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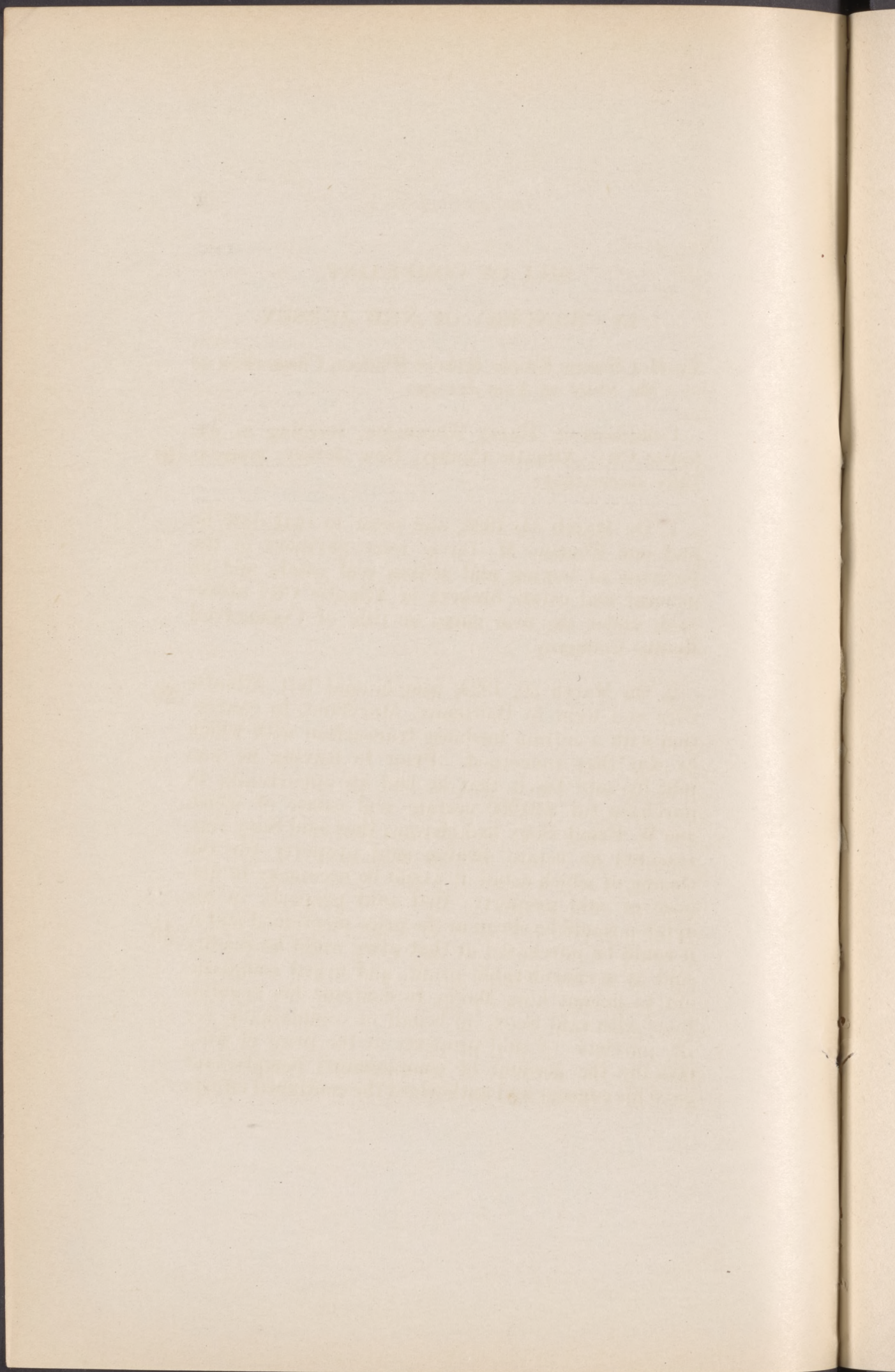
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BILL OF COMPLAINT.

IN CHANCERY OF NEW JERSEY.

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

Complainant, Harry Abramson, residing in Atlantic City, Atlantic County, New Jersey, respectfully shows that: 10

1. On March 31, 1923, and prior to that date he and one Thomas M. Davis were partners in the business of buying and selling real estate and as general real estate brokers in Atlantic City aforesaid, under the firm name or title of Commercial Realty Company.

2. On March 30, 1923, complainant left Atlantic City and went to Baltimore, Maryland, in connection with a certain business transaction with which he was then concerned. Prior to leaving he was told by said Davis that he had an opportunity to purchase for \$40,000 certain real estate of which one W. Frank Sooy had charge; that said Sooy represented an estate owning said property for the closing of which estate it would be necessary to dispose of said property; that said property in his opinion would be cheap at the price mentioned and it could be purchased at that price could be readily sold at a considerable profit, and urged complainant to permit him, Davis, to continue his negotiations with said Sooy, on behalf of complainant, for the purchase of said property at the price of \$40,000 for the account of complainant; complainant gave his consent and authorized the continued efforts 20 30

of said Davis to purchase said property, whereupon complainant on March 31, 1923, then being in Baltimore, was called by Davis on the telephone and informed that he, Davis, had secured the promise of Sooy to sell said property for \$40,000 and that \$5,000 was needed as an initial deposit or payment on account of purchase money to close the bargain; complainant approved and ratified what Davis had done and told him in that conversation that he, complainant, would use \$5,000 due him from William I. Segal, of Atlantic City, father-in-law of complainant, to pay said initial deposit and instructed said Davis to obtain the same from said Segal, who on the same day, at the request of said Davis, drew his check dated March 31, 1923, on the Boardwalk National Bank to the order of complainant, for the sum of \$5,000 and handed the same to Davis, which check was duly honored on presentation and the proceeds thereof used to make the first payment of purchase money for the property hereinafter described:

3. On March 31, 1923, one Lewis Silbert was the owner in fee simple of certain improved real estate consisting of a lot of ground on Fairmount Avenue in Atlantic City aforesaid being Nos. 2209 and 2211 Fairmount Avenue, 80 feet in front by 150 in depth on the front part of which lot was erected two brick apartment houses; one known as "The Fairmount" and the other known as "The Alva"; and in the rear of said lot was erected five brick and two frame dwelling houses which real estate said Silbert was desirous of selling and for that purpose he placed said property in the hands of one Goldstein, a licensed real estate broker in Atlantic City and authorized said broker to offer said property for sale and procure a purchaser thereof at the price of

\$40,000 pursuant to which authority said Goldstein offered said property for sale to Davis at said price. Said property is the same which said Davis represented and pretended to complainant belonged to an estate of which W. Frank Sooy had charge and for the purchase of which he, Davis, was negotiating with Sooy on complainant's account. Complainant avers the fact to be that said representations were false, that Sooy never had charge of said property and up to that time had no knowledge thereof but that said representations were preliminary to a design and scheme invented by said Davis to enable him to cheat and defraud complainant and which design and scheme he subsequently executed and accomplished in the mode and by the means hereinafter set forth.

4. On March 31, 1923, and immediately after complainant authorized the purchase of said property, Davis caused a writing to be prepared, which was subsequently signed by the parties named therein, by the terms of which said Lewis Silbert and Bella, his wife, agreed to sell and convey to W. Frank Sooy for the sum of \$40,000, the property mentioned in paragraph 3 of this bill of complaint, subject to mortgage liens aggregating \$30,000. Said writing provided that a deposit of \$5,000 of the purchase money should be made on the signing of the contract of sale and the balance of \$5,000 of consideration should be paid on the day of settlement under the contract which was therein agreed should be June 1, 1923. Said writing, after its preparation was taken by said Goldstein under instructions of said Davis to Harrisburg, Pennsylvania, where said Silbert, the vendor resided, and his signature was there procured. Said writing although bearing the date of March 31, 1923, was actually signed by said

Silbert on April 2, 1923. Complainant charges that although said W. Frank Sooy appears in said writing or contract as the purchaser of said property, he was not such, in fact, had no property right or pecuniary interest therein; that said Sooy really represented in said transaction said Thomas M. Davis, and unwittingly was being used by said Davis to further his design and consummate a fraud upon complainant.

10

5. The transaction touching the first payment of \$5,000 being the sum required to be paid by the terms of said contract on account of purchase money and therein acknowledged to have been received was as follows: On April 2, 1923, the date of the actual signing of said contract by said Lewis Silbert and at the time thereof said Goldstein delivered to him the check of W. Frank Sooy drawn on the Equitable Trust Company of Atlantic City for said sum of \$5,000 which check said Silbert deposited the same day in his Harrisburg bank to his credit; on April 3, 1923, complainant returned to Atlantic City from Baltimore and on that date deposited to the credit of Commercial Realty Company in the Chelsea National Bank of Atlantic City the check of William I. Segal to the order of complainant for \$5,000 hereinbefore mentioned and immediately drew the check of the Commercial Realty Company on said Chelsea National Bank to the order of William Frank Sooy for \$5,000, which last mentioned check was endorsed by said William Frank Sooy for \$5,000, and deposited to his credit in the Equitable Trust Company of Atlantic City, and was paid on presentation. Complainant is not informed and is without knowledge whether or not the \$5,000 represented by the check of said Sooy to said Silbert was his own money or had been previously advanced for that purpose by

20

30

said Davis, but said \$5,000 paid him, said Sooy, by complainant, was intended to and did reimburse him the money so advanced by him to said Silbert.

6. On April 3, 1923, complainant, without having been informed or knowing anything concerning the above mentioned transactions with said Lewis Silbert or anything concerning the area, character or value of the property he had authorized said Davis to purchase for him but relying solely upon the integrity, experience and opinion of said Davis and leaving to him the charge and conduct of the details of the transaction and with no knowledge whatever concerning said transaction save that the price was \$40,000, signed a writing, in form a contract with said William Frank Sooy, which writing provided, amongst other things, that said Sooy agreed to sell and convey for the price of \$40,000 and complainant agreed to purchase and pay for said property known as the "Fairmount Apartments" and the "Alva Apartments" subject to certain encumbrances in said writing mentioned. The property owned by said Silbert and described in said writing is a part of the property owned by said Silbert and conveyed to said Sooy as hereinabove set forth. By said writing it is provided that said \$40,000 should be paid \$5,000 on the signing thereof and deducting said encumbrances, the balance of \$13,000 on the date of settlement which date is therein designated as June 1, 1923, on which date settlement for said property was made at the office of the Atlantic Guaranty and Title Insurance Company in Atlantic City aforesaid, when complainant paid to said company \$16,033.26, the amount of money required at that time to make settlement under said writing for said property.

7. On April 2, 1923, said Thomas M. Davis sold for \$10,000 to one Harry Davis the said seven dwelling houses on the rear of said lot for which said money was paid and settlement made on June 1, 1923, at which time said property was conveyed by said Sooy to said Harry Davis.

8. Complainant alleges the fact to be that although the three transactions wherein said Lewis Silbert and wife conveyed said property to said William Frank Sooy and said Sooy conveyed part thereof to complainant and the remaining part to said Harry Davis purport to be transactions in which said Sooy was alone interested, yet in truth and in fact, he was only nominally concerned therein and had no real substantial interest whatever in any of said transactions, that he permitted his name to be used for the accommodation and convenience of said Thomas M. Davis who alone was beneficially interested in said transactions and who to avoid disclosure to and forestall inquiry by complainant respecting said purchase of property originated and contrived the false and fraudulent representations that said Sooy had charge of the property of an estate and to close the estate must dispose thereof by which he, said Davis was enabled to use complainant's money with which to speculate in the purchase of said property dispose of a part thereof for his own benefit without the knowledge of complainant and thus perpetrate a fraud upon complainant.

9. Complainant charges that the circumstances of the case and the relations of the parties at the time the above transactions arose were fiduciary and entitled complainant to the fullest disclosure by said Thomas M. Davis of all the facts touching said transaction; that the profits made by said Davis in said

transaction were without the knowledge of complainant and have not been and are not now consented to by him, and that such profits were wrongfully made and in respect thereof complainant is entitled in equity to an accounting by said Davis as for the violation of his said fiduciary duty.

10. Complainant has recently discovered the facts respecting the aforesaid transactions and had no knowledge thereof until in the month of August last past, when in a casual interview with said Lewis Silbert, theretofore a stranger, he learned the particulars of the sale to said Sooy. 10

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

1. That, Thomas M. Davis, who is the defendant in this suit, may answer this bill of complaint without oath and each statement therein made.

2. That he set forth and discover what profits were made by him from the sale of the property hereinabove described or any part thereof. 20

3. That he be decreed to be a trustee for complainant as to all such profits so made and that he account therefor and pay the same to complainant.

4. That complainant may have such further or other relief as may be equitable.

5. That a writ of subpoena may issue, commanding said defendant to answer this bill of complaint and to abide by such decree as this Court may make in the premises. 30

COLE & COLE,
*Solicitors for and of counsel
with Complainant.*

ANSWER.

IN CHANCERY OF NEW JERSEY.

10	Between HARRY ABRAMSON, <i>Plaintiff.</i>	}	On Bill, etc. Answer.
	and THOMAS M. DAVIS, <i>Defendant.</i>		

The answer of Thomas M. Davis, of the City of Atlantic City, County of Atlantic and State of New Jersey, to the bill of complaint:

1. Plaintiff admits paragraph 1.

2. Defendant denies paragraph 2, except as hereinafter otherwise admitted.

30 Defendant has no recollection of the date on which complainant left for Baltimore, Md., and explicitly denies that prior to the time complainant left for Baltimore that the defendant had any conversation with complainant with reference to the purchase of the premises in question or any conversation whatsoever with reference to said premises, and further denies that he urged complainant to permit defendant to purchase the property in question at the price of \$40,000, or any other sum, and denies that complainant and defendant knew anything about

the premises in question or the possibility of the sale thereof at or before the time complainant left Atlantic City and went to Baltimore, which complainant says was on March 30, 1923.

Further answering the second paragraph of the complaint, defendant denies that he ever talked over the telephone to the complainant while he was in Baltimore with reference to the sale of the property in question to him, but avers the fact to be that after Sooy had obtained possession of the agreement of the sale of the premises in question with the signature of Silbert thereto affixed, to wit: on the third day of April, 1923, defendant called Baltimore in an endeavor to reach complainant; that complainant's brother-in-law answered the 'phone and advised defendant that the complainant was then en-route to Atlantic City and that very shortly after defendant's attempt to reach complainant, complainant came into the office of the Commercial Realty Company and was advised that the property in question could be purchased from W. Frank Sooy for \$40,000 and that \$5,000 was needed as a deposit on account of the purchase money to close the bargain and that the complainant thereupon procured a check from William I. Segal for the sum of \$5,000, whereupon defendant and complainant entered into negotiations with Sooy for the purchase of said property with the result that Sooy signed the agreement agreeing to convey the premises to the complainant for \$40,000.

3. Defendant admits that sometime during the month of March, 1923, Lewis Silbert was the owner of the premises mentioned in Paragraph 3, and that one Goldstein was the real estate agent who had the property in charge for sale, but denies that defendant ever represented to the complainant that the

property mentioned in said paragraph belonged to an estate which W. Frank Sooy had charge of and for the purpose of which he, Thomas M. Davis, was negotiating with Sooy on complainant's account and denies that this defendant in any way cheated or defrauded the complainant with reference to the sale of the property in question or any other way, but avers the fact to be that at the time defendant negotiated with complainant for the sale of said premises by Sooy to complainant, that the said Sooy was the equitable owner thereof, he having entered into an agreement of purchase of said property with said Lewis Silbert who was the owner thereof.

4. Defendant admits that on March 31, 1923, an agreement was prepared by Goldstein for the sale of the property by Silbert to Sooy for the price mentioned in the fourth paragraph of the complaint and that a deposit of \$5,000 was handed to said Goldstein for the purpose of delivery to Silbert, and admits that Goldstein took the deposit and agreement to Harrisburg to procure the signature of Silbert, but denies that Goldstein went to Harrisburg at the instruction of defendant other than as a representative of Sooy, who was present at the time Goldstein was instructed to go to Harrisburg.

Defendant, further answering the fourth paragraph of the complaint, says that Sooy was in fact the real purchaser of the premises in question and that he was the owner of the \$5,000 which was deposited on account of the purchase price and that the defendant had no pecuniary interest in the property, the agreement of sale or the deposit made on account thereof, and the defendant further denies that the said Sooy represented this defendant, but avers the fact to be that he, the said Sooy, was the principal in the transaction.

5. Defendant is not advised as to the transaction touching the deposit of the \$5,000 check of Sooy drawn on the Equitable Trust Company, but admits that the complainant drew a check of the Commercial Realty Company to the order of Sooy for \$5,000 and that Sooy received said check and leaves the complainant to prove what Sooy did with it, and believes that the said check was deposited by Sooy in the Equitable Trust Company, of Atlantic City, N. J., in which bank the said Sooy is a director. Defendant denies that the \$5,000 check paid by complainant to Sooy was intended to and did reimburse him for the moneys advanced by him to Silbert, but avers the fact to be that said \$5,000 was the deposit money demanded by Sooy for the sale of said premises. 10

6. Defendant denies the sixth paragraph of the complaint, but avers the fact to be that at the time complainant signed the agreement with Sooy, he knew all about the property in question and that he discussed with Sooy, in the presence of the defendant, the improvements that he intended to make on said premises. 20

Defendant admits the terms and conditions of the contract in writing between the complainant and Sooy and that the complainant paid to Sooy the sum of \$16,033.26.

7. Defendant denies the seventh paragraph of the complaint, but avers the fact to be that Sooy sold the premises to Harry Davis mentioned in said paragraph. 30

8. Defendant denies the eighth paragraph of the complaint and avers the fact to be that said Sooy did have a substantial interest in said property to the

extent of being the equitable owner thereof, that he was dealing in his own name and not for the accommodation and convenience of the defendant, and denies that the defendant was beneficially interested in the transaction or that he was endeavoring to forestall inquiry by the complainant representing the purchase of the property, or that he in any way defrauded said complainant.

10 9. Defendant denies the ninth paragraph of the complaint in its entirety.

10. Defendant denies the tenth paragraph of the complaint.

This defendant further answering the entire bill of complaint avers that the true transaction with reference to the purchase by Sooy of the premises in question and the resale by him to complainant and

20 Harry Davis were as follows:

30 On Saturday, the 31st day of March, 1923, Mrs. Goldstein, the wife of the real estate agent by that name, mentioned in the bill of complaint, called defendant on the 'phone and said that they had for sale a property, that he, the defendant, would be interested in; that defendant thereupon called at the office of Goldstein and was advised that the premises in question could be purchased for \$40,000 that defendant thereupon went to the premises and returning to Goldstein's office offered \$37,500, which offer was refused by Goldstein; whereupon, defendant told Goldstein that it might be he could procure a purchaser having in mind at that time, that Sooy might possibly be interested; that in the evening of the same day, defendant visited Sooy at his residence and suggested to Sooy that he could possibly make a good deal if he was interested; where-

upon, defendant took up in detail with Sooy the transaction; whereupon, Sooy said that he would purchase; whereupon, defendant at Sooy's request, called Goldstein and informed him of Sooy's intention of purchasing; whereupon, Goldstein and his wife came to the residence of Sooy with a typewriter and wrote out the agreement which Sooy signed in duplicate at the same time giving to Goldstein his personal check for \$5,000 for the deposit moneys required under the terms of the agreement; whereupon, Goldstein took the two agreements and the \$5,000 check to Harrisburg returning with them signed by Silbert on the following Monday evening, April 2, 1923. That at the time defendant first knew that the premises were for sale, defendant's partner, the complainant, was in Baltimore, and this defendant did not call complainant on the 'phone until after Goldstein had returned with the signed agreements and that defendant could not get complainant on the 'phone as has been hereinbefore more fully and at large set forth; that the Commercial Realty Company did not have the funds to purchase the property and the Commercial Realty Company never in any way figured in the transaction other than as agent of Sooy for the sale of the property and that Abramson, at the time he signed the agreement of purchase, got Sooy to allow the Commercial Realty Company a commission of \$200; that at the time of the signing of the agreements, Sooy was the sole owner of the agreement of sale between himself and Silbert and this defendant had absolutely no interest therein other than as a partner with Abramson to share in the commissions received; that Abramson, prior to the signing of the agreement aforesaid, visited the premises in question and, at the time of the signing of the agreement, advised Sooy that he was going to make some necessary repairs request-

- ing Sooy's permission to start at once prior to making settlement; that after the signing of the agreement between Sooy and Silbert, and after the signing of the agreement between Sooy and Abramson, and during the latter part of the first week in May, the said Sooy told defendant that it would be necessary for him, Sooy to raise \$7,500 in addition to the deposit moneys already paid to him in order that he, the said Sooy could make settlement with Silbert and take title to the premises, and Sooy suggested to the defendant that inasmuch as defendant had agreed with Sooy to endorse a note for \$7,500, and inasmuch as there appeared some question as to final settlement that he, Sooy suggested to Davis that he would divide the profits with Davis if the deal was actually consummated and that up until the time that Sooy procured the endorsement of defendant to the note aforesaid, this defendant had no beneficial interest whatsoever in the property in question or the agreements aforesaid, but that his only interest was that as a member of the Commercial Realty Company in fifty per cent. of the commission earned by it.

- Defendant prays to be hence dismissed with his reasonable costs to be taxed.

THEO. W. SCHIMPF,

Solicitor for and of Counsel with Defendant.

- 30

ORDER OF REFERENCE TO VICE CHANCELLOR.

IN CHANCERY OF NEW JERSEY.

IN CHANCERY OF NEW JERSEY.

Between
 HARRY ABRAMSON,
Complainant.
 and
 THOMAS M. DAVIS,
Defendant.

On Bill, etc.
 Replication.

Complainant joins issue on the answer of the defendant.

COLE & COLE,
 C. L. COLE,
Solicitors for and of Counsel with Complainant.

E. R. WALKER,
 C.

I consent to the foregoing order of reference.
 T. W. SCHMIDT,
 Solicitor for Defendant.

11-13-23.

ORDER OF REFERENCE TO VICE
CHANCELLOR.

IN CHANCERY OF NEW JERSEY.

10 Between
HARRY ABRAMSON,
Complainant.
and
THOMAS M. DAVIS,
Defendant. } On Bill, etc.
Order of Reference to
Vice Chancellor.

20 It is, on this day of November, one thousand
nine hundred and twenty-three, on motion of C. L.
Cole, of counsel with the complainant, ordered, that
the above stated cause be referred to the Honorable
Robert H. Ingersoll, one of the Vice Chancellors of
this Court, to hear the same for the Chancellor and
to report thereon to him and advise what order or
decree should be made therein.

E. R. WALKER,
C.

30

I consent to the foregoing order of reference.

T. W. SCHIMPF,
Solicitor for Defendant.

11-15-23.

DESIGNATION.

IN CHANCERY OF NEW JERSEY.

Between	}		
HARRY ABRAMSON,		On Bill, etc.	10
<i>Complainant.</i>		On Order of Refer-	
and		ence.	
THOMAS M. DAVIS,	}	Designation.	
<i>Defendant.</i>			

Application having been made by Cole & Cole, solicitors for the complainant, to fix a time and place for the hearing of the above stated cause; 20

It is, on motion of said Cole & Cole, solicitors, ordered that the tenth day of June, 1924, at the hour of ten o'clock in the forenoon (daylight saving time) at the Chancery Chambers in Atlantic City, be, and the same is hereby designated as the time and place for the hearing of said cause.

R. H. INGERSOLL, *V. C.*

Dated June 7, 1924.

I consent to the above designation.

COLE & COLE,
Solicitors for Defendant.

HARRY ABRAMSON, the complainant, sworn.

Direct examination.

By Mr. Cole:

Q. Where do you live?

A. In Atlantic City.

Q. How long have you lived here?

10

A. About three years now.

Q. What is your business now?

A. I am in the fruit business.

Q. Do you know the defendant, Thomas M. Davis?

A. Yes, sir.

Q. How long have you known him?

A. About eighteen months.

Q. Were you at one time associated in business with him?

A. Yes, sir.

20

Q. What business?

A. The real estate business.

Q. When did you sever your connections, about?

A. About April thirtieth.

Q. 1924?

A. 1924—1923, your Honor please.

Q. I show you a deed of June first, 1923, from William Frank Sooy and wife to Harry Abramson, and ask you whether you are the grantee named in that deed?

30

A. Yes, sir.

Mr. Cole: Deed dated June 1st, 1923, from William Frank Sooy and wife to Harry Abramson, conveying property in Atlantic City, recorded June 2nd, 1923, book 714 of deeds, page 63, offered in evidence.

(Deed admitted in evidence and marked Exhibit C1.)

Q. I show you an agreement dated April 3rd, 1923, between William Frank Sooy and Harry Abramson, and ask you whether or not you are the party named as the vendee?

A. Yes, sir.

10 Q. Is the property described in the deed just offered in evidence the same property described in this agreement?

A. Yes, sir.

(Agreement offered and admitted in evidence and marked Exhibit C2.)

Q. Who first introduced to you the matter of buying the property described in those two papers?

A. Mr. Davis.

20 Q. The defendant?

A. Yes, sir.

Q. And when was that?

A. That was on the thirtieth of March.

Q. 1923?

A. 1923.

Q. And where were you?

A. I was right here in Atlantic City.

Q. Tell us what he said to you?

30 A. He told me at that time that he thought he had some property, that was an estate, and at that time I was looking for an investment, and we were going to buy it for me, at that time Mr. Davis had some real estate, and we thought that when business would be quiet it would be a good idea for each one of us to have an investment for ourselves, and in that way he mentioned to me that possibly he could buy some property for me.

Q. Did he tell you who represented that property, in whose hands it was?

A. He told me that Frank Sooy was the trustee for that estate.

Q. The Frank Sooy named in the agreement and deed?

A. Yes, sir.

Q. Now is that all that was said to you at that time? If not, tell us the whole story.

A. That is all that was said to me at that time. 10

Q. When did you next hear from him?

A. I heard from him the following day.

Q. And where were you?

A. I was in Baltimore at the time.

Q. And in what way did you hear from him?

A. He called me on the phone.

Q. And where was he?

A. In Atlantic City here.

Q. What was the conversation that passed between you? 20

A. He told me that he had a piece of property or had some property that he was talking to me about, and that it would be a wonderful buy, if I would buy it at that time, and I said to him, "Well, if you think it is a good deal, use your judgment and buy it for me," and he told me it was a wonderful deal, that the money I would put up at this time could be easily raised by increasing the larger mortgage, the mortgage at that time was inadequate because was an estate, and they didn't know how to run it, and for him to buy it, and I told him to go into my father-in-law's, and get a check for five thousand dollars, which he demanded at that time over the phone, and that is exactly what happened. 30

Q. At that time did you know just where the property was?

A. No, sir, I did not.

Q. Did he tell you on either of the occasions, either over the telephone or the day before, what the property consisted of?

A. No, sir, he did not.

Q. Did you rely upon his statement to you about that?

A. I positively did.

Q. Did he tell you how much the property could be bought for?

10 A. He told me around forty thousand dollars.

Q. I show you check of William I. Segal to your order for five thousand dollars, and ask you whether that is the check that Mr. Davis procured as a result of your talk over the telephone?

A. Yes, sir.

Q. Has that check been through bank?

A. Yes, sir.

Q. And paid?

A. Yes, sir.

20 Q. Charged to Mr. Segal's account?

A. Yes, sir.

Q. Who wrote Abramson's name on that check?

A. Our stenographer.

Q. On the back of it?

A. Our stenographer.

Q. It is marked "For deposit to the credit of the Commercial Realty Company."

A. Yes, sir.

30 (Check offered and admitted in evidence and marked Exhibit C3.)

