fire took place on the 18th of July? A. I don't remember the exact date, but I think it was in July, on Saturday, I think it was.

Q. And you returned to Trenton, did you not? A. I was up in the Catskill Mountains at that time, and I received a telegram from—

Q. You returned to Trenton? A. Yes.

Q. And you went up there to Catasauqua, didn't you? A. Not for several days afterwards.

Q. When you did go there, you went to the office of Mr. Schneller, didn't you? A. Yes.

Q. And drew up an agreement by which the personal property was turned over to you? A. Me and the Trenton Scrap Rubber Supply Company.

Q. Now, then, the Trenton Scrap Rubber Supply Company had advanced how much money to the Leicester Rubber Company in the form of goods and cash, etc.? A. I can't recall now, but I guess to the extent of $20,000.

Adjourned until Monday, the 3rd day of April, 1916, at 2 o'clock.

Defendant's Witness, Isaac Fineberg, Cross

Fourth Day.

IN CHANCERY OF NEW JERSEY.

Between:

HARRY FREEDMAN,
Complainant,

and

ISAAC FINEBERG,
Defendant.

On Bill, etc.
Testimony.

Testimony taken in the above-entitled cause, at the State House, Trenton, New Jersey, on Monday, the third day of April, 1916, at 2 o'clock P. M.

Before Hon. John H. Backes, Vice-Chancellor.

Appearances:

George W. Macpherson and Frank S. Katzenbach, Jr., Esqs., for the Complainant.

Scott Scammell and Charles Besore, Esqs., for the Defendant.

ISAAC FINEBERG, the above-named defendant, resumes the stand:

Cross-examination continued by Mr. Katzenbach:

Q. Mr. Fineberg, after this assignment of the personal property of the Leicester Rubber Company was made to you, did you direct or order any of the goods of the Leicester Rubber Company to be turned over to the Rubber Trading Company or the Rubber Trading Supply Company? A. There was Gambia over there that was purchased from the Rubber Trading Company, but at that time we didn't expect to—

Q. I am asking you whether you did or did not turn that over to the Rubber Trading Company, that Gambia? A. I directed it to be, yes.

Q. And the Rubber Trading Company's account with the Leicester Rubber Company was one of those accounts which you had personally guaranteed? A. It was.

Q. So that by the turning over of this Gambia to the Rubber Trading Company, the indebtedness of the Leicester Rubber Company to the Rubber Trading Company was reduced? A. Yes, sir.

Q. Now, you said you spent some period of time up at Catasauqua in the management of this rubber company, did you not? A. I spent very little time; I couldn't get away.

Q. Well, I was going to say that you have spent enough time to ask for an allowance of $6,000 or $7,000 for the time you did spend at the Leicester Rubber Company? A. Yes, sir.

Q. And that was for a period of less than a year, was it not? A. No, I think it was for a period of fourteen or fifteen months.

Q. When did the period of your services with the Leicester Rubber Company commence? A. As soon as negotiations were opened.

Q. For the sale of the Catasauqua plant? A. Yes, that was right after that.

Q. That would be in the month of— A. August.

Q. 1913? A. Yes, sir.

Q. And the fire took place in the month of July of the next year? A. Yes, sir.

Q. 1914? A. Yes.

Q. July 18, 1914, a little less than a year? A. Yes, sir.

Q. And you have asked that you be personally allowed for your services for that length of time, six or

seven thousand dollars? A. I don't want you to misunderstand me.

Q. No, I want you to make yourself understood. State it just exactly as it is? A. You see, we did a great deal of business in the Trenton Scrap Rubber office here in Trenton; I only went up there about once a week, and sometimes once in two weeks, and twice a week; we did a great deal of business in the Trenton Scrap Rubber office.

Q. This claim of salary was made by you before the Referee? A. Yes.

Q. And it took in what you say was done by you in the Trenton Scrap Rubber Company's office, as well as the visits to Catasauqua? A. That was done in the Trenton Scrap Rubber office by both Mr. Freedman and myself, and at Catasauqua by me.

Q. Do you say that Mr. Freedman did anything with reference to the affairs of the Leicester Rubber Company in the office of the Trenton Scrap Rubber Company? A. Yes.

Q. What did he do? A. He would read over the correspondence that was written in the office.

Q. The correspondence with the Leicester Rubber Company? A. Yes.

Q. Did Mr. Freedman ever write a letter for the Leicester Rubber Company, to your knowledge? A. No, sir.

Q. He never did, did he, to your knowledge? A. Not that I can remember; I will say "No."

Q. Now, then, in the bankruptcy matter of the Leicester Rubber Company, you made before Mr. Oliphant a claim of six to seven thousand dollars for your personal services to the Leicester Rubber Company, have you not? A. Yes, sir.

Q. When the Trenton Scrap Rubber Company borrowed any money of the banks, we will say, for example, the Mechanics Bank or the First National

Bank, for the accommodation of the Trenton Scrap Rubber Company, did Mr. Freedman indorse that paper personally? A. For the accommodation of the Trenton Scrap?

Q. Yes. A. He seldom indorsed notes; I did that myself, the same as for the Leicester Rubber Company.

Q. You did the indorsing? A. Yes.

Q. You have produced a note of $3,000 or $3,500, have you not? A. Yes, sir.

Q. Now, Mr. Fineberg, this note of $10,500, which was the remnant of the $25,000 Leicester Rubber Company note, made payable to De Piano, Mr. Bernstein and yourself, and indorsed by yourselves, and then the Trenton Scrap Rubber Supply Company, I. Fineberg, Treasurer, that was in the Mechanics Bank protested, was it not? A. Yes, sir.

Q. And it was there from November 12, the date of the certificate of protest, to December 15 of the year 1914? A. Yes, sir.

Q. That is true? A. Yes, some time in December.

Q. Does the check of $10,500, drawn by you—it was, wasn't it? A. Yes, sir.

Q. Does that refresh your recollection as to when this $10,500 note was taken out of the Mechanics Bank; does it refresh your recollection? A. Yes, sir, it does.

Q. Now, that note was taken out of the Mechanics Bank by this $10,500 check, was it not? A. No; by giving that note—

Q. What did the $10,500 check of December 15, 1914, take up? A. That $10,500 note.

Q. Now, then, Mr. Fineberg, Mr. Freedman was absent in the West buying scrap rubber at that time, was he not? A. Yes, sir.

Q. And on December 15, 1914, did you draw a note, "Trenton Scrap Rubber Supply Company, I.

Fineberg, Treasurer," to the order of Isaac Fineberg for $3,000? A. Yes.

Q. To the order of Isaac Fineberg for $3,000? A. Yes.

Q. And then indorsed it "Isaac Fineberg, Trenton Scrap Rubber Supply Company, I. Fineberg, Treasurer"? A. Yes, sir.

Q. Now, then, after the return of Mr. Freedman from the West to Trenton, did you ask Mr. Freedman to come down to the Mechanics Bank and place his name on this note, D9? A. Yes, sir, on the renewal note of $10,500.

Q. Now, then, you have referred to this as a renewal note? A. Yes, sir.

Q. What is your idea of a renewal note, Mr. Fineberg? A. If we have, for instance, a $500 note, and I want to pay $100 on it, that leaves a $400 note, and that is a renewal.

Q. That presupposes the same indorsers and the same makers for its renewal? A. Not always, no.

Q. Mr. Fineberg, you don't mean to tell me that, in your opinion, the note of $3,000, marked Exhibit D9, is a renewal of the note of $10,500 marked Exhibit D3, do you? A. Yes, sir.

Q. Well, now, that is your opinion of a renewal note? A. That's true; that is a renewal of the $10,500 note.

Q. Do you think D9 is made by the same maker? A. Yes, sir, but the maker is a bankrupt, we couldn't accept them.

Q. Was it the same maker? A. No, we couldn't have the same maker.

The Court: Is there any use of taking up any time on that?

Q. Now, Mr. Fineberg, there was a settlement made between you and Mr. Freedman upon the books of the

Trenton Scrap Rubber Company as of the date of July 1, 1912? A. Yes.

Q. And the books show no settlement made from that date to the present date, do they? A. No, sir.

Q. Now, you said that there had been a settlement or an adjustment on January 1st, 1914; is that correct? A. I don't think there was a settlement; there was some arrangement whereby Freedman would draw out an excess of four or five thousand dollars. No, we didn't have no settlement.

Q. Nothing was ever entered on the books of account as of the date of January 1st, 1914? A. No, sir.

Q. And the Atlantic City store was opened by Mr. Freedman over a year later, was it not? A. About ten or twelve months afterwards.

Q. And the entries were not made on the books of the Trenton Scrap Rubber Company until March, 1915; that is correct, is it not? A. February or March, yes, sir.

Q. That is when the entries were made? A. Yes, sir.

Q. And that was a year after you testified that you had this talk with Mr. Freedman on January 1st, 1914? A. Yes, sir.

Q. Was there any statement or memorandum signed by you or Mr. Freedman, as of the date of January 1st, 1914, as to your respective interests in the Trenton Scrap Rubber Company? A. I don't think there was, I don't think so.

Q. On the settlement of July 1st, 1912, Mr. Freedman at that time had in the business some $4,000 more than you did, did he not? A. Something like $3,300.

Q. There was two checks of the Trenton Scrap Rubber Supply Company of $2,000 each? A. Yes, sir.

Q. This $4,000 was put back in the following February, 1913, and then withdrawn by Mr. Freedman, $3,000 in one lump, to pay off a mortgage on a property of his, and another $1,000 for another purpose, so that he squared it up? A. Yes, sir.

Q. Now, then, that was in February, 1913; there is nothing further shown on the books as to any settlement between you—the moneys for the Atlantic City store were not drawn until about fifteen months after January 1, 1913? A. A little over a year afterwards; I don't know that it was fifteen months.

Q. Mr. Fineberg, the difficulties between you and Mr. Freedman broke out in the month of March, 1915, or, at least, assumed violent shape at that time? A. I don't think it was March.

Q. How long was it before the arbitration agreement was entered into? A. I guess three or four weeks, or two weeks; I think this was around the first of April.

Q. It was then in the month of March or the first of April, 1915? A. Yes, sir.

Q. And then the arbitration agreement was signed on April 20, was it not? A. April 20 or 22, I think it was the 22nd.

Q. And this matter was in charge of the arbitration for what period of time? A. Approximately two months.

Q. And the matter that they were to arbitrate, or the principal matters that they were to arbitrate, were the stock of the Leicester Rubber Company and this $10,500 note, were they not? A. No, sir, that wasn't all.

Q. Well, I asked you whether those were the principal matters? A. It was just about half of it; that was part of the matters they were to arbitrate.

Q. Those were specifically mentioned in the arbitration agreement? A. That was all the matters of

the Leicester Rubber Company, which included my personal indorsements outside, which was $13,000.

Q. All matters of the Leicester Rubber Company? A. Yes, sir.

Q. And the next question was, who should retain the name, as well as the business of this partnership? A. Yes, sir, and then that trial expense we agreed to; that was agreed to verbally.

Q. That was about $800, was it not? A. All together, I would say $2,000, about.

Q. That wasn't included in the agreement? A. Governor Stokes didn't want it that way.

Q. That wasn't included? A. No, sir.

Q. The principal thing included was in connection with the Leicester Rubber Company? A. Yes, sir.

Q. Now, you say that in the month of June and prior to the withdrawal of this matter from the hands of the arbitrators, an inventory was taken? A. The inventory started in May and ended about the first of June.

Q. Then, an inventory was taken? A. Yes, sir.

Q. Do you say that the total assets from liabilities at that time was $51,000? A. Yes, sir, that is right.

Q. Now, then, if that was $51,000, when Mr. Freedman offered you $25,000 for your interest in the partnership, why didn't you accept that offer then; that was equal to one-half of the partnership assets, according to your figures? A. I thought I was getting an equal bargain, and I would rather buy it.

Q. But you were advised by counsel, weren't you, at the time? A. No, sir.

Q. Now, Mr. Fineberg, you knew that Mr. Freedman was claiming that you had withdrawn from the partnership a very considerable sum of money, and also was claiming that this $10,500 should be charged to your interest in the partnership? A. That was left to the arbitration.

Q. So that at least, all together it amounted to the sum, or nearly to the sum of $25,000, didn't it, or around about $22,500? A. At that time the matter was before the arbitration, but I didn't know what he had claimed until—

Q. The amount which Mr. Freedman— A. He didn't claim anything at that time.

Q. But these were matters being considered before the arbitration? A. Yes, sir.

Q. As to whether this should be charged to you personally? A. Yes, sir.

Q. That was it? A. Yes.

Q. Now, then, if that amount of $23,000 should be charged to you personally, and the assets were only $51,000 over and above the liabilities, then your interest in the partnership, assuming that his claim was correct, was only three or four thousand dollars, wasn't it? A. I had personally indorsed, you see, on—

The Court: Well, it wouldn't be that much, would it; wouldn't it be about $1,200?

Q. Then, Mr. Fineberg, if Mr. Freedman was willing to pay you $25,000 upon that basis, you would be getting considerably more in the partnership than it was actually worth, if his contention was correct? A. I can't see it that way.

Q. Now, in the $51,000 you omitted to add to that the accounts receivable as of the date of June 1, 1915, did you not? A. No, sir, I didn't.

Q. Do you mean to say that the concern had no accounts receivable on June 1st, 1915? A. The accounts receivable on June 1, 1915, was approximately $22,000, or about the same as June 22nd, but we had paid notes that would offset that account; we paid off notes and bills for it, so that the accounts receivable on June 22nd was approximately the same as on June 1st, but we reduced our liability considerably.

Q. Your books of account would show exactly what the bills receivable and bills payable were, as of the date of June 1, 1915, would they not? A. Yes, sir.

Q. Now, you went up to Mr. Heher's office about what date? A. In reference to what?

Q. In reference to the so-called option agreement? A. Yes.

Q. Now, when you went up there to Mr. Heher's office what date was it, to the best of your recollection? A. About the option agreement?

Q. Yes? A. I think it was June 21, if I am not mistaken; yes, I think that's right; I am not sure; I think it was June 21. Mr. Freedman met me in front of the postoffice—

Q. Now, then, when you were up there in Mr. Heher's office, this agreement was changed so that you were given the right to purchase if you so desired? A. Yes, sir; the same conditions?

Q. Yes? A. Yes, sir.

Q. You have heard Mr. Heher's testimony in court of what occurred? A. Yes, sir.

Q. And that gives a correct history of it, does it not? A. With the exception of two or three things I think he was in error.

Q. Now, then, as a result of what transpired up there, these additional clauses which gave you the right to take over Mr. Freedman's interest, were added? A. Yes, sir.

Q. Did you insert in that agreement a correction of the description of the $10,500 note? A. Yes, sir.

Q. And after that agreement had been signed by Mr. Freedman, what did you do with it? A. Mr. Freedman wanted me to give him an answer right away, and I tried to get Mr. Scammell, and I couldn't get him, and asked him to give me until ten o'clock in the morning.

Q. You accepted the agreement the following day? A. Yes, sir.

Q After you accepted that, you went before the arbitrators? A. Yes, sir, the same morning.

Q. When did Mr. Freedman ever first express a wish to avoid this option agreement? A. In Judge Macpherson's office; no, first before Governor Stokes at the arbitration, he said, "Let's tear up this agreement and prepare another one," and I said "No."

Q. You told him you wouldn't? A. Yes, sir.

Q. What did he say to you why he wanted another one drawn up? A. He didn't.

Q. He didn't tell you why he wanted another one? A. No, sir.

Q. He just simply said, "Let's tear this up and draw another"? A. Yes, that's all.

Q. Did that refer to the option agreement or the arbitration agreement? A. The option agreement.

Q. What was it that made you think it referred to the option agreement? A. He referred to the agreement which we had drawn up and which I accepted; he thought I was going to sell out, but instead of that I bought, and he didn't like the idea of my buying.

Q. Is that all he said, "Let's tear this up and draw up another"? A. Yes, sir.

Q. And it was all in the same breath? A. Yes, he said that to Governor Stokes.

Q. Now, when next did you hear anything said by Mr. Freedman with reference to the option agreement? A. In Judge Macpherson's office.

Q. You next met in Judge Macpherson's office to pay the money? A. Yes, sir.

Q. And that was how many days later than your acceptance of it? A. I don't remember exactly; on Saturday it was.

Q. Four days later then? A. Yes, sir, four days later.

Q. And it was there that Mr. Freedman received the $10,000? A. Yes, sir.

Q. And received the $15,000 in notes? A. Yes, sir.

Q. And that all took place in Judge Macpherson's office? A. Yes, sir.

Q. Now, then, after you left Judge Macpherson's office, when did you next see Mr. Freedman? A. On the outside; Judge Macpherson and Mr. Freedman went out, and Judge Macpherson went over to Harry Heher's office; I saw Mr. Freedman on the outside.

Q. On the outside of the building? A. Outside the Broad Street Bank building.

Q. And that was after you had delivered the notes and the cash? A. Yes, sir.

Q. Was there anything said then that referred to the option agreement? A. Mr. Freedman said he was going to break it.

Q. After he had accepted the notes and the cash? A. Yes; even if he had to employ you to do it.

Q. And that was within how many minutes after he had accepted the notes and the cash? A. Oh, maybe half an hour, anywheres between fifteen and thirty minutes, possibly a half an hour afterwards; I judge that.

Q. Was Judge Macpherson present when he said that, or Mr. Scammell, or just you and he? A. Just Mr. Freedman and I were there.

Q. When was this first arbitration agreement with reference to the excess drawn up, to your knowledge? A. On the same day as I accepted the option agreement; Judge Macpherson drew up the first one; I think it was on the 22nd of June. You refer to the last one, don't you?

Q. No, the first one with reference to the excess? A. Do you mean after I had purchased Mr. Freedman's interest?

Q. After the option agreement? A. Yes, sir, on the 22nd.

Q. And that was drawn up on the 22nd of June, the first one? A. Yes, sir; I feel certain it was, under the direction of Governor Stokes; he said, "You will have to draw other papers; you have broken the first agreement."

Q. Where did you go? A. I went with him to Judge Macpherson's office.

Q. You went to Judge Macpherson's office? A. Yes, sir; he didn't want to go to Mr. Scammell's office.

Q. You say you went to Judge Macpherson's office on June 22? A. Yes, I am certain of that.

Q. Well, did you wait at Judge Macpherson's office until this option agreement was drawn up on the 22nd? A. No; Judge said, "Come around in about an hour."

Q. That was the arbitration agreement? A. Yes, sir.

Q. Did you go back? A. Yes.

Q. And was it ready? A. It was ready, but Mr. Freedman wouldn't sign it.

Q. Were you there? A. Yes, sir.

Q. Was Mr. Scammell there? A. No, sir; I don't think he was.

Q. Well, wasn't it you that wouldn't sign it, because Mr. Scammell wasn't there? A. No, sir.

Q. You would have signed it without Mr. Scammell being there? A. I would have called him up on the telephone and asked him, yes.

Q. You say Mr. Freedman didn't sign it? A. No, sir; he wouldn't sign it.

Q. When did you next see that arbitration agreement, in whose office? A. That one that Judge Macpherson drew up?

Q. Yes. A. I don't know whether I ever saw it at all, but if I did, I saw it in Mr. Scammell's office.

Q. Did you read it over when you were at Judge Macpherson's office? A. No, sir.

Q. And you didn't know what it contained? A. A. No, sir.

Q. When did you next see it; at what date, either that agreement or any other arbitration agreement? A. There were several agreements that passed between Judge Macpherson and Scott Scammell.

Q. I want to know what you know about it? A. I do know several agreements passed between Judge Macpherson and Scott Scammell, and one time in particular, Scott Scammell called me up and said, "Freedman is circulating the news that you don't want to arbitrate."

Q. Now, when did you next meet Mr. Freedman after June 26, which was the day of the payment of the money? A. Two days afterwards.

Q. And where was that? A. In my office, the Trenton Scrap Rubber office.

Q. Now, at that time, had there been any arbitration agreement executed? A. No, sir.

Q. With reference to the excess? A. No, sir; not that I know of.

Q. None had been signed? A. No.

Q. When did you next after that, see Mr. Freedman? A. The following day, in front of the office.

Q. Did you talk regarding the excess at that time? A. No.

Q. Had you talked regarding the excess on the preceding day when he was at your office? A. No, sir; I can't remember exactly.

Q. When did you next see Mr. Freedman with reference to this excess? A. I think it was on the day we had some trouble in our office.

Q. The trouble you refer to, is the taking of Mr. Freedman out of the office? A. Yes, sir.

Q. And you had heard nothing then with reference to the excess from June 26, 1915, until July 15; is that so? A. Only through Mr. Scammell.

Q. And everything you heard was through Mr. Scammell? A. Yes, sir; with the exception of that day.

Q. You received from Mr. Scammell the statement Mr. Freedman had made out as to the amount of excess? A. On July 15; yes, sir.

Q. Had you not received that prior to July 15? A. No, sir; never saw it.

Q. Hadn't Mr. Scammell informed you of it, or hadn't you received word of it before the 4th of July, 1915? A. No, sir; I don't think Mr. Scammell ever had it, or he would have showed it to me if he did.

Q. Did you ever read the second arbitration paper that was drawn up with reference to this excess, marked D40; when did you first see that paper (handing witness a paper)? A. I can't recall exactly when I saw it, but I remember seeing it.

Q. About when did you see it? A. During the time after I had purchased Mr. Freedman's interest, between that and July 15; I know it was that time.

Q. You saw this Exhibit D4 then, between June 26 and July 15? A. I believe so; I can't say certain about that; I know I saw some papers of arbitration.

Q. Can you fix a little nearer the date that you saw this Exhibit D4 first; you say it is between those dates? A. It was between those dates; no, I think it was on that day that I saw that arbitration paper. I will have to contradict myself; yes, it was on July 15, I saw the statement and that arbitration paper at the same time; that's it.

Q. And you never saw this recital of the amount claimed by Mr. Freedman until you saw this agreement (No answer.)

Q. Did you never see the statement which Mr. Freedman says was presented to Mr. Scammell, in which Mr. Freedman stated the amount to be $27,737.80— A. That was July 15 was the first time I ever saw it together with that arbitration paper.

Q. And you saw the arbitration paper, D4, and the statement at the same time? A. At the same time; yes, sir.

Q. Now, then, it was July 15, that you saw this statement of what Mr. Freedman claimed? A. Yes, sir.

Q. And that statement is D11, is that correct? A. Yes, sir; on July 15th, that's right.

Q. Now, it was on July 16, the following day, then, that you gave to Mr. Freedman a statement that you had no excess, was it? A. In answer to that, yes, I believe it was the following day, or two days afterwards; Mr. Scammell answered that paper that Judge Macpherson sent over.

Q. And what do you say that Mr. Scammell said to you? A. I can't remember the exact conversation.

Q. Now, Mr. Fineberg, do you say that you received for the first time notice of the amount of excess claimed by Mr. Freedman, on July 15? A. Yes, sir.

Q. That you never had before any notice of what the amount was that was claimed? A. Positively; yes, sir.

Q. And that when you knew the amount of excess claimed by Mr. Freedman, that you denied that you owed him that sum or any other sum? A. Yes, sir; I was willing to arbitrate.

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Q. Did you deny you owed him that sum or any other sum? A. Yes, sir.

Q. So that as soon as you received notice of the amount of the excess, you denied that you owed it? A. Yes, sir.

Q. Well, what was your idea of the option agreement of June 21 with respect to excess moneys; at the time you accepted that agreement, did you say anything about not owing any excess? A. Yes, sir; I told Mr. Freedman that although he didn't have any stated amount, I told Mr. Freedman if there was any excess due him, "We will pay you, and I will be willing to let the arbitrators decide whether I owe you any or not."

Q. You said you were willing to pay Mr. Freedman any excess? A. Yes, sir; any excess the arbitrators told me to pay.

Q. And then when you first saw the claim of Mr. Freedman as to the amount of the excess, and you served this notice, did you deny there was any such sum? A. Yes.

Q. Or that any excess was due? A. Yes, sir. I repeated the same thing; I was willing to let the arbitrators decide if I did owe him money, and if I did, I wanted to pay him according to the terms of the agreement.

Q. Well, your contention was then for the first time on July 15, that you didn't owe anything; is that it? A. Yes, sir.

Q. When the option agreement was made in Mr. Heher's office, you didn't state to Mr. Freedman, did you, that you didn't owe him any excess? A. Yes, sir.

Q. You did so state? A. Yes, I can explain that more clearly—

Q. I am asking you whether you so stated? A. I think I did, but I am a little inclined to think nothing

was said at that time when the word "excess" was put in; you see, I mentioned the word "excess" in the option agreement; Mr. Freedman didn't, as Mr. Heher stated; I mentioned that for the reason Mr. Fineberg had first inserted in the agreement that I was to give him $25,000 plus his original investment in the business, and that was only $2,200. I said, "If I owe you anything, I am willing to pay it; I don't owe you anything; if I do, I am willing to pay you"; that's the reason the excess was put in there.

Q. Do you say that in the office of Mr. Heher at the time this option agreement was drawn up, you didn't say that the books of the company would show what the excess was? A. I won't say that I didn't say it; I am inclined to think I didn't, I wouldn't say positive.

Q. The matter of excess was certainly mentioned in Mr. Heher's office, wasn't it? A. I mentioned that word "excess" myself, and Mr. Heher put it in.

Q. Why did you use "excess"? A. For the same reason Mr. Freedman had in his agreement "plus his original investment"; it was only $2,200, and according to that agreement I would be bound to give him $2,200; I said, "No, you put the word 'excess' in, and if anything was coming to him I wanted to pay it."

Q. What did $2,200 have to do with this option agreement? A. He claimed he wanted $25,000 plus his original investment; that's the reason it was put in there.

Q. Didn't Mr. Freedman say he wanted his excess in the business? A. No, sir.

Q. Wasn't that what he had been arbitrating for during the preceding two months? A. We had been arbitrating that matter, but that wasn't mentioned; I had it put in there.

Q. Why did you use it? A. Because Mr. Freedman claimed that it was $2,200, plus his original in-

vestment, and that word "excess" meant anything which might be due him; I am willing to let the arbitrators do that.

Q. At Mr. Heher's office, did Mr. Freedman make any statement with reference to the amount of excess? A. No, sir.

Q. He did not? A. He positively didn't.

Q. And never did? A. No, sir.

Q. Do you recall any statement made by Mr. Heher, that it was advisable to mention the amount of the excess in the agreement? A. I wasn't in the office at that time when the papers were drawn up, I wasn't in the office.

Q. Now, Mr. Fineberg, you recall making an affidavit in this case, in the early stages of it, in the month of August, 1915, do you not? A. In reference to what?

Q. Well, in reference to what passed at Mr. Heher's office? A. I believe so.

Q. Do you remember in your affidavit of stating the following, page 8, paragraph 11a: "Accepting Mr. Freedman's proposition at the time and place agreed upon, which was Mr. Heher's office, Mr. Freedman didn't take kindly to the idea of my purchasing his interest, and he said that he had an excess in the business of $14,000, which I disputed"; do you remember that? A. I really do; yes, sir.

Q. Well, now, then, as a matter of fact, that refreshes your recollection, does it not, that Mr. Freedman did, according to your statement, mention the amount of excess in the office of Mr. Heher? A. Yes, that refreshes my recollection now, and that was the reason we went to the arbitrators to discuss the amount of excess. I said, "There isn't anything due you"; I said, "There is five arbitrators and they are nearly through; let them decide how much I owe you and I will pay you."

Q. Then Mr. Freedman certainly didn't have any reference to any excess of $2,200, which was approximately, the amount of the surplus of his original contribution, did he? A. That is all he had in his mind.

Q. Do you think that that was what he had in his mind when he spoke about an excess of $14,000? A. That was the day I accepted.

Q. I have been asking you what took place in Mr. Heher's office on the day the agreement was drawn up? A. The day of the acceptance?

Q. No. A. Absolutely nothing.

Q. You say there was nothing said about an excess? A. No, sir; not the amount of any excess money.

RE-DIRECT EXAMINATION by Mr. Scammell:

Q. Will you please take the statement of June 22, 1915, which you had, Mr. Fineberg, about June 1, 1915—did you and Mr. Freedman together prepare a statement showing the condition of the business at that time? A. Yes, sir; we did.

Q. Where is that statement? A. Mr. Freedman has it.

Mr. Scammell: Will you produce it?

Mr. Macpherson: I haven't any statement of June 1; I have a statement here 5/18 and 6/4.

The Court: What have you done about these check voucher?

Mr. Scammell: We have tried to find the check vouchers; there is no check for $11,100. There wasn't a check for that; it was just charged. The $1,400 check was produced before the arbitrators, and we cannot find that

check. Mr. Freedman had the other papers in the matter, and we thought he had that particular check; we have gone through all our papers everywhere and we cannot find it.

(Mr. Macpherson produces a paper as called for by Mr. Scammell.)

Q. Is that the statement which you rpepared at that time (handing witness the paper)? A. This is the statement of accounts receivable June 4; that was a few days after stock taking, and it shows accounts receivable to the extent of $22,531.42.

Q. Is that the only statement you prepared at that time? A. No, sir; Mr. Freedman had a full statement of the entire business on June 4th.

Mr. Scammell: Will you produce those papers?

Mr. Macpherson: We haven't them; here are the stock sheets.

Q. Were these produced at the same time? A. This is June 4; it was produced the same time as this statement.

Q. What do those show? A. These sheets here would show considerably less, for the simple reason that between that time there was some merchandise shipped out.

Q. How much merchandise did you ship out between the two dates? A. I can't say.

Q. Can you say by reference to your stock sheets? A. The sales book will show about $22,000 we shipped out between those dates.

Q. What was your stock worth on June 1st? A. On June 1st?

Q. Yes, or thereabouts. A. Mr. Freedman took all those papers. June 1st there was $57,000, between $56,000 and $60,000.

By the Court:

Q. What real estate was there, $22,000? A. Yes, sir.

Q. And what accounts receivable, $22,531? A. Yes, sir.

Q. And that is all the assets? A. The horse and wagon and fixtures, about $1,500.

Q. Cash in bank? A. I got that on the 1st; I have that as of the 22nd; now, we paid against that as a mortgage on real estate, $9,500.

Q. And the liabilities? A. Notes payable, accounts payable, to the extent of about forty-three or forty-four thousand dollars on June 1st.

By Mr. Scammell:

Q. Mr. Fineberg, did the Trenton Scrap Rubber invest and interest itself in a plant other than the Leicester Rubber Company, at Columbia? A. Columbia, Pennsylvania; yes, sir.

Q. Mr. Freedman knew about that? A. Mr. Freedman was on the road at that time.

Q. How much was made? A. Our share was $5,500.

Q. You say Mr. Freedman was on the road? A. Yes, sir.

Q. That was of very short duration? A. Thirty days.

Q. Did Mr. Freedman know about the amount of profit on that transaction? A. When he came back from the west.

Q. Did he take his share of it?

Mr. Katzenbach: That is objected to as immaterial.