Q. Who was the Commercial Realty Company?

A. Thomas M. Davis and myself.

Q. I show you a check from Commercial Realty Company dated April twenty-third, 1923, to the order of William Frank Sooy, for five thousand

dollars, endorsed "William Frank Sooy, W. F. Sooy" and ask you whether that five thousand dollars went on account of the agreement which has been offered in evidence?

A. Yes, sir.

(Check offered and admitted in evidence and marked Exhibit C4.)

Q. I show you a check of the Commercial Realty Company, dated June first, to the order of the Atlantic Guaranty & Title Insurance Company for \$15,584.82 and ask you what that check represents. 10

A. That was a part of the balance of money that I owed on account of the property.

Q. In question here?

A. Yes, sir.

Q. Whose money was this?

A. Why a part of it was mine and part of it I borrowed from Baltimore. 20

Q. Well, money you borrowed, you mean?

A. Yes.

Q. Was any part of this money Mr. Davis'?

A. No, sir.

Q. Either represented by the fifteen thousand dollar check or the five thousand dollar check?

A. No, sir.

(Check offered and admitted in evidence and marked Exhibit C5.) 30

Q. I show you what purports to be a statement of settlement between W. Frank Sooy, seller, and Harry Abramson, purchaser, and ask you whether that statement has to do with the purchase under the agreement in evidence?

A. Yes, sir, it has.

Q. That is what that was for?

A. Yes, sir.

Q. To settle this matter?

A. Yes, sir.

(Statement offered and admitted in evidence and marked Exhibit C6.)

10 Q. I notice under the figures \$15,584.82, which figures are in ink, the figures \$448.44 in pencil, do you know whose figures they are?

A. No, sir, I do not.

Q. Do you know what they represent?

A. I think it was the adjustment of taxes on the B. & L., I don't just remember exactly.

Q. What do you mean by the B. & L., the Building and Loan?

A. Yes.

20 Q. I show you a check of June first, 1923, of Commercial Realty Company, to the order of Atlantic Guaranty and Title Insurance Company, for \$448.44, and ask you whether that was given to settle those figures on the statement?

A. Yes, sir.

Q. For the taxes as you have stated?

A. Yes, sir.

Q. Whose money was that?

A. My own money.

30 (Check offered and admitted in evidence and marked Exhibit C7.)

The Court: They were for the taxes, apparently?

A. Yes, sir.

Q. Do you now know who owned the property that Mr. Sooy sold to you?

A. Yes, sir, I certainly do, sir.

Q. Who?

A. Mr. Lewis Silbert.

Q. When did you first learn that he owned the property?

A. Some time in August of 1923.

Q. From whom did you get that information?

A. Why from Mr. Silbert.

Q. And where were you?

A. I was up in Mr. M. J. Krasney's Company office at the time, and Mr. Krasney introduced me to Mr. Silbert, and we were speaking about different things, and it struck — 10

Mr. Bourgeois: I object, if your Honor please.

Q. You can't tell the conversation you had with Mr. Silbert. That is the manner you first learned of him, is it?

A. Yes, sir. 20

Q. Do you know who drew the agreement you offered in evidence?

A. I don't know.

Q. Did you?

A. No, sir.

Q. Did you attend the settlement when you placed the money?

A. Yes, sir.

Q. Who were there?

A. Mr. Davis and Mr. Sooy, just for a little while. 30

Q. And you were there?

A. Yes, sir.

Q. Was Mr. and Mrs. Goldstein there?

A. No, sir.

Q. Now at the time that you attended this settlement and passed this check for \$15,000, plus, did

you then think you were getting all the property to which Mr. Davis had called your attention?

A. Yes, sir.

Mr. Bourgeois: That is objected to, if the Court please.

The Court: What is the objection?

10 Mr. Bourgeois: It is leading.

The Court: Yes, it is leading, but I will permit it.

Mr. Bourgeois: The man didn't have a chance to testify at all.

The Court: Yes, entirely leading.

20 Q. When did you first learn that you had not, by this deed, been granted all the land which Mr. Davis represented to you he was buying for you?

A. When Mr. Harry Davis made settlement at the same time with me, I then found out that there was two separate parcels. I hadn't known that it was in two separate parcels up until that time.

30 Mr. Cole: I offer in evidence the deed dated June first, from William Frank Sooy to Harry Davis and recorded the second day of June in book 714 of deeds, page 61.

Mr. Bourgeois: I don't see how this is relevant.

The Court: I will permit it.

(Deed admitted and marked Exhibit C8.)

Mr. Cole: I also offer in evidence the statement of settlement between Mr. Sooy seller and Harry Davis purchaser for the property described in that deed.

Mr. Bourgeois: Isn't there another settlement sheet?

Mr. Cole: I am going to offer all I have.

10

Mr. Bourgeois: I object to that one unless the other one goes in too.

Mr. Cole: What do you mean by the other one?

Mr. Bourgeois: There is another one shows commissions paid somewhere.

Mr. Cole: You mean from Silbert to Sooy?

20

Mr. Bourgeois: No, I don't mean that.

Mr. Cole: I am going to offer that too. There is commission referred to on the one we offered in evidence.

The Court: Commission of a hundred dollars on one that is offered.

(Statement of settlement admitted in evidence and marked Exhibit C6.) 30

Mr. Bourgeois: Sooy paid commission when he sold.

Mr. Cole: We offer this statement of settlement between Sooy and Davis.

Mr. Bourgeois: If your Honor please, I am going to object to this because it is not complete, as I understand it. Of course it is not relevant, it is not evidence, but I wouldn't object to it if it were complete.

Mr. Cole: I submit it is both evidential and complete on its face, if there is nothing more I don't know about it.

10

The Court: I will admit it.

(Paper admitted and marked Exhibit C9).

Mr. Cole: I also offer an agreement dated April second, between William Frank Sooy and Harry Davis, which refers to the same property in the deed from Sooy to Davis.

20

(Agreement admitted in evidence and marked Exhibit C10.)

Mr. Cole: I also offer statement of settlement between Silbert, seller, and Sooy, purchaser, which we say has to do with both tracts, that is the land described in the two deeds, offered in evidence.

(Statement of settlement admitted in evidence and marked Exhibit C11.)

30

The Court: I notice on this agreement for the sale of land there are apparently two assignments with the signatures crossed out. Were they effective assignments or not?

Mr. Cole: Evidently not, because the deed was made direct to Davis.

The Court: Assignment by Davis to Wood and by Wood to Abramson.

Mr. Cole: Is that the Harry Davis agreement?

The Court: Yes.

Mr. Bourgeois: I don't know, that is the other Davis. I don't know anything about that.

Q. After you had closed the transaction as shown by this settlement, and accepted the deed, and you learned, as you have stated, that your deed did not give you all the property that you supposed Mr. Davis was selling you, did you see Mr. Davis and talk to him about the matter?

10

A. Yes, sir, I did, sir.

Q. How soon was it after you made the discovery?

A. Some time in August.

20

Q. And where did you talk with him?

A. Why, on the street.

Q. Tell us what the conversation was between you at that time?

A. I told him that I was supposed to have gotten all the property that was in the back, including the front, for the forty thousand dollars, and he told me that he only sold me the front, and I told him I never knew anything at all about the rears, whatsoever.

30

Q. Now in his talk with you on the day before you left Baltimore, over the telephone, when you were in Baltimore, did he say anything about the front or rear to you?

A. No, sir.

Q. Who is Harry Davis named in the deed?

A. A brother of Mr. Davis.

Q. Had you seen this agreement, which seems to be without date—no, dated March thirty-first, 1923, between Silbert and Sooy, before you took your deed from Sooy?

A. I never saw that, no, sir.

Mr. Cole: I want to offer this in evidence.

(Agreement offered and admitted in evidence and
10 marked Exhibit C12.)

Q. It appears by the statement of settlement between Sooy and Harry Davis, that the consideration for the deed to Davis was ten thousand dollars; did you ever receive any part of that money?

A. No, sir, never did, sir.

Cross-examination.

20 By. Mr. Bourgeois:

Q. Now, Mr. Abramson, how long had you been in partnership with Mr. Davis prior to your dissolution on the twenty-eighth or thirtieth of April, 1923?

A. About eight or nine months.

Q. Did you have a partnership agreement in writing or was your understanding simply verbal?

A. When we first entered business, you mean?

30 Q. Yes.

A. Just a verbal agreement.

Q. Did you ever have any written agreement until the agreement of dissolution came about?

A. Never had a written agreement, no, until we dissolved.

Q. I show you an agreement under date of April thirtieth, 1923, which appears to have your signa-

ture to it, and I ask you is that your signature, Abramson?

A. That is right.

(Paper marked D1 for identification.)

Q. I understood you to say that Mr. Davis spoke to you about the buying of a property in which Mr. Sooy acted as attorney for the owner on the thirtieth of March; where did that conversation take place? 10

A. I don't remember now.

Q. Well, do you remember if it did take place on that day?

A. Yes, sir.

Q. Aren't you mistaken about that, wasn't it a day later than that?

A. No, sir.

Q. On the thirtieth of March, quite clear about it? 20

A. Yes, sir.

Q. Then why can't you tell me where it took place if you remember about it taking place?

A. Because I left that day for Baltimore and I was in a hurry to get out of town.

Q. You left on the thirtieth or thirty-first?

A. I left on the thirtieth.

Q. What time did you leave?

A. Two o'clock train out of here.

Q. What time of the day was it that you had the conversation with Mr. Davis? 30

A. Sometime close around noon or in the morning.

Q. And where?

A. I don't remember.

Q. Well, do you remember when it was, if it were around noon?

A. Well, I only remember I had that conversation with him, we often walk along the street and talk matters over, you know, don't always talk on the inside.

Q. You claim to remember of having had a conversation but you don't recall where it was nor the time it was?

A. No, just a casual conversation.

Q. What was it he said to you?

10 A. Well, just that in view of the fact that I was looking for an investment, that he had in mind some property that Mr. Sooy had charge of.

Q. And where did he say the property was?

A. He didn't tell me.

Q. You do recall he said it was the property that Mr. Sooy had charge of?

A. I don't remember whether he had charge of it, but he said that it was an estate that Mr. Sooy had been trustee or had charge of it, as the legal term
20 he used, termed it.

Q. And that was on the thirtieth of March?

A. Yes, sir.

Q. At two o'clock in the afternoon you went to Baltimore?

A. Yes, sir.

Q. When did you next hear from Mr. Davis?

A. The following day.

Q. What time of the day?

A. I think it was around two o'clock, something
30 like that.

Q. What was said at that time?

A. That he had some property for me, and that it was an estate that he was talking about.

Q. Was not or was?

A. Was.

Q. Was the estate that he was talking about?

A. Yes.

Q. Yes?

A. And that if I wanted it that I should act quick, and I told him that I couldn't come to Atlantic City, and I told him that he should act for me or act in my behalf.

Q. How was he going to act in your behalf?

A. Well I—he told me that he would have to have a check for five thousand dollars, and I told him to go into my father-in-law—our place of business is right in the building—and get a check from him for 10 five thousand dollars, and he did that.

Q. And you say that was on what date?

A. Thirty-first.

Q. Check was on the thirty-first?

A. Yes, sir.

Q. Of course, I don't suppose you know personally whether your father-in-law gave this check to Mr. Davis or not?

A. I understand he did.

Q. I didn't ask you if you understand, I say you 20 don't know personally?

A. I couldn't be here to see whether he did or not.

Q. At the time it was given, if given on the thirty-first of March, you were down in Baltimore?

A. Yes.

Q. When did you return here, when did you return to Atlantic City?

A. On the second of April, I think.

Q. What time of the day did you get in on the 30 second of April?

A. I don't remember any more.

Q. Was it in the morning or afternoon or in the evening?

A. It must have been late in the evening, sometime.

Q. How soon after that did you go down to look

at the property which you thought you were buying?

A. I didn't see the property at all, sir.

Q. Didn't you go down there at all?

A. No, sir.

Q. Never go down there?

A. No, sir.

Q. Who did go to look at it?

A. I don't know.

10 Q. Did anybody?

A. I don't know. I know that I didn't.

Q. Didn't you ever go down there in the presence or company of your wife and of your father-in-law?

A. Some time after the property was purchased, yes.

Q. Now, when was that?

A. That was quite some time later.

Q. And you wanted to make some improvements there, didn't you, at that time?

A. Possibly.

Q. You knew then that you were buying simply the front property, didn't you?

A. I did not.

Q. What did you think you were buying?

A. I thought I was buying the whole lots.

Q. When was it you first found out you were not buying the whole lot?

A. Sometime in August.

30 Q. Of the following year, that is 1923, I mean of the same year, 1923?

A. Yes.

Q. And that was after you had made settlement for the property, hadn't you?

A. Yes, sir.

Q. Where did you make settlement for the property?

A. In Atlantic Guaranty and Title Insurance Company downstairs.

Q. At the time you made settlement for the property did you have another partner—you had dissolved partners with Mr. Davis then?

A. I had no partner.

Q. Wasn't his brother a partner then, Harry Davis, what is his name?

A. No, sir.

Q. Wasn't he there when you made the settlement at the Atlantic Title Guaranty and Trust Company? 10

A. I don't remember.

Q. Didn't you make both settlements at the same time?

A. I know I made mine.

Q. Didn't Mr. Davis make his right there at the same time?

A. I don't know.

Q. Sure? 20

A. I don't know.

Q. You are quite sure, are you, that you didn't know anything about the sale of the property to Davis until August of that same year? You are sure of that, aren't you?

A. Let me understand the question again.

(Question repeated.)

A. I don't understand that question at all. 30

Q. You have said that you knew nothing about your getting the front part of the property and Mr. Davis getting the rear of the property until August, then you discovered that you had purchased the front property only and Mr. Davis had purchased the rear of it?

A. Yes, I didn't know there were two separate parcels at that time.

Q. Where did you have your office?

A. At North Carolina Avenue.

Q. Where did Harry Davis have his office?

A. He never had an office, he just had desk room there, just came in.

Q. In your same office?

A. Yes, sir.

10 Q. Now I notice in this agreement between Mr. Sooy and Harry Davis, the assignment on the back of it that the Judge spoke of; is that your signature witness to it, one of them?

A. Yes, the top one.

Q. That is the assignment made of the agreement between Sooy and Harry Davis, isn't it?

A. That is the assignment of Harry Davis' rights to Bob Wood, yes.

Q. In that agreement?

20 A. Yes.

Q. And that agreement is the one that calls for settlement on the first day of June, 1923, isn't it?

A. Yes, but this is undated, this has been later on.

Q. What would be the object of—settlement was made on the first of June, wasn't it?

A. I say this assignment here was made later than the date of April second.

30 Q. Yes, certainly made later than the date of April second, but it was made before the settlement took place, the settlement took place on that on the first of June, that provides for settlement on the first of June?

A. Yes.

Q. So that the assignment was made sometime between the second of April and first of June, wasn't it?

A. I don't know. There is no date on it.

Q. No, but you witnessed it, just the same?

A. Yes, I witnessed it.

Q. Who is Dorothy Zender?

A. The stenographer or the young lady we had employed at the time.

Q. Right there in your office?

A. Yes.

Q. And that assignment seems to be with Wood, Harry Davis assignment, assigns the property over to you, Harry Abramson for seventeen hundred dollars, that same property? 10

A. Yes.

Q. Is that right?

A. That is right.

Q. Then this agreement that Mr. Sooy made with Harry Davis for the sale of the rear properties was assigned by David Wood to you, wasn't it?

A. It was according to the assignment, but not according to record, that was merely done for an accommodation of a client of mine. 20

Q. Mr. Abramson, didn't your check pay the purchase price upon the day of settlement for both of these properties?

A. No, sir.

Q. Have you got your check with you?

A. I think so.

Q. Check by which you made settlement? I ask you to produce another check of yours for \$2,274, or whatever the amount was, that was required in making the settlement for the Harry Davis property? 30

A. I never settled for that property, and I have no check.

Q. Where was the settlement made, in the Atlantic Guaranty and Title Company? Who was present at the time settlement was made?

A. Why Mr. Davis.

Q. Which Davis?

A. Mr. Tom Davis.

Q. Harry Davis there?

A. Mr. Sooy—I don't say, I don't know.

Q. Was Mr. Wood there?

A. No.

Q. Who was present down in the Title Company office, before whom did you make the settlement?

10 A. I think Miss Mitchell, I am not sure.

Q. And was Mr. Sooy there?

A. Yes, just a little while.

Q. How long was he there?

A. Just a few minutes.

Q. Long enough to get his check?

A. I don't know.

Q. Now, Mr. Abramson, you have talked about the purchasing of the property from Mr. Sooy and not seeing it until later, some time after the agree-
20 ment was made; where did you make the negotiations, I mean the payment of moneys, the down moneys with Mr. Sooy?

A. Mr. Sooy called me one day and told me that it would be necessary for me to raise more money on account of the fact that there were back stock in the B. and L. to be paid. I had figured for a certain amount of money, and when Mr. Sooy evidently found out that he would have to have more money, I was called, and I was called just, I think a day or
30 so before the settlement, and I had to go into the Chelsea National Bank and discount money for four thousand dollars to make up that back stock I hadn't figured on having that money.

Q. When was that, was that long before your settlement of June first?

A. It was not very long before the settlement, no, sir.

Q. Up to that time you knew nothing about the fact that Davis was buying a property, as I understand, and you didn't learn that until August?

A. That is right.

Q. Now about the payment of the first moneys, the five thousand dollar payment, where was that check turned over to Mr. Sooy?

A. Where?

Q. Where, yes?

A. By Mr. Davis, yes, he took the check. 10

Q. Wasn't turned over by you?

A. Never.

Q. In the presence of Mr. Segal?

A. No, sir.

Q. To Mr. Sooy, in Mr. Sooy's office?

A. No, sir.

Q. Mr. Abramson, about this fact that you didn't know about Mr. Davis having bought the property, have you a letter of May twenty-fourth, 1923, that was sent to you by Mr. Sooy? 20

A. No, sir.

Q. You did get one, didn't you?

A. I don't think I did.

Q. Read that and see if you didn't?

A. No, sir, I never got a letter like that.

Q. Never got that letter?

A. I emphatically deny it, too.

Mr. Bourgeois: If the Court please, I want to call on the complainant to produce a letter from Mr. Sooy to Mr. Abramson under date of May twenty-fourth, 1923. 30

Mr. Cole: Never saw it, never heard of it until now.

Mr. Bourgeois: Mr. Abramson denies it, which I will ask be marked D2 for identification.

(Ccopy of letter marked D2 for identification.)

Q. Do you admit or deny that Mr. Sooy wrote you and told you, before the date of the settlement, the approximate amount of money that would be required to make settlement?

A. I never heard from Mr. Sooy by mail.

Q. Did he ever tell you how much it would take to make settlement?

10 A. No, he did not.

Q. Or did he tell you that he would want a certain amount of money and wanted to borrow the same?

A. I figured out myself just exactly what I would have to have.

Q. Did Mr. Sooy ever have any conversation with you about the amount of money required for settlement?

A. No, sir.

20 Q. There was a building and loan association statement that figured in this settlement, wasn't there?

A. Yes, they had a B. & L. on there, so it had to.

Q. Did you ever speak to you about the title, or ever say to you that he would give you the details of the Building and Loan Association of a Friday?

A. I don't remember.

Q. Did he ever write it to you?

30 A. Never write to me, no.

Q. Did you ever ask him to postpone the time of that settlement?

A. Never did.

Q. Did you ever say that you would like to have it postponed?

A. No, sir, I was ready at the time of settlement.

Q. Did he ever tell you it could not be postponed?

A. I don't remember that.

Q. Would he tell you it could not be postponed unless you asked for a postponement?

Mr. Cole: I object to what he would have done.

The Court: Sustain the objection.

Re-direct examination.

10

By Mr. Cole:

Q. Mr. Abramson, do you know where telephone Marine 1844, Atlantic City, is located?

A. Yes, sir.

Q. Where?

A. That was at our office at the time, in the Segal Building.

Q. Where were you called in Baltimore?

A. At my father's office.

20

Q. Do you remember his number?

A. Plaza, I just don't remember it, five something, I don't remember it.

Q. I show you what purports to be a telephone slip showing a call from Atlantic City to Baltimore, Maryland, on March thirty-first, 1923, and ask you where did you get that?

A. Why from the telephone company.

(Telephone slip offered and admitted in evidence 30 and marked Exhibit C13.)

Q. Let me ask you, is this slip now in the condition it was when you got it from the telephone company?

A. Yes, sir, you have had it almost a year, Judge.

Q. None of your writing on it, is there?

A. No.

Q. Did you have to do with the drawing of any of the papers, agreements or what not that are in evidence now?

A. No, sir, I did not, sir.

Q. Do you know who did draw them?

A. I understand Mr. Davis drew them.

Mr. Bourgeois: I ask that be stricken out.

10

The Court: Yes, it will be stricken.

Q. You don't know personally, do you?

A. No, I never saw them drawn.

Q. One thing perhaps that I overlooked, I show you a rent statement from J. H. Leek to Thomas Davis and ask you to what property is reference made in that statement?

A. To all the properties on Fairmount Avenue, including the rear properties.

20

Q. Does it include the property you bought yourself?

A. Yes, sir.

(Statement offered in evidence.)

Mr. Bourgeois: I don't see the pertinency of this. What is the object?

30 Mr. Cole: The pertinency is to show Mr. Davis received the rent for this property during the month of May, during which time the title was supposed to be in Mr. Sooy. It is a part of our case.

Mr. Bourgeois: That is objected to, if they want to show that let them bring the man that said he paid it to him.

Mr. Cole: If you object to it on the ground it is not proven, it is another matter. We want to show Mr. Davis got that rent that is referred to in that statement. I will mark it for identification and prove it later, if that is the point.

(Rent statement marked C14 for identification.)

Recess taken until 1.45 o'clock P. M.)

10

AFTERNOON SESSION.

(Trial of the cause resumed at 1.45 P. M.)

LEWIS SILBERT, sworn for the complainant.

20

Direct examination.

By Mr. Cole:

Q. Where do you live?

A. Harrisburg, Pennsylvania.

Q. Are you the Lewis Silbert who signed this agreement marked Exhibit C12?

30

A. Yes, sir.

Q. Where were you when you signed it?

A. Harrisburg.

Q. Who produced it to you?

A. Mr. Goldstein on April first.

Q. On April first?

A. Yes, sir.

Q. And when it was produced to you had it been signed by W. Frank Sooy?

A. Yes, sir.

Q. And you afterwards conveyed the property, sold it to Mr. Sooy as shown by the deed, didn't you?

A. The deed I give to Mr. Sooy, yes, sir.

Q. How long had you owned that property?

A. About two years.

Q. Did you have it in any agent's hands in Atlantic City for sale?

A. Mr. Goldstein.

Q. Mr. Philip Goldstein?

A. Yes, sir.

Q. Now sometime about the last of March or the first of April did you have a telephone call from Atlantic City?

A. I got three telephone calls on March —

Q. Just a moment, you had three telephone calls?

A. One afternoon.

20 Q. Were they all on the same day?

A. Yes, sir, on March the thirty-first.

Q. What?

A. It was on March thirty-first.

Q. From whom was the first call?

A. The first call was from Mrs. Goldstein.

Q. Did she talk to you about the sale of this property?

A. Yes, sir.

30 Q. How long was it after that before you had the next call?

A. A couple of hours later.

Q. Do you know who it was talking to you on the second call?

A. He told me that he is Mr. Goldstein talking.

Q. Did he say where he was talking from?

A. From Atlantic City.

Q. Did he talk to you about the property?

A. About the property, yes, sir; he offered me \$37,500. I said no, sir, I wouldn't do it, not less than forty-five.

Q. Did you—whoever this person may have been, did you finally state for what sum you would sell it?

A. I stated, yes, sir.

Q. What did you say?

A. I told him I wouldn't sell less than forty thousand dollars, that I am losing money, I said .

Q. Forty thousand dollars?

10

A. Yes.

Q. Did you have a call after that on the phone?

A. Yes, sir.

Q. How long after that?

A. Oh, about a couple of hours later again.

Q. Who was it on the phone at that time?

A. It was early in the evening, the same man, he said "Mr. Goldstein is talking."

Q. Now do you know at this time —

A. This time he asked me if I will pay the com- 20
mission, he asked me if I will pay the commission,
I said, "Well, yes, sir. " "If I will take a second
mortgage of five thousand dollars," I say, "Yes,
sir," and I have thought Mr. Goldstein is talking.
That is my opinion, I didn't know.

Q. Do you know now whether the person who
talked to you over the phone either the second or
the third time were Mr. Thomas M. Davis, the de-
fendant in this case?

A. I heard it after, yes, sir, I heard it.

30

Mr. Bourgeois: I ask that be stricken out.

Mr. Cole: It may be stricken unless we connect
it.

The Court: Yes.

Q. From whom did you hear it?

A. Mr. Goldstein the same evening came over to Harrisburg.

Q. He didn't come with Mr. Davis?

A. No, sir, he came himself.

Q. Strike that out for the moment. How long had you known Mr. Goldstein?

A. Oh, for over a year, I don't know, for two years, three years.

10 Q. Did you ever meet Mr. Sooy in connection with the transaction at all?

A. No, sir.

Q. Who did you meet in connection with it?

A. Mr. Davis, at the settlement I met Mr. Davis.

Q. The defendant here?

A. Yes, sir.

Q. Was that the first time you had seen or met him?

20 A. I met him before too, about a year before, I met him. I wanted to buy properties from him.

Q. Not in connection with this property?

A. No, sir.

Q. Who attended to the settlement?

A. Mr. Davis.

Q. Did Mr. Sooy have anything to do with it while you were there?

30 A. He came in, he signed the mortgage for five thousand dollars, with the bond, he left the papers and went out, the old gentleman, met Mr. Davis, I told Mr. Davis at that time, I said, "I guess you bought the properties," and he started to laugh.

Q. Started to laugh?

A. Yes.

Q. What made you think he had bought the property?

A. Well I had—he came over —

Mr. Bourgeois: Who had bought the property?

Mr. Cole: Mr. Davis.

Cross-examination.

By Mr. Bourgeois:

Q. Mr. Silbert, what time of the day was it when you got the first telephone call on the thirty-first day of March? 10

A. It was on a Saturday.

Q. What time in the day?

A. It was around two o'clock.

Q. Two o'clock in the afternoon?

A. Yes, sir.

Q. And the next one came in about four or five o'clock?

A. About four o'clock, I think it was, about a couple of hours later, I don't remember the minute. 20

Q. And the next one didn't come in until pretty late in the evening, did it?

A. The next one came up in the evening, I wasn't in, and they called me again.

Q. And Mr. Goldstein left Atlantic City after that call, apparently, and came over to you?

A. Yes, sir.

Q. When did he get over to Harrisburg, Sunday or Monday?

A. Who, Mr. Goldstein? 30

Q. Yes.

A. Saturday night.

Q. I beg pardon, Sunday at noon?

A. Sunday.

Q. Sunday?

A. Yes, sir.

Q. Now, Mr. Silbert, I show you Mr. Sooy's check

bearing date thirty-first of March, 1923, and an endorsement on the back of it and ask you if that is the check that you received for the first payment?

A. Yes, sir.

Q. Is that your endorsement on the back of it?

A. Yes, sir.

(Check marked D3 for identification.)

10 Q. When they talked to you over the telephone the second time, Goldstein wanted you to pay three per cent. commission I think, didn't he, and you wouldn't pay but two?

A. No, sir.

Q. He was asking me if I would pay the commission, I said, "Yes, sir." He didn't ask me how much. When he came over from Harrisburg we had the argument of the commission at that time.

20 Q. Everything went along all right, settlement was made all right?

A. Yes, sir.

Q. Everything so far as you are concerned was perfectly clear?

A. I got my money.

Q. That is all.

By Mr. Cole:

30 Q. Mr. Silbert, do you recall when you deposited this check?

A. On April the second.

Q. In your bank in Harrisburg?

A. In my bank, yes, sir.

Q. That check was handed to you by Mr. —

A. By Mr. Goldstein.

Q. By Mr. Goldstein?

A. Yes, sir.

MRS. SADIE GOLDSTEIN, SWORN for the complainant.

Direct examination.

By Mr. Cole:

Q. You are the wife of Mr. Philip Goldstein?

A. Yes, sir.

Q. Who had this property for sale? 10

A. Yes, sir.

Q. Did you meet Mr. Davis in connection with the sale of it?

A. Why all the negotiations for the sale of that property were with Mr. Davis.

Q. When did you first talk to Mr. Davis about it or he with you?

A. I received a letter from Mr. Silbert about it Saturday morning, March thirty-first. I have it here in my pocket, and in this letter he requested me to try and sell the property for him, and he said he was building in Harrisburg and didn't need it — 20

Q. We don't care about that. Did you meet Mr. Davis that day?

A. I received the letter, I sent for Mr. Davis, and he came to my office.

Q. Tell us what took place—was that on that same day?

A. That same day.

Q. Tell us what took place between you? 30

A. I told Mr. Davis I had a north side property, which I considered a bargain, and he asked me where it was and I told him, told him it was located on Fairmount Avenue between Missouri and Mississippi, and consisted of two brick apartment houses facing Fairmount Avenue, also seven houses in the rear on Ingersoll Terrace. I told him that they were

listed in my office for fifty-five thousand dollars, but that the owner wanted money and he was open to an offer, and he questioned me about the properties, and I had the listing card in my hand, and I told him. He says, "Let me see that," and I showed it to him too, and I also showed him the letter that Mr. Silbert wrote to me, and he said to me, "What do you think they could be bought for?" I said, "I really don't know, Mr. Davis. The owner is open
10 to an offer. Give me an offer backed by a check and I will try and get them for you." He said, "Do you think"—from my description of the property he thought it was a good buy, so he asked me "did I think it could be purchased for forty-five thousand dollars. I said, "If you will give me a check backed by that, I will try to get it for that price." So I said, "Well, supposing you go down there and look at those properties." So Mr. Davis went in his
20 car and he went down there and he looked at the properties. He came back in a short while and he said, "Those properties are in a terrible condition, I don't think they are worth forty-five thousand dollars. Do you think they could be gotten"—he says, "he gave me an offer of forty thousand dollars. These properties had buildings and loans against them for twenty-five thousand dollars, in three separate properties, there was ten on one, eight on the other and seven on the rear houses, making a total of twenty-five thousand dollars, and Mr.
30 Davis' offer to me was this, he was going to pay all cash above those mortgages, and a five thousand dollar check on the signing of the agreement, so I said, "All right, I will get in touch with the owner." So he says, "Well," he says, "What is the use doing that," he says, "why don't you call the owner right now?" So he had read the letter and it was on the stationery of the Senate Hotel in Harrisburg, and

I called the Senate Hotel in Harrisburg right in his presence. Mr. Silbert wasn't there, so I left a message for Mr. Silbert to call me. Mr. Davis sat in the office and he chatted with us for a while, and he was figuring out what it would cost to put these properties in proper condition. The telephone call that he was waiting for didn't come, and he started to go away but before he went away he made me another proposition, he said, "Mrs. Goldstein, if you can succeed in getting those properties for me for forty thousand dollars, I am going to make it worth your while, I will give you a thousand dollars extra for your trouble," and I thought that was a very liberal offer. Immediately Mr. Goldstein was called from the office, he had an appointment to show some property, and I sat in the office waiting for Mr. Silbert's call, and I waited quite a time, and finally Mr. Silbert did call me and I submitted the offer to him. Mr. Silbert wasn't at all pleased with that offer. He said the properties had cost him forty-eight thousand dollars, and that if he sold for forty and paid a commission he would be out a lot of money. So I said "Well, Mr. Silbert, you are building in Harrisburg, you need cash, fifteen thousand dollars is a lot of money, besides you will get some building and loan back." He says, "Well, I will tell you what you do, try and do better," he says, "Forty-five thousand dollars, I am ready to close, but do the best you can for me." So—but before Mr. Davis left the office he said, "Just as soon as you get word from Harrisburg, you call me." When I got Mr. Silbert's message, I tried very hard to get Mr. Davis, and it was almost two hours before I heard from him. He finally called me. He said, "Mrs. Goldstein, how did you make out?" I said, "Mr. Silbert was not at all pleased with your forty thousand dol-

lar offer. It is not enough, he claims he will be losing considerable, but he will close at forty-five." With that, before I got a chance to say anything more, Mr. Davis said, very excitedly to me, he said, "Why, Mrs. Goldstein," he says, "you are mistaken, Mr. Silbert did accept my offer for forty thousand dollars." He said, "What is more, he also agreed to take back a second mortgage of five thousand dollars for three years in the bargain." Oh yes—
 10 when I asked him where he got that information, he told me he had talked to Silbert himself. He said, "I will call you up in a little while, and I will let you know whether Phil goes to Harrisburg tonight or not."

Q. Whether Phil goes to Harrisburg or not?

A. Or not.

Q. Meaning your husband?

A. Meaning my husband. I didn't know just what to make about it. Mr. Silbert didn't accept my
 20 forty thousand dollar offer, and I was mystified how Mr. Davis got him to agree to take the forty, and also to take back a second mortgage of five. So I talked to my husband what will we do about this, "Phil, the best thing for you to do is to call up Harrisburg and verify what Mr. Davis said," so Mr. Goldstein called Harrisburg and he asked Mr. Silbert had he accepted—no, I called Harrisburg and Mr. Silbert answered me, and I said, "Mr. Silbert,
 30 is that true you have accepted forty thousand dollars for the property?" He said, "Yes, I was just talking to your husband."

Q. Now had he just been talking to your husband?

A. He had been talking to Mr. Davis but he was under the impression —

Q. Just a moment, how do you know he had been talking to Mr. Davis?

A. Because—how do I know? Just because Mr. Davis told me he had talked to Mr. Silbert and represented himself as my husband.

Q. Did Mr. Davis tell you that he had represented himself to be Mr. Goldstein?

A. Yes, he said “I talked with Mr. Silbert myself, and the joke of it was he thought he was talking to Philip Goldstein.”

Q. Then what followed that?

A. Then I was waiting for him to tell me whether 10
Mr. Goldstein was to go to Harrisburg or not. After while Mr. Davis called me up again and he said, “Mrs. Goldstein, I have reconsidered the matter and I have decided that I don’t want those properties. I don’t want to buy them at all.” I said, “How is that?” Well he says, “I don’t want them,” he says, “I will tell you what I will do.” He says, “I have a friend who will buy them at that price, and on those terms, on condition that you will split your commission with that party.” Well, I didn’t want 20
to lose the sale entirely, so I agreed to do so, and he asked me to come up to his house. Came up to his house and he wasn’t there. I asked the children where he was and they said, “He is at Mr. Sooy’s house next door, and will be right back.” So we waited quite a while and Mr. Davis came back, and was all flushed up and excited, he said he hadn’t eaten any supper, if we would excuse him he would have his supper, and then he would bring us to the party who was going to buy the property. When he 30
was through with the supper he took us next door to Mr. Sooy’s house, and he introduced us to Mr. and Mrs. Sooy. He said this was the party was going to buy the property. He said Mr. Sooy was ready to do business right there. So I said, “I will go to the office and draw up the agreement.” He said, “No, that is not necessary, you can draw the

agreement right here.” I said, “Have you a typewriter here in the house?” He said, “No,” so I sent Mr. Goldstein to my office to get the typewriter, we only live about ten squares from Mr. Sooy’s house. So I drew up the agreement, I drew up two agreements, and when I was through I gave one to Mr. Sooy and one to Mr. Davis.

Q. Now is the agreement we have offered in evidence the agreement you drew up?

10 A. Yes, sir.

Q. In whose house?

A. In Mr. Sooy’s house.

Q. On your typewriter?

A. On my typewriter, and Mr. Sooy signed both agreements and gave Mr. Goldstein a check for five thousand dollars and Mr. Davis signed as a witness to that agreement.

Q. Now then your husband went to Harrisburg with a check and brought the agreement back signed?

20 A. Yes, but there is one thing I would like to offer right now. Yes, after I had—after the agreements had been signed Mr. Davis said to me, “Well, how about that commission that Mr. Sooy is to get, I want you to give me a writing to that effect,” and I did, I wrote Mr. Sooy a little agreement that I would give him six hundred dollars of my commission.

Q. Have you got a copy of the paper?

A. I gave it to you in your office this morning.

30 Mr. Cole: Will you produce, Mr. Sooy, you got that original receipt?

Mr. Sooy: You mean the agreement she is now talking about?

Mr. Cole: Yes.

Mr. Sooy: No, I haven't got it. Are you sure I got that?

A. I gave it to you this morning.

Q. I think I gave it back to you, look and see. Haven't you got some papers?

A. I have got some papers, that I left with you; what I gave you was merely a copy.

Q. You showed me something but I thought I handed it back to you?

10

A. No.

(Paper produced by the witness' husband from witness' handbag.)

Q. Now is that a copy of the paper?

A. That is a copy of the paper I gave to Mr. —

Q. To Mr. Sooy?

A. To Mr. Sooy.

Q. For Mr. Sooy?

20

A. For Mr. Sooy.

(Receipt offered and admitted in evidence and marked Exhibit C15)

Q. When Mr. Davis asked you to sign an agreement to pay Mr. Sooy a commission, did you ask him for any explanation of that, why Mr. Sooy was to get a commission?

A. Well, I was rather piqued at it, but he said that was the condition; I would either sell it that way or he insinuated the sale wouldn't be made.

30

Q. Was the commission allowed Mr. Sooy?

Mr. Bourgeois: I ask the insinuation be stricken out.

Mr. Cole: Yes, strike out the insinuation.

A. I think I will retract that.

Q. You mean what, the insinuation?

A. The insinuation. I agreed over the phone to pay that commission.

Q. Was the commission paid to Mr. Sooy?

A. It was deducted at the settlement table.

Q. Did he get all or part of the commission?

10 A. Yes, got half of my commission.

Q. He got four hundred dollars and you got four hundred dollars?

A. I got four hundred dollars.

Q. Did you ever thereafter meet Mr. Sooy in connection with the matter?

A. At the settlement table just for a few minutes while he signed that bond.

Q. Who took care of the settlement for Mr. Silbert?

20 A. He had an attorney from Harrisburg with him.

Q. What was his name, do you recall?

A. I think his name was Rosenberg or Rosenthal.

Q. Who represented Mr. Sooy at the settlement?

A. Mr. Davis did.

Q. Did he stay throughout the settlement?

A. Whole settlement.

Q. Did Mr. Sooy remain until the whole settlement was completed?

30 A. No, he was just there, I think he signed a bond or deed or something.

Q. Did you thereafter meet Mr. Davis in connection with this matter up at his office?

A. In their office?

Q. Mr. Davis' office or Mr. Abramson's office?

A. No, I never saw Mr. Davis after that, but at the time when I gave Mr. Sooy that, when I gave that little slip of commission to Mr. Davis I was rather

piqued at losing half of my commission, so Mr. Davis made me a proposition that in order to reimburse me for that loss, he would sell me those seven rear houses for ten thousand dollars minus commission on that, which would have been \$9,700. Or he said I could sell those properties for him and he would pay me a full commission of three hundred dollars.

Q. Did you after that go to him?

A. Well, the following day I had a settlement at the South Jersey Title Company, and I met Mr. Davis down there and he asked me whether Mr. Goldstein had come back yet, and I said, "No, I expect him in the afternoon," and I was waiting on that money from that settlement to buy those rear properties, but you know how it is, settlement, you don't always get your commission right away, it was two days until I got my commission, and then —

Q. We don't care about that. Did you go to Mr. Davis to ask him to perform his agreement and let you have those rear houses? 10

A. I sent Mr. Goldstein to his office for that purpose.

Q. But you were not present?

A. I was not present.

Q. But Mr. Goldstein reported down there?

A. Yes, he came back.

Q. All right, we will show that by him. To whom was this agreement delivered after Mr. Goldstein brought it back from Harrisburg? 20 30

A. When Mr. Goldstein came back from Harrisburg Mr. Davis phoned our office and asked whether he had come back and I said "Yes, just came in the train, as soon as he has something to eat he will come down to your house." He says, "Is the agreement signed?" I said, "Yes, signed." So we went

down to Mr. Davis' house, and then Mr. Davis looked at the agreement and he took us over to Mr. Sooy's house, and we showed him the signed agreement.

Q. Did you have anything to do with drawing either the agreements between Sooy and Davis?

A. I drew both the agreements, I drew the agreements.

Q. I am not talking now about the agreement between Silbert and Sooy; did you have anything to do with drawing the agreement between Mr. Sooy and Mr. Davis?

A. No, there was no agreement to my knowledge.

Q. Then you didn't do it?

Cross-examination.

By Mr. Bourgeois:

Q. Mrs. Goldstein, you say that you went around and showed Mr. Sooy the agreement; didn't you give him the agreement, his property?

A. Well, I showed it first. You mean at the time I wrote it?

Q. No, I mean after the agreements came back to you, you say you went down to Mr. Davis' house, and the two of you went over to Mr. Sooy's house and showed it to him?

A. Mr. Davis called us and we came to Mr. Davis' house, and I gave it to Mr. Davis and then Mr. Davis gave it to Mr. Sooy.

Q. You folks went over there with him?

A. We went over there, right next door.

Q. From that time on everything went on just as an ordinary regular sale, I assume?

A. Yes.

Q. Wasn't unusual for somebody to want you to split commission with them, was it?

A. Well, it was.

Q. Was it?

A. It was.

Q. In this instance I notice that you have provided there on a basis of three per cent. and then only got two per cent.?

A. Yes.

Q. How did that come about?

A. That came about in the agreement, that called for three per cent. commission, and Mr. Goldstein took the agreement to Harrisburg; Mr. Silbert figured he lost so heavily that he couldn't afford to pay more than two per cent. commission. 10

Q. He wouldn't pay but two?

A. He wouldn't pay but two.

Q. And that was changed in the agreement?

A. That was changed in the agreement to two.

Q. So, instead of you getting twelve hundred and giving Sooy six hundred dollars, you got eight hundred and gave him four? 20

A. That is right.

Q. And that is what appears in the settlement certificate, I suppose?

A. Yes, sir.

Q. What time was it you got your typewriter down to Mr. Sooy's house on the evening of the thirty-first to start to draw that agreement?

A. I couldn't state the time definitely, but I should judge it was around nine o'clock.

Q. How long did it take you to get the agreement drawn? 30

A. About three quarters of an hour, I think.

Q. It was in the neighborhood of eleven o'clock when you left Sooy's house, wasn't it?

A. Yes, sir.

Q. Now did Mr. Goldstein start right off that night to go to Harrisburg?

A. They wanted him to but he was so tired that I said to him, "You better go Sunday morning."

Q. And he left Atlantic City what time, about?

A. The first train out, which was around eight o'clock, I think.

Q. Well, you had been there with Mr. Sooy on the evening previous, that is on the Saturday night, Mr. Sooy handed you this check for five thousand dollars, first payment on them, did he not?

10 A. Yes.

Q. Was it handed to you or was it handed to your husband?

A. It was handed to Mr. Goldstein.

Q. And he took it away with him that evening?

A. Yes.

Q. Of course, he had it all that night and the next morning took it over to Harrisburg?

A. That was Easter Sunday.

Q. And he got back here when, Monday what
20 time?

A. Monday between, say four and five, but I am not sure as to the exact time.

Q. Now, it was about two o'clock in the afternoon, I think, when you first got in touch with Mr. Davis about trying to sell these properties, on the second?

A. In my recollection I think it was before noon.

Q. Before noon?

A. Before noon.

30 Q. According to your best recollection about what time before noon?

A. I should judge, when I got in touch with Mr. Davis, you mean?

Q. Yes.

A. Around eleven o'clock, I think.

Q. Do you have the letter here which you say that you got from Mr. Silbert?

A. That Mr. Silbert wrote to me?

(Letter produced.)

Q. You received that about what time in the morning?

A. I received that in the first mail.

Q. About nine o'clock?

A. Nine o'clock.

Q. Written on the thirtieth at nine o'clock? 10

A. Nine o'clock.

Q. Written on the thirtieth, you received it on the next day, Saturday, the thirty-first?

A. Yes, sir.

(Letter marked D4 for identification.)

Q. Now, Mrs. Goldstein, prior to the receiving of this letter you had had this property in your hands for sale, or not? 20

A. I had, yes, here is the original listing card. I had it in my office for sale from June fifteenth, 1922, and those are the details as Mr. Silbert gave them to me.

Q. This was the first occasion you had of endeavoring to sell it to Mr. Davis, on that Saturday, March thirty-first?

A. That is the first occasion I had. I don't know what Mr. Goldstein may on the outside have done.

Q. I am talking about you, now. 30

A. Yes, sir.

Q. About the telephone calls, did Mr. Goldstein or you, call Mr. Silbert that evening?

A. Which evening?

Q. The evening of March thirty-first?

A. You mean the very first time?

Q. Yes, that is when you were down there in Mr. Sooy's during that period of time?

A. Mr. Goldstein called the Senate Hotel.

Q. About what time?

A. That was after Mr. Davis had looked at the properties and came back and gave me that forty thousand dollar offer, and I am not certain in my mind what time that was, I think it was in the early part of the afternoon.

10 Q. Was there another call that was made to Mr. Silbert late in the afternoon or early in the evening?

A. The next time that I called was to verify Mr. Davis' statement, that was late in the afternoon.

Q. Then was there a call still in the evening?

A. I didn't call any more, no.

Q. Did Mr. Goldstein, do you know?

A. I didn't have occasion to call. I just called once.

20 Q. I say do you know did Mr. Goldstein call again?

A. I don't think so.

Q. But you don't know?

A. No, I am not sure.

Mr. Cole: I want to offer Mr. Sooy's check that was marked D3 for identification.

(D3 for identification admitted in evidence and marked Exhibit C16.)

PHILLIP GOLDSTEIN, sworn for the complainant.

Direct examination.

By Mr. Cole:

Q. Are you the one who took the Silbert-Sooy agreement to Harrisburg?

A. Yes.

10

Q. You tell us what happened between you and Mr. Davis directly, or what happened between your wife and Mr. Davis on the thirty-first, before you started for Harrisburg?

A. Well, as soon as we received the letter from Mr. Silbert from Harrisburg Saturday, why we talked over —

Mr. Bourgeois: If the Court please —

Q. Don't tell the conversation between you and your wife.

20

A. No, but we made the suggestion who to give the property to to buy, so —

Mr. Bourgeois: That is just what the Court just told you not to do.

A. We called up Mr. Davis over the telephone.

Mr. Bourgeois: Who is we?

30

A. I did.

Mr. Bourgeois: I want him to say whether he or his wife.

The Court: Yes, do that, instead of saying "We," say whether you or your wife.

Q. You and your wife are one in law, but not one in testimony, you testify separately even though the law makes you one. Keep in mind that you are to testify what you said and did or what may have been said and done by your wife in Mr. Davis' presence. Now if you understand that, go ahead.

10 A. I called up Mr. Tom Davis' house and told him that I had a piece of property for sale and Mr. Tom Davis wanted to know where it was and I told him if he would come to the office we will explain it to him. And didn't take five minutes before he did come up to our office, and we explained the property to him. Furthermore Mrs. Goldstein —

The Court: You said "We explained the property to him."

20

A. That I did, and Mrs. Goldstein took the listing out of the drawer and showed Mr. Davis the listing we had on that property, and we had it listed for fifty-five thousand dollars, then Mrs. Goldstein was doing the talking, and trying to show Mr. Davis, tell him all the particulars about the property, and asked Mr. Davis to go down and look at the property, which he did.

Q. Did you go with him?

30

A. No, sir.

Q. Went alone, did he?

A. Went alone, and he came back and told us the condition the property was in, and then he heard, he asked whether that property couldn't be bought for forty-five thousand dollars, so I said we didn't know, but if he would give us a check on it we would get in touch with the owner and find out whether we

can get it for him at that price. So he says, "Well, what do you want to get in touch with him that way?" he says, "Can't you get him at the telephone?" So then Mrs. Goldstein rang up Mr. Silbert from Harrisburg, but I don't believe he was in then, but she left a message for him when he comes to ring us up, that is ring Mr. Goldstein up, our office. Well I believe I was out then, if I am not mistaken.

Q. What next happened so far as you were concerned? 10

A. Mr. Davis, while I was there Mr. Davis he came back and told us the condition of the property, he said the property wasn't worth any more than forty thousand dollars, he said if we could get the property for forty thousand dollars that he would make us a present of a thousand dollars, and we should see what we could do for him. So Mrs. Goldstein said she believed it would be impossible to get it for that price because the property cost Mr. Silbert more money than that, if he would do a little bit better, so I said, "Tom," I says, "here is a property is a bargain at forty-five thousand dollars, cheap," so yes, but he says, "Look at the improvements I have got to put in there, I have got to spend about fifteen thousand dollars on that property to put it in decent shape," so he says, "the only thing I could do," he says, "I will buy it for forty thousand dollars if you can get the sale through." So then Mrs. Goldstein rang up Mr. Silbert and put the proposition before him. Mrs. Goldstein had the conversation with him. I did not. 20 30

Q. Were you there when she talked over the phone?

A. Yes, sir.

Q. What did you hear her say through the phone?

Mr. Bourgeois: I object.

Mr. Cole: Was Mr. Davis there?

A. Mr. Davis was there too, yes, sir.

Q. While she was talking on the phone?

A. Yes, sir.

Q. Go ahead, tell us what was said then.

A. Mrs. Goldstein—I just can't recall it now, he
10 offered forty thousand dollars for it, and then he
promised that we could get —

Q. You have told us that.

A. I didn't want to get that paragraph —

Q. What did you hear Mrs. Goldstein say over
the telephone, while Mr. Davis was there?

A. She was telling him about the —

Mr. Bourgeois: I object to that. That is a con-
clusion.

20

Q. If Mr. Davis was there it is all right for him
to tell what she said, repeat her language.

A. Said to Mr. Silbert?

Q. Whatever she said on the phone, you can re-
peat that.

A. Yes, sir, she told Mr. Silbert that Mr. Davis
was willing to give him cash above the mortgage and
five thousand dollar deposit, and give him cash above
the mortgage.

30

Q. Now did Mrs. Goldstein tell Mr. Davis that?

A. She told that to Mr. Silbert.

Q. Mr. Davis was there, you say?

A. Mr. Davis was there.

Q. What did Mrs. Goldstein say, if anything, to
Mr. Davis as to what Mr. Silbert had said? What
did she report to Mr. Davis?

A. Mrs. Goldstein told Mr. Davis that it would

be impossible for him to sell that property for forty thousand dollars, that he would be losing too much money.

Q. Now did you, after that, and during that day, talk to Mr. Silbert yourself?

A. No, sir.

Q. Were you there at the house at any time after that when your wife talked over the telephone?

A. Yes, sir.

Q. How long was that after the conversation you had just related? 10

A. That wasn't very long, right after that.

Q. How many telephone conversations did you have, about, as happening on that day, between your office and Mr. Silbert?

A. Two.

Q. And only two?

A. Yes, sir.

Q. Do you know anything about a telephone conversation that is supposed to have been had between Mr. Davis and Mr. Silbert? 20

A. No, sir.

Q. You didn't talk to Mr. Davis about that?

A. No, sir.

Q. And he didn't with you?

A. No, sir.

Q. Now when did you first know Mr. Sooy in the transaction?

A. The only time I ever knew Mr. Sooy, when we were called down to Mr. Davis' house Saturday night, and when he took us over to Mr. Sooy's house and introduced Mrs. Goldstein and myself to Mr. and Mrs. Sooy. 30

Q. Now tell us what was said at that time to Mr. Sooy, and Mr. Davis and yourself being present?

A. Mr. Davis, when we were to Mr. Davis' house, and he told me that, "I am going to take you in to

a friend of mine who is going to buy the property from you.”

Mr. Bourgeois: From you?

A. Not from me, but property we have listed from Silbert, so we went next door with Mr. Davis into Mr. Sooy's house and there is where the whole transaction drawing up the agreement took place.

10 Q. Now after the agreement had been signed and you had delivered it, as I understand, to Mr. Davis, you say after it had been signed, to Harrisburg, did you deliver it to Mr. Davis?

A. Yes, sir, I came home right from Harrisburg and I went to my office, and I had something to eat, and just then Mr. Davis rang me up and find out whether I was back, and Mrs. Goldstein told him yes, I am just taking a little to eat, and I will come right down, so he says, “How long will he take before he
20 come down?” I told my wife to tell him in ten minutes, so when I was through I went right down to Mr. Davis' house, into his house, gave him the agreement, and he took us next door, to Mr. Sooy, and then Mr. Davis gave Mr. Sooy the agreement.

Q. Now did you after that see Mr. Davis about selling to your wife the rear of this property?

A. Yes, sir.

Q. How long was that after the agreement was delivered?

30 A. There was a little while, a few days after that, Mrs. Goldstein got her money from the other settlement, she gave me a check to go down to Mr. Davis to put a deposit on those seven houses in the rear.

Q. Where did you see him?

A. In his office.

Q. Tell us what took place between you?

A. When I came in Mr. Davis' office I said,

“Tom,” I says, “Mrs. Goldstein sent me down here to buy those properties that you have promised her in the rear, those seven houses.” He says, “Well,” he says, “I have nothing to do with them any more.” He says, “I have sold them to my brother Harry, if you want to buy them,” he says, “he will sell you his agreement for five hundred dollars.” Then I was kind of worked up on it, and I says, “Well you promised to sell Mrs. Goldstein those houses for ten thousand dollars, you promised Mrs. Goldstein if she would sell the houses for ten thousand dollars you would give her a commission, or she could buy it minus the commission herself.” Well he said, “No,” he says, “but I sold them to my brother, but,” he says, “if you don’t excited,” he says, “and keep cool,” he says, “I will try to get my brother to sell you the agreement, you can buy for a few hundred dollars’ profit.” So I rang up Mrs. Goldstein in Mr. Davis’ office, and I explained that to her, and Mrs. Goldstein told me that I shouldn’t buy it because shouldn’t give another profit on it, because after Mr. Davis has promised to sell that property to Mrs. Goldstein, and she didn’t see why it was necessary for her to pay Mr. Davis’ brother a profit on it.

Mr. Bourgeois: I object, that is all hearsay.

The Court: Yes.

Q. What did you say back to Mr. Davis after you had talked with your wife, what did you tell Mr. Davis?

A. I told Mr. Davis if I could get the property for the money they promised Mrs. Goldstein, we would buy it, but he says he hasn’t got anything to do with it any more, he sold it to his brother.

Q. On that occasion did Mr. Davis say anything to you or you to him about Mr. Abramson?

A. Why when I was arguing with Mr. Davis about those houses in the rear, so he says, "Now listen," he says, "keep quiet," he says, "and don't talk so much," he says, "you will get me in Dutch." I says, "Why?" I says, "Why I will get you in Dutch for, didn't you promise to sell those houses?" "Yes, I promised," he says, "but I haven't got them, I tell
10 you I haven't got them, I gave them to my brother, you can buy them off of him. You are getting so excited," he says, "and Mr. Abramson come in here," he says, "he will know all about it." I said, "He is your partner, he knows all about the transaction," which I always under the impression that Mr. Abramson knew all about it.

Q. Never mind the impression, what did he say to you?

A. So then he told me, he said now if I didn't
20 keep quiet, he says, stop talking about those properties, he says, "I will have to ask you to keep out of this office," so I was arguing with him about the property, so he got me by the arm and led me over far as the room and he opened the door and let me out in the street, and he said, "Don't come in here any more."