A. Yes, sir.

Q. Did the Trenton Scrap Rubber ever guarantee

any accounts at Mr. Freedman's request, or any of his relatives? A. Yes, sir.

Q. What accounts, do you know?

Mr. Katzenbach: Objected to.

The Court: Objection sustained.

Q. I think on your direct-examination you said you were not sure as to whether the Trenton Scrap Rubber had guaranteed any accounts of the Leicester Rubber Company; are you sure now? A. Yes, sir.

Q. What accounts? A. Three or four accounts, one of the Housatonic Tool & Steel Company, of Bridgeport, Connecticut; guaranteed the account of Hill & Mount, of Newark, New Jersey, and Freedman & Small, who sold them fittings.

Q. Is that Mr. Freedman's brother? A. Yes, sir; and Hill & Mount they are box manufacturers.

By the Court:

Q. Do you mean to say that the name of the Trenton Scrap Rubber Company was put to the guarantee by you? A. Yes, sir.

Q. That is, instead of putting "Isaac Fineberg" to the guarantee, you put "Trenton Scrap Rubber"? A. Yes, sir.

Q. That is what you mean by the co-partnership guarantee? A. Yes, and Mr. Freedman knew about it.

By Mr. Scammell:

Q. After you had agreed to submit the matter to arbitrators, were there any charges for individual expenses charged against either your account or Mr. Freedman's; will you refer to the account of Harry Freedman on sheet No. 1, and note any such charges that we have spoken of, and the dates? A. That was right after the time we decided to do business on

our own account; there has been charges for carting lumber and telephoning—

By the Court:

Q. Do you mean after the dissolution? A. No, after we agreed to do business on our own account.

Mr. Katzenbach: That is objected to as immaterial.

The Court: I cannot see that it will throw any light on the case at this juncture—it might.

By Mr. Scammell:

Q. The expenses of Mr. Freedman's trip to Catasauqua, was that paid by the partnership? A. That was paid by the partnership; yes, sir.

By the Court:

Q. When you took a trip that was paid by the partnership? A. Yes, sir.

RE-CROSS EXAMINATION by Mr. Katzenbach:

Q. Did you not testify before Referee Oliphant, that you had guaranteed personally the accounts of Hill & Mount at Newark? A. I don't think I did; if I did, it's a mistake; I don't think I did.

Q. Did you not testify before Mr. Oliphant that you had guaranteed personally the account of the Housatonic Tool and Machine Company? A. I can't remember saying that; if I did, it would be wrong.

Q. Were you not present when your counsel admitted in the bankruptcy matter of the Leicester Rubber Company before Referee Oliphant, that you had guaranteed all of the accounts of the Leicester Rubber Company, including the account of Hill &

Mount and of the Housatonic Tool & Machine Company? A. No, sir; I don't see how I could say that, for I didn't.

Q. Was Mr. Freedman's name affixed to any one of these guarantees of the Leicester Rubber Company? A. Mr. Freedman never affixed his signature to any letter.

Q. Did you ever talk to Mr. Freedman with reference to the guarantee, with the exception of Freedman, Small & Company, did you ever talk to Mr. Freedman or say anything to Mr. Freedman about a guarantee of any account for the Leicester Rubber Company by the Trenton Scrap Rubber Company? A. The only one I can remember is the Housatonic Tool & Machine Company; I don't know whether I told him about Hill & Mount or not, but he knew that, because we sent the telegram out of the office, and he saw the mail going out of the office.

Q. Do you mean to say that he saw a telegram sent by you to the Housatonic Tool & Machine Company, guaranteeing the account of the Leicester Rubber Company? A. The girl sent it out.

Q. (Stenographer repeats the question.) A. Yes, sir; he saw the telegram.

Q. Who dictated the telegram or who wrote it? A. One of the girls in the office.

Q. At whose direction? A. Either Mr. Freedman's or myself.

Q. Can't you tell? A. I believe I did.

Q. Did you have any talk with Mr. Freedman on that subject before the telegram was sent? A. Yes, sir.

Q. What did you say? A. I said to Mr. Freedman that this special tube machine that they needed up at Catasauqua and "they won't ship it unless we guarantee the account"; he said, "All right; go ahead

and guarantee it"; and I sent a telegram to the company telling them it was shipped on the same day, and I think I wrote a letter confirming that, a copy of the letter which I have here.

Mr. Scammell: I produce a copy of the letter, and we offer the copy of the letter in evidence.

Mr. Macpherson: It is objected to.

Mr. Katzenbach: It is simply a copy.

Mr. Scammell: We offer the copy of the telegram and the letter.

Said telegram and letter are marked Exhibit D13.

RE-DIRECT EXAMINATION by Mr. Scammell:

Q. The claim, Mr. Fineberg, which you put into the bankruptcy for your services, you directed to be credited to the Scrap Rubber account, did you not?

Mr. Katzenbach: That is objected to as leading.

The Court: Objection sustained.

Q. Did you direct what should be done with the proceeds of your claim for services? A. Yes, sir.

Q. What?

Mr. Katzenbach: Objected to.

Q. Did you direct the referee in bankruptcy what should be done with your allowance of that claim, if any allowance was made? A. Yes, sir.

Q. What direction did you give? A. I told him to apply it to the Trenton Scrap Rubber account.

Q. In addition to the two claims which were produced, there was another claim filed in the bankruptcy matter, was there not?

Mr. Katzenbach: That is objected to, because the proper way to prove that is by the claim itself.

The Court: Objection overruled.

A. Yes, sir.

Q. Did you file a claim on behalf of the Trenton Scrap Rubber for the $10,500 note? A. Yes, sir.

Q. And that claim had been filed prior to the option agreement of Mr. Freedman? A. Oh, yes, quite some time before.

Q. Mr. Freedman knew that claim had been filed? A. Mr. Freedman filed it himself; he had that $10,500 note in his possession and he took it to Richard Wilson to file, and at the next meeting of the Leicester Rubber Company I completed it, but he originally filed the claim of the Trenton Scrap Rubber Supply Company.

Q. And that is how Mr. Wilson was in possession of Exhibit C3? A. Yes, Mr. Freedman gave it to him.

Q. The note marked Exhibit 3, dated August 12, 1914, has a small "r" noted on the bottom of it; what does that indicate? A. Renewal, the "r" is—

Mr. Macpherson: I move to strike that out.

The Court: Motion denied.

Q. Where a note is in the bank and has been discounted, and it is directed that that note be charged to the account, do you know of any practice in the Mechanics Bank as to requiring a check to have it charged to the account of the person desiring to have it charged? A. Yes, sir, the Mechanics—

Mr. Katzenbach: That is objected to.

Q. The Mechanics Bank require you to give a check for the full amount of the note; then the renewal is credited to your account.

Q. Is that the reason for the check C3 or a part of Exhibit C3? A. Yes, sir.

Q. Why wasn't the stock of the Leicester Rubber Company entered up in the account upon the firm's books known as the stock and bonds account?

Mr. Katzenbach: Objected to.

The Court: Objection overruled.

A. That was not put in there for the simple reason we didn't care for anyone to know that the Trenton Scrap Rubber Supply Company was interested.

RE-CROSS EXAMINATION by Mr. Katzenbach:

Q. How would anybody know what the books of the Trenton Scrap Rubber Company showed? A. We never even allowed our bookkeepers to know.

By the Court:

Q. Your bookkeepers knew about the $10,500 note? A. Yes, sir.

Q. And that some of that had been paid over to the Leicester Rubber Company? A. Yes, sir.

Q. Did not you, yourself, swear to and submit a claim of this $10,500 note to the referee? A. Yes, sir.

EDWARD CASPAR STOKES, a witness produced on behalf of the defendant, being duly sworn, testified as follows:

Direct-examination by Mr. Scammell:

Q. Governor, you were one of the arbitrators in the matter of the dispute between Mr. Freedman and Mr. Fineberg? A. I was.

Q. How many meetings did the arbitrators have in all? A. Four or five, I judge.

Q. You took considerable testimony, did you not? A. We did.

Q. Did the arbitrators reach any decision? A. They did not.

Q. Did you make known to either Mr. Fineberg or Mr. Freedman, or anyone else, what the decision of the arbitrators would be? A. I did not.

Mr. Katzenbach: No cross-examination.

CLIFFORD H. OAKLEY, a witness produced on behalf of the defendant:

It is admitted that Mr. Oakley was one of the arbitrators in the matter between Mr. Freedman and Mr. Fineberg, and that he would testify to substantially the same facts as did Governor Stokes.

BENJAMIN H. ALBERT, a witness produced on behalf of the defendant, being duly sworn, testified as follows:

Direct-examination by Mr. Scammell:

Q. Mr. Albert, you know Mr. Fineberg and Mr. Freedman? A. Yes, sir.

Q. And you have known them for some time? A. Yes, sir.

Q. You knew of their difficulties in 1915, when they were submitting certain matters to arbitration? A. Yes, sir.

Q. Do you recall having a talk with Mr. Freedman sometime during the year 1915, when he stated how

much of an excess he claimed to have in the business? A. Yes, sir.

Q. Where, if you can recall, did the conversation take place? A. On State Street, in front of the post office.

Q. About when was it? A. During the month of July or August.

Q. 1915? A. Yes, sir.

Q. What did he say? A. I approached him and asked him whether they can't straighten up the difficulties without leading into litigation, and he told me he wanted Mr. Fineberg to pay him the excess, which he claimed was $12,500. He also stated that if he didn't pay it by tomorrow, it would be $5,000 more, and it may increase a little later.

CROSS-EXAMINATION by Mr. Katzenbach:

Q. This was in July or August, 1915? A. Yes, sir.

HARRY FREEDMAN, being recalled in rebuttal, testified as follows:

Direct-examination by Mr. Macpherson:

Q. Mr. Freedman, did you have any conversation with Mr. Fineberg with reference to the account of the Housatonic Tool and Machine Company? A. No, sir.

Q. In connection with the Leicester Rubber Company? A. No, sir.

Q. Did he ever consult with you about sending a telegram to that company and guaranteeing their account with the Leicester Rubber Company? A. No, sir.

Q. Did you ever see any correspondence or letters or telegrams which had been sent by Mr. Fineberg or by his direction, to this Housatonic Tool and Machine Company? A. No, sir.

Q. Did he speak to you with reference to the account of Freedman, Small and Company, of their account with the Leicester Rubber Company? A. No, sir.

Q. Did you know whether Freedman, Small and Company had any account with the Leicester Rubber Company? A. No, sir, I didn't.

Q. Did Mr. Fineberg ever say anything to you about guaranteeing to the Leicester Rubber Company the account of Freedman, Small and Company? A. No, sir.

Q. About guaranteeing it for the Leicester Rubber Company? A. No, sir.

Q. Did you ever have any conversation with Mr. Fineberg with reference to the Trenton Scrap Rubber Supply Company guaranteeing the Leicester Rubber Company for the account of Hill and Mount of Newark? A. No, sir.

Q. Do you know Mr. Small? A. Yes, sir.

Q. How long have you known him? A. Five or six years.

Q. Did he ever visit your home? A. He was once.

Q. While he was in your house, did you ever say to him that you were interested in the Leicester Rubber Company, or that you were going to live there at Catasauqua? A. No, sir.

Q. Did you ever say to him that you were going to make arrangements to live at Catasauqua and take your mother there and have her supplied with kosher meat? A. No, sir.

Q. Did you ever have any conversation with him at your home with reference to your moving to Catasauqua? A. No, sir.

Q. Did you ever say to him that Mr. Fineberg was to take the stock of the Leicester Rubber Company in his name, and that Mr. Fineberg was to spend two or three days in Catasauqua? A. No, sir.

Q. Did he say to you, the day after the fire down at Philadelphia, as he was going from their place on the street car to the Pennsylvania Railroad, did you say to him that Mr. Fineberg would have to stand for that loss? A. No, sir.

Q. That you were going to get out from under, and he replied or said to you, "Why, Mr. Freedman, you are not going to treat your partner that way," and that you said that when you got a rope around your neck you should do it, or words to that effect?

Mr. Scammell: That is objected to; that was not his statement.

A. No, sir.

Q. Did you say that to him or words to that effect? A. No.

Q. Did you say to Mr. Small at any time, that you were going to put all the loss of the Leicester Rubber Company on Mr. Fineberg? A. No, sir.

Q. And did he say to you, "You are not going to treat your partner that way," and you replied, "Yes, yes, you can't do anything else when you have a rope around your neck," or words to that effect? A. No, sir.

Mr. Scammell: I offer in evidence a notice to Harry Freedman, dated July 16, 1915, signed by Isaac Fineberg.

Said paper is marked Exhibit D14.

Adjourned until April 20, 1916, at 10 A. M.

IN CHANCERY OF NEW JERSEY.

Between

HARRY FREEDMAN,
Complainant,

and

ISAAC FINEBERG,
Defendant.

On Bill, &c.
Testimony.

Fifth Day.

Transcript of testimony taken in the above-entitled cause, at the State House, Trenton, New Jersey, on Thursday, the 20th day of April, 1915.

Before Hon. John H. Backes, Vice Chancellor.

Same appearances as before noted.

CHARLES L. HARDING, being recalled on behalf of the complainant, testified as follows:

Direct-examination by Mr. Macpherson:

Q. Mr. Harding, since you were here last, have you made an examination of the books of the Trenton Scrap Rubber Supply Company for the purpose of ascertaining what their standing was, both as to assets and liabilities, as of June 22, 1915? A. I have, yes, sir.

Q. And have you made a summary? A. I did.

Q. And conclusion of what your findings were? A. Yes, sir.

Q. I am showing you a paper; will you look at that? A. This is the summary that I made.

Q. And what do you find as of June 22, the assets of the company were? A. Shall I give you the items?

Q. No, the gross. A. The totals of the assets are $133,203.09.

Q. And what are the liabilities? A. $32,650.26.

Q. And what is the net? A. $100,552.83.

Q. In making up your items of assets, did you include what the books show that Mr. Fineberg owed the partnership? A. I did.

Q. How much is that? A. $20,645.43.

Q. Did you include also the note of the Leicester Rubber Company? A. And the Leicester Rubber Company account, too.

Q. What was the Leicester Rubber Company account? A. $11,302.88.

Q. And note? A. $10,500.

Q. Did that also include what the books show that Freedman had withdrawn? A. It does, $6,755.40.

Q. In making up this estimate of assets, and in taking the account which the books show Mr. Fineberg was charged with, did you charge Mr. Fineberg with any interest? A. I did not.

Q. So this is the account flat, without any charge for interest? A. Yes, sir; I took no account of interest whatever in any of these transactions.

The Court: You claim the Leicester Rubber Company account should be charged to Fineberg; and that aggregates how much?

Mr. Macpherson: That aggregates $11,302.88 and $10,500, the note; that makes $21,802.88.

Q. In making up this summary, was there anything on the books that showed the merchandise as inventoried? A. No, sir.

Q. And how did you arrive at that figure? A. Mr. Fineberg gave me the figures.

Q. Was there anything to show of that account, the $56,000 in merchandise, how much had been sold? A. I took off what had been sold from June 1 up to June 22, I took off the sales, which I have deducted that from the amount there.

Q. Now, you have also here cash? A. Yes, sir.

Q. And in your summary you have put cash $4,823.99; how did you arrive at that sum? A. The cash book showed a balance of $5,500, and I have gone over it, and Mr. Fineberg gave me the amount which he had paid which had been contracted for the benefit of the firm previous to June 22, and it amounted to six or seven hundred dollars, and I allowed it and struck the cash balance with those reductions.

Q. Then you were relying not only upon the books for the result you have given us, but also upon the statement given to you by Mr. Fineberg? A. Yes, sir; in his cash book he had a claim for expenses; for instance, that expense claim would not be posted in the ledger until the end of the month.

Q. Did you inquire as to why the cash should have been reduced, as he suggested? A. I examined into the matter, yes, sir.

Q. And did you inquire why the entry was not made upon the books until after he had obtained possession of the property on June 22? A. He explained it to me, very satisfactorily to me.

Q. What did he say? A. He said it was moneys he had paid after June 22, but for liabilities that accrued before June 22.

Q. And upon that statement you gave him credit for it? A. Yes, sir.

Q. Did you make an examination of the sales books? A. I did; that is, from June 1 to June 22.

Q. And did you find there had been any sales that were made that had not been charged to the sales account? A. I found there had been sales entered in the ledger to different customers, but they were not entered until after June 22, and consequently, they were not included in my statement of June 22.

Q. Have you in mind what those accounts were? A. Well, there were several of them there in the ledger.

Q. Did you examine any books that Mr. Fineberg had which were not the books of the partnership? A. Mr. Fineberg had a private ledger; I asked him if he had any objection to my copying off the sales; he said he had, so I didn't do it.

Q. Where was this private ledger Mr. Fineberg had? A. He kept it in the desk there in one of the drawers.

Q. I am showing you a statement; is that statement made by you? A. It is.

Q. What is that statement? A. I have headed it, "The following sales were made on date indicated, not posted in ledger until after June 22, 1915, and not included in accounts receivable, for the reason Fineberg claims his personal business."

Q. I observe one of these parties is the Panther Rubber Company? A. Yes, sir.

Q. And the sale of goods on May 14th was how much? A. $598.08.

Q. What is the next date? A. May 24.

Q. How much was that? A. $1,733.20.

Q. And the next? A. May 27.

Q. How much was that? A. $257.88.

Q. And the next? A. June 3, $468.11.

Q. And the next? A. June 9, $419.16.

Q. What is the next? A. June 14, $890.68.

Q. And the next? A. June 22, $761.07. Those were not included in the accounts receivable.

Complainant's Witness, Charles L. Harding, Cross

Q. What do they aggregate? (No answer.)

Q. What do those aggregate, Mr. Harding? A. That aggregate is $5,128.18, sold to the Panther Rubber Company.

Q. I call your attention to N. E. Bergen's account. A. Mr. Bergen's account aggregates $2,112.90.

Q. And the Empire Rubber? A. $619.97.

Q. And the Hamilton Rubber? A. $100.94.

Q. What you have said with reference to the Panther Rubber Company's account being entered after June 22, is that equally true with reference to the account of N. E. Bergen, the Empire Rubber Company and the Hamilton Rubber Company? A. Yes, sir.

CROSS-EXAMINATION by Mr. Scammell:

Q. In ascertaining, Mr. Harding, the total amount of assets of $133,203.09, these are not the assets which are appearing on the books of account, are they? A. No; the real estate there; the value of that was given me by Mr. Fineberg—and the horse and wagon, the value was given me by Mr. Fineberg; the inventory as of June 1, was given me by Mr. Fineberg.

Q. This inventory, didn't Mr. Fineberg show you the inventory prepared by Mr. Freedman, showing the total amount of stock on hand as of June 1st? A. No, sir, I didn't see any inventory.

Q. I show you certain sheets here, and ask you whether Mr. Fineberg didn't show you those papers? A. No, sir.

Q. Didn't you, at any time while you were there, see those? A. I didn't look them over.

Q. Did you see them there? A. I think I did see those papers, but not to look over them or make any examination.

Q. In making the statement of the merchandise on hand, he was referring to this inventory, wasn't he? A. I don't know; he gave it to me in round figures; I don't know where he got it from.

Q. Didn't he have those papers before him then? A. No.

Q. You think he did not? A. I think he did not. I have deducted the sales from June 1, to June 22, amounting to the sum of $20,000.

Q. You obtained that information from the sales book of the company? A. I did.

Q. That left the total amount of merchandise— A. That would leave the total amount of merchandise of June 22, something like $37,000.

Q. Then the statement of yours as to the condition of the firm on June 22, is incorrect when you say that the merchandise is $56,203.22? A. No, it is not, because I have deducted the $22,000 from the footings there.

Q. Now, the account of Isaac Fineberg is not $20,645.43, as it appears upon the books, is it? A. Yes.

Q. That includes all of his withdrawals up to what date? A. June 22; in that is included the $12,500 that he paid on the Leicester notes a year or two previous, but does not include the $10,500 note.

Q. In ascertaining the value of the company, you added to the company the withdrawals of Mr. Fineberg? A. I took them the same as though they were a private individual.

Q. In ascertaining the worth of the partnership, where there had been withdrawals, that is a claim of the individual partner due to the partnership, is it not? A. Yes.

Q. You also included in that the withdrawals of Mr. Freedman of $6,755.42? A. Yes, sir.

Q. So that the difference between those two items represented is $13,946.03, which you set forth in your previous statement? A. I think that is correct.

Q. So that in ascertaining the value of the property as between Mr. Fineberg and Mr. Freedman, there would only be a debt due from Mr. Feinberg, really, to the partnership for $13,946.03; that would be the excess withdrawals, and which would be a debt to the partnership? A. The excess on the two items, Freedman's and Fineberg's.

Q. That would be an asset from Fineberg to the company? A. That's right.

Q. Why was it, Mr. Harding, that you listed as a part of the assets of the company the face amount of the Leicester Rubber Company account of $11,302.88? A. Because it was on the books there against them.

Q. You knew that company was in bankruptcy, did you not? A. I made a separate statement of that for you people to digest; the accounts receivable—

Q. But it goes in the account? A. It does; you people can figure it out; I give you the books just as they are.

Q. The $10,000 note is figured in in the same way and for the same reason? A. Yes, sir, it was charged to the Leicester Rubber Company.

Q. And was a debt from the Leicester Rubber Company to the copartnership? A. That is a question for you folks to decide whether it is.

Q. Wasn't that the way it was set up on the books of account? A. That's the way it was set up on the books of account; it was charged to the Leicester Rubber Company.

Q. It was a debt— A. It was charged to them.

Q. Mr. Harding, if you considered the withdrawals as an asset, why didn't you offset against that their interest as set forth in the books represented on the

credit side of the books of account? A. I wasn't making up that statement that way; I was making up the statement of the account just as the books show.

Q. You made up a statement showing that the company was worth, on June 22, the sum of $81,964.81, did you not? A. I don't remember any such statement.

Q. I am showing you now the summary that you refer to. A. Yes, sir.

Q. I am now referring to the statement (handing witness a paper). A. I don't know anything about this.

Q. What is the total amount of the accounts receivable? A. $21,531.65.

Q. And the cash in bank? A. $4,823.99.

Q. And the merchandise on hand? A. That is the inventory.

Q. On June 22? A. $56,203.22.

Q. And the Leicester $22,000? A. $22,029.48.

Q. That would leave the total merchandise $34,107.67? A. The difference between those two.

Q. Horse and wagon and fixtures, $1,500? A. Yes.

Q. And real estate, $20,000? A. $22,000.

Q. Was there any depreciation taken off that item of $22,000? A. Those are the figures Mr. Fineberg gave me as to the values of the real estate.

Q. Didn't he mention a depreciation of 10% A. No, sir.

Q. The mortgage on the real estate was on the account among the liabilities, $9,500? A. $9,500, yes.

Q. The notes payable? A. The accounts payable was $20,216.89.

Q. The accounts payable? A. $2,933.37.

Q. Leaving the approximate value of the total value of the partnership, excluding the items of the Leicester

Rubber Company, $50,000, did it not? A. I haven't got my figures here—

Q. Excluding the items of the Leicester Rubber Company account, the $10,500— A. And the $11,000?

Q. Yes. A. It would be a reduction of $21,500 from $100,000.

Q. And that would leave the value of the copartnership approximately what sum? A. About $80,000, if you exclude those accounts.

Q. Now, excluding from that amount the $30,000, approximately, the $20,000 that Mr. Fineberg had withdrawn, and the $6,000 that Mr. Freedman had withdrawn, it would leave the present value of the property a little over $50,000? A. Yes, you can figure it that way; I didn't go into the calculation that way; I gave you the statement just as the books show.

Q. The books of account show, Mr. Harding, that on the first day of June, 1915, that is, up to the 22nd day of June, 1915, the withdrawals of Freedman were $1,075, did it not? A. How is that?

Q. The additional withdrawals since the first of June, in cash, was $1,075 to Mr. Freedman? A. Well, I have got that on the statement somewhere; I can't recall it without referring to my papers there, and Freedman's account will show that, what it was; let me have Freedman's account.

Q. I show you Mr. Fineberg's account, Sheet No. 2, and ask you whether, on June 4, 1915, it does not show a cash withdrawal of $1,000? A. Yes, sir, Isaac Fineberg.

Q. I show you the account of Harry Freedman, Sheet No. 1, and ask you whether it does not show— A. On June 17, $1,000, and on June 3, $75.

Q. On June 3, $75? A. Yes, those are all in the sum total of the account of Fineberg and Freedman.

Q. Did you examine the accounts to see the condition of the company, as of June 1, 1915? A. I got up for Mr. Fineberg a statement of the accounts receivable as of June 1, 1915.

Q. I show you a statement, and ask you whether that does not— A. Well, this is not my figures, but I have no reason to question it; Mr. Fineberg said the judge wanted to know the standing of the concern on June 1, 1915, and he would like me to get out the accounts receivable, the cash, and the accounts payable as of June 1, 1915, that hadn't entered into my account for June 22nd. I have got out a separate statement showing those figures at this time, and I presume that is correct; it is not my figures.

Q. This shows that the assets of the corporation on June 1, 1915, were what amount? A. This shows $99,472.76.

Q. And the total liabilities? A. $48,710.29.

Q. Leaving the net worth of the corporation, according to that statement— A. $50,762.47, that is, on June 1st.

Q. These were made from your figures? A. I don't know.

Q. From June 1 to June 22, you examined the account to see what notes were paid between those two dates, did you not? A. The notes payable on June 1st were considerably more than they were on June 22nd.

Q. I show you a paper and ask you whether this is not a statement of the notes prepared by you? A. Yes, sir, this is a list of the note outstanding on June 1, 1915, amounting to $33,955.76. Now, you will notice that the notes outstanding on June 22 is different from that in my statement.

Q. On June 22, the total amount of notes payable— A. Give me my paper; I want my own figures for it.

Q. Here it is. (Witness shown papers.) A. Bills payable on June 22, of the Trenton Scrap Rubber was $20,216.89.

Q. And that is the total, as set forth in this statement? A. All right; I got my own figures for it here now.

Q. The list of sales which you stated, Mr. Harding, which were made between May 14, 1915, and June 22, 1915, you obtained this information from whom, Mr. Harding? A. What information?

Q. Of these sales. A. I took them from the books, the ledger.

Q. They appeared upon the ledger? A. Yes, sir.

Q. Between those two dates? A. They appeared on the ledger after June 22.

Q. But under date of these different dates? A. Yes; I called Mr. Fineberg's attention to it, that there were charges made after June 22, of a previous date, against these different accounts, and I asked him about it. His answer was that it was for his private business.

Q. Did he tell you about the understanding that he had with Mr. Freedman that each should operate separately after a certain date? A. No; if he had I shouldn't have paid any attention to it; that wasn't on the books.

Q. Didn't he mention the matter to you? A. He may have done so; I wouldn't be surprised if he did; I am very strict in going into what is on the records, on the books; I don't take anything for granted.

Q. In considering the assets of the partnership, Mr. Harding, you have considered the total withdrawals on behalf of the partners? A. Yes, sir.

Q. And that $30,000 is included— A. That is the balance; they drew out and put in, but that is the balance against them.

Q. What do you mean by Freedman overdrawing $6,000 and Fineberg overdrawing $20,000? A. It means just this: that they from time to time each put in some money, and from time to time they each drew out money. Now, that is what I call Mr. Fineberg's withdrawals, it is the amount he drew out in excess of the amount he put in, and the same applies to Mr. Freedman.

By Mr. Katzenbach:

Q. That had no reference to the salaries? A. Not at all; the salaries were paid out of the pay roll.

RE-DIRECT EXAMINATION by Mr. Macpherson:

Q. Mr. Harding, you have been asked as to the assets of the company as of June 1, 1915. In ascertaining that, that situation, that surplus, did you take into calculation the amount of money which the books show that Fineberg had withdrawn from the company? A. No, they were not included.

Q. And you didn't include the amount that Mr. Freedman had withdrawn? A. No.

Q. Nor did you include the $10,500 note? A. I don't think the Leicester Rubber Company were in it either.

Q. Those four items were not in the account as you made it up, as of June 1st? A. No, sir.

HARRY FREEDMAN, being recalled in his own behalf, testified as follows:

Direct-examination by Mr. Macpherson:

Q. Did you have any conversation with Mr. Small at your residence in Trenton, with reference to the mill in Catasauqua? A. No, sir.

Q. Did you ever say to him, at your residence in Trenton, referring to the mill at Catasauqua, or did he ever say to you, "How are you going to leave this business here?" and did you reply, "I am going to leave it to Mr. Fineberg?" A. No, sir.

Q. Did he say to you, "I wouldn't leave no business to anybody in the world; if I couldn't take care of it myself, I wouldn't stay in business and then go away"? A. No, sir.

Q. Did you ever say to Mr. Small, "We have purchased the mill and we are going to have Mr. Fineberg take care of it two or three days a week"? A. No, sir.

Q. Did Mr. Small say to you, "Mr. Freedman, what made you do that; I wouldn't do anything like that"; and did you reply, "I think I could trust Mr. Fineberg"? A. No, sir.

Q. "I was with him a number of years, and we have a partnership and we handle enough capital, more than is involved in the Leicester Rubber Company, and I know him to be absolutely straight"? A. No, sir.

Q. Did you ever have a conversation with Mr. Small in his office in Philadelphia, with respect to the fire at Catasauqua? A. No, sir.

Q. Did you ever say to him in his office at Philadelphia: "Didn't you hear that we burned down?" A. No, sir.

Q. And he replied, "Yes; that ain't going to put you out of business there, is it?" A. No, sir.

Q. Did you ever say to him, "I have purchased the mill and we have turned over the entire stock in Mr. Fineberg's name"? A. No, sir.

Q. Did you say to him in reply, when he asked you whether that wasn't going to put you out of business, "No, not me, but I may be able to put somebody else out"; did you say that to him? A. No, sir.

Q. Did you say to him, "You know the entire stock is in Mr. Fineberg's name, and I got an opportunity now to clear myself absolutely"? A. No, sir.

Q. Did he say to you, "You don't mean to tell me you are going to do that to your partner," and did you say, "When I got a rope around my neck, I am going to clear myself"; did you say that either in Hebrew or in English? A. No, sir.

Q. Did you ever tell Mr. Small in your store at Atlantic City, that you had sold your interest in the Trenton Scrap Rubber Supply Company to Mr. Fineberg? A. No.

Q. Did he say, "How did you get along, Mr. Freedman?" and you said, "I got along all right; I got what I could out of the business and I am going to get what I can more out of him"? A. No, sir.

Q. Did he say to you, "What do you mean?" and did you say to him, "I am going to get back on him with a case for the capital he had paid off the Leicester Rubber Company"? A. No, sir.