Q. Did you ever talk with him about this property after that?

A. No, sir.

30 Q. Now who took care of the settlement between Silbert and Mr. Sooy?

A. So—between who, Judge?

Q. Between Mr. Silbert and Mr. Sooy?

A. So Mr. Thomas Davis and Mrs. Goldstein was there, and Mr. Silbert's lawyer was there, and I was there.

Q. How long was Mr. Sooy there?

A. He hadn't been there but five minutes.

Q. Did he stay until the matter was concluded?

A. Well he just came there and he signed a paper and he went out again.

Cross-examination.

By Mr. Bourgeois:

Q. What day of the week was it the settlement 10
with Silbert took place?

A. Date of settlement?

Q. Yes, what day of the week?

A. I don't remember that.

Q. It was to take place on what date?

A. What day of the month was it?

Q. What day of the month was it, do you remember?

A. I believe it was one month afterward.

Q. Tenth of May, wasn't it? 20

A. I believe it was.

Q. And the tenth of May was Thursday last year,
wasn't it?

A. I suppose so.

Mr. Bourgeois: I offer in evidence, if your Honor please, unless Judge Cole will admit it, that the tenth of May was Thursday —

Mr. Cole: I won't dispute the calendar, tenth of 30
May, 1923, Thursday, yes.

Mr. Bourgeois: It is admitted the tenth of May 1923, was on a Thursday.

Q. Do you know if the Commissioners meet on
Thursdays?

A. What?

Q. Do you know if the City Commissioners meet on Thursday?

A. I don't know, sir, no, sir.

Q. What time did you leave Atlantic City to go to Harrisburg?

A. Sunday morning.

Q. That is on the first day of June?

A. Yes, sir, Sunday morning.

10 Q. I mean April, not June?

A. Yes, was Sunday.

Q. At what time in the morning?

A. I believe it was around eight o'clock, nine o'clock, something like that.

Q. What time did you get in Harrisburg?

A. Around twelve o'clock, something like that.

Q. During all that time you had this check that has been offered in evidence with you for the first payment, didn't you?

20 A. Five thousand dollars.

Q. What time did you leave Harrisburg to return to Atlantic City?

A. Left there on Monday morning, I believe, right after—Monday morning.

Q. And you also took with you this agreement that is marked in evidence, C12?

A. Yes, sir.

30 Q. Then from the time that you left Mr. Sooy's home on the afternoon or rather the evening of March thirty-first, until sometime in the morning of April second, I assume that you had both the agreement and the check in your possession?

A. Yes, sir.

Q. What time was the agreement signed by Mr. Silbert as near as you can tell?

A. Well that was in his house I had it signed.

Q. Monday morning?

A. No, sir, it was—I believe it was Sunday evening.

Q. Was it Sunday evening or was it Monday morning?

A. It was Sunday evening, because we sat up quite late playing cards, and it was quite late before I got that, that I tried to do that, get them to sign the agreement, Mr. Silbert and his wife, his son-in-law was there, they signed it, I believe.

Q. Then you turned over the check to him? 10

A. Yes, sir.

Q. Then he gave you back the agreement you had brought over to him?

A. Yes, sir.

Q. And it was at that time that the three per cent. was changed to two per cent., was it not?

A. That was done in Mr. Silbert's house, after I got in touch with Mr. Davis, I rang up Mrs. Goldstein and told her the little dispute Mr. Silbert and I had about the commission. 20

Q. Was that on Sunday or Monday?

A. That was on Sunday evening, so I rang up Mrs. Goldstein, I said, "What shall I do about it?" Well she says, "Get in touch with Mr. Davis." I got in touch with Mr. Davis and Mr. Davis said "To do the best you can," so I thought the best thing I could do was to make the sale.

Q. So it was changed at that time from three per cent. to two per cent?

A. Yes, sir. 30

Q. And the agreement was signed and handed back to you?

A. Yes, sir.

Q. Now, do I understand you to say—what time did you leave Harrisburg?

A. Was Monday morning about, around, I don't know, around eight or nine o'clock, I believe it was.

Q. Did I understand you to say that if Mr. Davis said that if you could get this property for forty thousand dollars he would give you a thousand?

A. Yes, sir, told me that in my office.

Q. Did you agree to that?

A. Well when he—I tried to do my best.

Q. You didn't expect to get a thousand dollars from him and twelve hundred dollars from Silbert, did you?

10 A. Sir?

Q. You didn't expect to get a thousand dollars from one side and twelve hundred dollars from the other side to put this deal through, did you?

A. No, I didn't expect it, but Mr. Davis said if I could get this property for forty thousand dollars, he would make me an extra present of a thousand dollars.

Q. He did get it for forty thousand dollars, did you ever ask him to give you a thousand?

20 A. Oh, I have asked him, I certainly did ask Mr. Davis.

Q. To give you the thousand dollars?

A. That is I said where is that present you promised me, Mr. Davis, so he laughed at me, why he says, "Ain't you glad you made the sale? I helped you make the sale."

Q. Did you ever ask him about the thousand dollars he promised to give you if you got it for forty thousand dollars?

30 A. Yes, sir, I asked him.

Q. Where were you when you did that?

A. When I asked in the title company, you know, after he took title.

Q. What did you ask him?

A. I said, "Where is that present you promised to give me," so he laughed at me, he said, "ain't you glad you made commission on the sale?"

Q. But you never asked him to give you a thousand dollars?

A. Well, I didn't think it was necessary, when he promised me I took him at his word.

Q. I didn't ask you whether necessary or not, I just wanted to find out if you did, but you didn't, did you? Now you didn't say, "I want the thousand dollars you promised me?" Never said that to him, did you?

A. I don't recall that.

10

Q. Mr. Goldstein, you wouldn't have done that, would you? You wouldn't have taken eight hundred dollars off of Mr. Silbert for selling his property for him and then have taken a thousand dollars off of Mr. Davis for buying it, you wouldn't take a commission from either side?

A. No, but if a man wants to give me a present, I don't see why I shouldn't take it, he just gave me that for a present, he says.

Q. And what did he give it to you for?

20

A. He didn't give me any of it, but he promised me, that is all I got. I didn't bother asking him any more for it.

Q. You knew, when you came out of Mr. Sooy's house, that it was Sooy that was going to buy that property?

A. I knew nothing. What do you mean Mr. Sooy going to buy? I knew Mr. Tom Davis was going to buy it?

Q. What did you think Mr. Sooy's check was for?

30

A. I didn't know.

Q. What did you think the agreement was drawn in Sooy's name for?

A. I didn't know, but I was doing business all along with Mr. Tom Davis.

Q. You, as a real estate agent, did you ever do business with any other real estate agent?

A. Yes, sir.

Q. Where that agent wasn't the buyer of the property?

A. Yes, sir.

Q. Always been the buyer of the property or was dealing for somebody else?

A. Dealing for somebody else.

10 Q. Dealing for somebody else? Then why did you think that this property was Davis' when you had in your pocket Mr. Sooy's check for the first payment and you had gone to Mr. Sooy's house—wait a minute.

A. I am listening to you.

Q. You had gone to Mr. Sooy's house, and you had drawn the agreement between Mr. Silbert, your client, and Mr. Sooy, and you had Mr. Sooy's signed agreement in your pocket.

20 A. Because I wasn't doing any business with Mr. Sooy at all. I was doing all the business was with Davis.

Q. Do you always do business with the principal, or sometimes do it with the agent?

A. I haven't did any business with Mr. Sooy.

Q. Will you answer, do you sometimes do business with an agent or always do it with the principal?

30 A. I sometimes do business with the agent, sometimes do business with the principal, but this time we only done business with Davis.

Q. Didn't you go down to Mr. Sooy's house?

A. Positively, I went to Mr. Davis' house, from Davis we went to Mr. Sooy's house.

Q. When you found Mr. Sooy wanted to draw the agreement did you go up home and get the typewriting machine?

A. Yes, sir.

Q. Your wife drew that agreement?

A. Yes, sir.

Q. She typed this?

A. Yes, sir, I was there when she typed it.

Q. Between Mr. Sooy and Mr. Silbert, your client?

A. Yes, sir.

Q. Why do you say you didn't do any business with Mr. Sooy, wasn't Mr. Sooy there?

A. Because Mr. Sooy and I never had any conversation about it, it was Mr. Tom Davis did the talking, and I was doing business with Mr. Davis at that time, through Mr. Davis. 10

Q. Did you think this agreement was being drawn with Mr. Davis, did you think that?

A. I was doing business with Mr. Davis but Mr. Sooy's name was put on there after he told me he was going to buy the property, but Mr. Sooy had no conversation with me at that time.

Q. He told you Mr. Sooy was going to buy the property, he told you you would go over there because he was going to buy the property and you went over there and got Mr. Sooy's check and got Mr. Sooy's agreement and you took it up to Harrisburg, didn't you think Mr. Sooy had something to do with it? 20

A. Well it didn't look to me like Mr. Sooy was buying the property, that is the only thing.

Q. In other words it looked as if he had something to do with it, it looked that way against your will? 30

A. I was only doing business with Mr. Davis. I will tell you why, Mr. Counsellor, Mr. Sooy was doing business with me for that piece of property, he would have gotten details about the property, what I could do, a property like that, about it, but Mr. Sooy has never had a conversation with me

with reference to those properties, but Mr. Davis and I in my house, in my office did offer.

Q. Did Mr. Silbert ever have any conversation with Mr. Davis or did he transact his business through you as agent?

A. The only transaction he had with Mr. Davis was at the settlement table.

Q. I didn't ask you that, I asked you whether Mr. Silbert transacted his business directly with Mr. Davis or transacted it through you?

A. He transacted it through me.

Q. Did you think it was not possible for Mr. Sooy to transact his business with Mr. Davis?

A. If he did he would have held more conversation with me with reference to the property.

Q. Why would he? Did Mr. Silbert hold conversation with Mr. Sooy?

A. Did Mr. Silbert hold a conversation with Mr. Sooy? No, sir.

20 Q. He did all his negotiations with you?

A. He had it with me.

Q. Why couldn't Mr. Sooy have transacted all his business through Mr. Davis?

A. Well all that I can say that Mr. Tom Davis done all the transaction with Mrs. Goldstein and myself.

Q. He did all the negotiating?

A. All the negotiating at the start and the finish.

30 Q. But after negotiations were completed Mr. Sooy was the man who had paid the money and Mr. Sooy was the man who signed the agreement, wasn't he?

A. Yes, sir.

Q. And it was all done in Mr. Sooy's home?

A. Yes, sir.

Q. That Davis made up between you when you were there, were going to sell the property, and you

went to Mr. Sooy's home for the purpose of completing those negotiations of sale?

A. Yes, sir.

Q. You saw Davis, you talked about the houses in the rear and some days after the agreement had been delivered Mr. Davis—how many days after that agreement was delivered to Mr. Davis or delivered to Mr. Sooy was it that you talked about the buying of those houses in the rear?

A. How many days after it was?

10

Q. Yes.

A. Since Mr. Davis —

Q. On the direct examination you said after the agreement had been delivered to Mr. Sooy, first was handed to Mr. Davis?

A. Mr. Davis, it was a few—I believe a few days after.

Q. Now, how many days after? What is a few, seven?

A. Three or four days, two or three days, something around that time.

20

Q. Three or four days after the time?

A. Yes, sir, I went down to Mr. Davis' real estate office, Commercial Real Estate, and went in there and Mr. Davis was there, the stenographer was there, and Mr. Tom Davis' brother, Harry Davis, was there. When I came in ready to buy those rear properties, I says, "Tom," I says, "Mrs. Goldstein sent me down with a check to buy those properties." He says, "I have nothing to do with them, you will have to buy from my brother Harry, I have sold it to him, but I will tell you what I will do for you, I will try to get it cheap.

30

Q. Harry was there?

A. Harry was there.

Q. That was strange for him to say in front of Harry he was going to get them for you cheap?

A. Was wanting to show me the agreement.

Q. Did he show you the agreement?

A. He didn't show me the agreement because I wasn't interested in the agreement giving him a profit on the houses.

Q. He didn't show you the agreement at all?

A. No, sir, but Mr. Harry Davis wanted to sell it to me and I told him I will let Mrs. Goldstein know whether to buy it and give you a profit where
10 we could have bought it directly from Mr. Tom Davis.

Q. You couldn't have bought it?

A. From Tom Davis when he promised it.

Q. My dear sir, didn't your agreement you took out to Mr. Silbert for him to sign, and you bring it back to Sooy, didn't that include the property, didn't you know that that included?

A. That included the property, all that there, but I was under the impression that the property was
20 bought by Mr. Tom Davis.

Q. Then you thought that Sooy was going to be sort of a straw man for Davis?

A. I didn't know, I didn't say what he was going to be, I came to Tom Davis because he was the one who promised Mrs. Goldstein, I was there when he gave her his hand, and he promised that he would give Mrs. Goldstein the first option of buying the property for him or sell it for him for ten thousand, "I will give you a commission, or I will tell you what
30 I will do, if you will buy the property yourself I will allow you a commission, you can have it for nine thousand and something odd, dollars," so we were always under the impression we would get that property.

Q. All the time you knew the agreement for the purchase of the property was in Mr. Sooy, and again

Mr. Sooy's money had paid for it, yet you thought he was going to get it for you?

A. Yes, thought I was going to get it from Mr. Tom Davis.

Q. Never surmised that he had no right in it, did you?

A. No, sir.

10

HARRY DAVIS, sworn for the complainant.

Direct examination.

By Mr. Cole:

Q. Are you a brother of Thomas Davis, the defendant in this case?

A. Yes, sir.

Q. I show you a check dated April second to the order of Frank Sooy for a thousand dollars, signed "Harry Davis" and ask you if that is your check? 20

A. Yes.

Q. Is that paid by the bank?

A. Yes, sir.

Q. Out of your account?

A. Yes, sir.

Q. Who wrote in the body of the check "Frank Sooy," and the figures "1000?"

A. Thomas M. Davis. 30

Q. Did he write everything except the signature?

A. Yes.

Q. For what was that check given?

A. For seven houses on Ingersoll Terrace.

Q. The property in the deed which we have offered in evidence here?

A. Yes, sir.

(Check offered and admitted in evidence and marked Exhibit C17.)

Q. Who introduced to you the subject of buying those properties?

A. My brother.

Q. Where were you?

A. In his office.

Q. When was it he introduced the subject?

10 A. The day before I bought them.

Q. You mean the day before that check?

A. Yes, sir.

Q. When settlement was made according to the sheet that is in evidence here, there was something over two thousand dollars more paid, whose check paid for that, whose check paid the amount due on the settlement?

A. Mine.

20 Q. Did you ever meet Mr. Sooy in connection with the matter?

A. I did not.

Q. Who drew the agreement?

A. I don't know.

Q. Did you?

A. No, sir.

Q. Who drew the deed?

A. I don't know.

Q. Did you buy the property subject to some mortgage or other?

30 A. I bought it subject to a seven thousand dollar building and loan and a thousand dollar second, I think it was.

Q. I notice that the deed is a general warranty deed and says nothing whatever about the two mortgages which you bought subject to. I notice that when you took the deed, that there was no reference made to those mortgages.

A. No, they told me they were going to take a thousand dollar second mortgage back.

Cross-examination.

By Mr. Bourgeois:

Q. Mr. Davis, you got an agreement of sale from Mr. Sooy, did you, for those properties?

A. I guess so, must be somebody's agreement, I didn't know who it was signed. 10

Q. Look at it and see if that is it?

A. Yes, that is the agreement.

Q. That it is?

A. Yes, that is the agreement.

Q. Then you assigned it to Mr. Wood?

A. I did.

Q. And then Wood assigned it to Abramson?

A. I don't know what he done with that.

Q. What is that? 20

A. All I know I assigned it to Wood.

Q. You don't know that girl's handwriting, Miss Zender?

A. Yes.

Q. Is that her handwriting?

A. I don't know, but I imagine it is.

Q. When it came to the day of settlement you went to the Atlantic Title and Guaranty Company?

A. I did.

Q. You and these other folks? 30

A. No other folks, no.

Q. Who were there when you were there?

A. I found Tom Davis there, Mr. Sooy was there a couple of minutes, and he went back, and I was there.

Q. Mr. Silbert was there?

A. Mr. Silbert, no.

- Q. Wasn't he?
A. I don't know.
Q. Was Miss Mitchell there?
A. Must be, she must have been there.
Q. Didn't you all make the two settlements all at the same time?
A. No.
Q. You didn't?
A. You can't make two settlements at one time.
10 Q. Did you make one right after the other?
A. You mean do we?
Q. Which one was made first, yours or the Abramson settlement?
A. I suppose Mr. Abramson's must have been made first.
Q. What makes you think made first?
A. Because when I was getting ready to go in, he went out, getting ready to go out.
Q. But you did get them both at the same time?
20 A. Yes.
Q. Weren't you there in the room at all?
A. Just when he went out I went in.
Q. What conversation did you have with him?
A. Only about the settling, that is all, asked him had he got through, he said yes.
Q. What did he ask you?
A. "Going to make yours?" I said "Yes."
Q. He knew you had bought the property at that time?
30 A. At that time he didn't know what property, though, and I didn't tell him what property.
Q. That was on the first of June?
A. I don't know what day we made settlement.
Q. When did you first know he was going down on that day to make settlement for a property?
A. I didn't know when he was going down to make settlement on the property.

Q. You say when you went in there and you saw him you asked him if he had made his settlement?

A. I asked him what he was doing, he told me he made settlement in there.

Q. That is the first you knew at all?

A. Yes, sir, never knew anything about settlement.

Q. Right in his office at that time?

A. No, I am not in his office, that is with him.

Q. You were at that time?

10

A. No, I was not.

Q. Said you had desk room in there?

A. Yes, that was right after I bought the property.

Q. But I am talking about when you settled for the property on the first of June.

A. Then I had no desk room.

Q. On the first of June?

A. No.

Q. When did you have desk room?

20

A. Desk room in there would be about four or five weeks later than that.

Q. Where were you at the time your brother wanted you to buy this property?

A. Where was I at that time?

Q. Where were you?

A. Came down to his office.

Q. You were on speaking terms then, were you?

A. Yes, I am speaking to him now, too.

Q. Are you?

30

A. Yes.

Q. And you went to Abramson's office, did you?

A. I went to Tom Davis' office, not Abramson's office, I didn't know Abramson then.

Q. Weren't they in partnership then together?

A. I guess so.

Q. Then you went to his office, Abramson's as well as Davis', did you?

A. I didn't know Abramson if I fell over him, I didn't know him.

Q. And you were satisfied to buy this property for a thousand dollars?

A. I was satisfied to buy the property.

Q. Did you sell, did you make a *bona fide* sale of this agreement you got from Sooy to this man
10 Wood?

A. Sir?

Q. Did you make a sale of this agreement to Wood?

A. No, I just assigned my right and title to that property to Mr. Wood.

Q. What did you do that for? It says here you did it for \$1300, that is a difference of three hundred dollars; did you get the thirteen hundred?

A. I did.

20 Q. Then this agreement became Wood's agreement?

A. Yes.

Q. And then if Wood sold it to Abramson, it became Abramson's agreement?

A. I suppose so.

Q. Then if you sold the property to Wood, why did you go down to make settlement for it?

A. Well, because Mr. Wood claimed he didn't have the money and I wouldn't see him lose and I
30 laid the money out for him.

Q. And took title in whose name?

A. Took the title in my name, naturally if I am laying out the money naturally going to take the title in my own.

Q. What about the agreement, is that agreement still in force or out of force?

A. I don't know.

Q. If it is, did you take the title for Wood or for yourself?

A. If I laid the money out going to take it in my name.

Q. You were going to pay him and not going to see him lose the money?

A. I didn't see him lose, I got thirteen hundred dollars from him.

Q. Then you got his thirteen hundred?

A. Yes.

Q. And you got the property yourself?

A. Yes.

10

THOMAS M. DAVIS, sworn for the complainant.

Direct examination.

By Mr. Cole:

20

Q. You are the defendant in this case?

A. I am.

Q. I show you Exhibit C14 for identification, purporting to be statement of rents between Leek and yourself, and I ask you whether you received a check for one hundred dollars and ninety cents?

A. I did, his check for Mr. Sooy.

Q. Pardon me —

30

Mr. Cole: Will you strike out, may it please your Honor, his check?

The Court: Yes.

Q. Was the check drawn to your order?

A. I think it was.

Mr. Bourgeois: What is the date of that, May what?

Mr. Cole: Dated May thirty-first for rents collected during May.

Q. Do you know of your own knowledge how Leek came to make that statement out to you?

A. Do I know?

10 Q. Yes.

A. Mr. Sooy took title on May tenth, 1923, Mr. Leek has filed statements of rent, he was Mr. Silbert's agent at that time, and Mr. Sooy told him to go ahead and continue to collect the rents, until the end of this month, finish up the collection of it.

Q. Did you hear Mr. Sooy tell him that?

A. No, I did not.

Q. Why do you say that?

20 A. Well I know that Mr. Sooy —

Mr. Cole: I ask that be stricken.

The Court: Let it be stricken.

Q. I ask you if you know of your own knowledge how it came about that Mr. Leek made the statement out in your name?

A. Well I told him to make it out in my name because Mr. Sooy told me —

30 Q. You told Mr. Leek to make it out in your name, did you?

A. Yes, I told him to send me the check, I didn't tell him to make it out in my name.

Q. What did you do with that check?

A. Turned it over to Mr. Sooy.

Q. Did you endorse that check over to him?

A. I don't think so, I think I deposited that check to my credit and issued a check to Mr. Sooy.

Q. Which is it?

A. I feel confident that I deposited the check to my credit and issued a check to Mr. Sooy.

Q. Whose money was it?

A. It was Mr. Sooy's money.

Q. Why didn't you endorse the check over to Mr. Sooy?

A. It was made out to Thomas M. Davis, and naturally I deposited the check and then drew a check myself to have a record of it. 10

Q. I show you this check of Harry Davis, dated April second, to the order of Frank Sooy, and ask you whether you received any part of that thousand dollars?

A. No, sir, I did not.

Q. Did you ever receive Mr. Sooy's check for anything in connection with this transaction with Silbert? 20

A. Afterwards, yes.

Q. When?

A. In June, some time in June.

Q. Is there any statement outstanding between you and Mr. Sooy in connection with this transaction?

A. No, sir, there was no statement.

Q. Who drew these agreements and deeds?

A. Mr. Sooy's office.

Q. I notice there is nothing said in the deed from Mr. Sooy to your brother Harry concerning the existence of mortgages; do you know how it came about that no reference was made? 30

A. I do not. I didn't know anything about drawing the deeds.

Q. Who had the drawing of those deeds?

A. I guess Mr. Sooy, I don't know.

Q. Did you have anything to do with it?

A. Absolutely not.

Q. Not even the agreements?

A. No, sir.

Q. Or the deeds?

A. No, sir.

Q. Did you call Mr. Silbert on the telephone at the home in Harrisburg?

A. I did not.

10 Q. Never talked with him at all?

A. I did not excepting on May tenth, at the settlement, first time I met Mr. Silbert or had any conversation with him.

Q. Who got the four hundred dollars commission that was credited to Mr. Sooy at the settlement?

A. Mr. Sooy.

Q. All of it?

A. Absolutely.

20 Q. What did you get for your services in the matter?

A. I was taken in, on May seventh, as a partner with Mr. Sooy.

Q. Partner in what?

30 A. In that transaction, Mr. Sooy didn't have sufficient money to go through with the settlement and he asked me to lend him my name and I did, and he says if by doing that he would take me in whatever profit is to be made there, would be split, and we indorsed a note, Mr. Sooy and myself, for seventy-five hundred dollars, either on May sixth or seventh, 1923, three or four days before the settlement.

Q. When did Mr. Sooy tell you he hadn't money enough to carry it out?

A. Either a day or two before that.

Q. How much have you split?

A. Well we split whatever profit there was in it.

Q. How much is that?

A. I think was about \$4927, something, each.

Q. That is what you got out of it?

A. Yes, sir.

Q. When did you first know that you and Mr. Sooy were going to split the profit?

A. When did I first know? About the fifth of May or sixth of May, that is the first I knew.

Q. Up to that time where did you expect to get paid for your services in making this deal?

A. I got a commission from Mr. Sooy for the sale of this property to my brother and Mr. Abramson, the office got a commission. 10

Q. Where were you going to get paid for the sale that was made from Silbert to Sooy, how were you going to get paid for that?

A. I wasn't going to get paid. He is my neighbor, next door there, and I didn't want the property, I had no money to buy it, the Commercial Realty Company had no money to buy it.

Q. Then you did this as a purely friendly act to Mr. Sooy? 20

A. I thought it was a good deal, and told Mr. Sooy we had no money and the Commercial Realty Company had no money to purchase, I told Mr. Sooy to go ahead and do it, I think he can make something out of it, he said, "If you think so, I will."

Q. At that time did you have anybody in mind to whom you could sell?

A. No, sir.

Q. Nobody at all, is that right? 30

A. No, sir.

Q. Did you get the Segal check for five thousand dollars?

A. I did not.

Q. Do you know who did?

A. Mr. Abramson himself.

Q. Harry Abramson?

A. Harry Abramson himself received from W. I. Segal the check.

Q. Did you know it had been deposited to the Commercial Realty?

A. It was deposited with the Commercial Realty Company because Mr. Abramson got a check from the Commercial Realty Company for five thousand dollars and we didn't have the five thousand in bank, and Mr. Segal owed Mr. Abramson five thousand
10 dollars and he went there and wanted his father-in-law to give it to him so we could make good this check he gave Mr. Sooy.

Q. When did you first know that Mr. Abramson would be interested in buying this property?

A. When did I first know? On the day he bought the property.

Q. How did you find that out?

A. Because he was right in the office. I tried to get him in Baltimore on the third day of April and
20 I got his partner, Mr. Abraham Allen, and Mr. Allen told me Abramson was on his way back to Atlantic City.

Q. Hadn't you called up in Baltimore before that?

A. I did not.

Q. Do you know anything about this long distance call on the thirty-first of March?

A. That was the day Abramson left for Baltimore.

Q. Wait a moment now, please. This slip in evidence indicates a call at 9.59 A. M. on March thirty-
30 first, 1923, from Davis to Abramson, Atlantic City to Baltimore, do you know anything about that?

A. I do not, but I would like to call your attention to something —

Q. Just a moment, you have answered that, you say you do not?

A. I don't know anything about that call.

Q. Do you know whose telephone number?

A. Marine 1844, that was our office phone, Mr. Abramson and myself.

Q. Do you know whether Mr. Abramson was in fact in Baltimore on that day?

A. He left that day for Baltimore, Saturday, March first.

Q. Have you your telephone bills for the month of March, 1923?

A. I have not, no, sir.

Q. Who paid the telephone bills for that office? 10

A. The office did.

Q. You mean the firm?

A. The firm, yes. That is Mr. Abramson's home.

Q. You say that the only time that you telephoned Mr. Davis in Baltimore was on April third?

A. I didn't say that is the only time, but at that particular occasion I called up on the third day of April.

Q. Talk to him about this transaction?

A. Yes, because I had somebody that wanted to buy them from him and give a profit of three thousand dollars right in our office day he brought the property. 20

Cross-examination.

By Mr. Bourgeois:

Q. Mr. Davis, you have been asked about this property, when did you first know that this property was in the market for sale? 30

A. That was on Saturday, March thirty-first, around the hour of between twelve and one.

Q. From whom did you learn it?

A. I learned that from Mrs. Goldstein, that was the first time I ever knew of that property.

Q. What did you do with relation to that?

A. I went down and looked at that property there, and I knew it was cheap, and I came back and I made them an offer of forty-five thousand dollars. I didn't have the money but I made them an offer. I didn't think they would accept it anyhow, but after Mrs. Goldstein told me they did accept it I went and told Mr. Sooy about it. I had no money. My account will show it, and I said to Mr. Sooy, "There is a good buy that I think you can make some money
10 out of." So I says, "You need five thousand dollars for deposit," and I says, "You will need about ten more thousand at the time of settlement, including adjustments and stuff like that." He says, "All right." We were playing rum.