Q. Did he say, "How can you do that," and did you say, "I can take the books in court and show my name didn't appear at all"; did you say that? A. No, sir.

Q. Did you ever ride on the street car in Philadelphia with him when he spoke to you about going to Catasauqua? A. No, sir.

Q. Did you ever speak to him about the matter on the street car about your going to Catasauqua? A. No, sir.

Q. Did you ever have a talk with him about the fire at Catasauqua? A. No, sir.

Q. Did you ever meet Mr. Glassman in front of the Mercer Trust Company in this city, and say to him, "I guess you heard about the fire"? A. No, sir.

Q. And did he say to you, "Freedman, I was up there, and is that right that there is no insurance on

the plant"; and did you say, "No, we didn't have any insurance, only a small insurance on the business"? A. No, sir.

Q. Did he say, to you, "You and Ike will be heavy losers," and did you say, "Well, I should worry; the stock was all in Fineberg's name, and I am going to make him stand the loss"? A. No, sir.

Q. Mr. Freedman, at the time that you made the offer to buy or sell to Mr. Fineberg, had you been furnished with a statement of the assets and liabilities of your concern, of your firm?

Mr. Scammell: That is objected to; I don't think it is re-direct.

A. Yes, sir.

Q. I am showing you a statement which purports to be a copy of an inventory that you had? A. Yes, sir.

Q. And that was given to you by one of the girls in the office? A. One of the girls made me that.

Q. And you also were given a statement showing the amount? A. Of the outstanding bills.

Q. And also the amount of the notes that you owed in the bank? A. Yes, sir, Miss Nelson gave me this.

Q. Did you make any calculation as to about what the concern was worth? A. Sure.

Q. And where did you make that? A. Right in the office.

Q. Look at the paper in your hand; I am showing you some figures—

The Court: Do you want to go into all this?

Q. What did you have in mind, or calculate that the partnership was worth, without taking into question the matters that were in dispute and under arbitration?

Mr. Scammell: Objected to.

The Court: Objection sustained.

Complainant's Witness, Harry Freedman, Cross

Q. What did you think, from your calculation, that the partnership was worth?

Mr. Scammell: Objected to.
The Court: Objection sustained.

Q. You said you made a calculation, did you? A. Yes, sir.

Q. And what did you understand the concern to be worth?

Mr. Scammell: Objected to.
The Court: Objection sustained.

CROSS-EXAMINATION by Mr. Scammell:

Q. Did you ever go to Mr. Small's place of business in Philadelphia? A. Yes.

Q. Mr. Small did business with the Trenton Scrap Rubber, did he not? A. Yes, sir.

Q. And had been doing business for some years? A. Yes, I guess so.

Q. You went to his place of business in Philadelphia quite frequently, didn't you? A. Very seldom.

Q. Did you ever travel on the road with him? A. Once.

Q. Do you remember a trip when you went to Pittsburg with him? A. Yes.

Q. Do you remember seeing him in Atlantic City? A. Yes, sir.

Q. You did have a store there that you had purchased, had you not, at the time you saw him in Atlantic City? A. I saw him in my store.

Q. Mr. Small visited your house in Trenton, did he not? A. Yes, sir.

Q. And your relations with Mr. Small were perfectly friendly, were they not; he was friendly to you? A. Well, he was a partner at that time to my brother.

Q. You had no difference with Mr. Small of any kind, did you? A. No. No—

Q. No personal differences? A. No personal differences, just met him; I wouldn't tell him my confidential business.

Q. Just passed the time of day? A. That's all; never had anything with him, a near friend or anything like that.

Q. You were not a near friend? A. No.

Q. Do you recall seeing him upon a street car in Philadelphia, and going to the station with him once? A. That is according to when it was.

Q. You have met him on the street car, haven't you? A. Maybe, I did.

Q. You won't say you have not? Will you say that you didn't meet Mr. Small on a street car in Philadelphia? A. I didn't speak to Mr. Small.

Q. Did you ride on a car in Philadelphia with him? A. I can't recollect in that year whether I did or not.

Q. Mr. Small is a man of considerable affairs, is he not; has a large business in Philadelphia? A. I don't know.

Q. Don't you know when your brother and he were in partnership in Philadelphia, they had a large business in Philadelphia? A. That was my brother.

Q. Your brother and Mr. Small? A. But that was my brother, not Mr. Small.

Q. The principal owner was your brother? A. Yes, sir.

Q. But they operated a large business in Philadelphia? A. Yes, sir.

Q. Why was it that Mr. Small came to visit you at your home in Trenton? A. Why, my mother died, and in the Jewish religion, or whatever it is, after a mother dies, as a rule the son and daughter stays in the house for a week, and then my brother was here, too; he was to the funeral and he was here, and Small

didn't come by himself, but he come even with his wife, just to visit us in that week when he was here, that was about December 3rd; she died on the 29th of November, and he come two or three days after.

Q. What year? A. 1914.

Q. Is that the only time he was at your house? A. I can't exactly tell, but that's the time I remember he was, and that was the last time.

Q. That was the time he talked to you about the Leicester Rubber Company? A. No, we didn't talk that time; we ain't supposed to know any business.

Q. He came to see you at your home alone, that is, he came to your home at times when his wife wasn't with him? A. I can't recollect that; maybe he was, when I wasn't home; the only time I remember, he was there that time, but I think he was with his wife.

Q. He has been at your home and he has seen you and talked to you alone, hasn't he? A. That time?

Q. No, other times. A. No, never had talks with him; I don't think much of him.

Q. But he has been to your home? A. Maybe he was, I can't tell you; maybe he wasn't, maybe he was the previous year, but as much as I can recollect, it was that time when my mother died, and that was pretty near the last time.

Q. When he came to Trenton he has been at your home on several occasions, several times? A. Maybe he was.

Q. Has he been at your home several times? A. I guess he was several times, maybe; I can't remember exactly.

Q. You say that at no time during any of these visits to your home he discussed with you the question of going to Catasauqua to live, or to Allentown? A. Not with him.

Q. Wasn't he sufficiently interested in you to ask you, or you to tell him? A. Not with him.

Q. Not with him? A. No, sir.

Q. Wouldn't you tell that to anyone except to your partner? A. I had nothing to tell.

Q. You didn't have anything to tell? A. No, sir.

Q. When was it that you saw Mr. Small in Atlantic City when you had the store there? A. That was last summer, on Sunday; I come there with my automobile, and I find him trying to buy a tire in the store.

Q. About what part of the summer, in August? A. No, it was—

Q. September? A. It was sometime in June, I think it was.

Q. June or July? A. It was sometime in June, I think it was; well, it was in the summer time; I can't tell you the date.

Q. It was after Mr. Fineberg had bought your interest? A. I can't tell you that.

Q. You don't recall? A. I don't recall.

Q. Didn't he ask you what you were doing there with this store; did he know you had this store? A. Yes.

Q. Had you told him? A. No, sir.

Q. How did he know it? A. He used to come with my brother that way there.

Q. Where? A. In Atlantic City, that's in Atlantic City.

Q. You didn't buy the store in Atlantic City until when? A. In March.

Q. March of— A. 1915.

Q. How many times had he been in your Atlantic City store? A. I only saw him once.

Q. You never told him you had bought the store in Atlantic City? A. No, sir.

Q. You never told him? A. No, sir.

Q. How did he know? A. I don't know, did he know.

Q. Was your name on the window there? A. No, sir.

Q. What was the name? A. The Reliable Auto Supply Company.

Q. Didn't he ask you how you were getting along in this store? A. Well, he didn't ask me and I didn't tell him.

Q. Didn't he ask you what you were doing then, or how long you had sold out to Fineberg? A. I don't know.

Q. Didn't he say something to you about it? A. No, sir.

Q. Didn't you see him after you had sold to Fineberg, and talk to him about it? A. No, sir.

Q. Now, when the fire occurred up at Catasauqua—you remember when that happened, do you? You went down to your brother's store, didn't you, in Philadelphia? A. No, sir.

Q. You were never in his store after the date— A. Probably I was once, but not at that time.

Q. What do you mean? A. You said when the fire was.

Q. Well, after the fire? A. Maybe I was there in that period once or twice, and from that time until now.

Q. Well, you talked to Mr. Small, didn't you, about —A. No, sir.

Q. Do you want the Court to understand that you said nothing at all to him or he to you about the Leicester Rubber Company fire? A. Not a thing.

Q. He was a friend of yours? A. He was not a friend, just the same as we meet like one of the other—

Q. He knew that the Trenton Scrap or Fineberg was interested in the Leicester Rubber Company, didn't he? A. I don't know whether he knew that or not.

Q. Didn't he say something to you about hearing that you had a fire up there? A. No, sir.

Q. He didn't say anything to you about the Leicester Rubber Company fire? A. No, sir, nothing at all.

Q. You say that you never told him anything about the fire? A. No, sir.

Q. Did you tell your brother about the fire? A. I can't recollect if I ever told my brother.

Q. You don't think you did? A. I can't recollect.

Q. You think that you did? A. I can't recollect; it wasn't in my mind.

Q. It wasn't in your mind? A. Not a thing.

Q. You wouldn't tell your brother about a fire which your company had a large merchandise account with? A. No, sir.

Q. You never discussed your Trenton Scrap Rubber business with your brother? A. No, sir.

Q. Never did? A. No, sir.

Q. This is the same firm of Freedman and Small that went in the deal for the Columbia plant which you purchased? A. Yes, sir.

Q. Is that right? A. That was three or four parties at that time.

Q. Three or four partners? A. Yes, Cohen and Roberts—three or four parties.

Q. And the Trenton Scrap? A. I don't know how it was; it was years ago.

Q. You made a profit out of it of $5,500? A. Maybe it was.

Q. And that was the share of you and Mr. Fineberg in the transaction, wasn't it? A. Oh, yes; I was in the west when that transaction happened.

Q. And when you came back you were told about it by Mr. Fineberg? A. I think he did.

Q. And you got your share of the profits? A. The Trenton Scrap Rubber got it.

Q. And you did? A. I didn't take it; the Trenton Scrap Rubber got it; that was me and Mr. Fineberg.

Mr. Scammell: The defendant produces a claim of $10,500 against the bankrupt estate of the Leicester Rubber Company, sworn to by Isaac Fineberg, creditor, representing the firm of the Trenton Scrap Rubber Supply Company. The claim is based on the note which is described by a memorandum attached, dated August 12, 1914, for the sum mentioned, being a copy of "Exhibit C3."

Said paper is marked "Exhibit D14 1/2."

Q. Mr. Freedman, I show you "Exhibit C3," being the protested note of the Leicester Rubber Company, dated August 12, 1914, $10,500, and I ask you whether you handed that to Mr. Richard Wilson, the trustee in bankruptcy? A. I left that with Mr. Richard Wilson's office. I didn't give it to Mr. Wilson himself.

Q. You left it at his office? A. Yes, sir.

RE-DIRECT EXAMINATION by Mr. Katzenbach:

Q. Who requested you to take that to Mr. Wilson's office? A. Mr. Fineberg said I should take it to him, that it would make no difference, and that there would be no harm done; I was ready to sue Mr. Fineberg for that money, and I had that note in Judge Macpherson's office; when I went, he says, "If you shouldn't put it in, no matter who, you lose his evidence what you have to give on that note." Mr. Fineberg said I should take it over to Mr. Wilson's office, and I took the note from Judge Macpherson's office, and left it at Mr. Wilson's office.

Defendant's Witness, Isaac Fineberg, Direct

ISAAC FINEBERG, being recalled in his own behalf, testified as follows:

Direct-examination by Mr. Scammell:

Q. Mr. Fineberg, in pursuance of directions of the Court, did you prepare or have prepared a statement showing the condition of the Trenton Scrap Rubber Company on June 1, 1915, and June 22? A. Yes, sir, with the assistance of Mr. Harding.

Q. Will you tell us, please, the condition of the copartnership at that time, on June 1st? A. On June 1st, the accounts receivable were $20,117.19; cash in bank and on hand, $16,051.57; merchandise on hand, as inventoried by Mr. Freedman, $56,203.22; horse and wagon and fixtures, $1,500.00; real estate, $20,000, making a total asset of $99,472.76. Now, the liabilities against that: mortgage on real estate, $9,500; notes payable, $33,955.76; accounts payable, $5,254.53, making a total liability of $48,710.29. That makes the net worth of the Trenton Scrap Rubber Supply Company, $50,762.47; that is the net worth of the company. On June 22, the accounts receivable were $21,533.15; cash in bank and on hand, $48,023.99; merchandise on hand, $34,607.67; horse and wagon, $1,500; real estate $20,000, making a total asset of $81,964.81. The liabilities are: mortgage on real estate, $9,500; notes payable, $20,216.89; accounts payable, $2,933.37, making a total liability of $32,650.26, or a net worth of the Trenton Scrap Rubber Supply Company of $49,314.55. You will note that the net worth of the company on June 22nd is something like $1,400 less than it was on June 1st, but between June 1st and June 22nd, Mr. Freedman drew out $1,075.00 in cash, and I drew out between June 1st and June 22nd, $1,000 in cash, so that the company on June 22nd was really worth about $600.00 more than it was on June 1st. This is a correct statement

of the books. Of course, it does not include the moneys that Mr. Freedman and I drew out; I don't know why Mr. Harding includes that, and it wouldn't include the Leicester Rubber Company account, which is a bankrupt account. This is a correct statement.

By the Court:

Q. The overdrawals by you and Freedman were assets of the concern, were they not? A. No.

Q. Whatever your overdrawals were, forms an asset of that co-partnership, doesn't it, and that is the reason he put it in?

Mr. Scammell: An account receivable.

A. Mr. Harding didn't figure as a liability the amount of money Freedman and I had in the business.

By Mr. Scammell:

Q. Mr. Fineberg, what is there about this statement of goods sold, beginning with May 14, 1915, up to June 15, which, as Mr. Harding said, were not entered upon the books until after June 22nd? A. At the time Mr. Freedman and I went to you to draw up that arbitration paper, we decided that Mr. Freedman would do business on his own account and I on mine, and that we should stop business as far as the Trenton Scrap Rubber Supply Company was concerned. I did my business at night, and that was the business, and I carried it on a small ledger, and after I purchased his interest, I transferred it back into the company's books, being that I purchased the company.

Q. During that time, Mr. Freedman bought material from you personally, didn't he? A. During that time Mr. Freedman bought material from me for his Atlantic City store, yes; you have a bill of it.

Q. I show you a paper dated June 5, 1915, marked "H. Freedman" and signed "H. Freedman"? A. This is a bill of goods sold to him June 5, amounting to $565.58.

Q. Is there any other writing on that? A. Mr. Freedman signed this bill, and he said on here, "Please send check for $565.58 to I. Fineberg, P. O. Box, 723," and he signed his name to it. I opened another box up.

Q. There is something else, a "P. S." on there? A. He is writing his manager at Atlantic City.

Q. What does it say? A. "If you haven't enough money, send as much as you do."

Mr. Scammell: I offer the bill in evidence.

Said bill is marked Exhibit D15.

Q. Were these sales made; were these sales the property of the Trenton Scrap Rubber Company? A. No, sir, I can show where I bought every pound of—

Mr. Katzenbach: That is objected to.

Q. Were these made by you individually? A. They were made by me individually, and no moneys of the Trenton Scrap Rubber Company, and no merchandise of the Trenton Scrap Rubber were used in these sales; I can show a bill for everything I purchased, and not a pound has anything to do with the Trenton Scrap Rubber.

By the Court:

Q. Did you explain that to Mr. Harding? A. Yes, sir.

By Mr. Scammell:

Q. Mr. Fineberg, did you ascertain—you spoke of an inventory being taken January 1st, 1914? A. Yes.

Q. What was the amount or the difference between your withdrawals and Mr. Freedman's withdrawals on that day?

Mr. Macpherson: That is objected to as having been already asked and answered.

The Court: I don't see that it makes any difference, in view of the testimony already in the case, but if you think it will help your case, you may explain.

Q. Mr. Fineberg, were you the instigator or the originator of the matter which was afterwards framed up as an indictment by the State, and upon which Mr. Freedman was convicted?

Mr. Macpherson: Objected to.

The Court: Objection sustained.

Q. Did Mr. Freedman say to you, in connection with Exhibit C3, or, did you tell Mr. Freedman in connection with Exhibit C3, that Mr. Fineberg said you should take it to Mr. Wilson's office, that it would make no difference and that there would be no harm done, and that he was ready to sue you for that money and had that note in Judge Macpherson's office, and that when he went, you said, if he shouldn't put it in, no matter who, he would lose his evidence that was to be given on that note? Did you say that, or any of it? A. No, sir.

Mr. Scammell: I offer in evidence the check on the Mechanics National Bank from the Trenton Scrap Rubber Supply Company, signed by Isaac Fineberg, to the Mechanics National Bank, dated 11/12/13, for $23,600.

Said check is marked Exhibit D16.

Mr. Scammell: I also offer the stock sheets.

Said stock sheets are marked Exhibit D17.

Mr. Macpherson: I offer in evidence the summary which was used in the examination of Mr. Harding.

Said summary is marked Exhibit C20.

Conclusions

Mr. Macpherson: I offer in evidence the other paper upon which I examined Mr. Harding, showing the sales which were not posted on the ledger until after June 22nd.

Said paper is marked Exhibit C21.

CASE CLOSED.

Sixth Day

Conclusions

Filed May 25, 1916.

IN CHANCERY OF NEW JERSEY.

Between:

HARRY FREEDMAN,
Complainant,

and

ISAAC FINEBERG,
Defendant.

On Bill, etc.

Continuation of the hearing in the above-entitled cause, at the State House, Trenton, New Jersey, on Monday, the 24th day of April, 1916, at 10:30 A. M.

Before Hon. John H. Backes, Vice-Chancellor.

The Court (after argument): This litigation is between two former partners, who, after eight years in trade under the name of Trenton Scrap Rubber Sup-

ply Company, came to the parting of the ways in 1915, when they entered into a dissolution agreement, whereby they submitted their differences to arbitrators. Before an award was made, the complainant gave the defendant an optional agreement to sell his, or to purchase the defendant's, interest in the business, which in part consisted of real estate. The defendant accepted the complainant's offer to sell, agreeing to pay $25,000, and whatever excess the complainant had in the business over and above the defendant's interest. The provision concerning the excess is contained in the seventh paragraph of the optional agreement of the complainant to the defendant and reads as follows:

"7. In case you elect to purchase all my right, title and interest in and to said partnership, as hereinbefore provided, it is understood and agreed that in addition to the purchase price above named, I shall also receive all moneys which I have in the said partnership business in excess of the moneys in said business belonging to you, which moneys are to be paid to me in the same ratio or proportion, as to cash payments and notes, as the above-mentioned purchase price of my one-half interest is to be paid to me under the terms hereof."

The defendant paid the $25,000, part of the purchase price, as stipulated, and took possession of the co-partnership property. Upon his failure to pay the excess, the complainant filed his bill to rescind the sale, setting up the refusal of the defendant in this respect to comply with the contract. The defendant denies that there is any excess due the complainant, but says that if it should be found that there is, he stands ready to pay it and by his cross bill seeks a specific performance of the agreement.

Conclusions

I do not find anything in the evidence indicating refusal upon the defendant's part to abide by the terms of his contract. Quite the contrary. His attitude from the beginning has been one of affirmance of the agreement; his contention being that there was no excess in fact which he was called upon to pay, and this he offered to leave to the arbitrators who had been investigating the matter, or to another set to be chosen, or to the Court for settlement. This he wanted to do on the day he accepted the option, and it has been his disposition ever since. Whether there was any excess depended upon whether $23,000 of the partnership fund, withdrawn by the defendant and invested and lost in the Leicester Rubber Company of Catasauqua, was a partnership affair or a personal venture of the defendant and chargeable to him. If it was a partnership matter to be charged to the firm, and if the expenses of defending a criminal indictment against the complainant, paid by the firm, ought to be charged to the complainant's account, then there was practically no excess. The Catasauqua loss was the bone of contention between the two, which eventually led to the disruption of the co-partnership. It was the principal thing submitted to the arbitrators by the dissolution agreement and was unsettled when the sales contract was made. Even after the defendant resisted the item as a charge against him personally, and vigorously contested it in this hearing, but as I have said, at all times was he willing to have the question judiciously settled and to comply with the judgment. Under these circumstances, it seems to me that it cannot be seriously contended that the defendant's conduct was so inconsistent with his obligation under the contract of purchase, as to amount to a repudiation of it and to warrant the rescission.

The bill will, therefore, be dismissed.

* * * * * *

Conclusions

Now, as to the cross bill and the enforcement of the contract, which, of course, must necessarily follow. How much is due to the complainant for excess under the seventh paragraph of the contract? The books disclose, as testified by Mr. Harding, the accountant, and concerning which there is no dispute, that the defendant drew from the firm's assets $13,946.03 more than the complainant. For this he must account if the $23,000 lost in the Catasauqua enterprise is properly chargeable to him. $12,500 of this sum is already charged to him on the books and forms a part of the accountant's findings of overdrawals of $13,946.03. The remaining $10,500 is represented by a note paid out of the firm's assets, which is the remnant renewal of a $25,000 note, the proceeds of which were used to finance the Leicester Rubber Company. $2,000 of this note was paid by the Leicester Rubber Company, the balance of $23,000 by the partnership. For a fair understanding of the Leicester Rubber Company transaction, it will be necessary to give a short history. Up until 1913, the Leicester Rubber Company was engaged in the scrap rubber business in Trenton. On August 12th it purchased a rubber manufacturing plant at Catasauqua for $22,500. To pay for it, a note of $25,000 made by the Leicester Rubber Company and endorsed individually by its stockholders and the Trenton Scrap Rubber Supply Company, was discounted at the latter's bank. 197 shares of the capital stock of the Leicester Rubber Company at 62 1/2, amounting to $12,312.50, were issued to the defendant, who thereafter managed the plant and controlled its policy until it was burned down a year later. When the $25,000 note matured, it was reduced to $12,500 out of the funds of the Trenton Scrap Rubber Supply Company, which withdrawal from the funds were charged on the

books of the firm to the defendant's account, in two items, one of $1,400, the other of $11,100. The defendant's claim is that he should not have been so charged, and that the remnant of the $10,500 should not now be charged against him, because, as he claims, as already stated, the Leicester Company enterprise was a joint venture. In this stand he is overwhelmed by almost every circumstance and nearly all of the testimony in the case. During the early negotiation for the Catasauqua plant, the complainant point blank refused to be a party. This is not only his assertion, but he is supported positively by the testimony of one of the Mahers, a stockholder of the Leicester Company, and corroboration of this may be found in the testimony of the defendant himself, who said that when the proposition was under discussion in the presence of Maher and others, the complainant "throwed his bluff," meaning thereby that secretly he had agreed to join, but publicly declined for fear that connection of the firm with the Leicester Company in the manufacture of rubber goods, would antagonize the firm's customers, who were also manufacturers. The evidence of De Piano, and another one of the Mahers, and that of Bernstein, who afterwards became a stockholder in the Leicester Company, also discredit the defendant's story. What happened afterwards, the Leicester Rubber Company plant was purchased in the name of the defendant and De Piano. The earnest money of $500 was paid by the defendant drawing the firm's check. He endorsed in the firm's name and discounted the $25,000 note at the firm's bank, without the knowledge of the complainant, and thereafter his activities were of mastership over the affairs of the Leicester Company. For the company he borrowed some seven or eight thousand dollars from the Catasauqua Bank, on notes which he

personally endorsed. He guaranteed personally the accounts for equipments and for merchandise, amounting to many thousands of dollars. The Leicester Company bought the stock of one of the Mahers, as it had promised to do, through the defendant and he personally endorsed the company's $1,500 note given in payment. He directed the two items of $1,400 and $11,100 representing payment of one-half of the $25,000 note to be charged to his account on the books of the firm, and when the Leicester Company went into bankruptcy he presented to the Referee as a part of his own claim, for money lent, the difference between the $12,500 so charged against him and the amount of $12,312.50 paid by him for the capital stock of that company. There are many other instances to which I might allude and which counsel have discussed, all of which are in the same direction. On the other hand, it appears that the complainant had no hand in the affairs of the Leicester Rubber Company. The testimony and the circumstances referred to put to rout the defendant's contention that this was a partnership undertaking. It is absolutely convincing and establishes beyond the peradventure of a doubt that the money withdrawn from the firm was used by the defendant for his own benefit. The trend of the testimony as a whole leads but to this single conclusion. The defendant's conduct in connection with the Leicester Company is irreconcilable with ordinary everyday business practices of partnerships. If this were a partnership affair, why should he make himself personally liable to the banks for money to finance the company; to tradesmen for equipment and merchandise; to a stockholder for his stock; and why should he, without objection, permit himself to be charged on the books of his firm with the $12,500 used in purchasing the capital stock of the Leicester

Company; and why should he present as his due from the bankrupt concern the difference between the purchase price of his capital stock and the $12,500, if, in fact, he regarded himself as acting for his firm? The plea he puts forth that the investment was made and the capital stock purchased for the firm and put in his name by a secret agreement with the complainant, for the purpose of concealing from the firm's customers and to avoid their antagonism and ill-feeling and loss of trade, because the firm was about to be and would be a competitor in business, is, to say the least, disingenuous. I cannot possibly conceive, if this were the fact, how they could have hoped to hide from the trade any more the fact that the partnership was engaged in competition, by putting the stock in the name of the defendant, than if they had put it in the name of both partners or their firm name. The result, it seems to me, would have been the same.

The withdrawal of the $10,500 must be charged to the defendant's account.

The total of his withdrawals, viz: $24,390.03, measures the excess of the monies the complainant had in the business over the defendant. As I read the bargain between them, as set forth in the seventh paragraph of the contract: "I (complainant) shall also receive all monies which I have in the said partnership business in excess of the monies in said business belonging to you (defendant)," means that the complainant was to have first, of the partnership fund, a sum equal to the defendant's withdrawal, and for his half interest in the remainder he was to receive $25,000.

Interest on the withdrawals will not be allowed as part of the excess. On dissolution and accounting, interest, if chargeable, would be awarded in favor of the common fund. Here the common fund passed

to the defendant under his purchase, and with it the interest.

Under the terms of the optional contract, the defendant was to pay in cash $5,000 within five days after its acceptance; $5,000 in twenty days, and the balance of $15,000 in three promissory notes of $5,000 each, payable three months after date, each of which was to be renewed every three months upon the payment of $500 on account of the principal of each of said notes. The excess monies were to be paid in the same ratio or proportion. Therefore, of the excess, as above found, the complainant is entitled to one-fifth, with lawful interest from June 27, 1915, five days after the acceptance of the proposal; an additional one-fifth with lawful interest from twenty days after the above-mentioned date; and the remaining three-fifths by the payment of so much money as would have accrued from time to time, had notes therefor been issued in the proportion indicated, together with interest on the money from each accrual; and the balance of the delivery of notes as though the renewals had been regularly made.

The complainant is not entitled to interest on renewal notes. The contract is silent as to interest on the deferred payments and from the dealings of the parties, so far as disclosed, it is not to be implied that any was to be paid.

The defendant is entitled to a decree for specific performance, with costs.

Exhibit C1.

INCORPORATED UNDER THE LAWS OF THE STATE OF NEW JERSEY.

Number 18 — Shares 197

LEICESTER RUBBER COMPANY

Capital Stock, $50,000.

THIS CERTIFIES THAT Isaac Fineburg is the owner of one hundred and ninety-seven Shares of One Hundred Dollars each of the Capital Stock of

LEICESTER RUBBER COMPANY

transferrable only on the books of the Corporation by the holder hereof in person or by attorney upon surrender of this Certificate properly endorsed.

IN WITNESS WHEREOF, the said Corporation has caused this certificate to be signed by its duly authorized officers and to be sealed with the seal of the Corporation this 11th day of Aug., A. D., 1913.
(Corporate Seal.)

A. DE PIANO
President.

Wm. M. Maher
Treasurer.

Shares $100 each.

Exhibit C3.

Ren 10500.00

$10,500.00 Trenton, N. J., Aug. 12 1914

Three months after date we promise to pay to the order of A. De Piano—Harry Bernstein and I. Fineburg Ten Thousand five hundred 00/100 Dollars at The Mercer Trust Company, Trenton, N. J. Nos. 201-203 South Broad Street, without defalcation or discount, for value received

LEICESTER RUBBER CO.
Wm. M. Maher Secty.

A. De Piano
R. S 7365

BNov12D

(Endorsed): Harry Bernstein A. De Piano I. Fineburg Trenton Scrap Rubber Sup. Co. I. Fineburg, Treas.

THE MECHANICS NATIONAL BANK OF TRENTON

Pay to Yourselves
Ten thousand five hundred Dollars
L. R. note
$10,500.00

TRENTON SCRAP RUBBER SUP CO
I. Fineburg, Treas.

(Across face): Counter Check Not Negotiable

(Stamped): "Paid"

Exhibit C3

I. Fineburg STATEMENT H. Freedman

Trenton, N. J.

M Leicester Rubber Co

To Trenton Scrap Rubber Supply Co. Dr.

Commission Merchants

Wholesale Dealers in all Grades of Scrap Rubber

P. O. Box 360 Perrine Avenue

Terms Folio Your Invoice

To promissory note here with annexed
with interest from Nov. 12, 1914. 10501 50/100

UNITED STATES OF AMERICA.

$10500.00/ Trenton, N. J., Aug 12 1914

Three months after date we promise to pay to the order of A De Piano, Harry Bernstein and I Fineburg at the The Mercer Trust Company, Nos. 201-203 South Broad Street, Trenton, N. J. 55-79 Ten thousand five hundred 00/100 Dollars, without defalcation or discount for value received.

(Signed)

LEICESTER RUBBER CO

A De Piano Wm. M. Maher Secty

(Endorsed): Harry Bernstein A. De Piano I Fineburg Trenton Scrap Rubber Sup Co I Fineburg Treas

BE IT KNOWN, That on the day of the date hereof, I, J. Cad. Slack, Notary Public within the State of

Exhibit C3

New Jersey, by lawful authority duly commissioned and sworn, residing in the City of Trenton, in said State, at the request of The Mechanics National Bank of Trenton, (New Jersey), exhibited the original note (of which the above is a true copy) unto Clarence Smith, a clerk in The Mercer Trust Co. of Trenton, N. J., at the Banking House thereof, and demanding payment, which was refused, received for answer "Not sufficient funds"

WHEREUPON, I the said Notary, at the request aforesaid, have and do hereby publicly and solemnly protest against the endorsers of the said note and all others whom it doth or may concern, for all exchange, re-exchange, and all costs, damages and interest, suffered and to be suffered for want of payment thereof.

Thus done and protested at Trenton aforesaid, the twelfth day of November one thousand nine hundred and fourteen

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Notarial Seal, the day and year above written.

J. CAD SLACK
Notary Public.

(Notarial Seal)

Exhibit C3

Vol. 22 Folio 256

PROTEST.

Leicester Rubber Co.

Note,	$10500.00
Not'l Fee,	1.50
Postage,	.08

Trenton, N. J., Nov. 12, 1914.

Please take notice, that a note drawn by Leicester Rubber Co. for 10500 dollars, no cents, in favor of A. De Piano, Harry Bernstein and I. Fineberg. dated Aug. 12, 1916 payable at The Mercer Trust Co., Trenton, N. J., three months after date, endorsed by you, was this day protested for non-payment, and the holder looks to you for payment thereof.

J. CAD. SLACK,
Notary Public.

I, J. Cad. Slack, the Notary Public within named, do hereby certify that the above is a true copy of the notice of protest which I sent the endorsers of the note the protest of which is recorded herein, by depositing them in the Trenton Post Office the evening of the date of said protest, with the postage prepaid, directed as follows:

One to Leicester Rubber Co., Harry R. Wilson, Trustee, Amer Mech. Bldg. Trenton, N. J.

One to Harry Bernstein, Cor. Fall & Decatur St., Trenton, N. J.

One to I. Fineburg, 302 Bellevue Av., Trenton, N. J.

One to A. De Piano, Catasaqua, Pa.

J. CAD SLACK
Notary Public.

Exhibit C7.

CERTIFICATE

No. 18

For 197 Shares

Issued to
Isaac Fineburg
302 Bellveau Ave
Trenton, N. J.

Dated Aug 11 1913

Issued as per resolution of meeting
Dated Aug 11 1913

No. Original Certificate	No. Original Shares	No. of Shares Transferred
18	197	

Received Certificate No. 18
For 197 Shares
this 11 day of Aug 1913
Issac Fineburg

Exhibit C8.

Sheet No. 1.

Name Harry Freedman,
Address, Trenton, N. J.

Date 1910		Folio	Ck	Charges	Date 1910		Folio	Ck	Credits
Oct. 21	Trenton Water Work	161		3.37	Oct. 14	Ford.		√	38,541.94
Nov. 28	Taxes 1910	175		33.63					
Nov. 29	Taxes last year—1909	177		32.62					
Dec. 4	The People's Coal Co.	179		9.00					
1911									
Jan. 13	Joseph Wright, Int.	197		30.00					
Jan. 31	People's Coal Co.	203		6.00					
Mar. 16	S. R. Block	225		200.00					
Mar. 29	Cash	231		850.00					
Apr. 1	People's Coal Co.	233		6.00					
Apr. 17	Cash	239		1,000.00					
Apr. 28	Water rent	245		8.63					
Apr. 28	Geo. Macpherson	245		19.31					
May 6	Louis Freedman	249		75.00					
July 17	L. J. Mott	281		30.00					
Aug. 19	Jos. Wright, Int.	297		30.00					
Aug. 19	Cash	297		577.23					
Sept. 21	People's Coal Co.	13		21.50					
Oct. 28	Cash	25		350.00					
Feb. 3	Coal	67		12.00					
Mar. 30	S. Millner	91		24.00					
Apr. 16	Cash for 6 mos. Int. on house pay to Elizabeth White	99		75.00					
July 3	Cash	131		2,000.00					
July 3	Cash	131		2,000.00					
July 3	*To bal.*	√		*31,148.65*					
				38,541.94					38,541.94

Exhibit C8

Date		Folio	Ck	Charges	Date		Folio	Ck	Credits
1912					1912				
Nov. 29	Clinton J. Swartz., Rev. of Taxes	197		135.78	July 3	Bal.		√	31,148.65
1913					1913				
Feb. 11	Elizabeth B. White	229		3,000.00	Feb. 11	Check No. 11504, dated 7/3/12	228		2,000.00
Feb. 11	Cash	229		1,000.00	Feb. 11	Check, no number, dated 9/25/12 Both returned	228		2,000.00
Feb. 28	S. R. Block	235		50.00	Feb. 11	Int. on checks ret.	228		116.80
Mar. 19	Cash	243		700.00	Oct. 2	Cash	18		1,800.00
Apr. 4	Cash (Robert C. Mannen)	251		500.00					
Apr. 7	Note (Robert C. Mannen)	251		1,300.00					
Apr. 29	Water bill	259		16.49					
Dec. 8	Cash, Ed. L. Katzenbach	41		75.00					
1914									
Jan. 9	L. Freedman	51		294.00					
Jan. 9	M. Widlinsky	51		100.00					
Jan. 8	Congregation Bros. of Israel	53		2.75					
				7,174.02					37,065.45

Exhibit C8

	Jan.	31	Ford.	V	7,174.02	Jan.	31	Ford.	V	37,065.45
	Jan.	23	Cash, Freedman S.	59 V	400.00	Feb.	3	Cash	60 V	400.00
	Apr.	30	Hersch Bros. Coal	89	32.50	Oct.	23	Cash	136 V	1,000.00
	Oct.	23	Cash .	137 V	1,000.00	Dec.	2	Cash	150	3,500.00
	Nov.	28	Cash	149	50.00					
	Dec.	2	Emp. T. & R Note	151	4,000.00					
	Dec.	2	Ed. L. Katzenbach	151	75.00					
					12,731.52					41,965.45
	1915									
	Jan.	15	Chas. Trevis	169	15.00	Apr.	16	Mdse. S. P.	12	66.79
	Feb.	23	Mdse. A. S. S.	286	314.98	Apr.	16	Mdse. S. P.	13	1,099.35
	Mar.	27	Mdse. S. W.	4	12.00	Apr.	16	Mdse. S. P.	13	26.08
	Mar.	19	Cash B.	187	3,000.00	May	5	Int. paid	V V	80.00
	Mar.	29	S. D. B.	187	823.29	June	16	Mdse. S. P.	30	52.08
	Mar.	29	Sam Widlansky	191	50.00	July	7	Cash	V V	60.80
	Apr.	8	Mdse. Keystone	9	234.94	July	7	D. M. 6/29	V V	.70
	May	13	Mdse. S. P.	228	125.48					
	May	13	Mdse. E. R.	228	73.50					
	May	6	Int. on E. R. N.	203 V	80.00					
	May	19	Mdse. E. R.	229	76.44					
	May	26	Mdse. S. P. A.	234	318.23					
	May	26	Phone Atlantic City	234	5.00					
	May	7	Mdse	211	4.25					
	June	3	Ed. L. Katzenbach	211	75.00					
	June	16	Carting one load	236	.60					
	June	17	Cash	213	1,000.00					
	June	29	Mdse. R. A. I.	34 V	61.50					
	July	1	Tel. calls	238	1.27					

Exhibit C8

Sheet No. 1.

Name I. Fineburg.
Address Trenton, N. J.

Date		Folio	Ck	Charges	Date		Folio	Ck	Credits
1910					1910				
Nov. 30	Cash, Louise Prags	177		30.10	Oct. 14	Ford.		√	36,021.05
Nov. 30	Cash	179		30.00					
Nov. 30	Cash	179		36.00					
1911					1911				
Jan. 10	Cash (Max Lavine)	195		5.00	July 19	Cash	286		150.00
Jan. 31	A. Niedermeier	203		3.80					
Feb. 28	Sam Wolburg	217		40.00					
Apr. 30	Cash	245		40.00					
June 30	Cash	277		40.00					
July 26	Cash	289		35.00					
July 26	Cash	289		150.00					
Aug. 31	Cash	3		70.00					
Aug. 31	Cash	3		100.00					
Oct. 31	Cash	27		20.00					
Nov. 30	Cash, C. E. Stoat	39		3.00					
Nov. 11	Louis Prags	39		150.00					
Jan. 31	Cash	65		15.00					
Mar. 14	Cash T. B. Dolan	83		10.00					
Mar. 26	Tattersall Coal	87		12.50					
Mar. 30	Cash	91		50.00					
Mar. 30	Cash	91		100.00					
Mar. 30	Cash on Sam Zorn Check of $1,274.00	91		.28					
Apr. 1	Wm. Hughes	91		1.65					
Apr. 29	I. Atreri	103		84.00					
Apr. 30	Int. Sykes Note	103		.59					
Apr. 30	Cash	103		10.00					
May 31	J. W. Gilmore	117		20.00					

Exhibit C8

Date		Folio	Ck	Charges
1912				
May 31	Anthony Wiedmann	117		25.00
June 24	Goodyear Raincoat	127		51.00
June 25	Cash	129		3,000.00
June 30	R. Dunckle	129		100.00
June 30	Diff. in S. Zorn	129		50.00
July 3	Cash note	131		739.48
July 3	*To bal.*	√		*31,148.65*
				36,171.05
Aug. 22	Cash (Agent G. R. Co.)	151		145.74
Aug. 31	Cash	155		200.00
Aug. 31	Int. Zorn note	155		.64
Oct. 28	Carrollton Pd. in full 7/31 and 8/6 1/12	183		377.55
Oct. 31	Int Zorn note *$400*	183		3.95
Nov. 30	Clinton J. Swartz, rec. of Taxes	197		145.04
Nov. 16	Mr. Moses	191		1,217.00
Nov. 30	Check given Mr. Moses was for 1,-217.50 not 1,217.00 Diff.	197		.50
Dec. 9	Cash	201		500.00
1913				
Feb. 6	Cash	227		200.00
Mar. 27	Cash N. H. Aroniss	247		630.97
Apr. 16	Cash	261		25.00
Apr. 16	Cash, Wm. Gilmore	261		25.00
Apr. 30	Cash	261		100.00
Apr. 30	Cash	261		300.00
May 5	J. Janson Carpenter			

Date		Folio	Ck	Credits
1912				
July 3	Bal.	√		31,148.65
Dec. 3	Cash	198		150.00
Dec. 10	Cash	200		470.00
1913				
Aug. 31	Cash	6	√	150.00
Sept. 23	Cash Leonard & Co.	14		500.00

Exhibit C8

	fix chicken coop	263		12.50
May 31	J. L. Brock	273		4.20
May 21	Cash	273		100.00
May 6	Cash	273		300.00
May 15	Sol Garney	273		99.50
June 11	Cash	285		50.00
June 27	J. L. Brock	285		3.10
June 21	J. L. Brock	285		3.00
June 18	Cash	285		5.00
July 2	Carlson Rilsam	287		25.00
July 31	S. Miller	295		78.00
July 10	Cash	295		50.00
July 9	Cash	295		125.00
July 31	Leonard & Co.	295		500.00
Aug. 7	Ress & Taylor	299		24.50
Aug. 7	Stanley ford. shirts from N. Y. by express	299		5.38
Aug. 9	People's Garage	299		46.42
Aug. 23	Cash	7	√	150.00
Aug. 7	Cash	7		100.00
Aug. 17	L. C. Thompson	7		82.96
				5,635.95

32,423.65

Exhibit C8

Sheet No. 2

Date			Folio Ck	Charges	Date			Folio Ck	Credits
1913					1913				
Aug.	17	Ford.		5,635.95	Sept.	23	Ford		32,423.65
Sept.	10	Cash	19	30.00	Oct.	31	Cash	28	75.00
Sept.	15	Cash	19	125.00					
Sept.	3	Cash	19	300.00					
Sept.	18	Alv Kelsey	19	59.95					
Oct.	22	Mech Nat Bank	27	1,400.00					
Oct.	17	Joe Manze	29	75.00					
Oct.	24	Joe Manze	29	81.00					
Oct.	22	B. Beck	29	252.00					
Nov.	12	Cash	35	11,100.00					
Dec.	10	Chamberlin M. W. S. Co.	43	112.00					
"	26	A. Nirdeiman	49	50.00					
"	31	Wallace & Harpness	49	8.50					
"	20	Stack & Faussett	49	38.00					
1914									
Jan.	3	L. C. Thompson	49	75.00					
Jan.	5	Harry Spartor	51	51.00					
Jan.	22	Cash	59	35.00					
Feb.	4	John McQue	61	100.00					
Jan.	31	B. Harrison	69	147.75					
Feb.	15	Louis Prago	69	85.00					
Feb.	24	Cash	65	50.00					
Mar.	31	H. Stout	77	7.00					
Apr.	24	W. F. Smith	87	179.00					
Apr.	6	Cash	89	200.00					
Apr.	17	Cash	89	300.00					
Apr.	23	Cash	89	75.00					
Aug.	31	Cash	125	75.00					
Oct.	19	Cash	139	6.75					
Nov.	11	Exp. J. R. McC.	143	96.03					
Nov.	30	David Lewis	149	37.50					
				20,787.43					32,498.65

Exhibit C8

Date		Folio	Ck	Charges	Date		Folio	Ck	Credits
1915					1913				
Feb. 15	Cash	179		100.00	June 16	Cash	216	√	128.30
Mar. 31	Cash	191		10.00	June 26	Payroll	208		50.00
Apr. 26	Cash	203		100.00	June 30	Cash	216		102.00
May 26	Frt. Paid	234	√	5.44					
May 6	Cash	209		100.00					
June 4	Cash	213		1,000.00					
June 2	'Phone calls	234	√	1.05					
June 2	Tel. H. L. Seigel	234	√	.75					
June 7	Frt. Paid	234	√	36.29					
June 15	Frt. K. K. car	236	√	72.57					
June 16	Chg. for Labor	236	√	12.20					

Sheet No. 1

Name Leicester Rubber Co. No. 2 %.
Address City

Date		Folio	Ck	Charges	Date		Folio	Ck	Charges
1913					1913				
Aug. 30	Cash	7		21,500.00	Aug. 30	Note	6		25,000.00
Aug. 31	Cash	7		200.00	Sept. 6	Mdse.	283		10.67
Aug. 31	Cash	7		2,000.00	Sept. 23	Note Part R on 750	14	√	500.00
Aug. 31	Int. on 25,000.00	71		378.08	Sept. 23	Cash	14	√	257.50
Sept. 5	Mdse.	74		135.49	Sept. 23	Cash	14		251.34
" 10	Cash	11		300.00	Sept. 29	Note	16	√	500.00
" 11	Mdse.	76		244.92	*Oct. 29*	*Balance*	√		*1,023.27*
" 12	New Jersey N. C. Co.	13		9.93					
" 23	Int. 500.00	72		7.50					
" 23	Cash Note due	15		750.00					
" 23	Cash given Leonard Co.	15		500.00					
" 23	Cash	15		500.00					
" 23	Cash	15		250.00					
" 23	Cash	17		251.34					
	Their check no good								

Exhibit C8

	1913					1913					
	"	26	Cash		17	200.00					
	"	29	Int. 500.00		72	7.58					
	"	29	Cash		19	175.00					
	Oct.	6	Mdse.		86	132.94					
						27,542.78					27,542.78
	Oct.	*7*	*Bal*	√		*1,023.27*	Oct.	17	Note	22 √	200.00
	Oct.	14	Mdse.		89	186.43	Oct.	17	Cash	22 √	53.00
	Oct.	14	Int 200.00		75 √	3.00	Oct.	18	Note	24	1,000.00
	Oct.	14	Int. due		75	.06	Oct.	22	Mdse. 10/17	6 OK	24.34
	Oct.	15	Mdse.		91	65.27	Oct.	24	Mdse. 10/22	6 OK	250.56
	Oct.	16	Note due		25 √	250.00	Oct.	24	Note	26 √	200.00
	Oct.	17	Int. 1,000.00		76	15.33	Oct.	24	Cash	26 √	53.00
	Oct.	20	Mdse.		94	2.75	*Oct*				
	Oct.	21	Mdse.		95	8.53					
	Oct.	22	Int. 200.00		76 √	3.00					
	Oct.	22	Int. due		76	.06					
	Oct.	23	Mdse.		96	246.28					
	Oct.	25	Note due		27 √	250.00					
	Oct.	*29*	*Transfer from No. 1*	% √		*56.73*					
	Oct.	28	Mdse.		99	96.12					
	Oct.	31	Mdse.		99	142.05					
	Nov.	1	Mdse.		99	517.44					
						2,866.32					1,780.90

Exhibit C8

Date		Folio	Ck	Charges
1913				
Nov. 1	Ford.			2,866.32
Nov. 4	Int. 375.00	78		5.81
Nov. 1	Cash	31		375.00
Nov. 11	Int. 450.00	79	V	6.75
" 11	" due	79		.15
" 8	Mdse.	102		590.33
" 12	Note due	33	V	500.00
" 11	Mdse.	102		263.32
" 11	Mdse.	103		81.90
" 17	Cash	35		1,000.00
" 17	Mdse.	105		151.50
" 18	Mdse.	105		2.75
" 18	Int. on $2400	80		37.60
" 19	Note due	35	V	250.00
" 20	Int. 200.00	80	V	3.00
" 20	" due us	80		.06
" 20	" 12,500.00	80		191.10
" 12	Note due	35		12,500.00
" 24	Adv. Thomas G. Siddall	37		50.00
" 26	Mdse.	108		144.60
" 29	Mdse.	109		12.50
Dec. 1	Cash	39		1,000.00
Dec. 2	Mdse.	110		61.10
Dec. 3	Mdse.	110		177.21
Dec. 2	Mdse.	110		47.50
Dec. 3	C. Memo 2/25 Ext. 7710	16		11.10
Dec. 3	C. Memo 2/25 Ext. 60.64	16		77.10
Dec. 5	Mdse.	112		541.76
Dec. 6	Mdse.	112		31.50
Dec. 6	Mdse.	112		246.49
Dec. 9	Mdse	113		30.14
Dec. 12	Mdse.	114		93.78

Date		Folio	Ck	Credits
1913				
Nov. 1	Ford.			1,780.90
Nov. 1	Note	30		375.00
Nov. 12	Note P. Ron 500	30	V	450.00
" 12	Cash	30	V	56.75
" 12	Mdse. 11/11/13	14	O. K.	316.90
" 18	Note	34		2,400.00
" 19	Note	34	V	200.00
" 19	"	34	V	53.00
" 12	Note	34		12,500.00
Dec. 6	D. Memo. 6/10 5/24 6/13 6/14 6/11	92		24.00
Dec. 6	D. Memo. 9/5 9/11 10/6 10/14 10/15 10/23 10/31 11/1/-13 10/28 11/8 11/11 11/11	93		47.38
		93		17.10
Dec. 9	D. Memo. 11/17/13	27		87.50
Dec. 13	Mdse. 12/13	27		19.50
Dec. 17	Mdse. 12/9/13	29		5.00
Dec. 19	Mdse. 12/17	44	V	106.00
Dec. 22	Cash	44	V	400.00
Dec. 22	Note	46	V	450.00
Dec. 26	Note	46	V	56.75
" 26	Cash			

Exhibit C8

Date		Folio	Ck	Charges
1913				
Dec. 11	Mdse.	114		82.50
Dec. 22	Note due	47	V	500.00
Dec. 22	Int. 400.00	82	V	6.00
" 26	Int. 450.00	82	V	6.75
Dec. 26	Note due	46	V	500.00
Dec. 30	Cash	49		260.00
Dec. 31	Mdse.	119		30.00
1914				
Jan. 5	Mdse.	121		109.16
Jan. 8	Mdse.	122		308.10
Jan. 19	Note due	55	V	200.00
Jan. 19	Note due	55	V	1,000.00
Jan. 19	Int. on 750	84	V	11.25
Jan. 19	Int. on 150	84	V	2.25
Jan. 17	Mdse.	125		1,107.72
Jan. 26	Note due	57	V	200.00
Jan. 26	Int. 150.00	85	V	2.25
Jan. 27	R. M. Jaeger	57	V	25.00
Jan. 30	D. Memo. 1/23/14	40		0.00
Jan. 30	Diff. pure knives	40		3.00
Jan. 30	Int. 300.00	86	V	4.50
Jan. 31	Mdse.	133		1.05
Feb. 2	Note due	59	V	375.00
Feb. 6	Note due	61	V	2,400.00
Feb. 6	Int. 2100.00	87	V	32.50
Feb. 10	Int. 11500	87	V	172.50
Feb. 10	Int. 375.00	87	V	5.63
Feb. 11	Cash note due	63	V	12,500.00
Feb. 12	Note due	63	V	450.00
Feb. 11	Int. 500.00	88		7.50
Feb. 11	" 500.00	88		10.00
Feb. 10	Cash R. Jaeger	63	V	100.00
Feb. 11	Cash (Deposit for them in Mech.)	63	V	100.00

Date		Folio	Ck	Credits
1913				
Dec. 31	D. Memo. 12/9 12/5 12/2 12/3 11/26	99		73.64
1914				
Jan. 14	Cash	52		1,000.00
Jan. 19	Note	54	V	150.00
Jan. 19	Cash	54	V	52.25
Jan. 19	Cash	54	V	261.25
Jan. 19	Note	54	V	750.00
Jan. 19	D. Memo. 12/11 12/6 12/9	101		5.61
Jan. 20	Cash	54		1,000.00
Jan. 26	Note	56	V	150.00
Jan. 26	Cash	56	V	52.25
Jan. 30	Frt Cement & Tiling	104		25.05
Jan. 30	Mdse. 1/23/14	45	O. K.	191.00
Jan. 30	Note	58	V	300.00
Jan. 30	Cash	58	V	79.50
Jan. 30	Cash	58	V	25.00
Feb. 6	Note	60	V	2,100.00
Feb. 6	Cash	60	V	332.50
Feb. 6	Mdse.	47		26.60
Feb. 6	D. M. 1/17 1/8 12/12 1/5	107		31.18
Feb. 10	Cash	62	V	540.00
Feb. 10	Cash	62	V	512.50
Feb. 10	Cash	62	V	120.00
Feb. 10	Cash	62	V	80.63
Feb. 10	Note	62	V	11,500.00
Feb. 10	Note	62	V	375.00
Feb. 11	Note	62		500.00

Exhibit C8

Date		Folio	Ck	Charges	Date		Folio	Ck	Credits
1914					1914				
Feb. 19	C. Memo	47		4.80	Feb. 11	Note	62		500.00
Feb. 14	Mdse.	141		750.65	Feb. 14	Cash	62	√	100.00
Feb. 19	Int. 100.00	89	√	1.50	Feb. 14	Cash	62	√	100.00
Feb. 19	Cash Note due	65	√	200.00	Feb. 19	Note	64	√	100.00
Feb. 14	R. M. Jaeger	65		100.00	Feb. 19	Cash	64	√	101.50
" 17	R. T. Elwell	65		40.00	Feb. 27	Mdse 2/25/14	58		3.68
" 24	Victor Rullor Co.	67		1.00	Mar. 9	Cash	70		1,000.00
" 25	R. M. Jaeger	67		110.00	*Mar. 25*	*Bal.*		√	*4,335.55*
Feb. 26	Cash	67		85.00					
Feb. 26	Mdse.	145		241.35					
Feb. 27	Mdse.	146		99.68					
Feb. 27	Mdse.	147		160.73					
Mar. 4	Mdse.	148		487.68					
Mar. 6	Mdse.	148		967.74					
Mar. 9	Mdse.	149		85.80					
Mar. 7	R. Jaeger	71		100.00					
Mar. 16	Mdse.	153		452.02					
Mar. 19	Cash R. Jaeger	75		150.00	Mar. 24	Note	74	√	300.00
					Mar. 24	Cash	74	√	104.50
Mar. 25	*Bal.*		√	*4,335.55*	Mar. 25	Note	74	√	350.00
Mar. 25	Int. on 300.00 P. Renewal on 400	91	√	4.50	Mar. 25	Cash	74	√	105.25
					Mar. 28	Frt	116		25.33
Mar. 25	Int. on 350 P. Renewal on 450	92	√	5.25	Mar. 27	D. M. 2/27 2/27 3/9 3/4	116		37.53
Mar. 25	Note due	74	√	400.00	Mar. 27	Frt 2/26 2/27 2/27	116		8.46
Mar. 26	Note due	77	√	450.00	Apr. 2	Frt 3/4 3/9	119		21.93
Mar. 26	Mdse.	157		32.75	Apr. 4	Note	80		750.00
Mar. 28	R. M. Jaeger	77		150.00	Apr. 4	Cash	80		500.00
Mar. 31	Mdse.	159		273.47	Apr. 9	D. M. 3/6/14	120		68.98
Apr. 2	R. M. Jaeger	79		150.00	Apr. 18	Cash	84	√	76.13
Apr. 6	Mdse.	162		490.05	Apr. 18	Note	84	√	75.00
Apr. 6	Mdse.	162		506.19	Apr. 18	Cash	84	√	600.00
Apr. 6	Mdse.	162		464.78	Apr. 18	Note	84	√	159.00
Apr. 4	Int. 750.00	92		11.37	Apr. 24	D. M. 3/16/14	124		8.85
Apr. 14	Mdse.	166		188.70	Apr. 24	D. M. 3/31/14	125		3.65
Apr. 17	Mdse.	168		32.50	Apr. 24	D. M. 4/6	125		20.23

Exhibit C8

Date 1914		Folio	Ck	Charges	Date 1914			Folio	Ck	Credits
Apr. 20	Int. on 600.00	94	V	9.00	Apr.	24	D. M. Excess Feb. 3/6	125		14.20
Apr. 20	Int. on 75.00	94	V	1.13	May	1	Note	88	V	200.00
Apr. 20	Cash	85	V	75.00	May	1	Cash	88	V	103.00
Apr. 22	Note due	87	V	750.00						
Apr. 22	Cash	85	V	75.00						
Apr. 21	Mdse.	169		26.86						
May 2	R. M. Jaeger	89		100.00						
" 2	Note due	89	V	300.00						
" 2	Int. on note		V	300.00						
Apr. 28	Mdse.	171		200.38						
Apr. 27	Mdse.	172		612.00						
Apr. 28	Mdse.	172		252.28						
Apr. 29	Mdse.	172		45.22						
May 4	Int. 300.00	95		4.70	May	4	Note	88		300.00
May "	Note due	93	V	500.00	May	5	Note	90	V	1,900.00
May "	Int. 400.00	96	V	6.00	"	5	Cash	90	V	231.50
May "	Int. due	96		.13	"	5	D. M. 4/6/14	126		54.91
May 9	Mdse.	175		255.70	"	11	Note	92	V	400.00
May 12	Int. on 10,500	96	V	157.50	"	11	Cash	92	V	106.00
" 12	" due	96		3.50	"	11	To Excess Int.	128		3.00
" 12	Int. on 300	96	V	4.50	May	12	Note	92	V	300.00
" 12	" due	96		.10	May	12	Cash	92	V	79.50
" 11	Note due	93	V	375.00	May	12	Note	92	V	10,500.00
" 12	Note due	93	V	11,500.00	May	12	Cash	92	V	1,157.50
" 15	Mdse.	177		14.40	May	15	Cash	92		800.00
" 19	Mdse.	179		901.29	May	22	D. M. 4/14 4/21	129		17.66
" 21	Mdse	179		20.40	"	26	*Bal.*		V	*6,865.79*
" 21	Mdse.	179		427.89						
" 21	Int. on 1900.00	97	V	31.50						
" 23	Note due	97	V	2,100.00						
" 25	Diff. in ap.			.31						
	1914			26,247.90						26,247.90

Exhibit C8

1914					1914			
May 26	*Balance*			*6,865.79*	May 26	Note	98	750.00
" 23	Mdse.	181		303.78	June 11	Note	100 V	400.00
" 26	Int. 750.00	98		15.62	" 11	Cash	100 V	108.00
" 16	Cash R. M. Jaeger	99		50.00	" 6	D. M. 4/28 4/28 4/27	138	23.66
June 11	Note due	101	V	500.00	" 9	D. M. 4/29 5/9 5/21 5/21	138	18.85
" 11	Int. 400.00	99	V	8.00	" 9	Note	100	360.30
" 11	Int. due	99		.20	" 9	Note	100	200.00
" 11	Mdse.	186	V	14.24	" 9	Cash	100	200.00
" 11	Mdse.	186		833.52	" 9	D. M. 5/21	139	2.00
" 12	Mdse.	186		42.75	" 15	Cash	102	300.00
" 19	Mdse.	188		176.30	" 16	Posted in error	139 V	14.24
" 20	Cash R. M. Jaeger	107	V	126.00	" 22	Cash	106 V	126.00
" 26	Note due	107	V	350.00	" 26	Note	106 V	200.00
" 26	Int. on $200.00	100	V	3.00	" 26	Cash	106 V	153.00
July 2	Note due	109	V	750.00	June 29	D. Memo. 5/19	142	59.89
July 2	Int. on $600.00	101	V	9.20	June 29	D. Memo. 5/19	142	6.19
July 13	Mdse.	193		445.53	July 2	Note	108 V	600.00
July 20	Note due	113	V	600.00	July 2	Cash	108 V	159.00
July 17	Int. $400.00	102	V	6.00	July 20	Cash	112 V	206.00
July 20	Cash	112		200.00	July 20	Note	112 V	400.00
July 20	Note	112		400.00	July 22	Cash	112	30.00
Aug. 1	Note due	114	V	200.00	July 22	Cash	112	8.82
July 30	Int. $200.00 Note	103		3.07	July 22	Cash	112	9.80
Aug. 3	Note due	117	V	200.00	July 23	Cash	114	69.09
July 1	Cash	117		225.00	Aug. 3	Note	115 V	200.00
Aug. 8	Int. $400.00	104		6.13	Aug. 3	Note	116 V	200.00
Aug. 12	" $300.00	105		4.60	Aug. 11	Note	118 V	400.00
Aug. 11	Note due	119	V	400.00	Aug. 12	Note	118 V	300.00
Aug. 12	Note due	119	V	300.00	Aug. 12	Note	118 V	10,500.00
Aug. 12	Int. $10,500.00	105		161.00	Aug. 12	Cash	118	29.40
Aug. 12	Note due	119	V	10,500.00	Aug. 12	Cash	118	35.72
July 2	Excess Int. $600.00	101		.20	Aug. 12	Cash	118	72.50
Sept. 29	Note due	131		201.54	Aug. 27	Cash	122	18.00
Oct. 2	Note due	131		600.00	Aug. 27	Cash	122	15.00
Oct. 12	Note due	133		400.00				

Exhibit C9

Date		Folio	Ck.	Charges	Date	Folio	Ck	Credits
1914					1914			
Oct. 16	Cash	139		200.00				
Nov. 4	Note due	141		200.00				
Nov. 6	Note	141		825.00				
Nov. 11	Note due	143		400.00				
Nov. 12	Note due	143		300.00				
Nov. 23	Note due	147		405.87				
Dec. 15	Note due	153		10,500.00				
Jan. 20	Note due	165		250.00				

Exhibit C9.

Entries in Bills Payable Book of Leceister Rubber Company referred to in testimony.