Q. Playing it or drinking it?

A. Playing it and drinking it.

Q. Both?

A. Playing and drinking it, and I called up Mrs. Goldstein and told her that I can sell the property
20 for her but that this commission would have to be split with Mr. Sooy, so she agreed to do that.

Q. And then what?

A. Mr. and Mrs. Goldstein brought the typewriter down to Mr. Sooy's house, and I was still there.

Q. Did they bring it down when they came, or come first and send back?

A. Yes, they came first and after a talk with Mr. Sooy and myself in Mr. Sooy's they went back and got the typewriter and came back. We were still
30 playing rum and drinking it, and we dictated the agreement, I dictated some of the words, Mr. Sooy dictated the others, and we were both, I think, pretty well under the weather, and Mr. Sooy made out a check for five thousand dollars and told Mrs. Goldstein to go ahead and get it, that is all.

Q. That is on Saturday night?

A. That is on Saturday night, the thirty-first day of March, 1923.

Q. At what time that night did Mr. and Mrs. Goldstein leave Mr. Sooy's home?

A. That was about eleven o'clock that evening, eleven or eleven thirty.

Q. Is this check, Exhibit C16, is that the check that Mr. Sooy gave?

A. Yes, sir, that is the check.

Q. When did you first learn that Mr. Silbert had agreed to sell the property to Mr. Sooy?

A. When Mrs. Goldstein called me up about six o'clock that evening or seven o'clock.

Q. What evening?

A. Called me at Mr. Sooy's house, he tried to get me at home, which is next door, and the wife told them I was next door and transferred the call over to Sooy's.

Q. What day was that?

A. That was Saturday night, the thirty-first day of March, that is the first.

Q. I want to know when you learned that Mr. Silbert had agreed to sell to Sooy?

A. I told you I learned that night he agreed to accept Mr. Sooy's price.

Q. Over the phone?

A. Over the phone from Mrs. Goldstein, then I told them to come down here and we had the agreement drawn.

Q. Then you had known it was going to go through before the Goldsteins came down?

A. Yes, sure.

Q. Now then I notice this agreement is drawn to your brother is dated from the second of April, that is on Monday?

A. That is right.

Q. On that day where was Mr. Abramson?

A. That day Mr. Abramson was in Baltimore.

Q. Was this agreement completed at that time?

A. Absolutely.

Q. Let me ask you, now I show you Exhibit C2, which is agreement from Mr. Sooy to Mr. Abramson, which is dated on April third, the next day, Tuesday, was that executed on that day too, Tuesday?

10 A. That was executed on Tuesday, April third by Mr. Abramson and Mr. Sooy in the presence of Mr. Sooy, Harry Davis and myself in the office, Mr. Sooy's office.

Q. At what time of the day was that?

A. It was about, well, that must have been about close to three o'clock that afternoon.

Q. Do you recall—do you know whether or not Mr. Abramson went down to look at those houses before he signed that agreement?

20 A. He did, he took his father-in-law, he took Paul Saulsburg along with him, he took Charlie Showell, the manager of Segal's along. They all went down.

Q. His wife go along?

A. I don't recall. They came back tickled to death.

Q. That was on the third of April?

A. That was on the third of April.

Q. This check, is the check of Commercial Realty Company for five thousand dollars, signed April third, when was that check delivered to Mr. Sooy?

30 A. That check was drawn about ten minutes to three on April third, of 1923, by Mr. Abramson, myself and Harry Davis went down to Frank Sooy's office and signed the agreement and handed him the check.

Q. So late that he couldn't get it in bank on that same day?

A. That is correct, never got that check until the next day, couldn't get it in.

Q. And this check for five thousand dollars of Mr. Segal, that seems to be stamped the thirty-first day of March.

A. Mr. Segal delivered that check to Mr. Abramson personally on the third day of April about five minutes after that check of the Commercial Realty Company was drawn, to make good the check of the Commercial Realty Company, which didn't have the 10 money in bank.

Q. It seems to have also been deposited on the fourth of April?

A. That is deposited on the fourth of April, couldn't have been deposited any other day.

Q. Were you present at the time this check was delivered?

A. I certainly was right in the office.

Q. Was anything said as to why it was dated on the thirty-first of March? 20

A. I never noticed that date, it was given to Mr. Abramson.

Q. Not given to you?

A. No, sir, it was never given to me.

Q. Now at the time of the purchase of the property, or the entering into the agreement for the property by Mr. Sooy, with Mr. Silbert, did you have any interest whatever —

A. None whatever.

Q. — I don't mean that—any property interest 30 whatever in that agreement?

A. Absolutely not.

Q. Did you have any property interest in the agreement at the time Mr. Sooy entered into the agreement with Harry Davis for the sale of part of the property?

A. I did not.

Q. Did you have any property interest in the agreement at the time Mr. Sooy entered into the agreement of the sale of the property to Mr. Abramson?

A. I did not except the commission which Mr. Sooy agreed to pay me, two hundred dollars on the sale to Mr. Abramson and one hundred dollars on the sale to Harry Davis, and Harry Davis was the one that persuaded Mr. Sooy to give us a commission. Mr. Sooy didn't wish to do that.

Q. When did Mr. Abramson first become acquainted with the property that Mr. Sooy had then agreed to purchase from Silbert?

A. On the third day of April.

Q. And that was the first time you talked to him about it?

A. That was the first time I talked to Abramson about that property. I never knew of it until Saturday the thirty-first day of March.

Q. You remained a partner with Abramson until when?

A. April twenty-eighth, 1923.

Q. At that time did you have an agreement of dissolution?

A. I did.

Q. What did that agreement generally contain, of course?

A. It was some —

Mr. Cole: I object. Is it in writing?

The Court: Sustain the objection.

Q. Twenty-eighth day of April, you say?

A. Yes.

Q. At that time did you have any property interest in that agreement of Mr. Sooy's?

A. The twenty-eighth day of April?

Q. Yes?

A. No, sir, I did not.

Q. Do you know whether anything was said to Mr. Sooy when he was trying to be induced to buy these properties, to go into the agreement, about how much money might be raised?

A. About May the sixth or seventh —

Q. I don't mean that, but I mean had anything been said to him beforehand about what he should do, whether he would be able to raise the money or sell the property? 10

A. At the time Mr. Sooy bought it we were both pretty well pickled, I don't know if Mr. Sooy was, but I know I was, and there was no talk at all, all I said to Mr. Sooy was, "Give Mr. Goldstein a check for five thousand dollars and he will go down and buy it for you."

Q. Do you know after that time and before the date of settlement, before the tenth of May, if there was anything that arose that made Mr. Sooy doubtful if he would be able to make settlement? 20

A. Yes, Mr. Sooy came to me and he says, "You got me into this thing," and he says, "I haven't got any money," he says, "to make this settlement," now he says, "If you will lend me your name" —

Q. At that time were you still a partner with Abramson?

A. I was not.

Q. Did you have your dissolution settlement? 30

A. Absolutely.

Q. Now he said you would loan him your name?

A. He would give me half of the profits that there will be in there if the deal goes through.

Q. Now up to that time had you had any interest whatever in that?

A. None whatever.

Q. Did you loan him your name?

A. I did, on the seventh day of May, or about that, fifth, sixth or seventh, one of those three days.

Q. Was the settlement made?

A. Yes, sir.

Q. Later were the properties sold to Abramson and Harry Davis, I mean were the settlements completed?

10 A. Yes, they were completed around June.

Re-direct examination.

By Mr. Cole:

Q. Did you say that Mr. Abramson was in Baltimore on April third?

20 A. Yes, he left Baltimore April third, I guess he got here about half past one or two o'clock is when he got in, I just got done phoning, I had his brother on the phone when he walked in.

Q. Then he was in Baltimore part of April the third, was he?

A. Yes, up until about 1.30.

Q. During the day of that day, when he gave you this five thousand dollar check?

A. Nobody gave me any check.

Q. Weren't you handed this check of five thousand dollars?

A. I was not.

30 Q. To whom was that check given?

A. That was handed right to Mr. Abramson himself.

Q. No, I am talking about the check of five thousand dollars from the Commercial Realty to Mr. Sooy?

A. That was handed by Mr. Abramson to Mr. Sooy in my presence, and Harry Davis direct.

Q. It was on April third, was it?

A. That was on April third, about five minutes to three, somewhere around that time.

Q. You were present?

A. I was present, yes, sir.

Q. And you say that on the, what date was this check of Mr. Segal's given to Mr. Abramson in your presence?

A. On the third day of April, about five minutes after the check was drawn to the Commercial Realty Company, and I told Mr. Abramson we haven't got the money in the bank now, I says, "You will have to get your father-in-law's check to make good this check," I says, "I am not going to have any checks come back." 10

Q. Had you ever done any business, any real estate business with Mr. Sooy before this?

A. No, sir, I did not.

Q. Had you ever received any check from Mr. Sooy for any proposition before this transaction and Mr. Sooy's personal check? 20

A. Yes.

Q. And other transactions, you mean?

A. Oh, no, I have borrowed money off of him.

Q. Borrowed money?

A. Yes, I have borrowed money off of him several times.

Q. Did he give you a check for five hundred dollars at or about the, while this transaction was going on? 30

A. Did he give me a check?

Q. Loan you a check or pass his check to you for five hundred dollars?

A. He loaned me five hundred dollars around April fourth, I had a note due in the Chelsea National Bank —

Q. Then he did give you a check for five hundred dollars around April fourth?

A. I asked him to loan me five hundred dollars, yes, sir.

Q. That was a pure loan, was it?

A. Absolutely.

Q. Had nothing to do with this transaction?

A. No, sir.

10 Q. You said that you loaned him your name, what did you mean by that?

A. Well, we both went on a note of seventy-five hundred dollars in the Equitable Trust Company and it was discounted.

Q. Didn't this check for \$15,000 and some odd of the Commercial Realty provide all the money necessary to take the property over from Mr. Silbert?

A. Mr. Sooy made settlement on May tenth and Mr. Abramson settled on the first of June.

20 Q. You two together endorsed the note?

A. We did.

Q. That is when you were partners?

A. Yes, sir, when I went in partners with Sooy the first time, I went in partners, Mr. Sooy took me in the deal.

Re-cross examination.

By Mr. Bourgeois:

30 Q. Mr. Davis, you wanted to call Judge Cole's attention to something about this phone slip. Do you recall what it was you had in mind, you said that you didn't phone.

A. I didn't phone on that particular date, March thirty-first, Mr. Abramson calls Baltimore telling his people there that he is coming with his wife to Baltimore. It was the Jewish holiday, came out on

Easter Sunday, and he was going home for the Jewish holidays, and he called Baltimore telling them he is coming in.

Q. Why would it be marked "Davis" if you know?

A. I don't know anything about it, why it would be marked Davis, I know I didn't call it.

Q. Now about the five hundred dollars that you have borrowed from Mr. Sooy, tell us about that, you say that you had a note coming due?

A. I had a note due for \$6500 on April tenth, and I had in the bank at that time about three hundred and some odd dollars as a balance, and I wanted to reduce my note at least five hundred dollars with interest, which was ninety some odd dollars for three months, and I asked Mr. Sooy, I had more money coming in June, my share of mortgages, and I asked Mr. Sooy if he would loan me five hundred dollars, and Mr. Sooy says "Sure, will that be a check?" and I said, "Yes," and he handed me his check April fourth for five hundred dollars. I always, you know, as soon as I receive a notice from the Chelsea National Bank, which is close to seven days beforehand, I immediately make out a check for that note, take it down to the note teller, that is right here, and will testify to that, a few days ahead, leave the check and the note to take care of that note, renewal note, always a few days ahead, never wait until the day it is due.

Q. Then that five hundred dollars has nothing whatever to do with this real estate deal at all?

A. Absolutely none.

By Mr. Cole:

Q. Were you present when Mr. Abramson called Baltimore on March thirty-first?

A. Was I present, certainly, Saturday morning.

Q. Where?

A. In the office.

Q. In the office of the Commercial Realty Company?

A. Commercial Realty Company.

Q. Do you say that this slip represents that call?

10 A. I can't say if it does or not, it has got my name on it, and I know I didn't call, I called Baltimore April third and got his brother-in-law, Abraham Allen on the phone and told me he is on his way back, as I finished talking on the phone in walks Mr. Abramson, and I said, "I just tried to get you in Baltimore."

WILLIAM I. SEGAL, sworn for the complainant.

Direct examination.

20

By Mr. Cole:

Q. I show you a check which is Exhibit P3, the maker W. I. Segal, is that your check?

A. That is my check, my signature and my check, yes, sir.

Q. Do you recall the making of that check?

A. Yes, sir, my head bookkeeper made that and I signed it.

30

Q. Do you recall what date you signed it?

A. My bookkeeper put his stamp on, that is the date.

Q. March thirty-first?

A. March thirty-first.

Q. What became of this check after you signed it?

A. Well, I am going to tell you, that was on Sat-

urday morning, and I think that was when the Jewish holiday was, my son-in-law and my daughter, they went on Friday to Baltimore, Friday night was the holiday.

Q. That was the Friday before the date of that check?

A. Yes, that young man said it was Sunday, but it is a lie, he came into my store.

Q. Who do you mean, this gentleman right there, Mr. Thomas Davis? 10

A. I don't know what is the name, but that is the gentleman there.

Q. There is the gentleman, is he?

A. Oh, yes, exactly. You know I was busy at that time, and he came in and he says, "I got a deal for Harry, for your boy, for your son-in-law, and he says, "I haven't got no money." says, "You ain't got no money?" I says, "I can't help it." I was busy that morning and he tortured me and bothered me and everything, just so, you know, and every- 20
thing, and I says, "With whom have you got the deal with?" and he says, "He wouldn't know it, don't know the name." After he came back again he says, "Well, I am going to tell you," he says, "W. F. Sooy." I says, "Mr. Frank Sooy, the City Solicitor?" He says, "Yes, he represents an estate, and it must be done at once," he says, "And I must have a check." I says, "I don't know anything about it, Harry didn't say anything to me if I shall give you a check," but since he said Frank Sooy, I 30
said, "Frank Sooy is good enough for a check," so I went and I made out on the name Harry Abramson, I got the bookkeeper to make out, he made a couple of statements there, got to put down where I am going to get the bookkeeper, and my manager on here about everything, and I made out on the name Harry Abramson, so that shall be deposited

on his name. Of course after I dated that check I didn't know what he done with it.

Q. Did you give the check to him?

A. I gave it to that gentleman right here on Saturday morning, in my store, and my bookkeeper, if you would have time to have one of the bookkeepers, I would have right here, to testify right here, I say, when he was there, also my manager, he mentioned another word, said about me traveling
10 with them in automobiles, so I did give him that check on Saturday morning, that was that date.

Q. Who were there when you handed him the check?

A. Why I will tell you, my boy came over to me and he says, "Pop, what are you going to trust him with that fellow with a check?" I says, "I made out that check to Harry, and I don't know what he is going to do, and he can't endorse Harry's name."

20 Q. Was Harry there when you handed the check to Mr. Davis?

A. No, sir, Harry was in Baltimore, Harry left Friday afternoon, Friday night was holiday, Jewish holiday, was Friday night, and he left Friday about noon, he left, and that check was given Saturday morning, he pestered me all morning, bothered the life out of me, and I wouldn't give it to him until he mentioned Mr. Frank Sooy's name on it, so I says, "Mr. Frank Sooy" I says, "I am going to give you a check.." I wouldn't tell no lie even for
30 a hundred thousand dollars, that is the truth, and I am going to get the bookkeepers, going to get my manager, where he states riding in automobile and everything, going to come right here, will show you mentioned this gentleman's name ride with in automobile.

Q. Did you go down to see this property?

A. I never seen once, that is the evening.

Q. He testified you, I think your wife, and Mr. Saulsburg were down and looked this property over?

A. Yes.

Q. Were you ever down there and looked that property over with them?

A. I never seen it, and I don't care to go, in that location.

Cross-examination.

10

By Mr. Bourgeois:

Q. Mr. Segal, you own property right down there, don't you?

A. Me? I own it, yes, way down in the produce section, and I was never there before to see it, was too much.

Q. Mr. Segal, what time on Saturday morning was it you gave this check?

A. Which check, he starts to bother me, it was on Saturday morning, you know, on Saturday, and I was very busy, and I kept him away from me. 20

Q. Tell me something about what time it was, was it late as nine o'clock?

A. First around nine o'clock, then he was going about ten, and didn't go out to what I thought it was during the day, and I turned him down three or four time, and he came around and pestered me, after he mentioned that name "Frank Sooy" I gave him the check. 30

Q. What time was it you gave him the check?

A. I couldn't tell you.

Q. Was it prior to eleven o'clock you gave the check?

A. Was it? I couldn't tell you, but I don't want to say anything I don't remember.

Q. You can give me some notion of the time, can't you?

A. I couldn't tell you the time, I don't remember, of course perhaps my bookkeepers can tell you the times. I can't do it.

Q. Can't you remember the time of day it was?

A. It was Saturday, he came in Saturday morning nine o'clock.

Q. Now but does the fact that your son came to you and asked whether you were going to give the check to that man, or not, help you to determine
10 what time it was?

A. Perhaps my boy can tell you, but I don't remember.

Q. You don't know?

A. No.

Q. But you know it was Saturday morning?

A. It was Saturday morning.

Q. And you know when Mr. Davis first came in was nine o'clock in the morning?

A. First he went in was nine o'clock, then he
20 came again and half-past ten, then I told him bring the party up, I want to see the party.

Q. That is when he told you it was Sooy?

A. After he seen he couldn't lift the check from me, then he came around and said it was Mr. Sooy represents that estate.

HARRY ABRAMSON, recalled.

30 Direct examination.

By Mr. Cole:

Q. Mr. Davis stated that this Exhibit C3, the telephone slip, represents the call which you made on March thirty-first from your office when he was present to Baltimore, is that true?

A. No, sir.

Q. Did you telephone Baltimore that morning, March thirty-first?

A. I couldn't, sir. I was in Baltimore at the time.

Q. What time did you leave Baltimore to come home?

A. 2.10.

Q. Afternoon or morning?

A. In the afternoon.

Q. Is there a difference between the time of Baltimore, do you know, and Atlantic? 10

A. Yes, they have standard time and we have daylight saving time.

Q. When you say you left 2.10, was that standard or daylight time?

A. Standard time.

Q. I am not sure what you said on direct examination, but he testified that this check of Mr. Segal's was delivered to you and not to him, is that true?

A. Positively not. 20

Q. When did you first know that this check had been delivered to Mr. Davis?

A. On Tuesday night when I got home I calls my father-in-law to find out whether or not he had given this check.

Q. Was that your first information?

A. Yes, sir.

Q. All right, that is enough. Did you go to this property with your father-in-law, Mr. Segal, and his wife, and Mr. Saulsburg, and I think he said Mr. Showell, to look that property over before this deal was closed? 30

A. Never.

Cross-examination.

By Mr. Bourgeois.

Q. Do you know how much balance your firm that real estate firm of Commercial Realty Company had in bank on the thirty-first day of March of 1923, ending up the close of the day?

10 A. What day?

Q. How much money did you have in bank at the close of the business day, March thirty-first, 1923, do you know, your firm?

A. I can't remember.

By Mr. Cole:

Q. Did you have five thousand dollars on deposit when you gave this check of April third to Mr. 20 Sooy?

A. Yes.

Q. Did you have the money on deposit when you gave the other check of fifteen thousand dollars?

A. Yes, sir.

Q. You have already testified that was all your money?

A. Yes, sir.

By Mr. Bourgeois:

30

Q. You mean your money or the firm's money?

A. My own money.

Mr. Bourgeois: I understood that this check of five thousand dollars went into the Commercial Real Estate Company account?

Mr. Cole: It went there, yes, went to the credit of the Commercial Realty Company, but it was his money.

Mr. Bourgeois: This came from Mr. Segal.

Mr. Cole: Mr. Segal.

The Court: It has been testified Mr. Segal owed this man five thousand dollars and he collected it and deposited it in the company's account, but that the amount of money that was there was his money. 10

Mr. Cole: Mr. Davis does not pretend he put any money in it.

Mr. Bourgeois: Is that your signature?

A. No, sir.

Mr. Bourgeois: This is new banking to me, I haven't been able to get any bank to cash my check, made to my order, unless deposited to the order of Bourgeois and Coulomb. 20

The Witness: If you would put the implicit faith and trust in a man you would want to trust him with anything you had.

Mr. Bourgeois: Banks don't do business that way. 30

By Mr. Bourgeois:

Q. I show you a statement of the Chelsea National Bank, that is where the Commercial Realty Company kept its account, isn't it?

A. Yes, sir.

Q. That shows you a balance at the end of the day of March thirty-first of eighteen hundred and some dollars, doesn't it?

A. That is right.

Q. That was the close of business of March thirty-first?

By Mr. Cole:

10 Q. Do you know whether that represents the true balance or the balance as shown by the statement exclusive of checks that may have been outstanding?

A. That only shows the balance —

Q. That shows the balance of \$331.23, \$1972.49, do you know as a matter of fact at that time there were other checks outstanding?

20 The Court: What is the purpose of that, Judge Cole?

Mr. Cole: I don't know. I don't know what the purpose of Mr. Bourgeois in trying to show the balance.

Mr. Bourgeois: The actual amount would be less than that.

30 Mr. Cole: I want to know.

The Court: The check drawn to Mr. Sooy was dated April third?

Mr. Cole: I don't know why Mr. Bourgeois wanted to put this in.

The Court: I don't understand the relevancy of March thirty-first.

Mr. Bourgeois: Yes, this check was given March thirty-first. If they had been going to do business on March thirty-first and that check had been given at ten o'clock or eleven o'clock, the probabilities are it would have been deposited, and it was not deposited.

10

WILLIAM FRANK SOOY, sworn for the complainant.

(Recess taken until June eleventh, 1924, at nine o'clock.)

20

30

(Met this day, pursuant to adjournment, at 9.00 A. M. (daylight saving time), there being present parties as before noted.)

COURT OF CHANCERY, ATLANTIC COUNTY,
NEW JERSEY.

10

June 11, 1924.

THOMAS DAVIS, recalled.

Direct examination.

20 By Mr. Bourgeois:

Q. Have you given any thought to that telephone message that we were discussing yesterday since our adjournment?

A. Yes, sir.

Q. Can you tell me what it was?

A. On March 31st, the day that Mr. Abramson and Mrs. Abramson left in a Cadillac car for Baltimore, I sent this message to Baltimore notifying that he was coming; I know it was the thirty-first because that night at six o'clock was Passover, March 31st.

30 Q. I show you this Exhibit "C13" and call your attention to where it says "Tel. No. Flower 5747," and I ask you if you can tell me what that is?

A. I do not know what that is—I cannot say what that is but he lives in Baltimore on Flour Drive or something like that.

Q. Flour Place?

A. No, it is some drive.

Q. Did you telephone the message?

A. Yes, to the Western Union. I called the Western Union up and sent the telegram to Baltimore; I got the address from Mr. Segal's cashier; I did not know where Harry Abramson lived in Baltimore and I got the address then from some girl there in the office.

Q. Then you do not know whether that is the 10 street address or whether it is their telephone number?

A. I do not know what it is.

By Mr. Cole:

Q. Did you ever see one of those slips before?

A. No.

By Mr. Bourgeois:

20

Q. Do you notice up in the left-hand corner there the letters L. D.?

A. Yes, I do.

Q. Do you know what they stand for in telephone parlance?

A. No.

Q. You do not know that means "Long Distance?"

A. I do not.

Q. But anyhow do you now swear that this slip represents a telegram which you sent over the telephone by way of the Western Union to Mr. Abramson in Baltimore?

30

A. No, I could not swear that.

Q. How do you know that Mr. Abramson and his wife went to Baltimore in a Cadillac car?

A. Because I was in the office Saturday morning.

Q. Did they leave Saturday?

A. Yes, sir.

Q. What time?

A. They left some time Saturday morning; I cannot recall the exact hour.

Q. About what time?

A. I think it was around ten o'clock in the morning.

10 Q. Did you notice on this slip of paper that you appear to have called at 9.59; did you call at 9.59 before he left?

A. Probably I did, because I was ordered by Mr. Abramson to send the telegram that he was coming and that he was going to arrive in Baltimore, that he was leaving Atlantic City.

Q. Who was in the car?

A. Mr. Segal, Mr. Abramson and Mrs. Abramson.

20 Q. Where did you see them in the Cadillac car?

A. Out in front of the office on North Carolina avenue at the plant.

W. FRANK SOOY, a witness produced on behalf of the complainant, sworn.

Direct examination.

30

By Mr. Cole:

Q. Can you tell us when your check of five thousand dollars reached the bank on which it was drawn?

A. April third or April the fourth.

Q. In other words that check of yours for five

thousand dollars reached your bank on the same date that all the other checks were deposited; do you know that to be a fact?

A. No, I don't know anything about that.

Q. At all events that slip here from the bank shows that your check was out on the fourth?

A. Yes, sir.

The Court: Does it also show a deposit on the fourth for the sum of five thousand dollars? 10

A. It shows a deposit on the fourth of five thousand dollars—no, it shows a deposit on the third of five thousand dollars.

Q. My question is addressed to when your check of five thousand dollars reached your bank?

A. On the fourth.

Q. And the check of five thousand dollars of the Commercial Realty Company, when was that deposited? Wasn't that on the third? 20

A. I will have to look that up on the third.

Q. You think anyhow that check was deposited around the third?

A. I can say better by comparing the check with my deposit slip. You want to know when that check of five thousand dollars was deposited in my bank?

Q. Yes.

A. It was deposited in my bank I can say on April the third but this says April the fourth. That evidently is the last item there, April the 4th. That 30 is when it must have been.

Q. You have not got your deposit book here?

A. No, but I can send down stairs and get it up here. It must have been the fourth because that is the way it was marked.

Q. Who drew these agreements and deeds between you and Abramson and Harry Davis?

A. My recollection is that I did.

Q. When did you first know that Abramson was a prospective purchaser of a part of the property that you bought from Silbert?

A. On the day I got the check from Abramson.

Q. Who told you?

A. If my recollection serves me right Davis and Abramson came together at the time the five thousand dollar check was delivered to me; that is my
10 recollection of the transaction, and the five thousand dollars was turned over to me—no, that could not be right. My recollection of the thing is that—well, I am not sure about that. My hazy recollection is that they both came together but I cannot swear to that.

Q. Can you recall that Davis came to you alone and suggested that Abramson might be a purchaser?

A. No, I do not recall any such thing. I do not recall any conversation with reference to Abramson purchasing until the time the check was turned over.
20 That is my present recollection of it.

Q. When did Davis discuss the purchase, on the thirtieth or the thirty-first?

A. The thirty-first.

Q. What time of the day or night was that?

A. That was during the time I was eating dinner.

Q. The evening meal?

A. Yes, sir.

Q. Did you discuss the figures with him as to how it would be worked?

30 A. I, at first, refused to consider it, as I remember it, and then Davis came back and talked the situation over with me and said if he had the money he would buy it himself, and that it was a good buy and he told me that there were a certain number of apartments and a certain number of houses in the rear and even if it were not sold quickly during the boom, that it would more than carry itself and net a re-

turn on the investment in addition. I at the time had not seen the property at all but I rather absorbed some of his enthusiasm and finally agreed to purchase it.