Date	No.	Drawer	In Whose Favor	Where Payable	Time Months	When Due	Amount	Remarks
1913								paid by Maher
Aug 12		Leceister Rubber Co	Trenton Scrap Rubber Supply Co	New 25,000.00 Mechanics	3 Mo.	Nov. 12	25,000.00	paid DePiano Fineburg
Nov 12		"	Trenton Scrap Rubber Supply Co	re 25,000 note I F pays 12,500	3 Mo.	Mechanics B Feb. 12	12500.00	ren to I F paid Pay 2500.00
Feb 12		" Mechanics	Trenton Scrap Rubber Supply Co	Ren 12,500.00 pay 1,000.00	3 Mo.	Mechanics May 12 Dis by T S R S Co	11500.00	paid pay $1000.00
May 12		"	Trenton Scrap R. S. Co	Ren 11,500.00 pay 1,000.00	3 Mo.	Aug. 12 mak. pay ADP HB IF	10500.00	pd pay 1000.00
Aug 12		" changed fr T S R S Co to A D P H B & I F		Ren in ful 10,500.00	3 Mo.	Nov. 12	10500.00	given to T S R S Co

Exhibit C11.

Catasaugua Pa June 20 14

We the undersigned, stockholders of The Leicester Rubber Co hereby waive notice of meeting held in office of Co this day for the purpose of authorizing the increase of capital stock

Wm M. Maher	9	shares
A. DePiano	69	"
H. B	160	"
I Fineburg	197	"

Exhibit C12.

Catasaugua Pa June 20 14

I the undersigned hereby authorize Harry Bernstein to vote my 167 shares of the capital stock of Leceister Rubber Co at meeting of the above Co to be held in office of Co at Catasaugua Pa June 20 14 @ 2 P M on resolution authorizing the increase of capital stock of said Co. from $50,000.00 to $150,000.00.

I FINEBURG

Exhibit C15.

WILLIAM H. SCHNELLER

ATTORNEY-AT-LAW

Catasauqua, Pa.

KNOW ALL MEN BY THESE PRESENTS, That the Leicester Rubber Company, a corporation, duly incorporated under the laws of the State of New Jersey,

New Jersey State Library

Exhibit C15

located and doing business at Catasauqua, Pa., in consideration of moneys paid by Isaac Fineburg, personally, of Trenton, New Jersey, and for the further consideration of moneys now due to the said Isaac Fineburg, personally, and to the Trenton Scrap Rubber Supply Company, by the said Leicester Rubber Company, has bargained, sold, released, granted, and confirmed, and by these presents does hereby bargain, sell, release, grant, and confirm, unto the said Isaac Fineburg, his heirs and assigns forever, all the receiveable accounts, merchandise, stock & machinery on hand, of whatsoever nature or kind and wheresoever situate, of the said Leicester Rubber Company, Incorporated.

To have and to hold all and singular the said receivable book accounts, merchandise, stock & machinery on hand, of whatsoever nature or kind and wheresoever situate, and every of them, by these presents, bargained, sold, released, granted and confirmed, unto the said Isaac Fineburg, to his only proper use and behoof, his heirs, executors, administrators and assigns forever.

In Witness Whereof, The said Leicester Rubber, Incorporated, has this Twenty-first (21st) day of July, A. D., 1914, caused this Indenture to be executed by its proper officers, and has also caused its corporate seal to be affixed hereto.

Leicester Rubber Company, Incorporated

(Corporate Seal of Leicester Rubber Co.)

by

A. DePiano
President.

Harry Bernstein
Treasurer.

Attest:

Wm. M. Maher,
Secretary.

Exhibit C15

State of Pennsylvania, }
County of Lehigh, } ss:

Be it remembered, that on the Twenty-first (21st) day of July, in the year of our Lord one thousand nine hundred and fourteen (1914) before me, William H. Schneller, a Notary Public of the State of Pennsylvania, duly commissioned, residing at Catasauqua, Pa., personally appeared William M. Maher, Secretary of the Leicester Rubber Company above mentioned, who being duly sworn according to law, deposes and says that the corporate seal of the Leicester Rubber Company was destroyed by fire on July 19th, 1914, and that the ink scroll is used in lieu thereof by the consent of all of the officers of the said corporation; that he was personally present at the execution of the above written Indenture and saw the ink scroll aforesaid affixed as the common seal of the said corporation and that the seal so affixed was used as the common and corporate seal of the said Leicester Rubber Company for the purposes of the proper execution of this Indenture; and that the above written Indenture was duly assigned and sealed and delivered by and as and for the act and deed of the said Leicester Rubber Company for the uses and purposes therein mentioned: and that the name of this deponent subscribed to the said deed as the Secretary of the said corporation in attestation of the due execution and delivery of said deed, is of this deponent's own proper and respective handwriting; that the signature of Antonio De Piano, as president, and Harry Bernstein, as treasurer, was signed in his presence and is in their respective handwritings.

(Seal.) WM. M. Maher.

Sworn to and subscribed before me this Twenty-first (21st) day of July, A. D., 1914.

WM. H. Schneller,
Notary Public,
Commission expires Feb. 21, 1915.

Exhibit C16.

C 16
SP.

GEORGE W. MACPHERSON

COUNSELLOR AT LAW

Room 405-Broad Street Bank Building

Trenton, New Jersey

June 26, 1915.

Received of I. Fineburg the sum of ten thousand dollars in cash and three several promissory notes of five thousand dollars each bearing even date herewith and payable three months after date on account of and in accordance with the agreement for the purchase by I. Fineburg of the business of Trenton Scrap Rubber Supply Co.

H. FREEDMAN

Exhibit C19.

Sheet No. 1.

Name Stock & Bonds.
Address

Date		Folio	Ck	Charges	Date			Folio	Ck	Credits
1913					1914					
Feb. 21	J. R. Sweeney	233	√	1,135.00	Nov.	9	Note C. E. Murray 4 ms.	140	√	7,500.00
	Mech. N. Bank (5 Shares)				"	9	Loss of Pref. Stock		√	950.00
Mar. 8	100 Shares	239	√	8,450.00	"	9	Cash C. E. M.	140	√	125.00
	Empire R. & T. Co. preferred				Dec.	18	Sold M. S. B.	154	√	1,130.00
Nov. 6	2 1/2 Shares	141	√	125.00	Dec.	18	Lost on stock	154	√	500.00
	Empire R. & T. Co.									

Exhibit C20.

Summary.

1915		Assets
June 22	Cash less Did.	4,823.99
" "	Accounts Rec. less Did.	21,501.65
	Hanson Wag. vc Fineburg do.	1,500.
	Real Est. " "	22,000.
	Leicester Rub. Co. a/c	11,302.88
	" " Note	10,500.
	Mdse. Inv June 1st	56,203.22
		127,831.74
	I. Fineburg a/c	20,645.43
	H. Freedman a/c	6,755.40
		155,232.57
Less Mdse. Sale from June 1st to 22		22,029.48
		133,203.09

1915		Liabilities
June 22	Notes	20,216.89
" "	Accs Payable less Div.	2,933.37
" "	Mortgage	9,500.
		32,650.26
	Bal.	100,552.83
		133,203.09

Exhibit C21.

The following sales were made on date indicated not pasted in Ledger until after June 22, 1915, and not included in accounts Rec., for this reason Fineberg claims his personal losses.

Panther Rub Co

1915			
May	14	Mds	598.08
"	24	"	1,733.20
"	27	"	257.88
June	3	"	468.11
"	9	"	419.16
"	14	"	890.68
"	22	"	761.07

N. E. Bergen

May	26	Mds	1,439.52
June	9	"	233.28
"	"	"	362.82
"	10	"	772.28

Empire Rub Co

May	13	Mds	30.72
"	29	"	25.16
June	9	"	472.44
"	10	"	91.65

Hamilton Rub Co

June	15	Mdse	100.94

Exhibit D1.

$25,000.00

Trenton, N. J., Aug 12 1913

Three months after date we promise to pay to the order of Trenton Scrap Rubber Sup. Co. at THE MECHANICS NATIONAL BANK OF TRENTON Twenty-five thousand Dollars, without defalcation or discount, for value received.

LEICESTER RUBBER CO.
Wm. M. Maher Treas.

A. DePiano

B 6750 Nov 12 D

(Endorsed): Trenton Scrap Rubber Sup Co I Fineberg Treas Isaac Fineberg A. DePiano J. F. Maher Trenton Scrap Rubber Sup Co I Fineburg Treas Oct 22 1913 paid on within note fourteen hundred dollars

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Exhibit D3.

ARTICLES OF AGREEMENT, made this day of June, nineteen hundred and fifteen, Between Harry Freedman, of the City of Trenton, County of Mercer and State of New Jersey, party of the first part, and Isaac Fineberg, of the same place, party of the second part, WITNESSETH:

WHEREAS, the parties hereto have been engaged as partners in the City of Trenton in what is known as the scrap rubber business, trading as the Trenton Scrap Rubber Supply Company;

AND WHEREAS, they have agreed to a dissolution of said partnership, and the said Isaac Fineberg has

Exhibit D3

agreed to purchase all the right, title and interest in and to the said partnership property upon the terms and conditions hereinafter named;

AND WHEREAS, it is deemed advisable to fix the terms of said sale and purchase, and the times when the same shall be completed, by the transfer of the property of said partnership by proper deeds, bills of sale and other instruments necessary to give effect to the sale and transfer of said partnership property.

NOW, THEREFORE, the said Harry Freedman, in consideration of the sum of Twenty-five thousand Dollars, to be paid to him as hereinafter mentioned, and such further sum as shall represent the amount of money which the said Harry Freedman shall have in said partnership business in excess of the moneys which the said Isaac Fineberg has in such business, as shall be determined by arbitration as hereinafter mentioned, and in the further consideration of the premises and the covenants and the agreements hereinafter agreed to be performed in the manner hereinafter stated, covenants and agrees to sell and convey to the said Isaac Fineberg all his undivided one-half interest in the said partnership business on or before the first day of July, nineteen hundred and fifteen, and will execute such proper deeds, bills of sale and other necessary instruments in writing to convey, transfer and set over unto the said Isaac Fineberg all his undivided one-half interest in the said partnership business and property belonging to said business.

And the said Isaac Fineberg covenants and agrees to purchase all the undivided one-half interest of the said Harry Freedman in and to the said partnership business, and to pay therefor the sum of Twenty-five thousand Dollars, as follows: Ten thousand Dollars in cash upon the signing of this agreement and Fifteen thousand Dollars by giving three promissory notes

Exhibit D3

of Five thousand Dollars each, to be dated on the first day of July, nineteen hundred and fifteen, and payable three months after date with interest, each of which said notes to be renewed at each recurring period of three months, provided a payment of at least Five hundred Dollars is made on the principal of each note, the discount of said renewal notes to be paid by the maker of said notes; and further promises and agrees to pay such additional sum as shall be ascertained to be the amount of money which the said Harry Freedman has in said partnership in excess of what the said Isaac Fineberg shall have in said business, in the following manner: One-fifth part thereof in cash, one-fifth part within twenty days of the ascertainment of said amount by the arbitrators as hereinafter provided, and the balance of three-fifths by giving three promissory notes of equal amounts, each note representing one-fifth of the amount so ascertained to be due to the said Harry Freedman, and each of said notes to bear interest from its date and to be given for a period of three months and to be renewed at each recurring period of three months thereafter, provided that at such recurring period there is paid at least one-tenth of the principal of said notes; and said notes to be properly secured by a purchase money mortgage, both real and chattel, upon all the property, both real and personal, of the said partnership, and to be made and executed at the same time that the conveyance or conveyances by the said Harry Freedman to Isaac Fineberg are made, to wit; on the first day of July, nineteen hundred and fifteen.

And the said Isaac Fineberg further covenants and agrees to pay and discharge all the debts and liabilities of the said partnership business as the same now appears upon the books of account of said partnership, or in the event that there is any debt or liability not appearing on the books of account of said

Exhibit D3

partnership, then to pay such liability not so appearing on said books, provided the total amount shall not exceed the sum of One Thousand Dollars.

And the said parties further covenant and agree to and with each other to submit to three disinterested persons, one to be chosen on each side and they to choose another, the determination of the amount of money, if any, which the said Harry Freedman has in the said partnership business of the Trenton Scrap Rubber Supply Company in excess of the amount of money which the said Isaac Fineberg has in said business, and also to submit to like arbitration the determination as to whether there should be charged against the interest of the said Isaac Fineberg in said partnership business the payment of a certain promissory note made by the Leicester Rubber Company for the sum of Ten Thousand Five Hundred Dollars, to the order of A. DePiano (and endorsed by the said A. DePiano, H. Bernstein and Isaac Fineberg, which note was discounted at the Mechanics' National Bank and afterwards protested for nonpayment and finally paid by the said Isaac Fineberg out of the moneys of said partnership); and do mutually covenant and agree with each other that the award or decision made by the said arbitrators, or any two of them, to the said matter as to the amount of money which the said Harry Freedman has in the said business in excess of the said Isaac Fineberg, and also to the note of the said Leicester Rubber Company above referred to shall be accepted as final between them; such award by such arbitrators, or any two of them, shall be made in writing under their respective hands and shall be delivered to said parties, or such of them as shall desire to receive the same, on or before the tenth day of July, nineteen hundred and fifteen; the selection of said arbitrators to be made on or before the first day of July, next, by each of the parties hereto submit-

Exhibit D3

ting to the other the name of the person in writing selected by him, such selection when so made and the umpire selected and chosen by such arbitrators when made shall have the same force and effect as though the name of such arbitrators were herein set forth, and at all meetings of said arbitrators each of said parties shall have the right to submit such evidence as he deems proper and the assistance of counsel at the time; and further that the costs of said arbitration shall be paid by each of the parties hereto in equal shares or parts and before the signing of the said award by the arbitrators.

And it is further agreed between the parties hereto that the award of said arbitrators, or any two of them, may be made a rule of the Circuit Court of the County of Mercer, and such proceedings may be had in law or in equity as may be necessary to completely perform the said award.

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

Signed, sealed and delivered
in the presence of,

State of New Jersey, }
County of Mercer, } ss:

Be it remembered, that on this day of June, nineteen hundred and fifteen, before me, a Master in Chancery of the State of New Jersey, personally appeared Harry Freedman and Isaac Fineberg, who, I am satisfied are the persons mentioned in the within agreement, to whom I first made known the contents thereof, and thereupon they acknowledged that they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed.

Exhibit D5.

THIS AGREEMENT, made this twenti day of April, in the year of our Lord, one thousand nine hundred and fifteen, between Harry Freedman, of the City of Trenton, County of Mercer and State of New Jersey, party of the first part; and Isaac Fineberg, of the same place, party of the second part, WITNESSETH:

WHEREAS, the parties hereto did, on the twenty-fourth day of July, nineteen hundred and seven, enter into certain articles of co-partnership to carry on the business of dealing in scrap rubber, for the period of one year from the date thereof, and from year to year thereafter, under the firm name and style of "Trenton Scrap Rubber Supply Company"; and

WHEREAS, the said parties hereto have agreed to mutually dissolve said partnership in the manner hereinafter provided, and do hereby respectively waive any provision as to notice required to be given under the original articles of co-partnership, for the dissolution of said partnership, except as hereinafter provided;

NOW, THEREFORE, in consideration of the premises and the covenants and agreements hereinafter agreed to be performed in the manner hereinafter stated, the said parties to this agreement, do hereby submit the following matters, hereinafter stated, to the arbitration of Edward C. Stokes, Simon Gerson, and Hyman A. Rosenthal, W. H. Servis and C. H. Oakley, all of the City of Trenton, or any three of them; and we do mutually covenant and agree with each other, that the award or decision made by the said arbitrators, or any three of them, to all matters submitted to them as hereinafter stated, shall in all respects be well and faithfully performed and carried out by us and each of us. Such award by said arbitrators, or any three of them, shall be made in writing, under their respective hands, and shall be delivered to said parties, or such

Exhibit D5

of them as shall desire to receive the same, on or before the day of , nineteen hundred and fifteen.

SECOND. And be it further agreed, that the costs of said arbitration shall be at the expense of said partnership, and shall be deducted from the proceeds of said business, before a settlement or disposition is made of the same, as hereinafter provided.

THIRD. And it is further agreed, that the award of said arbitrators, or any three of them, may be made a rule of court, and such proceedings may be had at law or in equity as may be necessary to completely perform the said award.

FOURTH. And it is further agreed, that the parties hereto do agree to execute all bills of sale, deeds, or other instruments in writing, necessary to faithfully and fully perform the said award, and the dissolution of said partnership.

FIFTH. The following are the matters in dispute referred to said arbitrators, viz:

A. All matters in connection with the Leicester Rubber Company, and the relation of this firm to said company.

B. To decide who shall retain the name as well as the business of said co-partnership.

SIXTH. Upon the determination of the above questions the parties hereto do mutually hereby agree and consent that the co-partnership, aforesaid, be and the same is wholly dissolved, except so far as it may be necessary to continue the same for the settlement of the business thereof.

SEVENTH. That days after the dissolution of the partnership, a full and complete account

Exhibit D5

shall be taken and made of the property, assets and liabilities of the partnership, and a full and complete inventory of all the materials, plant, tools, utensels and effects belonging to the firm, including its real estate; and the same shall be appraised in the following manner, viz:

A. The scrap rubber shall be appraised by three prominent dealers in scrap rubber, said appraisers to be selected by the above-named arbitrators, and the value placed upon said materials by said appraisers, or any two of them, shall be the value to be placed in the inventory, and purchased in the manner hereinafter set forth.

B. The real estate shall be likewise appraised by three real estate dealers, selected by the above-named arbitrators, and whose decision as to the value thereof, or a majority of them, shall be the basis upon which the said real estate shall be taken into account upon the settlement of said co-partnership.

C. The horses, wagons, office furniture, tools, etc., shall be appraised by three appraisers appointed by said arbitrators, whose decision, or that of any two of them, shall be the basis upon which the property shall be paid for in the manner hereinafter set forth.

D. The accounts due to said co-partnership, including notes receivable, shall be appraised by the said partners, and they shall decide which shall be considered good or bad accounts. In the event that bad accounts are subsequently paid, one-half of the amount collected shall be paid to the partner withdrawing.

EIGHTH. Upon the completion of the General Account and Balance Sheet, ascertained in the above manner, the interest of said retiring partner, which is a one-half interest, shall be paid for in the following

Exhibit D5

manner, viz., the partner retaining said business may either purchase said retiring partner's share by paying for the same in cash, or by paying one-half in cash and the balance in merchandise, upon the values placed upon the same in accordance with the inventory above mentioned, it being agreed that in case of part payment in merchandise, the same shall be paid in the different grades of merchandise, proportionate to the respective quantities on hand.

NINTH. The partner remaining in said business, in addition to the payment of the consideration above mentioned, does hereby agree to assume and pay all of the debts and liabilities of the said partnership, and is likewise to receive in consideration of the above, all of the property of the said partnership, of any nature whatsoever.

TENTH. It is further agreed, that said dissolution shall take effect on the day of nineteen hundred and fifteen, and that within days after that date the partner remaining in said business shall be entirely and solely responsible for all notes renewed after that date, and that the retiring partner shall no longer be held liable for any liability thereon.

ELEVENTH. It is further understood and agreed, that no obligations or notes, after the day of aforesaid, shall in any way be given by the remaining partner to create any liability as against said partnership.

TWELFTH. It is further understood and agreed, that proper notice shall be given of the dissolution of the said partnership, and that the remaining partner has agreed to settle all debts of said partnership, and is likewise to receive all monies or accounts due to the same.

Exhibit D5

THIRTEENTH. It is further agreed, that the retiring partner does hereby authorize and empower the remaining partner to take all necessary actions at law or in equity, in the name of said partnership or otherwise, to collect all accounts, claims, choses in action or demands, due to said partnership, and likewise to defend any actions against said partnership, at law or in equity.

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

ISAAC FINEBERG (Seal)
H. FREEDMAN (Seal)

Signed, sealed and delivered
in the presence of
Simon Gerson.

Be it remembered, that on this twentieth day of April, nineteen hundred and fifteen, before the subscriber, a Master in Chancery of New Jersey, personally appeared Harry Freedman and Isaac Fineburg, the parties mentioned in the within agreement, and I having first made known to them the contents thereof, they did severally acknowledge that they signed, sealed and delivered the same as their several voluntary acts and deeds, for the uses and purposes therein expressed.

Exhibit D7.

WESTERN UNION TELEGRAM

THEO. N. VAIL, PRESIDENT

Received at
10 P M 14 Paid 11 AM
Catasaqua Pa June 23,

Trenton Scrap Rubber Supply Co
Perrine Ave, Trenton N J

Guest at Trenton Lodge tonight Stop at Trenton House Pleased to have you call

FRANK E. LEONARD.

Phoned to N.
Time 11-6A
By M. L. To be mailed

Exhibit D8.

Rev 11500.00

$10500.00

Trenton, N. J., May 12 1914

Three months after date we promise to pay to the order of Trenton Scrap Rubber Supply Co. at THE MECHANICS NATIONAL BANK OF TRENTON Ten thousand five hundred 00/100 Dollars, without defalcation or discount, for value received.

LEICESTER RUBBER CO.
Harry Bernstein Treas
Mr. M. M. Maher, Secty

A. DePiano

R11500

B 4306 Aug 12 D

(Endorsed): Trenton Scrap Rubber Sup Co I Fineberg Treas Harry Bernstein A. DePiano Isaac Fineburg Trenton Scrap Rubber Sup Co I Fineburg Treas.

Exhibit D9.

$3000.00 Trenton, N. J., 12/15 1914.

Four months after date We promise to Pay to the order of Isaac Fineburg, at THE MECHANICS NATIONAL BANK OF TRENTON, Three thousand Dollars, Without defalcation or discount, for value received.

TRENTON SCRAP RUBBER SUP. CO.
I. Fineburg, Treas.

(Stamped on face in red ink): B 11608 D Apr 15
(Perforated): PAID
(Endorsed): H. Freedman Isaac Fineburg Trenton Scrap Rubber Sup Co I. Fineberg Tres

Sixty cents of revenue stamps attached and cancelled.

Exhibit D11.

To Isaac Fineberg and Scott Scammell, his attorney.

Gentlemen:

I herewith present a statement of the amount of excess which Harry Freedman has in the partnership with Isaac Fineberg, trading as the Trenton Scrap Rubber Supply Company.

1. The excess covering a period from July 1, 1912, to Jan. 1, 1915, averaging	$17,522.71	
Interest on said sum for 2 years and 6 months		$2,628.40
2. To excess which Harry Freedman had in said business from Jan. 1, 1915, to June 22, 1915,		14,088.52
To 6 months interest on said sum		420.74
3. To promissory note paid by said partnership for Leicester Rubber Company and for the benefit of Isaac Fineberg		10,500.00
4. To discount on C. Edward Murray note of $2,500.00		50.14
5. To one week's salary from June 20, 1915, to June 26, 1915,		50.00
		$27,737.80

Yours truly,
HARRY FREEDMAN
by GEO. W. MACPHERSON
his atty.

Exhibit D12.

ARTICLES OF AGREEMENT, made this day of July, nineteen hundred and fifteen, BETWEEN Harry Freedman, of the City of Trenton, in the County of Mercer and State of New Jersey, of one part, and Isaac Fineberg, of the same place, of the other part, WITNESSETH:

WHEREAS, the said Isaac Fineberg has, by virtue of a certain option in writing, given to him by the said Harry Freedman, purchased all the right, title, good-will and interest of the said Harry Freedman in the partnership heretofore subsisting as the "Trenton Scrap Rubber Supply Company," and has paid the consideration mentioned in said option, in the manner therein provided, except as to such monies, if any, which the said Harry Freedman may have in said partnership business in excess of the monies which the said Isaac Fineberg has in said business; and

WHEREAS, it is provided in said option agreement that said monies in excess, if any, shall be paid in the same manner as the purchase price of said partnership interest of said Harry Freedman; and

WHEREAS, the said Harry Freedman claims to have in said partnership a considerable sum of money over and above the amount which the said Isaac Fineberg has in said business, which the said Isaac Fineberg disputes; and

WHEREAS, the said parties are desirous of having said claim amicably adjusted and submitted to arbitration as hereinafter set forth;

NOW THEREFORE, in consideration of the foregoing, and the sum of One Dollar each to the other in hand paid, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, the said parties hereto agree as follows:

Exhibit D12

FIRST: The said Harry Freedman covenants and agrees to execute and deliver to Scott Scammell, attorney for Isaac Fineberg, a proper and sufficient deed of conveyance conveying all his right, title and interest in the real estate of the said partnership to the said Isaac Fineberg, and also a proper and sufficient bill of sale assigning and setting over to the said Isaac Fineberg all his right, title and interest in and to the goods and chattels, merchandise, book accounts, bills receivable and all other personal property of said partnership, including his interest in the good will of said partnership; said deed of conveyance and bill of sale to be executed and delivered to the said Scott Scammell at the time of the first meeting of the arbitrators, and to be held by the said Scott Scammell in escrow until the award of the arbitrators hereinafter mentioned shall have been made and fully complied with on the part of the said Isaac Fineberg.

SECOND: The said Isaac Fineburg covenants and agrees to cause to be deposited in a legally created and responsible warehouse goods and merchandise formerly belonging to said partnership, and now belonging to said Isaac Fineberg, to the amount of Twenty thousand dollars, and to obtain therefor a proper, legal and sufficient warehouse receipt for the same, and to deposit said warehouse receipt in the care and custody of George W. Macpherson, attorney for the said Harry Freedman, to be held by him in escrow to await the determination of said award of said arbitrators, and when said award has been complied with by said Isaac Fineberg, then to return said warehouse receipt to the said Isaac Fineberg.

THIRD: Each of the parties hereto covenant and agree to and with each other to submit to arbitration of Edward C. Stokes, Simon Gerson, Hyman A. Rosenthal, W. H. Servis and C. H. Oakley, or a ma-

Exhibit D12

jority of them, the matters and things in difference between the parties, heretofore referred to, it being understood that the arbitrators herein named, or any or either of them, shall not have nor intend to have any direct interest in the matters and things herein submitted to them, or to have any interest with the said Isaac Fineberg in the business acquired by the said Isaac Fineberg or any interest in any corporation which the said Isaac Fineberg may form for the purpose of conducting or taking over said business.

FOURTH: And the said parties do mutually covenant and agree to and with each other that the award or decision made by the said arbitrators, or a majority of them, to the matters submitted to them as hereinbefore stated shall in all respects be well and faithfully performed and carried out by us and each of us, and such award of such arbitrators, or a majority of them, be made in writing under their respective hands, and shall be delivered to the said parties, or such of them as shall desire to receive the same, on or before the day of , nineteen hundred and fifteen, and at all meetings of such arbitrators each of said parties shall have the right to submit such evidence as he deems proper and to have the assistance of counsel at such meetings; and further that the costs of such arbitration shall be paid by each of the said parties hereto in equal shares or parts and before the signing of the said award by the arbitrators.

FIFTH: And it is further agreed that if the said arbitrators decide and award any sum to the said Harry Freedman for excess moneys in said partnership, such sum shall be paid in the manner provided in paragraph Seven (7) of the option agreement heretofore referred to and under which the said interest of the said Harry Freedman has been purchased.

Exhibit D12

SIXTH: And it is further agreed between the parties hereto that the award of the said arbitrators, or a majority of them, may be made a rule of the Circuit Court of the County of Mercer, and such proceedings may be had in law or in equity as may be necessary to completely perform the said award.

IN WITNESS WHEREOF, each of the parties hereto have hereunto set their hands and seals the day and year first above written.

(Seal)

(Seal)

Signed, sealed and delivered
in the presence of:

State of New Jersey,
County of Mercer, } ss:

Be it remembered, that on this day of July, nineteen hundred and fifteen, before me, a Master in Chancery of the State of New Jersey, personally appeared Harry Freedman and Isaac Fineberg, who, I am satisfied, are the persons mentioned in the within agreement, to whom I first made known the contents thereof, and thereupon they acknowledged that they signed, sealed and delievered the same as their voluntary act and deed, for the uses and purposes therein expressed.

TO ALL TO WHOM THESE PRESENTS SHALL COME, KNOW YE, that we, the subscribers, Scott Scammell, attorney of Isaac Fineberg and George W. Macpherson, attorney of Harry Freedman, in consideration of the trust imposed in us, by reason of the foregoing

agreement, covenant and agree to and with each other and with the parties to said agreement that we will accept and receive the deed, bill of sale and warehouse receipt upon the terms set forth in said agreement.

Exhibit D15.

H. Freedman 6/5/15

24—30x3	Clin.	N. S.	@ 9.45	226.80
31—30x3½	"	"	@ 12.20	378.20
4—28x3	"	"	@ 8.95	35.80
3—32x3½	"	"	@ 14.00	42.00
2—32x3½	Q. D.	"	@ 14.00	28.00
8—33x4	"	"	@ 20.00	160.00
4—35x4½	"	"	@ 28.35	113.40
2—34x4	Clin.	"	@ 20.35	40.70
2—34x4	Q. D.	"	@ 20.35	40.70
1—30x4	S. S.	"	@ 18.00	18.00
1—31x4	"	"	@ 18.85	18.85
1—36x4½	Q. D.	"	@ 28.70	28.70
				1,131.15
		Less 50%		565.57
				565.58

Amount ded. from your a. c. in T. S. R. S. Co. and given to I. Fineburg.

I. Fineburg.
Box 723.

Dear Sam

Please send cheque for $565.68 to I. Fineburg P. O. Box #723 Trenton N. J.

H. FREEDMAN.

P. S. If you haven't enough money, send as much as you have.

H. F.

Exhibit D16.

THE MECHANICS NATIONAL BANK OF TRENTON

Trenton, N. J., 11/12 1913

Pay to.....Yourselves.....
Twenty-three thousand six hundred .....Dollars.
$23,600.00

TRENTON SCRAP RUBBER SUP. CO.
I. Fineburg
Treas.

(Stamped across face): Counter check Not negotiable.
(Perforated): PAID.

NEW JERSEY COURT OF ERRORS AND APPEALS.

HARRY FREEDMAN,
Complainant-Respondent,
and
ISAAC FINEBURG,
Defendant-Appellant.

ON APPEAL.

BRIEF FOR RESPONDENT.

CONCISE STATEMENT OF FACTS.

On July 24th, 1907, the complainant-respondent, Harry Freedman, and the defendant-appellant, Isaac Fineburg, formed a partnership under the name of the "Trenton Scrap Rubber Supply Company" for the purpose of buying and selling scrap rubber. The partnership commenced business in 1907 with a capital of approximately $13,000. They purchased real estate in the city of Trenton and actively engaged in business. They so prospered in the business in which they had engaged that in about six years the assets of the partnership over and above the liabilities amounted to approximately $100,000.

In the city of Trenton, in the year 1913, there was a company incorporated under the laws of the state of New Jersey, known as the "Leicester Rubber

Company." This company was engaged in manufacturing rubber goods. The principal stockholders of the Leicester Rubber Company were considering the purchase of a plant at Catasauqua, Pennsylvania, which would enlarge the facilities of the company. These stockholders sought to interest Mr. Freedman and Mr. Fineburg in the enterprise. Mr. Freedman, after inspecting the property at Catasauqua, Pennsylvania, decided not to become interested in the purchase of the Catasauqua plant by the Leicester Rubber Company.

When the agent of the owners of the Catasauqua plant came to Trenton in July, 1913, Mr. Freedman stated that he did not care to become interested in the plant. Mr. Fineburg stated that he would purchase the plant himself. Mr. Fineburg, with Mr. De Piano of the Leicester Rubber Company, then went with the agent of the owners of the plant to the office of George W. Macpherson, Esquire, counsellor-at-law, of Trenton, New Jersey, and an agreement for the purchase of the plant was made between the agent and Mr. De Piano and Mr. Fineburg. The agreement was made on July 12th, 1913. The purchase price was $23,000, and this was to be paid on August 12th, 1913. On August 11th, 1913, at a meeting of the stockholders and directors of the Leicester Rubber Company, Mr. Fineburg purchased 197 shares of the capital stock of the Leicester Rubber Company and a certificate was issued to him in his name and receipted for by him. The price of the stock was $62.50 per share, making the sum of $12,312.50. In order to raise the $22,500 necessary to pay the balance of the purchase price ($500 having been paid by Mr. Fineburg at the time of the execution of the agreement), the Leicester Rubber Company made its promissory note to the order of

the Trenton Scrap Rubber Supply Company for the sum of $25,000. This note was then endorsed by the Trenton Scrap Rubber Supply Company by Mr. Fineburg, and then endorsed personally by Mr. Fineburg, Mr. De Piano and Mr. Joseph F. Maher, and was then again endorsed by the Trenton Scrap Rubber Supply Company by Mr. Fineburg, and discounted by the Mechanics' National Bank of Trenton, and the money placed to the credit of the Trenton Scrap Rubber Supply Company, the last endorser. It was then checked out of the account of the Trenton Scrap Rubber Supply Company by Mr. Fineburg for the Leicester Rubber Company, so that the Leicester Rubber Company received the full proceeds of the note and used the amount therefrom necessary to pay the balance of the purchase price of the Catasauqua plant, namely, $22,500.

This note fell due on November 12, 1913, and was reduced to $12,500 from the funds of the Trenton Scrap Rubber Supply Company and $12,500 was charged to the account of Mr. Fineburg on the books of the Trenton Scrap Rubber Supply Company. On February 12, 1914, the note was renewed for $11,500, $1,000 being paid by the Leicester Rubber Company, and on May 12, 1914, the note was again renewed and reduced to $10,500 by the payment of $1,000 by the Leicester Rubber Company. On August 12, 1914, the note was renewed in full for $10,500, and the form was changed so that it was made payable to Messrs. A. De Piano, H. Bernstein (a new stockholder) and I. Fineburg, and then endorsed by the Trenton Scrap Rubber Supply Company by Mr. Fineburg.

On November 12, 1914, this note was protested for non-payment and remained in the Mechanics' National Bank of Trenton as a protested item until

December 15, 1914, when Mr. Fineburg drew a Trenton Scrap Rubber Supply Company check for $10,500 and took up the note.

On July 15, 1914, the Catasauqua plant had been completely destroyed by fire without insurance. This loss resulted in the Leicester Rubber Company being adjudged a bankrupt in September, 1914.

The withdrawals of moneys from the account of the Trenton Scrap Rubber Supply Company by Mr. Fineburg for matters in connection with the Leicester Rubber Company resulted in a disagreement between Mr. Freedman and Mr. Fineburg. Mr. Fineburg contended that it was the Trenton Scrap Rubber Supply Company, the partnership, instead of himself, which had become interested in the Leicester Rubber Company. Mr. Freedman insisted that Mr. Fineburg had alone become interested in the Leicester Rubber Company and must stand the losses resulting therefrom.

In April, 1915, Messrs. Freedman and Fineburg agreed to dissolve the partnership and to submit their differences to arbitration. Arbitrators were selected, but before an award was made Mr. Freedman submitted to Mr. Fineburg a proposition to purchase Mr. Fineburg's interest in the business of the Trenton Scrap Rubber Supply Company. This offer, which was dated June 21, 1915, contained a stipulation that Mr. Fineburg should have the right, if he so desired, to purchase the interest of Mr. Freedman in the partnership business. The offer of Mr. Freedman also provided as follows (Record, p. 9):

> "7. In case you elect to purchase all my right, title and interest in and to said partnership, as hereinbefore provided, it is understood and agreed that in addition to the purchase price above named, I shall also receive all moneys

which I have in said partnership business in excess of the moneys in said business belonging to you, which moneys are to be paid to me in the same ratio or proportion, as to cash payments and notes, as the above-mentioned purchase price of my one-half interest is to be paid to me under the terms hereof."

On June 22nd, 1915, Mr. Fineburg accepted the offer of Mr. Freedman to sell. Mr. Fineburg paid the $25,000 in cash and notes but declined to pay the excess moneys which Mr. Freedman claimed that he had in the business. Mr. Freedman then endeavored to rescind the agreement and filed a bill in the Court of Chancery for this purpose. Mr. Fineburg filed a cross-bill asking for the specific performance of the agreement and tendered himself ready to pay any excess moneys which the Court determined that he owed to Mr. Freedman. The Vice-Chancellor, to whom the cause was referred, held that Mr. Freedman did not have the right to rescind but held that in addition to the $25,000 paid by Mr. Fineburg, Mr. Fineburg owed to Mr. Freedman the sum of $24,390.03 as this was the amount that Mr. Fineburg had withdrawn from the Trenton Scrap Rubber Supply Company over and above the sum withdrawn by Mr. Freedman. From this decree the defendant below, Mr. Fineburg, has appealed.

STATEMENT OF QUESTIONS INVOLVED.

First: Was there due from Mr. Fineburg to Mr. Freedman the sum of $24,390.03, being the amount of the withdrawals from the partnership business made by Mr. Fineburg over and above the amount

of the withdrawals by Mr. Freedman? This in turn involves the following questions:

(a) Did Isaac Fineburg, the defendant and appellant, purchase for himself the 197 shares of the capital stock of the Leicester Rubber Company?

(b) Should the $10,500 note of the Leicester Rubber Company which was paid by the moneys of the Trenton Scrap Rubber Supply Company be charged to the account of the defendant-appellant, Isaac Fineburg?

Second: Should the seventh paragraph of the contract by which the interest of Mr. Freedman in the business of the Trenton Scrap Rubber Supply Company was purchased by Mr. Fineburg be so construed as to require only the payment by Mr. Fineburg to Mr. Freedman of one-half of the said excess moneys, that is, one-half of $24,390.03, namely, $12,-195.02?

POINT 1.

Was there due from Mr. Fineburg to Mr. Freedman the sum of $24,390.03, which sum was found by the Court of Chancery to be the withdrawals from the partnership business made by Mr. Fineburg, in excess of the withdrawals from said business by Mr. Freedman?

The books of the partnership (testimony of Mr. Harding, expert accountant), concerning which there was no dispute, disclosed that Fineburg had withdrawn from the firm's assets $13,946.03 more than Freedman. The remaining $10,500 is represented by the note of the Leicester Rubber Company, paid on

December 15, 1914, by Mr. Fineburg out of the moneys of the partnership (Trenton Scrap Rubber Supply Company). Of the $13,946.03, $12,500 was withdrawn from the Trenton Scrap Rubber Supply Company for the purposes of the Leicester Rubber Company.

The sum found to be due by the Court of Chancery, $24,390.03, depends, as has been stated, upon the two questions above referred to; (1) whether Fineburg purchased for himself the 197 shares of the capital stock of the Leicester Rubber Company; and (2) whether the $10,500 note of the Leicester Rubber Company, paid out of the moneys of the Trenton Scrap Rubber Supply Company, should be charged to the account of Fineburg.

The question as to whether the $10,500 note should be charged to Fineburg depends upon the question of the ownership of the 197 shares of the capital stock of the Leicester Rubber Company and if the shares of stock are the property of Isaac Fineburg, then it necessarily follows that the note of $10,500 made by the Leicester Rubber Company and endorsed by Fineburg, De Piano and Bernstein, the proceeds of which were received by the Leicester Rubber Company and which note was ultimately paid out of the funds of the Trenton Scrap Rubber Supply Company, is an obligation which should be charged to Fineburg.

The $10,500 note was a renewal of a $25,000 note which had been improperly endorsed by Fineburg with the name of the Trenton Scrap Rubber Supply Company and the proceeds of which, after being discounted by the Trenton Scrap Rubber Supply Company, were paid to the Leicester Rubber Company for the purchase of the plant at Catasauqua. The act of endorsement by Mr. Fineburg was an improper

act and the sum paid from the partnership moneys by reason of this transaction is properly chargeable to him.

It is undisputed that the stock was issued to Isaac Fineburg by the Leicester Rubber Company and that he receipted for the stock under date of August 11, 1913, upon the books of the Leicester Rubber Company, and that the certificate has always been in his possession and was produced by him at the hearing. Fineburg's account of this transaction is contained in his testimony (Record, pp. 229 and 230), and is as follows:

> "Q. Just state what took place in July or whenever the matter was closed, when Mr. Leonard came to your office.
>
> A. Mr. Leonard came to our office sometime in July; I don't know the exact date, and wanted to close the deal; he still stuck to his bargain of $25,000, but I felt sure that I could get it for $22,500, and Freedman said I would never get it at that price; but feeling that he was anxious to sell in order to get his commissions out of it, I stuck to my bargain; I said I would only give him $22,500, and when he came down here he asked $23,000; and finally he took us up for $22,-500; then he said, 'No,' he would only give $22,-000. Mr. Maher came in about that time, and we left Mr. Maher talking to Mr. Leonard, and Mr. Freedman and I went out in the warehouse, and at that time was the first intimation he made to me that he wouldn't go to Catasauqua on account of the condition of his mother. He told me he didn't care about going for the present on that account, but he might go later. I said, 'What are you going to do; I can't buy the stock in the Trenton Scrap; it would look bad; and

they will be competitors, and they won't do business with us; I can't put it in the Trenton Scrap name.' He said, 'You buy it in your name'; he said, 'Will you do that?' I said, 'Yes'; and that's when he throwed his bluff: 'Well, I don't care to become interested in the Leicester Rubber Company.' That was at that time understood. We didn't want any of the people to know that the Trenton Scrap Rubber was interested; at first, it was understood that Freedman only would be interested, and, then, on account of not being able to go up there, it was understood that the stock would be issued in my name. We didn't even want Mr. Maher to know anything about it or anything in connection with the Leicester Rubber Company.''

Mr. Freedman's version of the circumstances surrounding the purchase of the Catasauqua plant is that the matter was broached to him by Fineburg; that he went up to see the mill at Catasauqua and after seeing it decided that he would have nothing to do with the purchase of the plant as the purchase would involve his going to Catasauqua to live, which he did not desire to do as his mother was aged and his children were in school in Trenton, and he did not care to change his residence.

The final talk with reference to the purchase of the plant is found in Mr. Freedman's testimony on page 115 of the record and is as follows:

''A. They was talking in our office; I told Mr. Fineburg not to be bothered on it; I said, 'Don't buy it, Fineburg'; he said, 'You and Joe Maher you get together; you don't know really a good thing; you don't know where a good thing is'; he said, 'if you bought it; if you don't

want it, I'll buy it myself'; and he raised his hands that way; he went away, Mr. Leonard and Mr. De Piano went away with him.

Q. Did you hear afterwards that they had made an agreement with Mr. Leonard for the purchase of the property?

A. I heard they bought it; I didn't know how, or what, or when."

The statement of Mr. Freedman that Mr. Fineburg was alone interested in this transaction is corroborated by the following circumstances:

First: The statements of the parties actively interested in the Leicester Rubber Company at the time of the issue of the stock to Mr. Fineburg corroborate the position and statement of Mr. Freedman. The Leicester Rubber Company was a New Jersey corporation which was engaged in the business of manufacturing rubber goods. The stockholders actively interested in the company at the time of the discussion of the purchase of the Catasauqua rubber mill were Antonio De Piano, William M. Maher and Joseph F. Maher. There were also two other stockholders in Boston by the name of Bachuliquo. Messrs. De Piano, William M. Maher and Joseph F. Maher have each testified that Mr. Freedman was not interested in the Leicester Rubber Company, and that Mr. Fineburg was the stockholder and was interested in the Leicester Rubber Company and the director of the policies of that company after the purchase of the Catasauqua mill. Mr. William M. Maher (Record, p. 66) states that Mr. Freedman was not a stockholder; that Mr. Fineburg ran the business of the Leicester Rubber Company, gave all instructions and orders. Mr. Joseph F. Maher

states in his testimony (Record, p. 81), that Mr. Freedman disapproved of the purchase and that he said to Mr. Fineburg, "Ike, don't buy it; we have been together a long while and have made a lot of money; don't buy it." Mr. Fineburg asked him if he did not want it and he said, "No." Then Mr. Fineburg said, "Well, I will take it myself." Mr. Antonio De Piano, who was the president of the Leicester Rubber Company, said that after he had been to Catasauqua with Mr. Freedman, that Mr. Freedman said if the plant was in Trenton it would be all right, but that he did not care to go up to Catasauqua; that he had a nice house and his children were in school and he did not want to break up; that Mr. Fineburg said that unless Mr. Freedman moved up to Catasauqua he could not have any interest in the business (Record, p. 96).

Mr. De Piano was the one who with Mr. Fineburg then went to Judge Macpherson's office and had the agreement for the purchase of the plant drawn up between Mr. Leonard, of the one part, and himself and Mr. Fineburg of the other part.

Mr. Harry Bernstein invested $10,000 in the enterprise in the month of January, 1913. He was a cousin of Mr. Fineburg and made the investment in the stock of the Leicester Rubber Company through the advice of Mr. Fineburg and after the investment became the treasurer of the company. He states that he never heard that Mr. Freedman had any interest in the business and that Mr. Fineburg told him on one occasion that the witness and himself (Mr. Fineburg) had the controlling interest in the business.

Messrs. William M. Maher, De Piano, Joseph F. Maher and Harry Bernstein were the ones, with the exception of Mr. Fineburg, most actively inter-

ested in the Leicester Rubber Company. During all of this period, Messrs. De Piano and William M. Maher were connected with the company and for portions of the time Messrs. Joseph F. Maher and Harry Bernstein were connected with the company. These men can have no interest in stating anything other than the truth and all unqualifiedly say that Mr. Freedman had no interest in the business. It would seem strange that if Mr. Freedman or the Trenton Scrap Rubber Supply Company had an interest in the business nothing was ever said by Mr. Fineburg which would indicate such a situation. The fact that nothing was ever said by Mr. Fineburg on this subject would seem to be strong corroboration of the position of Mr. Freedman that he had no interest in the business and that the 197 shares of stock of the Leicester Rubber Company were the property of Mr. Fineburg and that Mr. Freedman or the Trenton Scrap Rubber Supply Company had no interest therein.

Second: Further corroboration of Mr. Freedman's statement that he had nothing to do with it and of Mr. Fineburg's statement that he would buy the Catasauqua plant himself, is furnished by the acts of the parties immediately after the statement was made. Mr. Fineburg with Mr. De Piano went with Mr. Leonard to Judge Macpherson's office and the contract for the purchase of the plant was drawn between Mr. Leonard and Messrs. Fineburg and De Piano. Mr. Fineburg paid the sum of $500 on account of the purchase price. The sum was charged to Mr. Fineburg on the books of the Trenton Scrap Rubber Supply Company as a withdrawal of this amount by Mr. Fineburg personally and the same was charged to Mr. Fineburg's personal account.

Mr. Fineburg was the active one in the raising of the funds necessary to consummate the purchase of the Catasauqua plant. According to the statement of Mr. De Piano, which is not denied, there were various banks which were approached and notes for various amounts drawn in various forms (Record, p. 110). Finally a note for $25,000 made by the Leicester Rubber Company to the order of the Trenton Scrap Rubber Supply Company and endorsed by the Trenton Scrap Rubber Supply Company, through Mr. Fineburg, and by Messrs. Fineburg, De Piano and Joseph F. Maher personally, was discounted by the Trenton Scrap Rubber Supply Company at the Mechanics' Bank and the funds thus obtained paid for account of the Leicester Rubber Company. Mr. Fineburg took the certified check for payment of the plant to Catasauqua and there attended to the receipt of the deed and the payment of the purchase price.

Third: The circumstances relating to the issue of the stock also corroborate the position of Mr. Freedman that Mr. Fineburg paid personally the 197 shares of capital stock of the Leicester Rubber Company. The consummation of the purchase of the plant was to take place on August 12, 1913. On August 11, 1913, a meeting of the stockholders of the Leicester Rubber Company was held at the office of the Leicester Rubber Company in the city of Trenton. There were present Messrs. De Piano, William M. Maher, Joseph F. Maher and Mr. Fineburg. At this meeting the interest which Mr. Fineburg was to take in the concern was discussed and it was finally agreed that Mr. Fineburg should take 197 shares of stock at the price of $62.50 per share, making the sum of $12,312.50. The certificate for

these shares is dated on August 11, 1913, and the receipt upon the stub of the stock book shows that it was received on that day by Mr. Fineburg who receipted for the same in his own handwriting, personally. There appears to have been no statement made at this meeting that either Mr. Freedman or the Trenton Scrap Rubber Supply Company was interested in the purchase of this stock and all of the negotiations were transacted by Mr. Fineburg, personally, and he gave unquestionably the impression by his statements and actions to all the other stockholders present that he was becoming personally interested as a stockholder in the Leicester Rubber Company. There can be no other constructions placed upon the actions of Mr. Fineburg at this meeting of the stockholders of the Leicester Rubber Company.

Fourth: The books of the Leicester Rubber Company indicate that Mr. Fineburg was a stockholder personally of that company. In the ledger of the Leicester Rubber Company there is an "I. Fineburg" account (Record, p. 65). Upon this account there is a credit of $12,500, which was the amount paid on November 12, 1913, by Mr. Fineburg to the Leicester Rubber Company. On the debit side of the ledger appears a debit of capital stock, $12,-312.50. The difference between $12,500 and $12,-312.50, namely $187.50 is also credited to Mr. Fineburg.

Fifth: One of the strongest of the many documentary proofs that Mr. Fineburg bought this stock for himself, personally, and not for the Trenton Scrap Rubber Supply Company, is the entry upon the books of the Trenton Scrap Rubber Supply Com-

pany. In this connection it must be remembered that Mr. Freedman is a man of very limited education and that Mr. Fineburg had received a good education in the schools of the city of Trenton; that he had graduated from the Trenton High School and had also attended Rutgers' College, so that he was a man of liberal education. From the commencement of the business the office and bookkeeping end had been almost solely transacted by Mr. Fineburg. He originally kept the books and afterwards the books were kept under his direction by Mrs. Ada Davis (formerly Ada Scheele) up to the month of June, 1914, when Mrs. Davis was married and left the employ of the Trenton Scrap Rubber Supply Company.

The sum of $12,500 shown upon the books of the Leicester Rubber Company as having been paid to it for capital stock by Mr. Fineburg, appears on the books of the Trenton Scrap Rubber Supply Company in two items; one under date of October 22, 1913, for $1400, and one under date of November 12, 1913, for $11,100. The entries charge these two items to Mr. Fineburg on his personal account. (Exhibit C8, Record, p. 352.)

Mr. Fineburg (Record, p. 233) in answer to the question: "Who directed that charge to be made to your account?" said, "I can't remember whether I did or Mr. Freedman; one of us surely did it; if it was not myself, it was Mr. Freedman; either one of us always did give those instructions. I do not remember that I ever did."

Mr. Freedman, in his testimony (Record, pp. 115, 116), with reference to this sum of $12,500 testified as follows:

> "Q. Did you know he had used the Trenton Scrap Rubber money for the buying of that stock?

A. At the time the money was paid ——
Q. For the stock?
A. At the time he paid for the stock I didn't know a thing; but after awhile, I think—one time I was looking over the books and I saw an entry Fineburg was charged with $12,500 and I said to the girl, 'What is it?' and she said, 'Mr. Fineburg paid for the stock.' ''

It will be observed from these statements that Mr. Fineburg is uncertain as to whether he gave the direction or not as to the charge of the two items of $1400 and $11,100, which paid the $12,500 to his account. Mr. Freedman states positively that he never knew anything about it until he saw the entry upon the book and that he asked the girl (bookkeeper) about it and she said, "Mr. Fineburg paid for the stock."

In this connection the testimony of the bookkeeper, Mrs. Davis, (Record, p. 210) is most important. Mrs. Davis testified at first that she could not recollect who had told her to make the entires of $1400 and $11,100, but that she would not have entered them without instructions. Mrs. Davis further testified that there were no withdrawals from the bank account except upon check and that at the end of the month when the returned checks came in if there were any she did not understand about she would inquire with reference to them. The checks for the items of $1400 and $11,100, although notice was given to produce them, were not produced by the defendant. The check book with the stubs was produced and the stub of the $1400 check was in the handwriting of Mrs. Davis. Upon being shown this she stated that she must have been directed by Mr. Fineburg to make the check, otherwise it would

not have been made out. As to the check for $11,100, Mrs. Davis testified that she must not have made that out at the time, because there was no stub in the check book from which the $11,100 check had been detached, and there was a memorandum upon another check of "Cash, I. Fineburg," which Mrs. Davis said was in her handwriting. Mrs. Davis said as to this item of $11,100, upon being asked who had instructed her with reference to it, that she would not say positively, but that she must have been instructed by Mr. Fineburg, otherwise it would not have been there.

It can readily be seen from the testimony of Mrs. Davis that she must have been instructed by Mr. Fineburg with reference to both of these charges, for otherwise she would not have been likely to have either drawn the check, made the memorandum as to the $1400 item, or to have made the memorandum in connection with the $11,100, "Cash, I. Fineburg," unless she had been so instructed by Mr. Fineburg. Mrs. Davis further testified that she could not recall any instance where Mr. Freedman had ever told her to make any charge to Mr. Fineburg's account, and that in the conduct of the business the only items which she ever charged to the account of one partner at the direction of the other were expense accounts that were incurred on the road.

From the entries in the books alone the evidence seems conclusive that Mr. Fineburg had directed the charges to be made against him on the books of account, and as they were made at the direction of Mr. Fineburg it is almost conclusive evidence that he considered the stock of the Leicester Rubber Company his personal investment.

Sixth: Upon the books of the Trenton Scrap Rubber Supply Company there was an account known as the bond and stock account. (Exhibit C19.) The account contained entries of the purchase by the Trenton Scrap Rubber Supply Company of stock of the Mechanics' National Bank and stock of the Empire Rubber and Tire Company. If the stock of the Leicester Rubber Company had been an investment of the Trenton Scrap Rubber Supply Company, it is impossible to conceive that it would not have been entered upon the stock and bond account the same as the stock of the Mechanics' National Bank and the Empire Rubber and Tire Company had been entered.

The books of account contained the entries of transactions of the firm's business and of the withdrawals, etc., of the partners constituting the firm. It is no answer to the fact of this omission of the stock of the Leicester Rubber Company from the stock and bond account to say that it is a part of the plan by which rubber manufacturers should not know of the Trenton Scrap Rubber Company's interest in the business of a manufacturing concern. The books were private books to which probably only three persons had access, namely, Messrs. Fineburg and Freedman and Mrs. Davis, so that the entries of the purchase of the Leicester Rubber Company stock in the stock and bond account of the Trenton Scrap Rubber Supply Company would not have been known to any rubber manufacturers, assuming there is any substance to the explanation given by Mr. Fineburg.

Seventh: The activities of Mr. Fineburg with reference to the business of the Leicester Rubber Company strongly tend to corroborate the position of

Mr. Freedman that the purchase of the 197 shares of capital stock of the Leicester Rubber Company was a purchase by Mr. Fineburg personally. The circumstances under which the contract was made, the deed delivered and the consideration money for the deed secured through the activities of Mr. Fineburg have been recited, but after the plant was acquired all of the interested stockholders, namely, Joseph F. Maher, William M. Maher, Antonio De Piano and Harry Bernstein, testified that the business was under the direction of Mr. Fineburg, that he gave the orders as to how the business was to be conducted. Moreover, Mr. Fineburg endorsed the obligations of the Leicester Rubber Company personally. The Leicester Rubber Company borrowed at least $8,500 from the Lehigh National Bank at Catasauqua, Pennsylvania, and these notes were endorsed personally by Mr. Fineburg. The mill at Catasauqua needed machinery. Some of this machinery was obtained from William R. Thropp & Sons Company and Mr. Fineburg endorsed the notes that were given to the William R. Thropp & Sons Company in payment for this machinery. He personally guaranteed the accounts of the Leicester Rubber Company with dealers in materials. He guaranteed the account of the Rubber Trading Company; the account of D. Fineburg & Company; an account for lumber purchased at Newark and likewise other accounts.

Upon his cross-examination Mr. Fineburg could not recall any instances where the Trenton Scrap Rubber Supply Company had guaranteed an account; upon re-examination, however, he produced carbon copies of certain letters said to have been written by the Trenton Scrap Rubber Supply Company guaranteeing certain accounts. This does not

alter the effect of this testimony to any extent, for all of the carbon copies of letters show that the letters were dictated by Mr. Fineburg, for Mr. Freedman says he knows nothing of the writing of these letters and the guaranteeing of these accounts in the name of the Trenton Scrap Rubber Supply Company by Mr. Fineburg. There is no contradiction of the testimony of Mr. Freedman on this point.

Mr. Fineburg also personally secured the investment of $10,000 by his cousin, Harry Bernstein, in the Leicester Rubber Company. Mr. Fineburg and Mr. Bernstein then controlled the Leicester Rubber Company. The stock of Mr. Joseph F. Maher was returned by an agreement made between him and Mr. Fineburg. It was purchased by the Leicester Rubber Company by the agreement to purchase which had been made by Mr. Fineburg at the time that Mr. Maher agreed to go to Catasauqua for a short period. The note given to Mr. Maher for his stock shows that the stock was purchased by the Leicester Rubber Company and the note was endorsed by Mr. Fineburg.

It seems remarkable that a man of Mr. Fineburg's education and business acumen should not have at any juncture in all these proceedings ever secured from Mr. Freedman a written admission or a written agreement that the Trenton Scrap Rubber Supply Company should indemnify Mr. Fineburg for the contingent liabilities incurred by Mr. Fineburg in all of these many business transactions of the Leicester Rubber Company. The undertakings made by Mr. Fineburg are very strong evidence of the intention in his mind that in no event should Mr. Freedman be in a position to claim that the stock of the Leicester Rubber Company was a possession of the Trenton Scrap Rubber Supply Company.

Eighth: The actions of Mr. Fineburg after the burning of the Catasauqua plant on July 18, 1914, also tend to prove his personal interest as a stockholder in and as an endorser and guarantor of the obligations of the Leicester Rubber Company. Upon going to Catasauqua he secured an assignment and bill of sale to himself of the accounts, merchandise, stock and machinery of the Leicester Rubber Company. These were assigned to Mr. Fineburg personally, although the consideration is stated to have moved from both Mr. Fineburg and the Trenton Scrap Rubber Supply Company. Mr. Fineburg then proceeded to deal with the goods of the Leicester Rubber Company so as to lessen his liability. He had a car of goods shipped from Catasauqua back to the Rubber Trading Supply Company, whose account he had personally guaranteed.

The attitude of Messrs. Fineburg and Freedman at the time of the fire is so opposite that it corroborates the position of Mr. Freedman. Mr. Fineburg, in his testimony, admits that upon learning of the fire he felt so bad that he cried. He said, "I never cry over any business transaction of that kind, but it hurt my feelings so that I cried." (Record, p. 237.)

From the testimony of Mr. A. De Piano we learn of the attitude of Mr. Freedman at the time of the fire. Mr. Freedman was called on the telephone by Mr. Joseph F. Maher, whose brother, William M. Maher, had telephoned to him during the night that the Catasauqua mill was burning. Mr. Joseph F. Maher could not get into communication with Mr. Fineburg, as Mr. Fineburg was in the Catskill Mountains, so he went to Mr. Freedman in order to ascertain where Mr. Fineburg was. Mr. Freedman sent a telegram to Mr. Fineburg and on the same

day went to Catasauqua. Mr. A. De Piano said upon cross-examination, in answer to the question as to whether Mr. Freedman has inquired what the loss was, that Mr. Freedman only said, "You are so smart without insurance"; Mr. De Piano walked away from him because he was disgusted.

Ninth: After the bankruptcy of the Leicester Rubber Company, which occurred in September, 1914, some two months after the fire, and after the extent of the loss was well known to Mr. Fineburg, Mr. Fineburg made admissions under oath as to the ownership of the stock. The admissions are of two classes: first, admissions upon examination before Samuel D. Oliphant, Esquire, referee in bankruptcy. These examinations took place in the month of November. On the first occasion, Mr. Fineburg testified as follows (Record, p. 261):

"Q. Were you a stockholder or are you a stockholder of the Leicester Rubber Company?

A. Yes, sir.

Q. How much stock did you have?

A. $12,500.

Q. And that you purchased from the company?

A. Yes, sir.

Q. What's the par value of it?

A. I think the par value is $100, $62.50 is what I paid.

Q. How did you pay this?

A. Paid cash for it.

Q. At the time of its issuance?

A. Not at the time of its issuance. We issued a note which I paid in full.

Q. You gave the company a note?

A. The company issued a note at that time for

25,000, of which 12,500 was my obligation and I paid that myself.

Q. The books show that, do they?

A. I believe it does. If it doesn't, it should show."

On the second occasion, Mr. Fineburg testified with reference to his stockholdings as follows:

"Q. Mr. Fineburg, you were a stockholder of this company?

A. Yes, sir.

Q. How much stock did you hold?

A. $12,500 worth.

Q. Paid up stock, treasury stock?

A. What do you mean by treasury stock?

Q. Never been issued to anyone else?

A. Not that I know of.

Q. Did you know what the par value of the shares was?

A. I know at that time it was little over $60.00. I paid $62.50. I paid a little more than the par value at that time."

The second of these admissions is in the form of two affidavits made by Mr. Fineburg on October 21, 1914. One of these affidavits was annexed to and was a part of the claim submitted by Mr. Fineburg personally to Mr. Oliphant in the bankruptcy of the Leicester Rubber Company, whereby Mr. Fineburg claimed the sum of $819.96. (Exhibit C13.) The account was made upon a billhead of the Trenton Scrap Rubber Supply Company, but the name of the Trenton Scrap Rubber Supply Company had been crossed out and the name of I. Fineburg substituted. This claim shows that on November 12, 1913, Mr. Fineburg advanced $12,500 cash to the Leicester

Rubber Company, and that upon the claim there appears a credit under date of August 12, 1913, of "By capital stock, $12,312.50," together with other items of cash. On the same day, Mr. Fineburg swore to a claim against the Leicester Rubber Company for the Trenton Scrap Rubber Supply Company, in which there is no reference to the $12,500 or to the credit of $12,312.50 for capital stock. (Exhibit C14.)