Q. Weren't you at all acquainted with the property?

A. I did not know anything more about it and had no more idea about the property than you who have never seen it. I had never seen it and could not visualize it. I did have a sort of a hazy idea that somewhere around there were apartment houses. 10

Q. In his talk to you did he mention Abramson at all at the time?

A. No.

Q. Now how did this condition of commission on the sale by Goldstein come about?

A. As I remember it Davis suggested that I would have to pay forty thousand dollars for the property but that I could get that reduced by half of the commissions. That is the way I recall it and I, of course, wanted to get everything off I could and that is why the commission came off to Goldstein. 20

Q. There is an exhibit here of the rent statement as of May the thirty-first; did you get that money?

A. I, at the settlement, got everything that was coming to me and I got the rents as well as other adjustments; I do not remember any particular specific item but I know that at the time of the settlements there was a discussion about the rents; there was some apartments that were back in their rents and Mr. Rosenberg representing Mr. Silbert, brought in, in some way or other, about assuming those back rents and I refused to do it and whatever rents were coming at the time, I got. 30

Q. Mr. Davis said that the check for one hundred dollars and ninety cents as shown by this statement was drawn to him and that he then drew his check to

you; will you look at your deposits and say if you have such a deposit as that?

A. My deposits would not show that at all; I could not tell a thing by this deposit slip with reference to whether or not on May the thirty-first I got a check from Mr. Davis but I do know that whatever was coming in rents, I got.

Q. Did you ever see this Exhibit 14 before?

10 A. I saw whatever statements they had in regard to this property, including the statement of rents, but the particular statement I saw I do not know.

Q. But if Mr. Davis gave you a check for \$100.90 as represented in this statement, wouldn't that appear in your bank account?

A. I don't know whether it would or not; it might appear together with another item or it might be that I did not deposit it but cashed it, but I know that I got all that was coming to me.

20 Q. Do you have any present recollection of this check?

A. I have no recollection of any particular check.

Q. You did not enter it in that deposit slip to identify it?

A. No.

Mr. Cole: I call upon Mr. Davis at this time to produce that check of 100.90. Will you give me the settlement sheet between Sooy and Harry Davis?

30 Q. Who devised the terms of settlement between you and Abramson?

A. I did with his consent.

Q. Was Davis a party to it?

A. Davis may have talked to me about it.

Q. Did you regard Davis as representing you at the time?

A. I regarded him as representing me at all times

in this transaction; he got me in it and I wanted him to get me out of it too.

Q. Did you draw that check to Davis for \$500 on or about April the fourth, 1923?

A. I gave Davis a check for \$500 which was cashed in my bank on April the fifth; what the date of the check was, I don't know; that is the only check I have not been able to find, but I think I can find it. I did not have much time.

Q. Did you give Davis that check on the same day that you received Harry Davis' check for a thousand dollars? 10

A. That I cannot tell you because I have not been able to find that particular check; it evidently came back from my bank on the fifth. Now whether it was dated the fifth or what date it was I cannot tell.

Q. On what date did you deposit the check for a thousand dollars from Harry Davis?

A. On the third.

Q. On the day of its date? 20

A. I assume that is the day of its date.

Q. You received your own check for five thousand dollars to Thomas Davis back from the bank on the fifth?

A. On the fifth.

Q. So that you gave your check either on the third or the fourth?

A. I have no recollection as to the date of that check at all.

Q. You say you have not found that check? 30

A. No, but I think I can find it if I have a little more time to search.

Q. What was your arrangement with Davis touching this property as to his interest in it?

A. No arrangement at all; at first Davis said that he had opportunity to buy this property; that he considered it a good investment but he did not have

the money; that his money was invested in such a manner that he could not get it out and that he had already gone to the bank for loans and he suggested that I should buy it. After some persuasion on his part I consented to buy it, but with no arrangement between Davis and myself as to any interest he had in the property; Davis is mistaken as to that. He did say to me that in financing the thing he would assist me by lending me his name in case I had to
10 discount any paper. That is the situation as it existed up until a few days before the settlement.

Q. What are those statements?

A. January, February and down to April—in fact I have got them from December on.

Q. Do you mind telling me if you know approximately your balance when you paid the five thousand dollar check?

A. \$6543.78.

Q. You have figured it out?

20 A. No, I have that from this slip.

Q. And your balance because of the checks that were drawn afterwards did not change?

A. No.

Q. When you paid the five thousand dollar check you had over six thousand dollars balance?

A. Yes, sir.

Mr. Bourgeois: May I postpone the cross-examination?

RAYMOND HOOVER, called by consent out of turn for the defendant, after having been duly sworn, testified as follows:

Direct examination.

By Mr. Bourgeois:

Q. You are an employe of the Chelsea National Bank? 10

A. Yes, sir.

Q. What is your position?

A. Note teller in the discount department.

Q. You were requested to bring the account of the Commercial Realty Company showing their balance on March 31st, April 2nd, 3rd, etc. Will you tell me what balance they had in bank on March 31st?

A. At the close of business on March 31st, they had \$1,973.44.

Q. What did they have in your bank on April 2nd?

A. April 2nd, \$1590.44.

Q. And on April 3rd?

A. At the close of business on April 3rd they had \$6868.43.

Q. Segal's check appears to have been cancelled on the fourth?

A. That is right.

30

Q. Now how did that come about—how was this credited in your bank on the 31st?

The Court: There is no testimony to that effect at all so far.

By Mr. Bourgeois:

Q. What were the transactions of the Commercial Realty Company on April the 3rd?

A. At the beginning of the day their balance was \$1590.44 from which was taken a check for \$53.31 and a check for \$373.70, making a balance of \$1163.43. April the 3rd they had deposited \$705.00, making a balance of \$1868.43, and later on on the same day they made a deposit of \$5000.

Q. Was there any deposit or transaction after that deposit on that day?

A. None whatever.

Q. Can you tell what time of the day that was made?

A. I can tell you it was the afternoon because there were two deposits, the first in the morning and the second in the afternoon.

Q. When was that balanced next?

A. The morning of the next day, April 4th.

Q. To what?

A. There were three small checks drawn, one for \$3.34, \$2.03 and \$40, and a check for \$5000.

Q. Was there any other change after that \$5000 check?

A. There was another check drawn of \$502.28 and another check for \$142.50, and that is all on that day.

(30) By the Court:

Q. What balance did that leave at the end of that day's business?

A. There were \$740.76 deposited after that and that left \$1919.94.

Q. Will you tell me something about the collection of these checks? That check C3 appears to have

been deposited in your bank on the third, and it shows a payment stamp on the 4th, in the Boardwalk National Bank; tell me what that is?

A. When these items are deposited in the bank, the bank receiving them, dates them the date they were sent them for payment; that is to the Boardwalk National;—we receive the checks today and they are not stamped until the next morning by the man who prepares them for the Clearing House and they are stamped and endorsed on the back by the man receiving them according to the date they leave the bank for the Clearing House. 10

Q. What are your hours of clearing at the Clearing House?

A. 9.30.

Q. And any items that come into your bank after 9.30 in the morning of one day do not go into the Clearing House until the next day?

A. Any check that comes in today does not clear until tomorrow regardless of whether it comes in before 9.30 or after. 20

Q. In other words you do not endorse it until just before you send it to the Clearing House?

A. Yes, sir.

Q. So that there will be no misunderstanding, what you term the Clearing House here is simply a meeting of the representatives of each bank at a specified point for making settlement?

A. Yes, sir.

Q. There is no Clearing House in the strict sense of the word, meaning an institution where you send things? 30

A. It is more or less so now because it is conducted by the Federal Reserve and we meet there.

Q. Do your representatives all meet there?

A. Yes, sir.

By Mr. Bourgeois:

Q. You have stated the method of the collection and the stamping in your bank; is that the same in all the banks here in town?

A. I presume it is.

Q. As far as the Clearing House is concerned would that be the same?

A. It should be.

10 Q. In other words the fact that Mr. Sooy's check which is marked C-16, was stamped paid on the 4th, would that indicate that it was received in the Equitable Trust Company on the 4th necessarily, or it might have been received there on the 3rd?

A. It may, but it would have to be received there on the afternoon of the 3rd if it was paid on the 4th and stamped on the 4th.

Q. Why would that be?

20 A. Because sometimes a man comes in the bank after 3 o'clock and he is allowed to make his deposit because he is in there and at the time he goes up to the window, the receiving teller is making his statement.

By the Court:

Q. By what bank is the perforated mark made?

A. The paying bank always makes the perforation.

30

By Mr. Bourgeois:

Q. The bank on which it is drawn?

A. Yes, sir.

Q. You see the stamp shows April 3rd, and it is only the perforation that shows the 4th; could that check have come into the Equitable Trust Company

after 9 o'clock in the morning of the 3rd and yet had not been stamped by the bank—can you tell me what bank that came to in Atlantic City?

A. I presume it was deposited in the Central Trust Company—yes, it was deposited in the Central Trust Company, Harrisburg, and they endorsed it “Payable to the Girard National Bank, Philadelphia,” the Girard National Bank endorsed it to the Federal Reserve Bank of Philadelphia, and then the Federal Reserve Bank of Philadelphia has sent that in to—I cannot tell you; that is not on the check. The Federal Reserve Bank has sent it directly to the Equitable Trust Company. 10

Q. What bank is that?

A. The Girard National Bank made the check payable to the Federal Reserve Bank of Philadelphia so I presume this endorsement which is not entirely on the check is the endorsement of the Federal Reserve Bank of Philadelphia. I might say that it was impossible to be received by the Equitable Trust Company on the 3rd of April; they would not get it before the 4th. 20

Q. Now, do you have with you the account of Thomas Davis for the month of April and also the latter part of March?

A. Yes, sir.

Q. Tell me what Mr. Davis' balance was on the 31st of March, 1923?

A. Mr. Davis' balance on March 31, at the close of business was \$518.48. 30

Q. What was it on the 2nd of April, 1923?

A. On the 2nd of April it was \$218.48.

Q. On the 3rd of April what was the balance?

A. \$358.48.

Q. Did Mr. Davis ever discount in the Chelsea Bank a note around that time?

A. There was a note in there.

Q. Do you remember for how much?

A. On April 3rd the note was \$65.00, due on April 10.

Q. What was his balance on April 4th?

A. April 4th, \$858.48.

Q. And that came about from what?

A. A \$500 deposit on April 4th.

Q. What was his balance on April 5th?

A. At the close of business it was \$853.37.

10 Q. What was his balance on April 6th?

A. \$903.37.

Q. And what was his balance on the 7th?

A. \$937.87.

Q. What was his balance on the 8th?

A. The same balance.

Q. And on the 9th?

A. \$928.82.

Q. And on the 10th?

A. At the close of business on the 10th, it was
20 \$299.62.

Q. Did Mr. Davis make any payment on account of that \$6500 note on that date?

A. He did make a \$500 payment with the interest.

Cross-examination:

By Mr. Cole:

Q. How was that note on the 10th taken care of?

30 A. It was renewed and extended for three months with the payment of \$500 and interest.

Q. You received \$500?

A. Yes, sir.

Q. How did you receive it?

A. It was a personal check of Mr. Davis, drawn on his account, and it was taken from his balance on the 10th; \$593.20.

Q. Was a deposit made by him at or about that time of \$500.00?

A. It was made about a week before that; it was on April 4th, a \$500 check.

Q. Whose check was it?

A. I could not tell you whose check it was, but I can tell you it was on the Equitable Trust Company.

Q. Was it possible for this check of Mr. Sooy's of \$500 to reach the Equitable Trust Company before the 4th and be deposited in Harrisburg on the 2nd and afterwards go through the two banks in Philadelphia? 10

A. It could not.

Q. I show you a check of April 3rd, Exhibit "C," for the Commercial Realty Company, and ask you to tell me when that check was deposited?

A. It was deposited in the Equitable Trust Company on the 3rd of April, and paid by us on the 4th.

20

WALTER RIDGEWAY, called by the defendant out of turn by consent, and duly sworn.

Direct examination.

By Mr. Bourgeois:

Q. You are an employe of the Equitable Trust Company? 30

A. Yes, sir.

Q. Have you your records with you of Mr. Sooy's account for the months of March and April, 1923?

A. Beginning the 7th of April.

Q. Haven't you it for March?

A. No, sir, I was not asked to produce it.

Q. Have you a record with you to show whether

Mr. Sooy discounted a note in your bank on or about the 7th day of May, 1923?

A. There was a credit to his account of \$7464.75 on the 10th of May, a discount on a \$7500 note with the interest deducted.

Q. Who were the makers of that note?

A. Thomas Davis and W. Frank Sooy.

Q. Was it a joint note or an endorsed note?

A. A joint note, makers, W. Frank Sooy and
10 Thomas Davis.

Q. Will you tell me what Mr. Sooy's balance was on the 9th of May, 1923?

A. At the close of business on the 9th of May it was \$2811.30.

Q. Then you say there was a note discounted next day for how much?

A. \$7500, the proceeds being \$764.75.

Q. That made his balance how much?

A. \$10,226.05.

20 Q. Do you know whether or not there was a check drawn against his account on that day?

A. There were no checks paid on that account on that date, the 10th of May.

By the Court:

Q. What was done on that day?

A. We discounted a note and credited it to his
account.

30

By Mr. Bourgeois:

Q. What was his balance the next day?

A. At the close of business on the 11th, it was \$1908.88.

Q. At the beginning of the day?

A. It was \$10,276.05.

Q. Then at the close of the day you said it was how much?

A. \$1908.88.

Q. Was there any other check drawn against the account?

A. \$8,894.49.

Cross-examination.

By Mr. Cole:

10

Q. What is that sheet?

A. The bookkeeper's ledger sheet, starting April 7th and ending August 11th, 1923.

Q. Of course when you look at that sheet to determine the balance on certain dates, it does not take into account outstanding checks.

A. No.

Q. What was his balance on the 31st of March?

A. I have no record of that here; I can produce 20 that.

Q. It is not on that sheet?

A. No.

Q. Counsel produced certain sheets and I ask you if you can tell by looking at them what the exact balance was on March 31st?

A. According to that, \$7038.78.

Q. Would that be at the end of the 31st?

A. At the close of business on March 31st. I arrive at that by taking the balance brought forward on the 23rd, deducting the \$5000 check and crediting the \$500 deposit. 30

Q. Of course this record does not show to whom checks were drawn?

A. No, sir.

By the Court:

Q. You just stated in reply to a question that on May 11th a check of \$8894.49 was drawn from Mr. Sooy's account; was that one check?

A. Yes, sir; that is one check.

10 WILLIAM FRANK SOOY, resumed.

Cross-examination.

By Mr. Bourgeois:

Q. Judge Cole has questioned you about a five hundred dollar check that you gave to Mr. Davis along in the early part of April of 1923; did that five hundred dollar check have any relation whatever to the purchase of that property or the negotiations or the dealings concerning the property concerning which this dispute has arisen?

A. Not at all, except that Davis knew that I had that much money.

Q. Do you know what he wanted that money for?

A. Yes, he told me that he was short in his bank balance and had a note coming due and wanted to know if I could let him have five hundred dollars for a short time and I told him I could.

30 Q. Did you get it back?

A. Yes, sir.

Q. When?

A. I cannot recall the exact date he gave me a check; I think it was after the settlement for the Abramson property; I do not know if it was a week or a couple of days after or not.

Q. I want to show you a check for \$8,889.49 and I ask you if that is your check?

A. Yes, sir.

Q. Can you tell me what that check was used for?

A. To pay the balance on the settlement between Mr. Silbert and myself for the properties in question.

Q. What was the date of it?

A. May the tenth, 1923.

10

(Check marked Defendant's Exhibit 6 for identification.)

The Court: To whom was that check given?

A. The Atlantic Title and Guaranty Company.

Q. When these properties were sold by you to Abramson and Harry Davis, was any commission paid?

A. Yes, to the Commercial Realty Company there was paid a commission of two hundred dollars on one and one hundred dollars on the other. 20

Q. By you?

A. Yes, sir.

Q. On what date did you first learn that these properties were for sale?

A. March the thirty-first, Saturday evening.

Q. When did you first learn that it was claimed that Mr. Thomas M. Davis had some interest in these properties—that he was claiming that he had some interest in them? 30

A. When I went to the settlement on May the tenth with Mr. Silbert both Mr. Silbert and Mr. Rosenberg his attorney two or three times referred to Davis as being the real purchaser and I did not pay any attention to that until it came to the question

of taking the rents and then I said, "You gentlemen may call Mr. Davis the purchaser if you want to; I do not care, but I want you to understand that I am the purchaser of this property and I do not intend to turn over these back rents." At the time I did not pay any attention to it; they thought they were selling at a cheap price and they said that we knew they were.

10 Q. This bill of complaint intimates that you were a straw man for Davis; is that true?

A. Absolutely not.

Q. Did anybody have any interest whatever in these properties except you at the time that you made that settlement?

A. I made my settlement on May the tenth and I had gone to Davis —

Q. You were at Davis' about what date?

20 A. Well it was around the time for settlement; I would not be exact but two or three days probably before I discounted the note at the Equitable Trust Company.

Q. That was May the tenth?

A. Yes, sir.

Q. On the first of May was anybody interested directly or indirectly in these properties except yourself?

A. No, sir.

30 Q. Did you have any agreement whatever with Mr. Davis for the payment to him of any commission in the purchase of these properties?

A. No, sir.

Q. But you did agree to pay a commission for the sale of them?

A. Yes, sir.

Q. Did you ever agree with Mr. Abramson or Mr. Davis or the two of them with relation to their commissions?

A. Yes, sir.

Q. Where?

A. Down at my office.

Q. When?

A. Of course I met both of them at the time of the signing of the agreement in the first place and then afterwards —

Q. Tell us about the signing of the agreement by Mr. Abramson.

A. Mr. Abramson came in; I think it was on the 10
third. Davis came there on the second, Abramson
on the third and my recollection is that both Abram-
son and Harry Davis came in together and we dis-
cussed the situation; in fact I know that they came
in together—we discussed the situation with refer-
ence to the properties and what I would require.
The agreements were drawn and signed and that
was the time Harry Davis insisted I should pay
Abramson a commission and insisted also I should 20
pay a commission to the Commercial Realty Com-
pany for the sale of the property. At first I said
I was not going to pay a cent because Abramson
was part of the Commercial Realty Company but
they insisted and finally I agreed to give them a
commission of two hundred dollars on it; I figured
I was giving them two hundred dollars less
in price for it. Afterwards Harry Davis and
Abramson came in together and Abramson I think
did most of the talking; he said that Wood to whom 30
the assignment had been made would not be able
to make a settlement on the day arranged for and
that as far as Abramson was concerned he would
be able to settle but Wood would not be able to set-
tle and he wanted an extension for thirty days. I
told them I would think the matter over and if it
were possible for me to do it I would let them have
the extension. Subsequently I wrote a letter to

Abramson in which I told him I could not agree to the extension.

Mr. Bourgeois: I call for a letter to Abramson under date of May 24, 1923.

Q. I show you a copy of a letter and ask you if that is a copy of a letter you sent to Abramson?

A. It is.

10

By Mr. Cole:

Q. Did you mail the letter yourself?

A. I did not testify I did.

Q. You don't know anything about the mailing of the letter?

A. It was mailed the same as any other letter I had in the office.

20 By Mr. Bourgeois:

Q. Did you send that letter?

A. Yes, sir.

Q. Did you ever meet Abramson after that time?

A. Yes, sir.

Q. Where?

A. I cannot say for sure; my recollection of the thing is that the next time I heard from Abramson—no, I guess I am wrong about that. I met him somewhere and I don't know where after that time and he told me it would be all right and that they would make the settlement.

30

Q. This was before the day of settlement arrived?

A. Yes, but I do not think it was very long before the day of settlement; I cannot give you the exact time.

Q. When, to your knowledge, did Abramson first become aware of the fact that Harry Davis had purchased this rear property?

A. He was aware of it at the time he signed the agreement on April the third; he was aware of it at all times, as a matter of fact. He telephoned to me at my house and asked whether or not he could come in and make improvements on his property before he took possession of the property stating that he wanted to put in electric lights, wanted to fix the front porches and attend to some other things that I do not remember, but I told him that I had absolutely no objection to his doing that; that it was his own risk and was not mine. As a matter of fact I have in my office surveys that had been made by Mr. Rightmire that both Davis and Abramson looked at and saw. 10

Q. Both at the same time?

A. Yes, sir.

Q. For what properties? 20

A. The survey showed the rear seven houses and the front two apartment houses.

Q. I show you Exhibit C16, which shows an assignment from Harry Davis to Wood and also an assignment from Wood to Harry Abramson and ask you whether or not that paper was ever shown to you before the day of settlement?

A. I don't think so.

Q. Now when it came to the day of settlement where was the settlement made? 30

A. Down in the Atlantic Title Company's office in the Law Building.

Q. Who was present?

A. Harry Davis, Harry Abramson, Tom Davis, myself and the settlement clerk.

Q. It has been stated that you were there just to sign a mortgage?

A. I did not have any mortgage to sign at that settlement.

Q. At any time before this settlement?

A. No.

Q. How long were you at this settlement?

A. Well, at the first settlement my recollection is that I was there all the time; that is the settlement between Silbert and myself. Now I might be mistaken about the time, but I was there long enough to sign the agreement, to hear the figuring with reference to the back rents, the uncollected rents and I was there long enough to have given an extended argument as to the payment of the current month's building and loan dues about which there was quite an argument. In fact my distinct recollection of this subject is that this occurred. Now when it came to the Abramson and Davis settlements I do not think I was there throughout the settlement or any considerable portion of it; I do not think I was there very long.

Q. When did this take place?

A. I think the first one was at two o'clock in the afternoon and I forget if the second was at two or not.

Q. That was on a Thursday?

A. I don't remember.

Q. It has been shown it was; what day do they meet?

A. Thursday.

Q. You usually attend those meetings?

A. I usually attend them, and I would be there between two and three in the afternoon at them.

Q. You say that Davis and Abramson both were there, that is Harry Davis and Abramson both of them were there at the time of this settlement?

A. Yes, sir.

Q. Which settlement took place first of these two?

A. I do not recollect.

Q. That was made on the first day of June?

A. Yes, sir.

Q. But you do know that Harry Davis was there?

A. Yes, sir.

Q. Now I show you a check of yours bearing date June the second, 1923, for thirty dollars to E. D. Rightmire and ask you what that is for?

A. That was a check in payment of the survey that he delivered to me I think on April the third. 10

Q. What time of the evening was it that you signed the agreement to purchase this property?

A. I should say it was between eleven and eleven-thirty; somewhere thereabouts.

Q. Who was present at the time?

A. Mr. Davis, Mr. and Mrs. Goldstein and myself.

Q. When was it that you gave your check for the five thousand dollars?

A. At the time; that was a check I had taken out of my wife's check book I had down at the house. 20

Q. At the time you had the amount of money in the bank to meet that check?

A. Yes, sir.

Q. And had all the time until the check came in on the third or fourth of April?

A. Yes, sir.

Q. Did you know at the time that Tom Davis endorsed a note for you that he had dissolved partnership with Abramson? 30

A. I don't think I knew anything about that; as I remember it did not make any difference to me.

Re-direct examination

By Mr. Cole:

Q. Where do you say you signed the agreement with Abramson?

A. In my office to my recollection of it.

Q. Who were present?

A. Harry Davis, Abramson and I think Tom Davis and myself.

10 Q. Isn't it a fact that Mr. Abramson signed this agreement in his own office, witnessed by Mr. Davis and he was not in your office at the time it was signed at all by you?

A. That is not my recollection of it.

Q. Well, suppose I show you the agreement and ask you to note the difference in the ink which is used in the signatures and the ink used by Mr. Davis as a witness and I ask you whether that would change your mind about it?

20 A. No, I don't think it would.

Q. The ink in the Davis signature and also the Abramson signature; look at that.

A. They appear to me to be the same.

Q. The ink in your opinion is not different?

A. I probably used my own fountain pen.

Q. You still think that Abramson signed that in your office?

A. My recollection is that it was signed in my office.

30 Q. How much have you paid Mr. Davis under your arrangement with him touching this property?

A. I have a check here will show exactly.

Q. Is that the check?

A. Yes, that is the check.

(Check offered in evidence and marked Exhibit C17.)

Q. Does that close the matter or is there something more?

A. No there is nothing more.

Q. Does that represent one-half of all the profits in this transaction?

A. No, I think there was a check he gave me for some of that back; just what portion it was I do not know, some part in the adjustment.

Q. Have you a statement showing how that amount was arrived at? 10

A. No.

Q. Was any statement ever made?

A. Well, I have a rough statement of it I scribbled off on the back of an envelope. I think here are the figures as I understand them—I had the check drawn and insisted it was a check for what I owed him and here are the figures. I think he gave me the check back for something; I do not know just what it was but that is substantially the amount. 20

Q. When was there an arrangement made between you that there was to be a sharing of the profits?

A. At about the time of the discounting of the seventy-five hundred dollar note.

Q. At that time that Davis spoke to you on March thirty-first, any time during that day or night, did he tell you that he had received Segal's check for five thousand dollars to buy some real estate? 30

A. No, sir.

Q. When did you first hear about the Segal check?

A. Not until the suit was brought.

Q. Now who was it that urged the payment of commissions to the Commercial Realty Company?

A. Harry Davis and Abramson.

Re-cross examination.

By Mr. Bourgeois:

Q. I show you a check signed by Davis bearing date May the tenth, 1923, for \$702.72 and ask you if that is the check which you say Mr. Davis gave to you?

10 A. Well, that is a check he gave me in payment of five hundred dollars that he owed me as I remember it and \$202 adjustment that he owed me.

Q. This \$202 comes off of this \$5030?

A. I am not so sure how that works out.

Q. I mean as far as the profit goes; there are \$202 coming off of this \$5030?

A. I don't know how that works; let me see that check for a minute—no, that is not true. This check is for \$500 plus \$200 for some account in the ad-
20-justment; that is the payment on the Silbert settle-
ment; he owed me \$500 for something and that had nothing to do with this check.

NATHAN SEGAL, sworn for the complainant.

Direct examination.

30 By Mr. Cole:

Q. Are you the son of William I. Segal?

A. Yes, sir.

Q. Do you know Mr. Abramson?

A. Yes, sir.

Q. And Thomas Davis?

A. Yes, sir.

Q. Did you start to Baltimore in a Cadillac automobile with Mr. Abramson on the thirty-first of March, 1923?

A. No, sir.

Q. Did Mr. Abramson go to Baltimore somewhere about that time?

A. He went the day before the Jewish holidays which I think was March the thirtieth.

Q. Do you recall the day of the week

A. I think it was on a Friday.

10

Q. Do you know how he went?

A. By train.

Q. Did you see delivered this \$5000 check of William I. Segal drawn to the order of Abramson?

A. I did.

Q. Where was that delivered?

A. Right in the store; right in the back where my office is, back in the wholesale department.

Q. Whose store?

A. My father's store.

20

Q. By whom was it delivered?

A. By my father himself.

Q. Was Abramson there?

A. No, sir.

Q. To whom was it delivered?

A. Tom Davis.

Q. Was Abramson there?

A. No, sir.

Q. At the time that the check was delivered to Davis where was Abramson?

30

A. In Baltimore.

Q. The check was dated March thirty-first, 1923?

A. Yes, sir.

Q. Was it delivered to Davis on that day?

A. Yes, it was on a Saturday.

Q. Did you hear any talk by Davis at the time?

A. I heard him say a few words to my father.

Q. What did he say?

A. Something about property; that is all.

Cross-examination.