This action by Mr. Fineburg furnishes conclusive proof that the capital stock was purchased by him personally. It is almost inconceivable that where this claim was made by him or under his direction on the same day against the Leicester Rubber Company, if the Trenton Scrap Rubber Supply Company had been the owner of the stock and had advanced the $12,500 to the Leicester Rubber Company, this position should not have been taken by Mr. Fineburg.

There is also a third class of admissions made by Mr. Fineburg, namely, the notices signed by Mr. Fineburg as a stockholder of the Leicester Rubber Company. On June 20, 1914, he waived notice of a meeting of the stockholders for the purpose of authorizing an increase of the capital stock. (Exhibit C11.) This was signed by Mr. Fineburg personally and was offered in evidence. At the same time he executed a power of attorney or proxy to Harry Bernstein to vote his shares of the capital stock of the company for the purpose of authorizing an increase of capital stock. (Exhibit C12.)

With reference to the payment of the $10,500 note of the Leicester Rubber Company out of the funds of the Trenton Scrap Rubber Supply Company, it is the uncontradicted evidence in the case that the Leicester Rubber Company on August 12, 1913, made its promissory note to the order of the Trenton

Scrap Rubber Supply Company, and that this note was endorsed by the Trenton Scrap Rubber Supply Company by Mr. Fineburg, and then endorsed personally by Fineburg, De Piano and Joseph F. Maher, and then again endorsed by the Trenton Scrap Rubber Supply Company by Mr. Fineburg, and the money placed to the credit of the Trenton Scrap Rubber Supply Company. It was then checked out of the account of the Trenton Scrap Rubber Supply Company for the benefit of the Leicester Rubber Company, so that the Leicester Rubber Company received the full proceeds of the note.

Upon the first renewal on November 12, 1913, the note was reduced to $12,500, by the payment of $12,500 by Mr. Fineburg. Upon each of the two subsequent renewals $1000 was paid by the Leicester Rubber Company, so that the note was finally reduced to $10,500. This note was on August 12, 1914, by previous direction, according to the testimony of William M. Maher, made payable to Messrs. De Piano, Bernstein and Fineburg and endorsed by them and by the Trenton Scrap Rubber Supply Company. This note was protested on November 12, 1914, and remained in the Mechanics' National Bank as a protested item until December 15, 1914, when Mr. Fineburg drew a Trenton Scrap Rubber Supply Company check for $10,500 and the note was taken out of the bank.

From this history of the note it is apparent that the Trenton Scrap Rubber Supply Company never received any benefit from the note and that it was obliged to pay out of its treasury $10,500 for a note which in its inception was the act of Mr. Fineburg, and during the whole history of the note was a note in which the name of the Trenton Scrap Rubber Supply Company had been used for the accommodation of the Leicester Rubber Company.

As was said at the beginning of this argument, if the stock of the Leicester Rubber Company was owned by Mr. Fineburg personally, then it follows as a corollary that Mr. Fineburg must be personally responsible for the sum of $10,500, taken from the treasury of the Trenton Scrap Rubber Supply Company to pay the note.

The law is well settled that where a partner uses partnership funds improperly and for his own benefit, that he must account therefor to the partnership.

If a partner employs firm moneys for his personal advantage without the consent of his partner, he is guilty of misappropriation. 30 *Cyc.* 446, and cases there cited.

POINT II.

Should the contract by which the interest of Mr. Freedman in the business of the Trenton Scrap Rubber Supply Company was purchased by Mr. Fineburg, be so construed as to require only the payment by Mr. Fineburg to Mr. Freedman of one-half of the excess moneys which Mr. Freedman had in the business, that is to say, should the full amount of said excess moneys ($24,390.03) be paid by Mr. Fineburg, or one-half thereof, namely, $12,195.02?

The seventh section of the contract provides as follows (Record, p. 9):

> "7. In case you elect to purchase all my right, title and interest in and to said partnership, as hereinbefore provided, it is understood and agreed that in addition to the purchase price above named, I shall also receive all moneys

> which I have in the partnership business in excess of the moneys in said business belonging to you, which moneys are to be paid to me in the same ratio or proportion, as to cash payments and notes, as the above-mentioned purchase price of my one-half interest is to be paid to me under the terms hereof."

Counsel for Mr. Fineburg contend that the construction of this paragraph is that but one-half of the withdrawals from the business of the Trenton Scrap Rubber Supply Company made by Mr. Fineburg in excess of the amount made by Mr. Freedman should be paid; that is to say, instead of the amount decreed by the Court of Chancery to be paid to Mr. Freedman, to wit, $24,390.03, only the sum of $12,-195.02 should be paid.

No better construction of this paragraph can be given than that given by the Vice-Chancellor in his conclusions (Record, p. 338). The Vice-Chancellor said:

> "The total of his withdrawals, viz.: $24,390.03, measures the excess of the moneys the complainant had in the business over the defendant. As I read the bargain between them, as set forth in the seventh paragraph of the contract: 'I (complainant) shall also receive all moneys which I have in the said partnership business in excess of the moneys in said business belonging to you (defendant),' means that the complainant was to have first, of the partnership fund, a sum equal to the defendant's withdrawal, and for his half interest in the remainder he was to receive $25,000."

The situation with reference to this matter was as follows:

The withdrawals of Fineburg as shown upon the books of the firm as of the date of June 22, 1915, are $20,645.43. Add to this sum the $10,500 which was the amount withdrawn from the firm's assets by Fineburg to pay the $10,500 note, and the total amount of Fineburg's withdrawals is $31,145.43. The withdrawals of Freedman during the same period were $6755.40. This makes the amount of Fineburg's withdrawals exceed the amount of Freedman's withdrawals by the sum of $24,390.03. In other words, Fineburg has had of the firm's assets $24,390.03 more than Freedman.

The option agreement of June 22nd, 1915, provided that in the event of Fineburg purchasing the interest of Freedman in the partnership assets, in addition to the amount of $25,000, Fineburg should pay to Freedman the moneys which Freedman had in the partnership in excess of the moneys in said business belonging to Fineburg. In other words, by the option agreement under which Fineburg purchased the interest of Freedman in the Trenton Scrap Rubber Supply Company, Fineburg is to pay $25,000 plus the excess moneys which Freedman had in said business over Fineburg, which has been shown to be the sum of $24,390.03. The total sum to be paid by Fineburg to Freedman under this agreement is $49,390.03.

It is urged by Fineburg's counsel that only one-half of the excess moneys should be paid to Freedman under the terms of this agreement, for the reason that one-half of the moneys withdrawn by Fineburg were his. This is an unsound position. While in theory one-half of a partner's withdrawals are his, yet such withdrawals if not returned to the part-

nership business must be allowed in full to the other partner in any settlement or accounting between the partners.

Fineburg and Freedman each knew of the condition of the partnership business and the option agreement of June 22, 1915, was based upon this knowledge each had.

The total assets above liabilities on June 22, 1915, were, according to the statement of Mr. Harding, $100,552.83. This included each partner's withdrawals and the Leicester Rubber Company indebtedness. In these assets each had an equal interest, that is, $50,261.42. If, then, Freedman gets from Fineburg $25,000, plus $24,390.03, Freedman will be getting just about the amount of his one-half interest. If, on the other hand, only one-half of the $24,390.03 is paid to Freedman, then Freedman, under the agreement, will receive for his one-half interest $25,000, plus $12,195.02, or $37,195.02, while Fineburg would receive assets of $100,552.83, resulting in Fineburg's securing $62,299.80 and Freedman $37,195.02.

In the assets of $100,552.83 were included the following:

I. Fineburg's account	$20,645.43
H. Freedman's account	6,755.40
Leicester Rubber Co. note	10,500.
Leicester Rubber Co. account	11,302.88
Total	49,203.71
Deduct the above sums from the assets of	100,552.83
	49,203.71
and we have	51,349.12

Both Fineburg and Freedman knew on June 22, 1915, the exact condition of the business.

Of the assets of $51,348.12, which were the assets less the partners' and Leicester Rubber Company's accounts, $25,000, which was agreed upon as the amount Freedman would receive, and Fineburg would pay for his interest, was just about one-half the value of these assets, especially when you consider that the agreement provided that in the event of Freedman purchasing Fineburg's interest, Freedman was to release Fineburg from his liability on the $10,500 note as an endorser.

Of the $49,203.71, representing the partners' and the Leicester Rubber Company's accounts, Fineburg had had the benefit for his individual use of $24,-390.03 more than Freedman. As he had this the agreement that he was to pay his amount in addition to the $25,000 representing one-half of the $51,349.12, was but fair and, as has been pointed out, made the settlement so that each received substantially an equal interest.

It may be argued that in view of the bankruptcy of the Leicester Rubber Company this made a poor bargain for Fineburg. The bargain is better than it seems. Fineburg would receive the dividend paid out of the assets of the Leicester Rubber Company not only upon the open account $11,302.88, but also upon the $10,500 note. The good-will of the Trenton Scrap Rubber Supply Company was also valuable. The assets as determined by Mr. Harding eliminated all doubtful accounts. The inventory probably figured the stock on hand low.

Fineburg knew all of this and he preferred to buy rather than to sell. He bought under an agreement which is clear in its terms. The consideration to be paid to Freedman was $25,000, plus the moneys

which Freedman had in the business in excess of the moneys which Fineburg had, which excess amounted to $24,390.03, so that Fineburg should by decree be directed to pay to Freedman $24,390.03, in addition to the $25,000, in the form and manner provided by the agreement.

The seventh section of the option agreement stated, "I shall also receive all moneys which I have in the said partnership business in excess of the moneys in said business belonging to you." This language could not be clearer. If an account were stated between the parties as of the date of June 22, 1915, it would be shown that Freedman had in the business $24,390.03 more than Fineburg. The agreement means that Freedman in addition to the $25,000 is to receive $24,390.03, the amount of moneys which he, Freedman, had in the business in excess of the moneys which Fineburg had in the business.

It is respectfully submitted that the decree of the Court of Chancery should be affirmed for the foregoing reasons.

FRANK S. KATZENBACH, JR.,
Solicitor for Complainant-Respondent.

GEORGE W. MACPHERSON,
FRANK S. KATZENBACH, JR.,
Of Counsel.

New Jersey Court of Errors and Appeals

Between HARRY FREEDMAN, Complainant-Respondent, and ISAAC FINEBERG, Defendant-Appellant.	On Appeal.

BRIEF OF DEFENDANT-APPELLANT.

I.

This is an appeal from certain portions of the final decree made in the above cause in the Court of Chancery. The decree will be found on pages 34 to 38 of the printed case. The petition of appeal setting forth the different grounds of appeal is to be found on pages 41 to 45 of the case. The details of the matter of appeal as well as the respective grounds upon which the same is based will be set forth more at length hereinafter.

II.

The bill in this case alleges that on July 24, 1907, complainant and defendant entered into articles of co-

partnership, the firm name and style of the same being Trenton Scrap Rubber Supply Company; that the object of the co-partnership was the purchase and sale of scrap rubber. The partnership was to continue from year to year until terminated as provided in the agreement; that books of account should be kept which each partner should have access to, and upon the dissolution of the partnership a final account was required to be made, and the assets remaining to be divided between the partners in equal shares.

The bill further sets forth that the said partnership began business immediately and that it was successful; but that because of certain differences with respect to the connection between the partnership and a corporation known as the Leicester Rubber Company, the partners mutually agreed to dissolve the partnership and each waived the provisions of the co-partnership agreement with reference to notice of the dissolution.

The bill further sets forth that on April 20, 1915, an arbitration agreement was made between the partners to submit the matters in dispute concerning the partnership relations with the Leicester Rubber Company to certain arbitrators and that pending such arbitration the complainant, Freedman, made a proposal to the defendant, Fineberg, a copy of which is set forth in the bill of complaint, and will be found on pages 6, 7, 8 and 9 of the state of the case.

This proposal, which was an optional contract of sale or purchase, whichever action the respective partners might take, was accepted by Fineberg, the defendant, within the time provided by the terms of the option agreement.

The bill further sets forth that the defendant, Fineberg, made the first payment as provided in the agreement, *i. e.*, by delivery of the cash and notes covering the purchase price of $25,000.00, the amount agreed upon.

By the terms of this option or sale agreement, it was provided by Paragraph 7 that, "In case you (Fineberg), elect to purchase all my right, title and interest in and to said partnership as hereinbefore provided, it is understood and agreed that in addition to the purchase price above named I shall also receive all moneys which I have in the said partnership business in excess of the moneys in said business belonging to you (Fineberg)."

The bill further sets forth that a statement of the amount of the excess which the complainant (Freedman), claimed was presented to the defendant, and this statement appears upon page 16 of the case.

The bill further sets forth that the defendant Fineberg disputed the amount of the excess and the complainant alleged that he was willing to arbitrate the question of the amount of this excess provided security would be given for the payment of the same. That while the complainant was trying to obtain the consent of the defendant to arbitrate their differences the defendant went into possession of the partnership property and excluded the complainant therefrom.

The bill further alleges that because of the attitude of the said defendant the complainant elected to rescind the optional agreement, and gave notice thereof to the defendant, a copy of which is to be found upon page 13 of the case, to which notice the reply of the defendant will be found on pages 15 and 16.

The bill further alleges the right to rescind the option agreement and the complainant elects to rescind and thereby rescinds the same.

The bill prays for an accounting and for the appointment of a receiver to take charge of and wind up the co-partnership business.

The articles of co-partnership are to be found on pages 21, 22 and 23 of the printed case, and form a portion of the bill of complaint.

The answer of the defendant admits the articles of co-partnership, and that the partnership was prosper-

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ous, but denies certain allegations as to the value of the co-partnership property, and the extent of its liabilities.

The answer further denies the charge that the investment in the Leicester Rubber Company was the personal investment of the defendant, and further denies that the promissory note of $10,500.00 was a personal withdrawal of the defendant, Fineberg, from the partnership funds.

The answer admits that there was a matter of dispute between the partners as to the connection of the co-partnership with the Leicester Rubber Company, and that such matters had been submitted to certain arbitrators for arbitration.

The answer further admits that the complainant submitted an offer to sell his interest in the partnership to the defendant and that the copy of the option agreement as set forth in the bill of complaint is a true copy thereof.

The answer further shows that the offer of sale was accepted by the complainant and that the cash payment was accepted in pursuance of the terms of said agreement.

A denial is made that the statement as found on page 11 of the case was delivered to the defendant by the complainant, at the time of the payment of the cash and the delivery of the notes as set forth in the bill.

The answer further sets forth that the several notices of rescission and reply were duly received and given.

The answer denies the right of the complainant to rescind, and by way of counterclaim prays for the specific performance of the option agreement.

The action duly came to a final hearing and the conclusions of the Vice Chancellor in the case are to be found on pages 332 to 339, inclusive.

III.

The material facts shown at the hearing were as follows:

In April of 1915, a serious dispute arose between the partners upon the question as to whether the partnership was responsible for the investment in the corporation known as the Leicester Rubber Company, or whether it was an individual investment of Mr. Fineberg—this dispute culminating in the present litigation. It appears that the Leicester Rubber Company, in 1913, was operating a small manufacturing plant adjacent to the plant of the partners, and was a customer of the partners, *i. e.*, purchased considerable of the scrap rubber in which the partners dealt. As a result of a discussion which took place between the partners and the officers and stockholders of the Leicester Rubber Company, an investment was made in the stock of that company and a plant was purchased at Catasauqua, Pennsylvania. In the inception of the enterprise it was understood between the partners that Mr. Freedman was to go to Catasauqua and take charge of the plant, but that subsequently this offer on his part was withdrawn, and he claimed that he refused to enter into the enterprise. Notwithstanding this, however, the investment was made by discounting a note of the Leicester Rubber Company, for $25,000.00, by the partnership, and when this note came due, one-half, $12,500.00, was credited on the note as a subscription to the capital stock of the company.

The balance of the note, viz., $12,500.00, was renewed by the Scrap Rubber Company and from time to time payments were made on the same by the Leicester Rubber Company to the extent of $2,000,-00, leaving the balance due on the note the sum of $10,500.00. The whole transaction, consisting of the original discounting of the Leicester Rubber Company

note of $25,000.00, by the Scrap Rubber Company, was duly entered on the books of the partnership and the renewal note of $12,500.00 was also duly entered in the partnership books, as well as all renewals thereof, so that the transaction was all a matter of record, in the partnership books.

The Leicester Rubber Company was a successful enterprise and was doing a large business, when in July, 1914, it was visited by a disastrous fire, and because there was not sufficient insurance carried on the plant and machinery as well as on the merchandise stock of the Leicester Rubber Company, it suddenly found itself in financial difficulities, and was subsequently, in September, 1914, declared bankrupt.

The testimony in the case shows that this fire and the resulting loss was discussed by the partners. At the time of the fire the renewal note of $12,500.00 had been reduced to $10,500.00, and that note in that sum was continued to be renewed until November 12, 1914, when it was protested (see Exhibit C3, page 344). This note was allowed to remain under protest until December 15, 1914, when it was paid by a check on the firm funds. This matter was not discussed by the partners from that time on until, as we have stated, some time during April of 1915, when the dispute above mentioned arose.

As a result of this dispute, the partners agreed to dissolve the co-partnership, and to arbitrate their differences. The articles of arbitration are found on page 372 of the case, and as it sets forth, two matters were to be decided by the arbitrators, viz:

a. All matters in connection with the Leicester Rubber Company, and the relation of this firm to the said company;

b. To decide who shall retain the name as well as the business of the said co-partnership.

Immediately after the execution of these articles of arbitration, the arbitrators selected met, and for several weeks received the evidence submitted by the

partners as to the matters in dispute, and it was understood that the arbitrators had reached a conclusion and were about to make a report of their decision, both sides having submitted all of the evidence that they desired in connection with the matters, submitted to arbitration, when a suggestion was made by Mr. Freedman that he would be willing to purchase the interest of his partner, Fineberg, in the partnership, and according to Mr. Freedman's testimony, he went to Mr. Fineberg and said that he understood that he (Fineberg), would be willing to sell, and that Fineberg's reply was that he would consider the matter, but whatever Mr. Freedman had to submit, he wanted in writing (Case, pp. 159-160). As a result of this suggestion, Freedman went to Harry Heher, Esq., an attorney-at-law of the City of Trenton, and directed him to prepare an offer to Fineberg for the purchase of his (Fineberg's) interest in the partnership by him (Freedman). Mr. Heher testified that he prepared such an option and that it constituted paragraphs 1 to 4, both inclusive, of the option agreement in this controversy, which appears on pages 7 to 9 of the state of the case, and of which the following is a copy in full:

"To Isaac Fineburg:

"I hereby submit to you for your approval the following offer to purchase all your right, title and interest in and to the partnership business heretofore carried on between us, trading as Trenton Scrap Rubber Supply Company:

"1. Property to be conveyed to me shall include all your right, title and interest in and to the real estate owned by said partnership, and in all and singular the goods and chattels, furniture and fixtures, rubber goods and materials, stock in trade, merchandise, horses, wagons and other vehicles, book and other debts, accounts receivable, credits, contracts, assets,

effects, business and good will of the said partnership heretofore carried on between us, trading as Trenton Scrap Rubber Supply Company.

"2. In consideration of the conveyance to me of the above-mentioned property and effects of said partnership, I will pay you the sum of Twenty-five thousand dollars ($25,000) in manner following, that is to say:

"Five thousand dollars ($5,000) in cash within five days after your acceptance of this offer or proposal;

"Five thousand dollars ($5,000) in cash within twenty days after your acceptance of this offer or proposal; and the balance

Fifteen thousand dollars ($15,000) in three promissory notes, each made by me to your order, in the sum of Five thousand dollars ($5,000) payable three months after date; each of which promissory notes is to be renewed every three months upon payment to you of five hundred dollars ($500) in cash on account of the principal of each of said notes.

"3. I will pay all the debts and discharge all the liabilities of the said partnership and will, at all times hereafter, effectually keep you, and your executors and administrators, and your and their estate and effects, indemnified against all such debts and liabilities, and all actions, proceedings, costs and expenses in respect thereof.

"4. Upon the consummation of said sale, as herein provided, each of us shall release and forever discharge the other, his heirs, executors, administrators and assigns, from all actions, proceedings, claims and demands whatsoever, which such respective releasing party, or his heirs, executors, administrators or assigns, now has or hereafter might have had against the other, his heirs, executors, administrators or assigns, on account of the said partnership, or anything relating thereto; and I will especially release you

from all claims and demands of every kind and nature, which I now have or hereafter might have against you by reason of a certain promissory note in the sum of Ten thousand five hundred dollars ($10,500), made by the Leicester Rubber Company to the order of A. DePiano, H. Bernstein and I. Fineberg and endorsed by same, of which I. Fineberg was an accommodation endorser and which note is now held and owned by said partnership; it being understood and agreed, however, that the surrender and discharge of this said promissory note, and the extinguishment of your liability as endorser, shall not deprive me of the right to collect and receive the dividends which have been declared, or which may hereafter be declared, by the Trustee in bankruptcy of the said Leicester Rubber Company, now bankrupt.

"5. It is understood and agreed, that in case you desire to purchase all my right, title and interest in and to the said partnership business heretofore carried on by us, trading as Trenton Scrap Rubber Supply Company, that I will and do hereby agree to sell and convey to you all my right, title and interest of every kind and description in and to the said partnership, and all its property and assets, upon the same terms and conditions hereinbefore specified, which I have agreed to take and accept for the conveyance of all my right, title and interest in and to the said partnership.

"6. This offer shall remain open for acceptance until Tuesday morning, June twenty-second, A. D., nineteen hundred and fifteen, at ten A. M.; and unless you agree to either buy or sell, in accordance with this offer, and give notice of such decision before said time, this offer shall become null and void.

"7. In case you elect to purchase all my right, title and interest in and to said partnership, as hereinbefore provided, it is understood and agreed that in addition

to the purchase price above named, I shall also receive all moneys which I have in the said partnership business in excess of the moneys in said business belonging to you, which moneys are to be paid to me in the same ratio or proportion, as to cash payments and notes, as the above mentioned purchase price of my one-half interest is to be paid to me under the terms hereof.

"8. It is further understood and agreed, that if you elect to purchase my interest in said partnership business, that your liability to pay the debts and obligations of the said partnership, as provided herein, shall not extend to nor include any debts or liabilities greater in the aggregate than the sum of One thousand dollars not at present appearing on the partnership books of account; and that in case I purchase your interest in said partnership, my liability to pay the debts and obligations of the said partnership shall not extend to nor include any debts or liabilities greater in the aggregate than the sum of One thousand dollars not at present appearing on the partnership books of account.

"Dated the twenty-first of June, A. D., nineteen hundred and fifteen.

"H. FREEDMAN."

When the option agreement, as suggested by Freedman, was completed, Mr. Heher suggested that Mr. Freedman should ascertain the whereabouts of Mr. Fineberg and have him come to him (Heher's) office for the submission of the offer to Fineberg, in order that he might take immediate action thereon.

It seems that Mr. Fineberg was found by Mr. Freedman and immediately taken to Mr. Heher's office, and what took place there is best described in Mr. Heher's words (Case, p. 222):

"Q. What went on at your office? A. When Mr. Fineberg came in, he took the paper which

had been prepared down to and including paragraph 4—it had not then been signed—and without saying anything he went into my private office and used the telephone. I don't know what number he called; he was unable to get the party, and in a minute or so he came back and said he tried to get Mr. Scammell but was unable to locate him, and after studying over the paper for three or four minutes, well, he made some changes here; he said the $11,-500 note hadn't been accurately described, and he made some changes which appear in his handwriting in pen in paragraph 4; and after doing that he said, 'What is fair for one is fair for the other,' or something to that effect. He said, 'I think I ought to have the right to purchase your interest on the same terms you agreed to purchase mine.' Well he and Mr. Freedman and Mr. Gordon talked it over for a time, and finally, Mr. Freedman said that was agreeable to him, provided he received in addition to the consideration of $25,000 all the excess moneys which were coming to him from the business, and Mr. Fineberg said he was willing to enter into an agreement containing that provision. When I found that they had come to an agreement, I told them the words 'excess money' were rather indefinite and uncertain, and that they ought to stipulate the amount of the excess money. Mr. Fineberg said they couldn't tell what they amounted to, but that the books would show. I asked them if they could approximate the amount; they said, 'No,' and whatever the books showed the excess to be was the amount of money that was to be paid over; but I think before that I then dictated the remaining paragraphs from paragraph 5, on, to the stenographer, at the machine, and when we came to paragraph 7 to 'invested,' I used the word 'invested'; I understood them to mean Mr. Freedman had invested more money in the concern than Mr. Fineberg, and when I used that word, Mr. Fineberg interrupted and said that wouldn't be correct. I don't recall what words he used, but I understood him to mean that the word

'invested' would not include the excess moneys coming to Mr. Freedman; in other words, that the excess moneys of Mr. Freedman would not be included in those words; I then struck that off and said: 'Receive all moneys which I have in the said partnership business in excess of the moneys in said business belonging to you.'

"Q. It was then Mr. Fineberg suggested that you strike out 'invested,' because that would not cover the situation? A. No, but he said that word was not correct and it wouldn't convey the meaning they intended. When he said that, Mr. Freedman apparently agreed with him; he entered no objection. I saw from what Mr. Fineberg said, that the word would not give Mr. Freedman the excess money coming to him; I realized that was for his benefit, and so I changed it.

"Q. Didn't you ask them to fix the amount of what they claimed? A. Yes, sir; that it might result in litigation and be the cause of considerable trouble; I realized such a thing might happen, and that it was safer to state the amount so there couldn't be any dispute, and both of them said the books would show the excess money, and then they said whatever that was would be the amount which should be paid. I asked them if they couldn't approximate the amount, and told them it would be advisable to have something definite in writing, and they said whatever the books would show would be the amount. At that time I didn't know anything about their difficulties or books or what they were referring to when they said 'excess moneys.'"

Freedman's account of this transaction, which is practically identical, appears in case, pages 120, 121.

At this time the partnership books showed the amount of Fineberg's withdrawals from partnership funds to be $20,645.43, which included the $12,500 stock investment while Freedman was charged with withdrawals amounting to $6,750.40, and the $10,500 note was carried as an asset of the partnership in the Leicester Rubber Company account.

After the option agreement was finished Freedman signed it and gave it to Fineberg (Case, p. 121).

On the following day Fineberg served on Freedman written notice that he (Fineberg) would buy Freedman's interest in accordance with the terms of the option agreement.

On June 26, 1915, Fineberg paid the $10,000 cash and executed and delivered to Freedman, the $15,000, in notes, as provided by the option agreement, at which time there then arose the dispute respecting the amount of moneys which should be paid under Paragraph 7.

The progress of that dispute was represented by the submission of forms of arbitration; the complainant, Freedman, demanded security for the balance due him, contrary to the terms of the option, and refusing to arbitrate unless security was given him, while Fineberg, on the other hand, agreed to arbitrate, and was willing to give security until the arbitrators had decided the amount due, and thereupon agreed to make payment of that amount in accordance with the terms of the option agreement.

This situation continued until the bill in this case was filed.

IV.

The issues at the hearing were:

FIRST. HAD THE COMPLAINANT FREEDMAN, THE RIGHT TO RESCIND, AND IF NOT, SHOULD THE OPTION AGREEMENT BE SPECIFICALLY PERFORMED?

The Court disposed of this issue by denying the right of the complainant to rescind the option agreement and decreed that it should be specifically performed. No appeal has been taken from this conclusion.

SECOND. IN DECREEING SPECIFIC PERFORMANCE OF THE OPTION AGREEMENT, WHAT AMOUNT REPRESENTED THE SUM OF MONEY, WHICH WAS REQUIRED TO BE PAID BY THE DEFENDANT, FINEBERG, UNDER PARAGRAPH 7 OF THE OPTION AGREEMENT?

As to this issue, complainant's (Freedman's) contention, was that the $12,500 stock item was properly charged on the books as an individual withdrawal of Fineberg, that the $10,500, note transaction was Fineberg's individual withdrawal as well, and should be so charged against him, and that the sum to be paid by Fineberg was the difference between his (Freedman's) withdrawals of $6,750.40, and the sum total of the withdrawals already charged to Fineberg ($20,645.43), and $10,500 (that is, the difference between $31,145.43 and $6,750.40 or $24,390.03).

Defendant, Fineberg, contended that the $12,500 stock transaction was a partnership transaction, and as such, should be eliminated from his withdrawal account, reducing its total to $8,145.43; that the $10,500 note transaction being also a partnership transaction, was properly charged on the books, and should not be charged against him as a withdrawal and that his liability under Paragraph 7 of the option agreement, was to pay to Freedman one-half of the difference between the total of his withdrawals account, when so reduced ($8,145.43) and the total of Freedman's withdrawals ($6,750.40) or $695.01.

The Court adopted complainant's contention *in toto* and decreed that Fineberg must pay Freedman $24,390.03 to satisfy paragraph 7 of the option agreement, the recital in the decree being as follows (Case, pp. 34-38):

> "The Court being further of the opinion that there is due from the defendant to the complainant, as the monies which complainant

had in the co-partnership business, described in said contract of purchase, in excess of the monies in said business belonging to the defendant, the sum of $24,390.03, and that in arriving at said sum the sum of $12,500 already charged against the defendant on the books of the co-partnership, and representing the payment for certain shares of the capital stock of the Leicester Rubber Company, should be considered an individual withdrawal from the partnership funds on the part of the defendant, and that the sum of $10,500 now charged on the books of said co-partnership to the Leicester Rubber Company, and representing the sums paid for and on account of a certain note of that amount out of the assets of the said co-partnership, should be charged to the defendant as part of his personal withdrawals, and that the difference between the defendant's withdrawals, calculated after adding said sum of $10,500 to the sums already charged on the books of said co-partnership against him, and the complainant's withdrawals as the same were charged on said books, measures the excess of the monies which the complainant had in said co-partnership business, at the time of the making of said contract of purchase, over the monies in said business then belonging to the defendant."

The appeal is from so much of the decree as finds $24,390.03 to be the sum to be paid under paragraph 7 of the option agreement, upon the grounds:

FIRST: That the sum to be paid in cash by the giving of notes by the defendant to the complainant in order to entitle the defendant to specific performance of the contract of purchase of June 21, 1915, is such sum as equals one-half of the difference between the defendant's withdrawals from the co-partnership business and the complainant's withdrawals therefrom.

SECOND: That at the time of the making of said contract of purchase, the amount of the moneys which

complainant had in the co-partnership business in excess of the moneys in said business belonging to the defendant is measured by and equals one-half of the difference between the complainant's withdrawals from the partnership funds, and the defendant's withdrawals therefrom.

THIRD: That in calculating the amount of the defendant's withdrawals from the said partnership funds, said sum of $10,500 now charged on the books of said co-partnership to the Leicester Rubber Company, and representing the sums paid on account of a certain note of that amount out of the assets of said co-partnership, is properly so charged, and should be considered a partnership transaction, and, as such should not be counted as a withdrawal on the part of the defendant.

FOURTH: That at the time of the making of said agreement of purchase, the moneys which the complainant had in said co-partnership business in excess of the moneys in said co-partnership business belonging to the defendant, amounted to the total sum of $6,945.02.

FIFTH: That in order to entitle the defendant to have the agreement of purchase or option agreement of June 21, 1915, set forth in the bill of complaint, specifically performed on the part of the complainant, the defendant should pay to the complainant the sum of $1,389, with interest thereon from June 27, 1915, amounting to $77.32, and the further sum of $1,389, with interest thereon from July 12, 1915, amounting to $73.85, and the further sum of $1,500, with interest thereon from October 12, 1915, amounting to $57.25, and the further sum of $1,500, with interest thereon from January 12, 1915, amounting to $124.75, and the further sum of $1,167.02, with interest thereon from April 12, 1916, amounting to $9.13, making in all a total payment of principal of $6,945.02, and a total payment of interest of $342.30.

V.

Defendant's appeal, therefore, is from so much of the decree as fixes the sums to be paid by Fineberg to Freedman at $24,390.03 in order to entitle him (Fineberg) to specific performance of the agreement, and defendant's argument is based on two points:

POINT ONE.

That Fineberg should be required to pay to Freedman, in order to satisfy Paragraph 7 of the option agreement, but one-half of the difference between the totals of the individual withdrawals of the partners, on whatsoever basis calculated, instead of the whole of this difference, in order to entitle him (Fineberg)to specific performance of the agreement.

POINT TWO.

The Leicester Rubber Company note of $10,500 should not have been considered by the Vice Chancellor as a withdrawal by Fineberg in ascertaining the amount to be paid under the option agreement.

In discussing Point One, the figures used by the Vice Chancellor in calculating the withdrawal accounts will be used for convenience. These figures in-

clude the $10,500 note transaction amongst Fineberg's withdrawals, but the use of these figures should not be assumed as any waiver of the claim that this item should not be charged, and the results attained will, therefore, not be accurate in figures on the basis of defendant's contention as to this item.

VI.

POINT ONE.

That Fineberg should be required to pay to Freedman, in order to satisfy Paragraph 7 of the option agreement, but one-half of the difference between the totals of the individual withdrawals of the partners, on whatsoever basis calculated, instead of the whole of this difference, in order to entitle him (Fineberg) to specific performance of the agreement.

Defendants respectfully submit:

That the option agreement had its origin in a proposal by Freedman to buy from Fineberg.

That Section 7 was inserted when Fineberg proposed to buy instead of to sell, and to enable Freedman to obtain the benefit of his share of the unequal withdrawal accounts.

That the test of what Freedman expected to receive for his interest in the partnership is what he expected to pay for Fineberg's interest.

That what he expected to pay for Fineberg's interest must be determined by what he would have been entitled to receive had the partnership been dissolved without purchase by one partner of the other's interest.

That on such a dissolution, Freedman would have been entitled to one-half of the value of all the assets of the partnership, i. e., one-half of the value of the actual existing assets, and one-half of the value of the overdawal account assets.

That the withdrawal accounts being charged against the individual partners and in favor of the partnership, constituted firm or joint funds, and upon dissolution, each partner would be entitled to one-half interest in each withdrawal account.

That Freedman's interest, on dissolution, in the sum total of two withdrawal accounts, was a one-half interest, and the balance due him on account of the withdrawals would be one-half the difference between his own withdrawals and those of his partner.

That had Freedman purchased Fineberg's interest in the partnership for $25,000, his right to insist upon repayment by Fineberg to the partnership of his (Fineberg's) withdrawals would have disappeared by reason of the release clause in the option.

That Freedman would have lost, on such a purchase, his interest in so much of Fineberg's withdrawals as exceeded his (Freedman's) withdrawals; namely, one-half of the difference, and would, therefore, have paid for the partnership assets this sum plus the sum of $25,000.

That Fineberg is entitled to pay Freedman a sum equivalent to one-half the difference between his and Freedman's withdrawals, in addition to the $25,000.00 which he has already paid.

Section 7 of the option agreement (Case, p. 9), reads as follows:

> "7. In case you elect to purchase all my right, title and interest in and to said partnership, as hereinbefore provided, it is understood and agreed that in addition to the purchase

> price above named, I shall also receive all moneys which I have in the said partnership business in excess of the moneys in said business belonging to you, which moneys are to be paid to me in the same ratio or proportion, as to cash payments and notes, as the above mentioned purchase price of my one-half interest is to be paid to me under the terms hereof."

The Vice Chancellor's conclusions with regard to the measure of the excess are as follows (Case, p. 338):

> "The total of his withdrawals, viz: $24,390.03, measures the excess of the monies the complainant had in the business over the defendant. As I read the bargain between them, as set forth in the seventh paragraph of the contract: 'I (complainant) shall also receive all monies which I have in the said partnership business in excess of the monies in said business belonging to you (defendant),' means that the complainant was to have first, of the partnership fund, a sum equal to the defendant's withdrawal, and for his half interest in the remainder he was to receive $25,000."

It is submitted that the Vice Chancellor, in construing this provision, entirely disregards the partnership character of the accounts, and disregards, as well, the evidence of the parties' intentions as a basis for construction. He does not consider, in construing this paragraph, that the original option agreement was an option on Freedman's part to purchase Fineberg's interest and that this very paragraph was added when the option to purchase was opened to Fineberg. He disregards, as well, the evidence of Mr. Heher before quoted (Case, pp. 221 to 225), which clearly shows the intention of the parties in inserting this paragraph to have been to give to Freedman his interest in the overdrawal accounts, in addition to the $25,000, in event that Fineberg purchased. He disregards, as well, Mr. Heher's evidence to the

effect that the parties agreed to settle by the books, and the inference that, both parties knowing that the books were partnership books, kept on a basis of partnership accounting, a settlement on a partnership basis was contemplated. Without discussing the theory on which his conclusion is based, the Vice Chancellor, it is submitted, construes this section and the partnership transactions therein involved, as that the transactions were individual ones and the accounts individual accounts, showing a liability of one partner to the other, and not of each partner to both.

At the hearing, a number of statements of the assets and liabilities of the business were produced. By the testimony of both Messrs. Freedman and Fineberg, it appears that each had a statement showing the condition of the business on June 1st, 1915, and that both the partners knew the condition of the business on June 22d, 1915 (Case, p. 293). According to the testimony of Mr. Harding, the condition of the business on June 1, 1915, eliminating the questions of withdrawals by each partner, was as follows (Case, pp. 315-328):

Assets.

Accounts receivable	$20,117.97	
Cash, in bank and on hand	1,651.57	
Merchandise on hand	56,203.22	
Horse, wagon and fixtures	1,500.00	
Real estate	20,000.00	
		$99,472.76

Liabilities.

Mortgage on real estate	$ 9,500.00	
Notes payable	33,955.76	
Accounts payable	5,254.53	
		$48,710.29
		$50,762.47

On June 22, 1915, the condition of the business, as disclosed by the books of account, according to Mr. Harding, was as follows:

Assets.

Accounts receivable	$21,533.15	
Cash, in bank and on hand	4,823.99	
Merchandise on hand	34,107.67	
Horse, wagon and fixtures	1,500.00	
Real estate	20,000.00	
		$81,964.81

Liabilities.

Mortgage on real estate	$ 9,500.00	
Notes payable	20,216.89	
Accounts payable	2,933.37	
		$32,650.26
		$49,314.55

In the above statements, the $2,000 (Case, pp. 249-281), of withdrawals by Freedman for his criminal trials were treated as items of expense of the business, instead of being considered as withdrawals by Freedman for his personal account, and which Freedman agreed should be submitted to the arbitrators, but which items he had arbitrarily directed to be charged to the item of expense on the books of the company.

Assuming that the $12,500.00 Leicester Rubber Company stock item and the $10,500.00 Leicester Rubber Company note item are both to be included in Fineberg's withdrawals, what sum represents the amount of money which Freedman had in the partnership business in excess of the moneys in said business belonging to Fineberg.

The question here is simply the construction of a contract, the parties having provided that $25,000.00 shall pay for the one-half interest of the selling partner in all of the assets except the difference in withdrawals of the partners themselves. It can make no difference, therefore, whether these assets (excluding the withdrawal account) be valued at $40,000.00 or a million dollars, since the purchase price for a one-half interest in them is fixed by the option agreement.

It would hardly seem necessary to argue the point that under no circumstances, or in no event, could Freedman expect to receive more than the book value of his interest in the partnership assets, so long as the assets sold for $25,000.00 exceed, in the valuation appearing on either statement, that sum.

According to complainant's statement, the account analysis is as follows:

Fineberg's withdrawals from the business, as shown on the books	$20,645.43
Leicester Rubber Co. note item, charged to Fineberg	10,500.00
Fineberg's total withdrawals	$31,145.43
Freedman's withdrawals	6,755.40
Excess of Fineberg's withdrawals over Freedman's withdrawals from the business	$24,390.03

In considering the option agreement, as has been shown, but two classes of assets need be considered separately; the withdrawal account assets, which are to be separately paid for under paragraph 7, and the other assets of the business, which Freedman agreed to sell, and by the option agreement, he did sell, his one-half interest therein for the sum of $25,000.00. The following is an analysis of complainant's statement on this basis:

Total assets of firm		$100,552.83
Withdrawal Account Assets:		
Fineberg's withdrawals	$20,645.43	
Leicester Rubber Co. note item	10,500.00	
Total Fineberg's withdrawals	$31,145.43	
Freedman's withdrawals	6,755.40	
Total of withdrawal account assets,		$37,900.83
Assets other than withdrawal account assets,		62,652.00

On the basis of this statement, Freedman's total one-half interest is $50,276.41. His one-half interest in the assets other than the withdrawal account assets is $31,326, this interest he sold for $25,000.00 to Fineberg. His one-half interest in the withdrawal account assets amounts to $18,950.41, of which he has already received $6,755.40 by his own withdrawals, and he is, therefore, entitled to receive the difference between $18,950.41, his one-half interest in the withdrawal account assets, and the $6,755,40, his own withdrawals, viz: $12,195.01. This is the sum, therefore, which represents the sum of money which Freedman had in the partnership business in excess of the moneys in said business belonging to Fineberg.

The following is a statement of the account on this basis, accounting for his full one-half interest:

Withdrawals already made by Freedman	$6,755.40
One-half interest in assets other than withdrawal account assets, sold for $25,000	31,326.00
Amount to be paid by Fineberg to satisfy paragraph 7	12,195.01
Total amount of Freedman's share on the basis of complainant's statement	$50,276.41

We have gone into the above discussion on the basis of the statement set up by the complainant, but, upon the same method of presentation, taking the figures as represented by the statement of June 22, prepared by Mr. Harding, at the request of Mr. Fineberg (Case, p. 365), it will be seen that the same result is accomplished; the only difference between the figures as set forth in the defendant's statement, is the item of $11,302.88, representing the open account of the Leicester Rubber Company, which both partners considered of very little value, if any, and the sum of $2,000, the difference in the value placed upon the real estate of the co-partnership. The same result, however, follows, by the use of the figures of either the statement of the complainant or the defendant. The following is a comparative analysis of these two statements:

	Complainant's Statement	Defendant's Statement
Total amount of withdrawal account	$ 37,900.83	$37,900.83
Total amount of other assets	62,652.00	49,314.55
Net worth of partnership	$100,552.83	$87,215.38
Freedman's half interest	50,276.41	43,607.69
Less Freedman's withdrawals	6,755.40	6,755.40
Freedman's net interest	43,521.01	36,852.29
Freedman's half interest in assets other than withdrawal account (sold for $25,000)	31,326.00	24,657.28
Balance due Freedman to make up full half interest, and which represents the excess due him	$12,195.01	12,195.01

Freedman therefore receives his one-half in the actual assets, $31,326.00 according to his own statement, and $25,694.78 according to Fineberg's statement, by the payment of $25,000 for which he sold this interest. The difference in the value of this interest, as already explained, arises from the elimination in the Fineberg account of the Leicester Rubber Company account of $11,302.88, and the $2,000 difference in the valuation of the real estate of the partnership. But, no matter what the book value of this interest is, it was sold by Freedman for $25,000.00. So it will be seen that Freedman, with his withdrawals of $6,755.40, and when he has received $12,195.01 more, he has received his entire interest, viz: $50,276.41, according to his own statement, or $44,645.19 according to the defendant's statement.

It is certainly clear from the wording of the seventh clause of the option agreement, viz: "I shall also receive all moneys which I have in said partnership business in excess of the moneys in said business belonging to you," that Freedman was not to receive more money out of the business than he had in it, and, as the calculations hereinbefore set forth account for the entire one-half interest which Freedman owned and sold, it seems to us that the correctness of the statement cannot be questioned.

Further, assuming that the excess withdrawals of Fineberg over Freedman amounted to $24,390.03, *and that on the day before the agreement was made, Fineberg had paid to Freedman one-half of this sum, how much more money would Freedman then have had in the business in excess of the moneys belonging to Fineberg?* Obviously none, since the entire overdrawal account would then have been evenly divided between the partners. If this result could be accomplished by the payment of $12,195.01 on the day before the agreement was made, it is respectfully submitted that the payment of the same sum will satisfy that requirement today.

In the Court below it was argued by complainant's counsel that "While in theory one-half of a partner's withdrawals are his, yet such withdrawals, if not returned to the partnership business, must be allowed in full to the other partner in any settlement or accounting between the partners." It is submitted that this statement is absolutely contrary to well-established legal principles. On the contrary, the cases hold that withdrawals should be accounted as debts due by the partners to the firm, and that each partner's interest should be determined after having added to the partnership assets the amount of all withdrawals. Of course, in determining the actual amount of cash which a partner will receive, his withdrawals, that is the amount of money which he has already had, is subtracted from the amount of his share, however, he receives credit along with all other partners for his own share of his and all other partners' withdrawals.

This rule is clearly stated in *Buckingham v. Ludlam*, 29 N. J. Eq., 345, and applied in *Hutchinson v. Onderdonk*, 6 N. J. Eq., 277.

The following analysis by an eminent accountant reaches the same conclusion. The figures are taken from Exhibit C20, offered by complainant as a statement of the partnership business, June 22, 1915, and found on page 365 of the case.

That, the decree awards to the plaintiff all, and not one-half of the residuary properties, as represented between the drawings of the defendant	31,145.43	
and drawings of the plaintiff	6,755.40	24,390.03
That, the option of purchase was intended to be as fair to the defendant as to the plaintiff (Case, p. 223).		
That, all of the assets including partners' drawings and Leicester Rubber account and notes were in amount, as per Mr. Harding's accounting		133,203.09
That, the total liabilities as per Mr. Harding's accounting were in amount		32,650.26
That, the surplus on June 22nd, 1915, representing a *joint* investment of the plaintiff and defendant in the business of "The Trenton Scrap Rubber Supply Company" was in amount		100,552.83
That, the plaintiff sold to the defendant his one-half interest in the business of the "Trenton Scrap Rubber Supply Company" exclusive of the amount represented by the joint, but unequal drawings of the plaintiff and of the defendant (see option agreement).		
That, the drawings of the defendant were	20,645.43	
That, the Leicester Rubber Company note was by the decree to be charged as a drawing to the defendant and was in amount	10,500.00	
That, the drawings of the plaintiff were	6,755.40	
That, the amount to be arbitrated in accordance with Paragraph 7, is		37,900.83
That, the amount of the properties representing the *joint* interests of the plaintiff and defendant, in accordance with paragraph 1 of the bill of complaint is		62,652.00
That, one-half of said *joint* investment as per paragraph 1 in the bill of complaint in favor of the defendant is in amount		31,326.00

That, the plaintiff in accordance with paragraph 1 of the option, sold to the defendant the said residuary one-half interest at an agreed purchase price, buy or sell, irrespective of what that half was worth for		25,000.00
That, the apparent advantage in favor of the defendant was		6,326.00
That, the Leicester Rubber Company account, $11,302.28 was doubtful or bad, a fact known to both the plaintiff and the defendant.		
That, the Leicester Rubber Company account was included in the total assets.		
That, one-half of the Leicester Rubber Company account of $11,302.88 is included in the apparent advantage of $6,326.		5,651.44
That, the advantage of purchase to the defendant was		674.56
That, the paragraph 7 in the option agreement is to determine how much (exclusive of interest) the plaintiff shall receive from the defendant so as to share equally with respect to the residuary properties, represented by the combined but unequal drawings of the co-partners, in amount		37,900.83
That, the plaintiff's drawings were	6,755.40	
That, the defendant's drawings, including the Leicester Rubber Company note of $10,500 were	31,145.43	
That, the plaintiff is entitled to one-half of the residuary *joint* investment represented by the total of the unequal drawings of the co-partners, in amount		18,950.41
That, the plaintiff's drawings were		6,755.40
That, the plaintiff should receive from the defendant the sum of		12,195.01

That, the defendant's drawings were in amount $20,745.43 and $10,500 (Leicester Rubber Company note)		31,145.43
That, the defendant is entitled to have one-half of the residuary investment represented by the total of the unequal drawings of the co-partners, in amount (one-half total withdrawals)		18,950.43
That, the defendant should pay to the plaintiff the excess amount of the defendant's drawings in accordance with paragraph 7 of the option agreement		12,195.01
That, if the defendant pays to the plaintiff, in accordance with the decree the sum of	24,390.03	
the plaintiff will receive in excess of his equitable one-half share of the residuary assets of the Trenton Scrap Rubber Supply Company, the sum		12,195.02
That, the total amount of the admitted assets, including the $37,900.80, co-partners' drawing were in amount		133,203.09
That, the amount of the liabilities were		32,203.26
That, the joint net investment of the co-partners (including drawings) were		100,552.83
That, the plaintiff's one-half share is		50,276.41
That, the plaintiff receives for the said one-half share:		
Plaintiff's allowance to defendant with respect to Paragraph 1 of the option agreement	6,326.00	
Cash and notes	25,000.00	
Being one-half co-partners' assets	31,326.00	
Plaintiff's drawings	6,755.40	
Vice-Chancellor's award	24,390.03	

That, the total amount that would be paid to the plaintiff as a purchase price for a one-half interest assets would be		62,471.43
That, the plaintiff will receive in excess of the value of his one-half interest in all of the co-partnership joint assets		12,195.02
That, the excess represents exactly one-half of the amount of the Vice Chancellor's award		24,390.03

That, the Vice Chancellor's award represents a JOINT, and not an individual excess in accordance with Paragraph 7 of the agreement.

That, a withdrawal from *joint funds* and a direct loan from one co-partner to another are two distinct principles.

That, assuming two partners each contribute $5, representing a combined capital of $10 "A" draws $7.50 and "B" draws $2.50. How much would "A" pay "B"?

Certainly not $5, for "B" would then receive $7.50. "B" invested originally $5; he has drawn $2.50. He receives from "A" one-half of "A's" excess drawings (one-half of $5.00). If "A" repaid to the business of the co-partnership $5 excess drawings, then "A" and "B" would only have to draw $2.50 each. The co-partnership asset of $5 repaid by "A" if equally divided would repay $2.50 to each co-partner, and then "A" and "B" would each receive $5, the amount of their original investment.

That, the award of the Vice Chancellor credits all of the residuary assets including the plaintiff's drawings to the plaintiff, in amount		37,900.83
That, the plaintiff has already drawn	6,755.40	
That, the defendant would pay to the plaintiff what should be paid to the business, all of defendant's drawings and the Leicester Rubber Company note	20,645.43	
	10,500.00	37,900.83

That, the defendant owned a one-half interest in the business including his own and the plaintiff's drawings, and the plaintiff owned a one-half interest in the business including his own and the defendant's drawings.		
That, the agreed net assets, including the drawings of the plaintiff and defendant were		100,552.83
That, the plaintiff's one-half interest amounts to		50,276.41
How does the plaintiff receive that value?		
By his allowance on the purchase price of the difference between $31,326 and the cash and note settlement of $25,000	6,326.00	
By cash and notes from the defendant	25,000.00	
By plaintiff's drawings	6,755.40	
By balance due by the defendant to the plaintiff, see Paragraph 7 of the option agreement, of all moneys which the plaintiff had in the said business, in excess of the moneys in said business belonging to the defendant and to be paid by the defendant in the same ratio or proportion as to cash payments and notes as the above-mentioned purchase price of the plaintiff's one-half interest was to be paid to the plaintiff under the terms thereof	12,195.01	50,276.41

Let it be assumed that as both the plaintiff and defendant drew moneys from the *joint* funds that they returned or repaid to the business the unequal amounts drawn from the *joint* funds of that business.

CASH REPAID TO BUSINESS—JOINT FUND.

		Residuary assets divisible:	
Returned by I. Fineberg	$31,145.43	I. Fineberg, one-half	$18,950.42
Returned by H. Freedman	$6,755.46	H. Freedman, one-half	18,950.41
	37,900.83		37,900.83

ISAAC FINEBERG—ACCOUNT.

Drawings	$20,645.43		
Leicester Rubber Co. Note	10,500.00	Returned as above to the business	$31,145.43
	31,145.43		31,145.43
Drawings	20,645.43	One-half residuary assets	18,950.42
Leicester Rubber Co. Note	10,500.00	Pay to H. Freedman	12,195.01
	31,145.43		31,145.43

HARRY FREEDMAN—ACCOUNT.

Drawings	6,755.40	Returned, as above to the business	6,755.40
	6,755.40		6,755.40
Drawings	6,755.40		
Received from *I. Fineberg*	12,195.01	One-half residuary assets	18,950.41
	18,950.41		18,950.41

As a further and final illustration that the award of $24,390.03 comprehends *all* of the residuary joint moneys and represents a loss to the defendant, the accounts of the plaintiff and defendant are submitted.

Dr. Defendant — ISAAC FINEBERG—ACCOUNT — Cr.

Drawings		$20,645.43	Drawings of co-partners		$
Leicester Rubber Company Note		10,500.00	Residuary fund	$37,900.83	
Overpayment	$12,195.02		Defendant's one-half share		18,950.42
			Pay to H. Freedman as per Vice Chancellor's decree		24,390.03

Dr. Plaintiff — HARRY FREEDMAN—ACCOUNT — Cr.

			Drawings of co-partners		
Drawings		6,755.40	Residuary fund	$37,900.83	
Receive from I. Fineberg, per Vice Chancellor's decree		24,390.03	Plaintiff's one-half share		18,950.41
			Excess amount received		*$12,195.02*

It is therefore respectfully submitted that the award of the Vice Chancellor in favor of the plaintiff should be corrected to read $12,195.01

for by addition thereto of the following amounts:

Difference between the $31,326 assets, and Purchase price of	25,000	$ 6,326.	
		25,000.	
Cash and notes from defendant		6,755.	38,081.00
Plaintiff's drawings			

The plaintiff receives to a penny the value of his one-half interest in all the properties of the Trenton Scrap Rubber Supply Company, as of June 22d, 1915, and in accordance with the figures and accounts stated by Mr. Harding, the accountant (Exhibit C-20) 50,276.41

POINT TWO.

The Leicester Rubber Company note of $10,500 should not have been considered by the Vice Chancellor as a withdrawal by Fineberg in ascertaining the amount to be paid under the option agreement.

A.

THE COURT WAS SPECIFICALLY PERFORMING THE OPTION AGREEMENT OF FREEDMAN TO SELL HIS SHARE OR INTEREST IN THE CO-PARTNERSHIP.

In this agreement to sell (paragraph 4), it was to be considered by the partners that the $10,500 note was a partnership asset and the releasing clause in this (4th) paragraph provided that he (Freedman) would release Fineberg from all claims and demands which he then had or might thereafter have against Fineberg by reason of this note.

This paragraph had already been incorporated in the option agreement by the draftsman, Mr. Heher, by Freedman's instructions, before Mr. Fineberg knew of its contents (case, p. 160). Its (the note's) existence and relationship to the firm affairs was well known, especially to Freedman, who testified that it was because of the payment of this note from the partnership funds that the dispute culminating in the dissolution arose (case, p. 118). Freedman had as well, the note in his possession (case, p. 300). The note was included in the matters referred to the arbitrators under the arbitration agreement (case, p. 157). In view of this, the 4th paragraph had a considerable import in the option agreement, and should not be dis-

regarded in enforcing the option agreement. This paragraph is as follows:

> "4. Upon the consummation of said sale, as herein provided, each of us shall release and forever discharge the other, his heirs, executors, administrators and assigns, from all actions, proceedings, claims and demands whatsoever, which such respective releasing party, or his heirs executors, administrators or assigns, now has or hereafter might have had against the others, his heirs, executors, administrators or assigns, on account of the said partnership, or anything relating thereto; and I will especially release you from all claims and demands of every kind and nature, which I now have or hereafter might have against you by reason of a certain promissory note in the sum of Ten thousand five hundred dollars ($10,500), made by the Leicester Rubber Company to the order of A. DePiano, H. Bernstein and I. Fineburg and endorsed by same, of which I. Fineburg was an accommodation endorser and which note is now held and owned by said partnership; it being understood and agreed, however, that the surrender and discharge of this said promissory note, and the extinguishment of your liability as endorser, shall not deprive me of the right to collect and receive the dividends which have been declared, or which may hereafter be declared, by the Trustee in bankruptcy of the said Leicester Rubber Company, now bankrupt."

The releasing clause is mutual between the partners as to their respective claims against each other, and as to any claim that Freedman might have against Fineberg by reason of this $10,500 note, the releasing clause is specific.

The character of Fineberg's liability upon the note is likewise declared. Whatever the dispute between the partners was as to his (Fineberg's) connection with this note, the option agreement fixed it finally as to how it was to be treated in the sale thereunder.

Fineberg was an "accommodation endorser." This provision settled as well the responsibility of Fineberg to the partnership so far as this note was concerned.

The note was declared to be "held and owned by said partnership"; in other words, an asset. The maker of the note was the Leicester Rubber Company, which company was, at the time of the making of the option agreement, bankrupt, and its affairs were being administered in bankruptcy. A claim on behalf of the partnership had been filed with the Referee in Bankruptcy (case, p. 300). The option agreement covered this contingency by stating "that the surrender, etc." (see fourth paragraph quoted above). Mr. Freedman had carefully covered every detail with reference to the note; there was nothing left to conjecture. There was no assertion in the agreement that the note was a personal withdrawal by Fineberg from the partnership funds. On the contrary, it was definitely settled that his (Fineberg's) only interest in this note was that of "an accommodation endorser," and that the note was "held and owned by the partnership." There was nothing left for dispute between the partners as to this note, its disposition and how it was to be treated in the sale. The plain words indicated that it was the intention of Freedman under the sale to eliminate any question of Mr. Fineberg's personal responsibility.

It may be contended, but we think without force, that when this paragraph was prepared, Freedman did not contemplate selling. While this is true, yet before Freedman made his offer the whole matter was discussed and no change was made by Freedman in his offer. We respectfully submit that Freedman, by his express words, settled the question of what disposition was to be made of the $10,500 in a sale under the option agreement.

B.

THE OPTION AGREEMENT PROVIDED AND PARTNERS AGREED THAT THE BOOKS OF ACCOUNT OF THE PARTNERSHIP WERE TO BE CONSIDERED IN DETERMINING THE QUESTIONS ARISING UNDER THE OPTION AGREEMENT.

The eighth clause of the option agreement provides:

> "8. It is further understood and agreed, that if you elect to purchase my interests in said partnership business, that your liability to pay the debts and obligations of the said partnership, as provided herein, shall not extend to nor include any debts or liabilities greater in the aggregate than the sum of One thousand dollars not at present appearing on the partnership books of account; and that in case I purchase your interest in said partnership, my liability to pay the debts and obligations of the said partnership shall not extend to nor include any debts or liabilities greater in the aggregate than the sum of One thousand dollars not at present appearing on the partnership books of account."

The books of account and the entries therein were to decide. Mr. Heher testifies that it was agreed by both partners that "the books would show the excess money," that "whatever the books would show would be the amount" (case, p. 223).

The "*debts and obligations* of the said partnership" were not to exceed in the aggregate, $1,000 more than those at present (June 21, 1915) "appearing upon the partnership books of account." The $10,500 note of the Leicester Rubber Company was entered on the books of account as a debt due to the partnership from that company. It was carried thereon as an asset. It was duly entered in the note book of the partnership as a Bills Receivable from that company. *It was not*

entered in Mr. Fineberg's account as a personal withdrawal from the partnership funds.

The books of account disclosed that it was a partnership transaction, and not the individual withdrawal of Fineberg.

The entries in the books of account were to be controlling in connection with the other terms of the option agreement. The legal effect of such entries is well recognized.

> *Dunnell v. Henderson,* 23 N. J. Eq., 174-177.
> *Schleicher v. Whyte,* 74 N. J. Eq., 839 and cases.
> *Chick v. Robinson,* 52 L. R. A., 833.

C.

THE COURT BELOW SHOULD IN ITS ENFORCEMENT OF THE OPTION AGREEMENT, OBSERVE THE USUAL RULES OF INTERPRETATION.

The plain language of the agreement excluded the $10,500 note as a personal withdrawal. By the option agreement and the understanding of the partners, the books of account were, as well, to be controlling. No entry on the books of account indicated that it was to be considered a personal withdrawal, but on the contrary, the entries were that it was a partnership transaction. The obligation of Fineberg to pay any *"debt or obligation"* not set up on the books of account was limited by the option agreement to $1,000, in any event, and the Vice Chancellor was clearly in error when he said:

> "The withdrawal of the $10,500 must be charged to the defendant's account."

For the above reasons, this note should not have been considered by the Vice Chancellor in ascertaining the excess due to Freedman from Fineberg.

VII.

Defendant-appellant, therefore, respectfully submits that the sum which he (Fineberg) should be required to pay to Freedman in order to satisfy paragraph 7 of the option agreement and to specifically perform the agreement, is one-half the difference between the sum total of his (Fineberg's) withdrawal account as the same is charged upon the partnership books, and the sum total of the withdrawals charged on the partnership books to Freedman, according to the following statement of account:

Fineberg's withdrawals as charged on the books,	$20,645.43
Freedman's total withdrawals,	6,755.40
Difference,	$13,890.03
Freedman's interest in difference between partners' withdrawals, one-half of above,	$6,945.02

It is, therefore, respectfully submitted that the decree entered in the Court of Chancery should be modified so as to provide for the payment of this sum of $6,945.02 to the complainant in the manner provided by the terms of the option agreement, and set forth in the fifth ground of appeal appearing in the petition of appeal in this cause (Case, p. 45).

Respectfully submitted,

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Defendant-Appellant.