By Mr. Bourgeois:

Q. What train did Mr. Abramson take to go to Baltimore?

10 A. If I remember right it was around two o'clock.

Q. The Pennsylvania or Reading Railroad?

A. The Pennsylvania, across the street here.

Q. Did he have any baggage with him?

A. Yes, sir.

Q. Who went with him?

A. My sister.

Q. Anyone else?

A. That is all as far as I know.

Q. How did they go to the depot?

20 A. If I remember right I think I took them over in my car.

Q. Who else was with you besides yourself and them?

A. I think my mother was there and she bid them good-bye.

Q. She went ever with you?

A. Yes, sir.

Q. What sort of a car do you drive?

A. A Cadillac.

30 Q. You say that this was before the Jewish holiday; what Jewish holiday do you mean, Easter?

A. Yes, sir.

Q. And they were there over Sunday?

A. They were in Baltimore Saturday and Sunday.

Q. The Jewish holiday begins when?

A. If I remember right it was Friday night that it begins at sun-down.

Q. They left the same night that the holiday began?

A. The same afternoon; the holiday does not begin until night.

Q. And they stayed over until the next Tuesday or something like that; when did they come back?

A. If I remember right the holiday was Saturday and Sunday and they must have come back on Monday, I guess. 10

FRANCES ABRAMSON, called by the plaintiff, and duly sworn.

By Mr. Cole:

Q. You are the wife of Mr. Abramson? 20

A. I am.

Q. Did you go to Baltimore with him sometime in 1923?

A. I did.

Q. What way did you go?

A. By train.

Q. When did you leave for Baltimore?

A. Around 2 o'clock.

Q. What route did you go by?

A. The Pennsylvania. 30

Q. What day of the week was it?

A. Friday.

Q. Were you in Atlantic City on Saturday, March 31, 1923?

A. No.

Q. Where were you on that day?

A. In Baltimore.

Frances Abramson—Cross

Q. Was Mr. Abramson there?

A. He was.

Q. Do you recall when you left Baltimore and returned to Atlantic City?

A. I do not remember if it was on a Monday or Tuesday.

Q. Do you remember what time of day you arrived back in Atlantic City?

A. I think it was around six o'clock.

10

Cross-examination.

By Mr. Bourgeois:

Q. How do you recall that it was the 31st?

A. It was not the 31st.

Q. How do you recall it was the 30th?

A. Because we were going there to spend the Jewish holidays, and we would not go on the holiday.

20

Q. The holiday commenced that Saturday night?

A. It did.

ROBERT WOOD, called out of turn by the defendant by consent, being duly sworn, testified as follows:

Direct examination.

30

By Mr. Bourgeois:

Q. You live where?

A. 512 North Connecticut avenue.

Q. What is your business?

A. Assistant in the City Controller's office.

Q. I show you an agreement marked "C10," and call your attention to the assignment on the back of it where it says "I hereby assign all my right, title and interest in the agreement to Robert Wood for \$1300," and another assignment "I hereby assign all my right, title and interest in my agreement to Harry Abramson," and I ask you to tell the Court what you know about those agreements and those assignments?

A. Mr. Davis brought this agreement to sell to me for \$1300, and I agreed to buy it, which the first assignment shows. Mr. Abramson offered to assist me at the date of settlement if I happened to be short of funds. Now, a few days before the date of settlement I told him that it would be very difficult for me to make the settlement and he said that he had a client that would buy it but he at the time was very short and probably would not be able to handle their share, but he would take care of it and he would give me \$200 profit on the agreement of sale. 10
20

Q. In other words you paid to Davis \$1300 for it?

A. Yes, and inasmuch as he said that he was going to assist this party to buy this piece of property and his son being tied up too, I gave him my check for \$700 and in return he gave me his check for \$2200 which I held for a little time and deposited; that is where my interest ended in the matter.

Q. So that he gave you \$1500 net and you transferred it over to Abramson? 30

A. Yes, sir.

Q. Were these signatures of Harry Davis and Robert Wood scratched out at the time that you had this agreement or after you delivered it to them?

A. No, this was not scratched out.

Q. Of course you knew this when you got the money from Abramson; didn't you write your signature?

A. That is not my signature.

Q. Whose signature is that, do you know?

A. I don't know; that is not mine.

Q. When I was speaking of Davis I meant Harry Davis, you understood that?

A. Surely.

10

Cross-examination.

By Mr. Cole:

Q. You have told the whole story as far as you are concerned, concerning that agreement?

A. Well, I might add if it will make it any clearer that at the time I took Mr. Abramson's check for \$2200, he had that agreement and I left it in his care; so far as I was concerned I had my \$200 profit and that was where the matter ended. I had made the agreement and he agreed to help me out with it and I left the agreement with him.

20

Q. Then you never assigned the agreement at all; you just left the agreement with him?

A. Yes, sir.

30

DOROTHY ZENDLER, called in behalf of defendant, first being duly sworn, testifies as follows:

Direct examination.

By Mr. Bourgeois:

Q. For whom do you work?

A. At the time I was working for the Commercial Realty Company. 10

Q. What was your position?

A. Stenographer.

Q. When did you go to work for this company?

A. In October, 1922.

Q. How long did you work for them?

A. I worked until April 28, 1923, until they dissolved partnership and I worked for Mr. Abramson until February, 1924.

Q. Are you not working for him now? 20

A. No.

Q. Now, I will show you an agreement of April 3rd, 1923, between William Frank Sooy and Harry Abramson and call your attention to the signatures "William Frank Sooy" and "Harry Abramson," witnessed by "T. N. Davis" and ask you if you know where Mr. Abramson was when he signed that paper?

A. Mr. Abramson was in his office at the time.

Q. Do you recall who were there? 30

A. Mr. Davis, Mr. Abramson and myself; they were the only ones I knew who were there.

Q. You think you saw Mr. Abramson sign that in his office?

A. Yes; he signed it in his office.

Q. Did you ever hear any talk between Thomas

Davis and Mr. Abramson concerning the purchase of the property?

A. At one time I heard Mr. Abramson tell Mr. Davis that he would give him some sort of a property for income and he told him that—

Q. Where was he when that talk took place?

A. In the office.

Q. When was that?

A. I don't recall.

10 Q. Did you draw this check up on April 3rd, 1923, to William Frank Sooy?

A. I did.

Q. The body of that is in your handwriting?

A. Yes, sir.

Q. Where was Thomas Davis when he signed the check, if you know?

A. That was in our office.

Q. He signed it and you were there?

A. Yes, sir.

20 Q. Do you know if he used the same ink that you did?

A. That is the same ink there.

Q. Now, when was it that you heard Mr. Davis speak about buying some property to Mr. Abramson as relating to this check, was it before or after, or when with relation to this check that you heard that talk?

A. When Mr. Davis referred to it I did not know whether it related to that check or not.

30 Q. Did you ever hear more than one conversation about buying the property for him?

A. No, I did not.

Cross-examination.

By Mr. Cole:

Q. What did you hear Mr. Davis say about buying the property?

A. I know that he told Mr. Davis that he would get him a good income and he told him that it would be an estate.

Q. Who said that, Mr. Abramson or Mr. Davis? 10

A. Mr. Abramson.

Q. To whom did he say that?

A. To Mr. Davis.

Q. When did he say that?

A. I don't recall.

Q. I suppose it would have been after Mr. Abramson came back from Baltimore?

A. I hardly think it would be.

Q. It might have been?

A. I don't think so. 20

Q. You think it might not have been?

A. No.

Q. I show you Exhibit "C10," and ask you if that is your signature "Dorothy Zendler?"

A. It is.

Q. Who signed the name before you witnessed it, "Robert Wood?"

A. I don't know.

Q. How did you come to witness it if you did not see it signed? 30

A. I don't remember who signed it.

Q. Did Robert Wood sign it?

A. I don't know that.

Q. Did Harry Davis sign it?

A. I don't know.

Q. And yet you witnessed it and you ought to be

able to say who signed the signature "Robert Wood."

A. I don't remember.

Q. Where were you when you witnessed it?

A. In the office.

Q. Who asked you to witness it?

A. There was Mr. Davis and Mr. Abramson there, but I don't know who asked me.

10 Q. Did either of them ask you to witness it for them?

A. I don't remember.

Q. Was the signature there at the time that you witnessed it?

A. It was when I witnessed it.

Q. They simply brought it out to you and asked you to sign it?

A. The signature was written when I witnessed it.

Q. You did not see the signature written?

20 A. The signature was written.

Q. And somebody brought it out to you and asked you to witness it?

A. Yes, that is the way they do.

Q. Who brought it out to you, Mr. Abramson or Mr. Davis?

A. I don't remember.

Q. Was it one or the other of them?

A. I don't know.

30 By the Court:

Q. Was the signature written in your presence?

A. It was.

By Mr. Bourgeois:

Q. By whom?

A. I don't remember.

Q. Did you see Mr. Wood when he was on the stand here this morning?

A. Yes, sir.

Q. Had you ever seen him before?

A. Yes, sir.

Q. Where?

A. In the office.

Q. Did he sign it?

A. I don't know.

Q. Did Mr. Abramson sign it?

10

A. I don't know.

Q. Did Mr. Harry Davis sign it?

A. I don't remember.

Q. Now, you saw Mr. Abramson sign this exhibit marked Exhibit "C-2" in your office?

A. Yes, sir.

Q. You are not a witness to that signature?

A. No.

Q. Can you tell me where it was signed?

20

A. In the office.

Q. In your office?

A. In our office, the office of the Commercial Realty Company.

Q. In which room?

A. It was done in the place where I was sitting.

Q. Who was present at the time?

A. Mr. Davis, Mr. Abramson and myself.

Q. You remember that quite distinctly?

A. Yes, sir.

Q. Although you did not witness that?

30

A. Yes, sir.

Q. But you cannot remember who signed the signature to the agreement that you did witness?

A. No.

Q. Can you explain to us how that happens, that you should have a lapse of memory as to this signature that you did witness, and yet have such a

distinct recollection of the signing of this paper "C-2" that you did not witness?

A. They were talking so much about this property that naturally I remember it better than this other one.

Q. How long had they been talking about this property?

A. I don't remember.

Q. Not very long?

10 A. I don't know how long.

Q. Are you quite sure you saw Harry Abramson sign this agreement "C-2?"

A. I did.

Q. Did you have the agreement in your hand?

A. No.

Q. But you saw where it was?

A. No.

Q. Did you know that it was an agreement for sale?

20 A. Yes.

Q. How do you know?

A. Because I heard them talking about it.

Q. Then, of course you heard them talking and some paper was signed and you are willing to testify that that is the paper you saw signed?

A. Yes, sir.

Q. It could have been no other?

A. No, because this is what they were talking about, and I knew that is what Mr. Davis had in his
30 hand.

Q. Did you see the agreement, did you have the agreement in your hand?

A. No.

Q. Did you read it or see it at all except to see that it was signed?

A. I saw it after it was brought back.

Q. But you did not see it before it was brought back?

A. No.

Q. Where did you get your legal stationery?

A. Shaner and Kannuer.

Q. You still say that you do not know who signed the name of "Robert Wood" on Exhibit "C-10?"

A. I do.

Q. You do remember that you saw Abramson sign the agreement "C-2?"

10

A. Yes, sir.

Q. When did Mr. Abramson and Mr. Davis dissolve partnership?

A. April 20, 1923.

Q. Did you draw that agreement?

A. No.

WILLIAM I. SEGAL, recalled.

20

Direct examination resumed.

By Mr. Cole:

Q. I asked you yesterday about the delivery of that \$5000 check to Mr. Davis, and I now ask you whether anything was said by him as to where Mr. Abramson was that day?

A. Yes.

30

Q. What did he say?

A. He came in the second time to me and asked me again about the \$5000. I said "I will not give it." He said "Come in and talk to Harry. I have got Harry on the phone in Baltimore." I said "Don't bother me. I am not going to give you any money and that is all there is about it."

HARRY ABRAMSON, recalled.

Direct examination, resumed.

By Mr. Bourgeois:

Q. Did you receive a telegram from Thomas Davis when you were in Baltimore around March 10 31, or April 1, 1923?

A. I do not remember, sir.

Q. He stated that you and your wife and Nathan Segal went to Baltimore on Saturday in a Cadillac car; did you?

A. I never did.

Q. Where were you, were you when you signed the agreement with Mr. Sooy?

A. I never signed an agreement with Mr. Sooy in his office. I was in my office with Tom Davis and 20 Miss Zendler.

Q. You signed an agreement with Mr. Sooy for the purchase of the property?

A. I did.

Q. Where were you when you did that?

A. I was in my own office.

Q. Who was there?

A. Miss Zendler and Tom Davis.

Q. Did you sign the agreement in Mr. Sooy's office?

30 A. No, sir, I never did.

Q. I call your attention to the check for \$5000 to the Commercial Realty Company, and also your check book showing stub of check No. 2012 and I ask you first who wrote the body of the check?

A. Miss Zendler.

Q. The young lady who was just on the witness stand?

A. Yes, sir.

Q. Who wrote on the stub of that check?

A. Miss Zendler.

Q. How does the drawing of that check and the writing on the stub relate to the execution of the contract by you with Mr. Sooy?

A. I signed the agreement and Mr. Davis witnessed it and right after Miss Zendler drew out the check and Mr. Davis and myself both signed it.

Q. In other words, the transaction all happened at the same time? 10

A. Yes, I examined the agreement and signed that and Mr. Davis witnessed it and then Miss Zendler drew the check and he and I both signed.

No cross-examination.

REV. SAMUEL J. RIMSON, called by defendant, 20
sworn.

By Mr. Bourgeois:

Q. You reside where?

A. 24 South Boston Avenue.

Q. You are the Jewish Rabbi in this city?

A. Yes, sir, I am the Cantor at the Congregation.

Q. How long have you held that office?—I do not mean just in Atlantic City. 30

A. On and off for the time of fifteen years.

Q. Have you with you an almanac or diary from which you can refresh your memory, if you need to, and tell us when the Jewish holiday began?—the Easter or Passover holiday of 1923?

A. I would have to look at it because I do not recall except from what I see—Easter, 1923?

Q. Yes.

A. According to the almanac here which I am guided by, because I do not remember otherwise, the holiday started Saturday evening, Saturday, March 31; the holiday commenced Saturday evening and continued over Sunday and Monday.

10 Q. What time of the day on Saturday evening did it begin?

A. It begins at sunset.

Cross-examination.

By Mr. Cole:

Q. Is there a distinction between the holiday and Easter?

A. The Easter is a holiday.

20 Q. Does the holiday begin before what we call Easter?

A. No, Easter begins at sunset and the holiday begins at the same time because the Easter is a holiday.

Q. Then you say that the holiday and Easter come along together?

A. The holiday is Easter; it is called the Easter holiday.

Q. You say there is no distinction?

30 A. Not that I know of.

Q. When does the Jewish Sabbath begin?

A. It begins Friday at sunset.

Q. Isn't that when the Easter holiday begins?—every Sabbath is a holiday and of course it was so in this case?

A. The Sabbath being a holiday and the Easter

being a holiday, it follows naturally that we abstain from work.

Q. So that it really is a continuous holiday from Friday after sundown until Monday?

A. I would say the Sabbath commenced at sunset on Friday and the holiday followed the Sabbath on Saturday at sunset.

Q. Is the Sabbath a holiday?

A. Every Sabbath is a holiday.

Q. So that the holiday did begin in the Jewish church at sunset on Friday? 10

A. I thought that I explained and made myself clear; if you refer to the holiday of Passover, that commenced Saturday evening; but if you referred to the holiday of Sabbath, that begins Friday at sunset.

Re-direct examination.

By Mr. Bourgeois: 20

Q. In other words, the holiday which begins on Friday night is the Jewish Sabbath day?

A. Yes, sir.

Q. And you have fifty-two of them in a year?

A. Yes, sir.

Q. And the Passover or Easter holiday commenced on Saturday night the 31st of March?

A. Yes, sir.

Q. And that continued over until Monday? 30

A. Yes, sir.

By the Court:

Q. In the observance of Easter, does it commence Friday evening, that is, as to what you term the Easter services?

A. The Sabbath services are not a part; however, at the services on the Sabbath preceding Easter there are certain prayers with regard to the holiday that is to follow and naturally this Sabbath is a little different from the other Sabbaths of the year because there is usually something said about the holiday that will follow.

10 THOMAS M. DAVIS, recalled.

Re-direct examination.

By Mr. Bourgeois:

Q. There has been some question as to where the agreement between Mr. Sooy and Mr. Abramson was signed by Mr. Abramson and then witnessed by
20 Thomas M. Davis; I call your attention to the plaintiff's signature and ask you if that is his signature?

A. Yes, sir.

Q. Can you tell me when that agreement was signed by Mr. Abramson?

A. Right in Mr. Sooy's office with my fountain pen; Mr. Harry Abramson signed with the blue ink and Mr. Sooy used his own fountain pen.

Q. I show you the agreement which is a carbon
30 copy except the part written in ink which appears in the original; that says "The commission of \$200 shall be allowed by the party of the first part to the Commercial Realty Company." When was that written?

A. That was written in Mr. Abramson's office; Abramson insisted that that should be put in.

Q. Was that put in before the agreement was signed?

A. Yes, they would not sign the agreement unless Sooy agreed to give him \$200.

Q. That was put in before the agreement was signed?

A. Yes, sir.

Cross-examination.

10

By Mr. Cole:

Q. Have you undertaken to locate the telegram that you say you sent to Mr. Abramson?

A. I have, yes, sir.

Q. What did you find?

A. They told me they were going to deliver the telegram in fifteen minutes after I got the telephone call in the Vice-chancellor's chamber.

Q. Have you undertaken to find your check that you gave to Mr. Sooy for the \$100 and some cents?

20

A. No, sir, I have not been in the office.

Q. Have you got that check?

A. If I have given any check, I believe I have.

Q. You testified that you gave that one?

A. I must have it.

Q. Will you try to find it?

A. I am going to try to find it, yes, sir.

Re-direct examination.

30

By Mr. Bourgeois:

Q. Did you account to Sooy for the amount of rent that came in for the month of May?

A. No, sir, the only thing I accounted for was when Mr. Leak gave me a check for \$100 and some

odd cents to my name and I deposited it and made out a check to Mr. Sooy. I turned that right over to Mr. Sooy.

Q. Did you have any interest in this property from the 20th of May, 1923?

A. No, sir, I did not.

Q. Did you have any interest in it prior to the time that you agreed to go on that note with Mr. Sooy to receive \$7500?

10 A. No, sir.

Defendant's Exhibit "D1" marked for identification received in evidence.

Mr. Bourgeois: I offer in evidence letter from Mr. Sooy which he says he sent out in the course of their office work.

Mr. Cole: I object.

20

The Court: It is not connected up in any way; there is nothing to show that it was mailed; the witness testified that he dictated it and it went out in the usual course of business but there is nothing to show that it was mailed.

W. FRANK SOOY, recalled.

30

Direct examination.

By Mr. Cole:

Q. What is the course of business pursued in your office with regard to the mailing of letters?

A. I dictate them to the stenographer, the sten-

ographer typewrites them and mails them at the end of the day.

Q. Where are they mailed, do you know?

A. Right down here in the Law Building.

Q. And that is the course pursued in your office?

A. Yes, sir.

Cross-examination.

10

By Mr. Bourgeois:

Q. Do you ever mail any of the letters yourself?

A. I might have.

Q. You have no personal recollection about that?

A. Not any particular letter, no, sir.

Mr. Cole: I do not think it is admissible.

The Court: Technically it is not admissible.

20

Mr. Cole: I do not think it is of any great importance.

The Court: I will admit it on that statement.

(Exhibit D2 for identification admitted in evidence and marked Exhibit D2.)

Mr. Bourgeois: I offer D4 for identification in evidence being a letter written to Mrs. Goldstein.

30

Mr. Cole: Objected to on the ground it is not properly admissible in evidence, not for the purpose of contradicting.

Mr. Bourgeois: It is for the purpose of corroboration.

The Court: Objection sustained.

Mr. Bourgeois: She testifies that she had received an authorization for him to sell this property and she said she received a letter asking her to sell it on the thirty-first. She produces a letter that is dated March thirtieth. Now that corroborates her as to the date because it shows that it was written at Harrisburg on March the thirtieth and she says she received it on the morning of the thirty-first and what happened on the thirty-first is quite material in this case.

The Court: The complainant's testimony is that she received a letter on March the thirty-first and I will admit the letter without its contents to show that the letter was received on that date.

(D4 for identification admitted and marked Exhibit D4.)

(D6 for identification offered and admitted in evidence without objection and marked Exhibit D6.)

(D7 for identification offered and admitted in evidence without objection and marked Exhibit D7.)

Q. I show you a settlement certificate, statement of settlement between Mr. Silbert and you and ask you what it is?

A. This was the settlement certificate given to me by the Atlantic Guaranty and Title Insurance Company at the time of the settlement between Silbert and myself.

Q. I see at the bottom of it \$200 due us; what does that mean?

A. There are some memoranda made afterwards which had nothing to do with the settlement as made up by the Title Company.

Q. And I notice this settlement certificate calls for a check of \$8894.49; was that the amount that you paid?

A. That is what I paid and I allowed another ten dollars; I think the amount was \$8884.49. 10

Q. That was the settlement of the amount?

A. Yes, sir.

(Settlement certificate offered and admitted in evidence and marked Exhibit D8.)

Q. I notice that settlement certificate shows there were four hundred dollars paid for commissions; you said \$200 and \$100.

A. No, that was on another settlement before between Davis and Abramson. 20

By the Court:

Q. Didn't you get an allowance of \$400 for commission on that settlement?

A. I don't know; they charge me here for \$400. I was entitled to \$400 on account of the \$800.

Q. Who got the other \$400?

A. Goldstein got the other \$400. 30

Mr. Bourgeois: I am through except I am waiting for that telegram.

TESTIMONY CLOSED.

Atlantic City, N. J., June 17th, 1924.

(Trial of the cause resumed at 8.45 A. M.)

Mr. Bourgeois: Your Honor, please, I want to offer in evidence the check we succeeded in getting from Mr. Leek, and I notice not only my own exhibits, but some of Judge Cole's exhibits were marked for identification and have not been marked in evidence, and I want to move all of my exhibits, marked for identification, be admitted in evidence. I will offer this check of J. H. Leek of May thirty-first, 1923, for \$100.90 in evidence.

Mr. Cole: In view of this offer I would like to ask Mr. Davis a question. There is an endorsement on the back, Tom Davis by W. F. Sooy, attorney, and I would like to know.

(Check admitted in evidence and marked Exhibit D9.)

THOMAS M. DAVIS, recalled.

By Mr. Cole:

Q. This check just offered in evidence drawn to your order is endorsed on the back your name by Mr. Sooy as attorney. What was your relation at that time?

A. Well, when I received that check I turned it right over to Mr. Sooy and he endorsed my name on the back of it and signed his own.

Q. Why didn't you do it?

A. I thought I had to deposit the check and give him my check, but I hunted through my checks.

Q. Why didn't you sign the check on the back?

A. It did not belong to me, I just turned it right over to him.

Q. Was there at that time an outstanding power of attorney between you and Mr. Sooy?

A. No, sir.

10

(Paper heretofore marked C14 for identification, offered and admitted in evidence and marked Exhibit C14.)

TESTIMONY CLOSED.

CONCLUSIONS.

20

IN CHANCERY OF NEW JERSEY.

Between

HARRY ABRAMSON,
Complainant,

and

THOMAS M. DAVIS,
Defendant.)

On Bill, &c.
On Final Hearing.
Conclusions.

30

Not to be published in the official or unofficial reports.

MESSRS. COLE & COLE, for the complainant.

MR. S. PAUL RIDGWAY and MESSRS. BOURGEOIS & COULOMB, for the defendant.

INGERSOLL, V. C.:

The complainant and defendant were, at one time, and until about April 30th, 1923, engaged as partners in the real estate business in Atlantic City, New Jersey, under the name of Commercial Realty Company.

In March, 1923, the defendant told the complainant that he knew of some property he thought to be a good investment, and suggested that he purchase it. The defendant also told the complainant that Frank Sooy, a counsellor-at law of this State, was the trustee for the property. The complainant testifies that he said to the defendant, "Well, if you think it is a good deal, use your judgment and buy it for me," and arranged for the defendant to go to his (complainant's) father-in-law, and secure a check for \$5,000, as the first payment. This check was secured from Segal, the father-in-law, and I am convinced that Davis obtained it. It was deposited to the credit of the Realty Company. Davis, on or about April 2nd, 1923, obtained an agreement from one Silbert, agreeing to convey to Sooy certain premises in Atlantic City, being known as Nos. 2204 and 2211 Fairmount Avenue, being eighty feet in front by one hundred fifty feet in depth; said premises consisting of two apartment houses, the Alvin and Fairmount, and five houses in the rear of said property, for the sum of \$40,000. This being the property referred to by Davis in his conversation with the complainant.

On or about April 3rd, 1923, the complainant entered into an agreement to purchase of said Sooy, the Alvin and Fairmount apartments for the sum of \$40,000. At about the same time the remaining property (the five cottages in the rear) was sold to Harry Davis, a brother of the defendant, for the sum of \$10,000, and settlement for same and deed was delivered upon the same day as the settlement between Sooy and Abramson.

Sooy's connection with the matter was, that on the 30th or 31st of March, while at his home, Davis called and discussed the question of the purchase of the property in question, and told him that he would have to pay \$40,000 for the property, but that he could get some reduction on account of commission, and that he (Sooy) decided to buy the property, and gave Davis a check for \$5,000 to apply on account of the purchase price, and the agreement from Silbert was obtained. 10

Sooy testifies, that Davis had no interest whatever in these properties except such commission as he would receive as a co-partner in the Commercial Realty Company, until a few days prior to the settlement with Silbert, when ascertaining that he needed funds to complete the settlement, agreed that Davis should receive one-half of the profits realized from the sale as consideration for the use of his, Davis', name as endorser of a note to secure the money. 20

I am entirely convinced that Sooy is entirely innocent in this matter. I am, however, convinced that Davis should account to Abramson for any profit that he, Davis, made in this transaction. 30

I am unable to determine whether Davis anticipated what actually did occur. That is, an opportunity to secure part of the profits Sooy was to obtain, or whether he saw an opportunity to make some money for Sooy, his friend. Nevertheless, he

certainly knew that Abramson was expecting to, and led Abramson to believe he, Abramson, was to receive the entire property for which "Sooy was acting as trustee," and he, Davis, was the master and controlling hand in the entire transaction and all the details thereof.

Under the facts, had Davis purchased the property in his own name, he would have become a constructive trustee for Abramson's benefit. *Harrop v. Cole*, 85 N. J. Eq. 32. He assuredly cannot by a subterfuge place it in the hands of an innocent third party, from whom he received a portion of the profit, and avoid his responsibility.

A reference will be made to a Master for an accounting of the profits which Davis received.

INTERLOCUTORY ORDER.

IN CHANCERY OF NEW JERSEY.

Between

HARRY ABRAMSON,
Complainant,

and

THOMAS M. DAVIS,
Defendant.

On Bill, &c.
Interlocutory Order.

30 This matter having been brought on for final hearing and having been considered on the pleadings, evidence and argument of respective counsel, and the Court being of the opinion that the complainant is entitled to the relief prayed for and that the defendant should account to the complainant for the profit accruing because and out of the sale of real

estate referred to in the bill of complaint which amount can only be determined by an accounting.

It is on this day of 1925, on motion of Cole & Cole, solicitors of complainant, ordered that the matter be referred to Clifton C. Dunn, one of the special masters of this court to take testimony pursuant to statute and rules of court to ascertain and determine the net profit resulting from the purchase by Davis from one Silbert under the agreement referred to in the bill and sale or sales for the same premises thereafter made. 10

It is further ordered that said Master make his report with all convenient speed, and that the entry of a final decree and all further proceedings await the filing and confirmation of said Master's report.

R. H. INGERSOLL,
V. C.

STIPULATION. 20

IN CHANCERY OF NEW JERSEY.

Between

HARRY ABRAMSON,
Complainant,
and
THOMAS M. DAVIS,
Defendant.

} Stipulation.

30

For the purpose of the entry of a final decree under the conclusions filed, it is stipulated as follows: The profit made by W. Frank Sooy was the sum of forty-seven hundred and twenty-seven dollars (\$4727), and the profit made by defendant,

Thomas M. Davis, was the sum of forty-seven hundred and twenty-seven dollars (\$4727), in addition to which Commercial Realty Company received four hundred dollars (\$400) commissions from W. Frank Sooy on the sale of said property to Harry Davis and Harry Abramson, which four hundred dollars (\$400) was divided equally between Harry Abramson and defendant, Thomas M. Davis.

10

COLE & COLE,
Solicitors of Complainant.
S. PAUL RIDGWAY,
BOURGEOIS & COULOMB,
Solicitors of Defendant.

FINAL DECREE.

IN CHANCERY OF NEW JERSEY.

20

Between

HARRY ABRAMSON,
Complainant,
and
THOMAS M. DAVIS,
Defendant.

On Bill, &c.
Final Decree.

30

This cause came on to be heard on bill, answer, replication and proofs in open court in the presence of C. L. Cole, of Cole & Cole, solicitors for the complainant, and S. Paul Ridgway, solicitor, and George A. Bourgeois, of Bourgeois & Coulomb, of counsel with the defendant, and the Court having read and considered the pleadings and having heard and con-

sidered the evidence, together with the argument of respective counsel, and being of the opinion that the defendant should account to the plaintiff for any profit that he, defendant, made in the transaction set forth in the pleadings, but not for any profit which W. Frank Sooy may have made out of the transaction and not received by said defendant; and the respective parties by their respective solicitors having filed a stipulation in which, for the purpose of the entry of a final decree in this cause, pursuant to the conclusions filed, it is agreed that the profit made by W. Frank Sooy out of said transaction and received and retained by him alone and no part of which was received by the defendant, Davis, is the sum of \$4727; and the profit made and received by the defendant is the sum of \$4727. 10

It is on this eleventh day of January, 1926, ordered, adjudged and decreed that the defendant do account and pay to the complainant as his profit made in the transaction referred to in the bill of complaint the sum of \$4,727, with interest from the first day of June, 1923. 20

It is further ordered, adjudged and decreed that said defendant pay to the solicitor of complainant the sum of \$250.00 as a counsel fee together with costs to be taxed, and that said counsel fee be included in and made a part of the taxed costs, and that the said decree together with the taxed costs be enforced and collected pursuant to statute and the rules and practice of this Court. 30

Respectfully advised,

R. H. INGERSOLL,

V. C.

A true copy,

COLE & COLE,

Solicitors of Complainant.

NOTICE OF APPEAL.

(Filed February 1st, 1926.)

IN CHANCERY OF NEW JERSEY.

10 Between

HARRY ABRAMSON,
Complainant,
 and
 THOMAS M. DAVIS,
Defendant.

On Bill, &c.
 Notice of Appeal.

20 The defendant hereby appeals from the final de-
 cree made in this court in the above-stated cause on
 the eleventh day of January, 1926, and from the
 whole and every part thereof, because the same is
 erroneous in law.

To the Court of Errors and Appeals, the last re-
 sort in all causes.

Dated February 1st, 1926.

S. PAUL RIDGWAY,
Solicitor for Defendant.
 GEO. A. BOURGEOIS,
Of Counsel.

30

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

GEO. A. BOURGEOIS,
Of Counsel.

[ENDORSED]

February 1st, 1926.

Service of copy of the within Notice
is hereby acknowledged.

Cole & Cole,
Sols. for Complt.

10

PETITION OF APPEAL.

(Filed February 1st, 1926.)

NEW JERSEY COURT OF ERRORS AND
APPEALS.

Between

HARRY ABRAMSON,
Complainant-Respondent,
and
THOMAS M. DAVIS,
Defendant-Appellant.

} Petition of Appeal.

20

*To the Honorable, the Court of Errors and Appeals,
the last resort in all causes:*

30

The petition of Thomas M. Davis, the 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 the State of New Jersey, bearing date the eleventh day of January, 1926,

wherein Harry Abramson was complainant and the said Thomas M. Davis was defendant, in this respect, to wit, that the said decree adjudges that the defendant should pay to complainant the sum of forty-seven hundred and twenty-seven dollars (\$4727.00), and should pay to complainant's solicitor two hundred and fifty dollars (\$250.00) as counsel fee, together with costs to be taxed.

10 And your petitioner humbly appeals from said decree, and from every part thereof, of the Chancellor which declares that defendant should pay to complainant the said sum of forty-seven hundred and twenty-seven dollars (4727.00) and should pay to complainant's solicitor two hundred and fifty dollars (\$250.00) as counsel fee, besides costs of suit, as aforesaid, upon the ground that the same is erroneous, in that the said decree should have been in favor of the defendant.

20 Your petitioner, therefore, prays that the said decree of the said Chancellor may be in the particulars aforesaid be 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.

S. PAUL RIDGWAY,
Solicitor for Appellant.

GEO. A. BOURGEOIS,
Of Counsel with Appellant.

30

[ENDORSED]

February 1st, 1926.

Service of copy of the within petition
of appeal is hereby acknowledged.

Cole & Cole,
Sols. for Respondent.

NOTICE OF APPEAL.
IN CHANCERY OF NEW JERSEY.

Between

HARRY ABRAMSON,
Complainant,

and

THOMAS M. DAVIS,
Defendant.

On Bill, &c.
Notice of Appeal.

10

To Bourgeois & Coulomb, Esqs., Solicitors of Defendant:

20

The complainant hereby appeals from the whole and every part of the final decree made in this court in the above stated cause on the 11th day of January, 1926, to the Court of Errors and Appeals in the last resort in all causes.

Dated February 10, 1926.

COLE & COLE,
Solicitors for Complainant.

30

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

C. L. COLE,
Of Counsel with Complainant.

PETITION OF APPEAL.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

10 Between

HARRY ABRAMSON,
Complainant-Appellant,

and

THOMAS M. DAVIS,
*Defendant-Respondent.*On Appeal from
Chancery.

Petition of Appeal.

20 *To the Honorable, the Court of Errors and Appeals
in the last resort in all causes:*

The petition of Harry Abramson, the 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 the State of New Jersey, bearing date the 11th day of January, 1926, wherein the said Harry Abramson was complainant and Thomas M. Davis was defendant, in this respect, to wit: The Court should have decreed that appellant, Abramson, was entitled to all the profit actually realized and not limit to the profit actually received by Davis. And your petitioner humbly appeals from that part of the decree of the Chancellor which decrees as aforesaid upon the ground that the same is erroneous. Your petitioner

therefore prays that the said decree of the said Chancellor 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.

COLE & COLE,
Solicitors for and
C. L. COLE,
Of Counsel with Appellant.

10

ANSWER.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

Between

HARRY ABRAMSON,
Complainant-Respondent,
and
THOMAS M. DAVIS,
Defendant-Appellant.

Answer.
On Appeal from
Chancery.

20

The answer of the above named respondent to the petition of appeal of the above named appellant. 30

This respondent, not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto, nevertheless, says and admits, that a decree was on the 11th day of January, 1926, made and entered in the Court of Chancery, in the cause for that purpose mentioned in the said petition, as is therein stated; but as to the

substance and form thereof, this respondent prays to refer thereto when the same shall be produced. And this respondent is advised and believes, that the said decree is agreeable to equity, in so far as appellant's petition is concerned, but should be reversed according to the prayer of respondent's petition of appeal, with costs to be adjudged to this respondent.

COLE & COLE,
*Solicitors for and of Counsel
with Respondent.*

10

ANSWER.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

20

Between

HARRY ABRAMSON,
Complainant-Appellant, }
and
THOMAS M. DAVIS,
Defendant-Respondent. }

On Appeal from
Chancery.

30 The answer of the above named respondent to the petition of appeal of the above named appellant:

This respondent, not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto, nevertheless, says and admits that a decree was on the eleventh day of January, 1926, made and entered in the Court of Chancery, in the cause for that purpose mentioned in the said petition, as is therein stated;

but as to the substance and form thereof, this respondent prays to refer thereto when the same shall be produced. And this respondent is advised and believes that the said decree is not agreeable to equity, in so far as the same adjudges that defendant-respondent should pay to the said complainant-appellant the sum of forty-seven hundred and twenty-seven dollars, or any other sum, as adjudged in said decree.

BOURGEOIS & COULOMB, 10
*Solicitors for Respondent in
Cross-Appeal.*

EXHIBIT C1, 6/10/24L.

THIS INDENTURE, made the 1st day of June in the year of our Lord one thousand nine hundred and twenty-three 20

BETWEEN WILLIAM FRANK SOOY and HAZEL M. SOOY, his wife, of the City of Atlantic City, County of Atlantic and State of New Jersey, of the first part, and HARRY ABRAMSON, of the City, County and State aforesaid, of the second part:

WITNESSETH, That the said party of the first part, for and in consideration of the sum of One hundred (\$100.00 Dollars and other good and valuable consideration, lawful money of the United States of America, well and truly paid by the said party of the second part to the said party of the first part, at and before the ensealing and delivering of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, enfeoffed, released, conveyed and confirmed, and by these presents doth grant, bargain, sell, alien, en- 30

feoff, release, convey and confirm, unto the said party of the second part, his heirs and assigns, ALL that certain lot tract or parcel of land and premises situate, lying and being in the City of Atlantic City, County of Atlantic and State of New Jersey, bounded and described as follows:

10 BEGINNING at a point in the North line of Fairmount Avenue sixty-eight and seventy-five hundredths feet West of the Westerly line of Missouri Avenue, and extending thence (1) Northwardly parallel with Missouri Avenue eighty-six feet to the South line of a four feet wide alley, thence (2) Westwardly parallel with Fairmount Avenue in and along the South line of said alley, forty and twenty-five hundredths feet, thence (3) Southwardly parallel with Missouri Avenue eighty-six feet to the North line of Fairmount Avenue, thence (4) Eastwardly in and along the North line of Fairmount Avenue 20 forty and twenty-five hundredths feet to the place of beginning. Known at #2209 Fairmount Avenue.

30 BEGINNING at a point in the North line of Fairmount Avenue one hundred thirteen feet West from the Westerly line of Missouri Avenue, and extending thence (1) Northwardly parallel with Missouri Avenue eighty-six feet, thence (2) Westwardly parallel with Fairmount Avenue thirty-seven feet, thence (3) Southwardly parallel with Missouri Avenue eighty-six feet to the North line of Fairmount Avenue, thence (4) Eastwardly in and along the said North line of Fairmount Avenue thirty-seven feet to the place of beginning. Known as #2211 Fairmount Avenue.

TOGETHER with a right of way for the party of the second part, his heirs, executors, administrators, tenants and servants, in over and along all

that certain strip of land bounded and described as follows:

BEGINNING at a point in the North line of Fairmount Avenue one hundred nine feet West of the Westerly line of Missouri Avenue, thence extending (1) Northwardly parallel with Missouri Avenue eighty-six feet, thence (2) Eastwardly parallel with Fairmount Avenue forty and twenty-five hundredths feet, thence (3) Northwardly parallel with Missouri Avenue four feet, thence (4) Westwardly parallel with Fairmount Avenue eighty-one and twenty-five hundredths feet, thence (5) Southwardly parallel with Missouri Avenue four feet, thence (6) Eastwardly with Fairmount Avenue thirty-seven feet, thence (7) Southwardly parallel with Missouri Avenue eighty-six feet to the North line of Fairmount Avenue, thence (8) Eastwardly in and along the North line of Fairmount Avenue four feet to the place of beginning.

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

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

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

AND the said William Frank Sooy, for himself, his heirs, executors and administrators, DOTH by these presents covenant, grant and agree to and with the said party of the second part, his heirs and assigns, that he the said William Frank Sooy, his heirs, all and singular the hereditaments and premises herein above described and granted, or mentioned and intended to be so, with the appurtenances, unto the said party of the second part, his heirs and assigns, against him the said William Frank Sooy, his heirs, and against all and every other person or persons whomsoever lawfully claiming or to claim the same, or any part thereof, SHALL and WILL WARRANT and forever DEFEND.

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

20 William Frank Sooy (Seal)
Hazel M. Sooy (Seal)
SIGNED, SEALED AND DELIVERED }
IN THE PRESENCE OF }
T. M. Davis

(Twenty-one dollars in revenue stamps affixed.)
(Stamped) ATLANTIC GUARANTY AND TITLE
INSURANCE CO.

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

30 BE IT REMEMBERED, that on this 1st day of June in the year of our Lord one thousand nine hundred and twenty-three (1923) before me, a Notary Public of New Jersey, personally appeared William Frank Sooy and Hazel M. Sooy who, I am satisfied are the grantors mentioned in the above deed or conveyance, and I having first made known to them the contents thereof they acknowledged that they signed, sealed and delivered the same as their

voluntary act and deed. All of which is hereby certified.

Thomas M. Davis,
Notary Public of N. J.
Com. expires June 13/26

App 4680/Blk. 159
853 6/2/23

DEED.

WILLIAM FRANK SOOY, et ux
to

10

HARRY ABRAMSON.

#2209 and 2211 FAIRMOUNT AVE.

DATED June 1st, 1923. Received in the Clerk's office of the County of Atlantic on the 2 day of June A. D. 1923 at 8 o'clock in the forenoon, and recorded in Book #714 of DEEDS for said County, on pages 63 &c.

Edwin A. Parker,

Clerk.

20

A. W. J.

(ATLANTIC GUARANTY AND
TITLE INSURANCE CO.)

In compliance with the statute I have presented an abstract of the within to the assessor of the taxing district therein mentioned.

EDWIN A. PARKER,

Clerk.

30

EXHIBIT C2, 6/10/24L.

ARTICLES OF AGREEMENT, MADE THIS Third day of April in the year of our Lord one thousand nine hundred and twenty-three BETWEEN William Frank Sooy, of the City of Atlantic City,

County of Atlantic, and State of New Jersey, party of the first part, and HARRY ABRAMSON, of the City of Atlantic City, County of Atlantic, and State of New Jersey, party of the second part; WITNESSETH, that the said party of the first part, for and in consideration of the sum of FORTY THOUSAND (\$40,000.00) DOLLARS to be paid and satisfied as hereinafter mentioned and also in consideration of the covenants and agreements hereinafter mentioned, made and entered into by the said party of the second part, does agree to and with the said party of the second part, that he the said party of the first part, will well and sufficiently convey to the said party of the second part, his heirs and assigns, by Deed of general warranty free from all incumbrances except as hereinafter mentioned on or before the First day of June, 1923 all that lot, tract, or parcel of land and premises hereinafter particularly described, situate, lying and being in the City of Atlantic City in the county of Atlantic and State of New Jersey.

All that certain premises known as the Alvin Apartments, and the Fairmount Apartments, situated on Fairmount Avenue between Missouri Avenue and Mississippi Avenue. The First Apartment house containing eight apartments; and the second Apartment house containing six apartments.

AND THE said party of the second part for himself, his heirs, executors and administrators, does covenant, promise and agree to and with the said party of the first part, his heirs, successors assigns, that he the said party of the second part, will pay and satisfy or cause to be paid and satisfied unto the said party of the first part, the said sum of FORTY THOUSAND (\$40,000.00) DOLLARS as and for the purchase money of the foregoing de-

scribed land and premises, in the following manner, that is to say:

Five thousand dollars on the signing of this agreement; receipt whereof is hereby acknowledged.

A ten-thousand-dollar Building & Loan Mortgage existing on the eight-family apartment house; also a two-thousand Purchase Money Mortgage to be placed on the final day of settlement.

An eight-thousand-dollar Building & Loan Mortgage existing on the six-family apartment house; also a two-thousand-dollar Purchase Money Mortgage to be placed on the final day of settlement. 10

The balance of thirteen thousand dollars to be paid in cash on the final day of settlement.

All adjustments to be made on the final day of settlement.

Settlement to be made at the Atlantic Guarantee & Title Co.

It is understood and agreed that a commission of \$200.00 be allowed by the party of the first part to the Commercial Realty Company. 20

AND IT IS FURTHER AGREED, by the parties to these presents, that the said party of the second part, himself, his heirs and assigns, may enter into and upon the said land and premises on the final day of settlement and from thence take the rents, issues and profits to himself and their use.

AND for the performance of all and singular the covenants and agreements aforesaid, the said parties do bind themselves and their respective heirs, executors and administrators, and they hereby agree to pay, upon failure to perform the same, the sum of _____ which they hereby fix and settle as liquidated damages thereof. 30

IN WITNESS WHEREOF, the said parties have

hereunto interchangeably set their hands and seals
the day and year first above mentioned.

Wm. Frank Sooy (Seal)

Harry Abramson (Seal)

SIGNED, SEALED AND DELIVERED }

IN THE PRESENCE OF }

T. M. Davis

STATE OF

COUNTY, } ss.

10 BE IT REMEMBERED, That on this
day of _____ in the year of our Lord
one thousand nine hundred and _____ before
me

personally appeared
who, I am satisfied, _____ the vendor mentioned in
the above deed or conveyance, and I having first
made known to _____ the contents thereof,
acknowledged that _____ signed, sealed
and delivered the same as _____ voluntary act and
20 deed. All of which is hereby certified.

STATE OF

COUNTY, } ss.

BE IT KNOWN, That on this
day of _____ one thousand nine hun-
dred and _____ before me, the subscriber, a
personally appeared
who, being by me duly
sworn according to law, did on his oath say that he
is the Secretary of the

30 the grantor mentioned in the foregoing indenture;
that he knows the seal of said Corporation; that the
seal affixed to the said Indenture is the common seal
of the said Corporation; that
is the _____ President of said Corporation and did
by its order sign, seal and deliver the said Indenture
as its voluntary act and deed, in the presence of said
deponent, pursuant to a resolution of the Board of

Directors of said Corporation; and that the said deponent did, at the execution thereof, subscribe his name as a witness thereto.

Sworn and subscribed before me }
the day and year aforesaid. }

AGREEMENT
FOR SALE OF LAND
WILLIAM FRANK SOOY
TO
HARRY ABRAMSON
DATED April 3, 1923

10

Received.....19...., and
Recorded in the.....
Office of.....County
at
in Book.....of.....
Folio

20

30

EXHIBIT C3, 6/10/24L.

WILLIAM I. SEGAL
Wholesale and Retail
FRUIT & PRODUCE

Atlantic and North Carolina Aves.

10 No. 10202 Atlantic City, N. J., Mar 31 1923 192
THE BOARDWALK NATIONAL BANK 55-146
Pay to the order of Harry Abramson \$5000.00/100
Five thousand00/100 Dollars
W. I. Segal

(Endorsed)

Harry Abramson
(Stamped on back)

For deposit to
Credit of

20 COMMERCIAL REALTY CO.
Pay to the order of
ANY BANK, BANKER OR TRUST CO.
All Prior Endorsements Guaranteed
APR. 4 1923
CHELSEA NATIONAL BANK
Atlantic City, N. J.
55-144 P. N. Bessor, Cashier
(Perforated)
PAID 4-4-23

EXHIBIT C4, 6/10/24L.

COMMERCIAL REALTY CO.

Insurance — Real Estate — Mortgages
2 S. North Carolina Ave. Segal Building
No. 2012 Atlantic City, N. J. Apr. 3 1923

Pay to the order of William Frank Sooy
\$5000 00/100

The Sum \$5000 and 00 cts. /100 Dollars 10

This check in settlement of the following account

Purchase of the Elvia and Fairmount apts. One
containing 8 apts & the other containing 6 apts.
\$40,000 for both.

Endorsement of this check by the payee will
acknowledge the correctness and receipt in full
of the account hereon shown and will release
accordingly.

If incorrect please return
COMMERCIAL REALTY CO. 20

Harry Abramson Thomas M. Davis
President President

To THE CHELSEA NATIONAL BANK,)
55-144 Atlantic City, N. J.)

(Endorsed)

William Frank Sooy
W. T. Sooy

(Stamped on back)

Pay to the order of
ANY BANK, BANKER OR TRUST CO. 30

All Prior Endorsements Guaranteed

APR 4 1923

EQUITABLE TRUST CO.

55-148 Atlantic City, N. J. 55-148

DENNIS E. KELLY, Treas.

(Perforated)

55-144 4*4*23

EXHIBIT C5, 6/10/24L.

COMMERCIAL REALTY CO.

Insurance — Real Estate — Mortgages
 2 S. North Carolina Ave. Segal Building
 No. 2159 Atlantic City, N. J., June 1 1923
 Pay to the order of Atlantic Guaranty and Title
 Insurance Co. \$15584.82/100

Fifteen thousand five hundred and eighty-four 82/
 10 100 Dollars

This check in settlement of the following account
 Settlement of 2209-11 Fairmont Ave properties.

Endorsement of this check by the payee will
 acknowledge the correctness and receipt in full
 of the account hereon shown and will release
 accordingly.

If incorrect please return
 COMMERCIAL REALTY CO.

20 Harry Abramson
 President

To THE CHELSEA NATIONAL BANK, {
 55-144 Atlantic City, N. J. }
 (Stamped on back)

For deposit in
 THE ATLANTIC SAFE DEPOSIT & TRUST CO.
 Atlantic City,
 To the credit of

ATLANTIC GUARANTY &
 TITLE INSURANCE COMPANY

30 Pay to the Order of
 ANY BANK OR TRUST CO.
 Prior Endorsements Guaranteed

JUN 4 1923
 THE ATLANTIC SAFE DEPOSIT & TRUST CO.
 Atlantic City, N. J.

55-140 JOS. B. SMITH, Treasurer
 (Perforated)
 55-144 *6*4*23

EXHIBIT C6, 6/10/24L.

ATLANTIC GUARANTY AND TITLE INSURANCE COMPANY
Atlantic City, New Jersey

STATEMENT OF SETTLEMENT

Between W. Frank Sooy, Seller and Harry Abramson, purchaser, as of June 1, 1923. 10

Under application No. 4680 affecting premises situate 2209-2211 Fairmount Ave.

Consideration	\$40,000.00	
Water at \$145—Paid to 8/1	24.16	
Sewer at \$77.61—Paid to 10/1	25.87	
Insurance 18,000 prem. 779.22 to 9/23/26		
—5 yrs.	515.95	
4,000 prem. 85.00 to 5/10/26		
3 yrs.	83.40	
Taxes 704.48 to 6/30	58.70	20

\$40,708.08

Paid on a/c	5000.00	
Mortgage B & L—\$10,000 now red.	8594.60	
B & L—8,000 now red	6875.68	
Mtgs.—\$2000 each	4000.00	
Int. pr. 5/10	13.34	
Taxes \$448.44	448.44	
Cr. Commission	100.00	30
Rent Credit	139.20	
Bal. Due Seller	15536.82	
	<hr/>	
	40,708.08	
	<hr/>	

Complainant's Exhibits

Bal. Due Seller as shown	\$15,536.82
Rec Deed	3.00
Policy	45.00
	<hr/>
	15,584.82
	448.44
	<hr/>
	\$16,033.26

10 The above statement is hereby approved and settlement thereunder authorized

ATLANTIC GUARANTY AND
TITLE INSURANCE COMPANY
Real Estate and Law Building
Atlantic City, N. J.
STATEMENT OF SETTLEMENT
Between

20 EXHIBIT C7, 6/10/24L.

Atlantic City, N. J., June 1, 1923
THE CHELSEA NATIONAL BANK
Atlantic City, N. J.

Pay to the order of ATLANTIC GUARANTY
AND TITLE INSURANCE CO. Four Hundred and
Forty-Eight 44/100 Dollars

COUNTER CHECK
COMMERCIAL REALTY CO.

30 Harry Abramson
President

\$448.44

(Perforated)
55-144 6*4*23
(Stamped on back)

FOR DEPOSIT IN
The Atlantic Safe Deposit & Trust Co.,
Atlantic City
To the credit of
ATLANTIC GUARANTY &
TITLE INSURANCE COMPANY
Pay to the Order of
ANY BANK OR TRUST CO.
Prior Endorsements Guaranteed
JUN 4 1923 10
THE ATLANTIC SAFE DEPOSIT & TRUST CO.
55-140 Atlantic City, N. J.
JOS. B. SMITH, Treasurer

EXHIBIT C8, 6/10/24L.

THIS INDENTURE, MADE THE First day of June in the year of our Lord one thousand nine hundred and Twenty-three. 20

BETWEEN WILLIAM FRANK SOOY and HAZEL M. SOOY, his wife, of the City of Atlantic City, County of Atlantic and State of New Jersey of the first part, and HARRY DAVIS, of the City, County and State aforesaid, of the second part:

WITNESSETH, That the said party of the first part, for and in consideration of the sum of One Hundred (\$100.00) Dollars and other good and valuable consideration lawful money of the United States of America, well and truly paid by the said party of the second part to the said party of the first part, at and before the ensealing and delivering of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, encoffed, released, conveyed and confirmed, and by these presents doth grant, bargain, sell, alien, en- 30

feoff, release, convey and confirm, unto the said party of the second part, his heirs and assigns, ALL that certain lot, tract, or parcel of land and premises situate, lying and being in the City of Atlantic City, County of Atlantic and State of New Jersey, bounded and described as follows:—

BEGINNING at a point one hundred fifty feet North from the Northerly line of Fairmount Avenue, measured at right angles thereto and fifty feet
 10 West from the Westerly line of Missouri Avenue, measures at right angles thereof, and extending thence (1) Southwardly parallel with Missouri Avenue, sixty feet; thence (2) Westwardly parallel with Fairmount Avenue one hundred feet; thence (3) Northwardly parallel with Missouri Avenue sixty feet; thence (4) Eastwardly parallel with Fairmount Avenue one hundred feet to the place of beginning. Known as #2204, 2208, 2210, 2212, 2214 and 2216 Ingersoll Terrace.

20 TOGETHER with a right of way for the party of the second part, his heirs, executors, administrators, tenants and servants, in over and along that certain strip of land bounded and described as follows:

BEGINNING at a point in the North line of Fairmount Avenue, one hundred nine feet West of the Westerly line of Missouri Avenue, thence extending (1) Northwardly parallel with Missouri Avenue eighty-six feet, thence (2) Eastwardly parallel with Fairmount Avenue forty and twenty-five hundredths
 30 feet; thence (3) Northwardly parallel with Missouri Avenue four feet; thence (4) Westwardly parallel with Fairmount Avenue eighty-one and twenty-five hundredths feet; thence (5) Southwardly parallel with Missouri Avenue four feet; thence (6) Eastwardly parallel with Fairmount Avenue, thirty-seven feet; thence (7) Southwardly parallel with Missouri Avenue eighty-six feet to the North line of Fair-

mount Avenue; thence (8) Eastwardly in and along the North line of Fairmount Avenue, four feet to the place of beginning.

TOGETHER with all and singular, the buildings improvements, woods, ways, rights, liberties, privileges, hereditaments and appurtenances, to the same belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and the profits thereof, and of every part and parcel thereof: 10

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

TO HAVE AND TO HOLD the said premises, with all and singular the appurtenances, unto the said party of the second part, his heirs and assigns, to the only proper use, benefit and behoof of the said party of the second part, his heirs and assigns forever. 20

AND the said William Frank Sooy, for himself, his heirs, executors and administrators, DOTH by these presents covenant, grant and agree to and with the said party of the second part, his heirs, and assigns, that he, the said William Frank Sooy, his heirs, all and singular the hereditaments and premises herein above described and granted, or mentioned and intended to be so, with the appurtenances, unto the said party of the second part, his heirs and assigns, against him the said William Frank Sooy, his heirs, and against all and every other person or persons whomsoever lawfully claiming or to claim the same, or any part thereof, SHALL and WILL WARRANT and forever DEFEND. 30

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

William Frank Sooy (Seal)

SIGNED, SEALED AND DELIVERED }
IN THE PRESENCE OF }
T. M. Davis

Hazel M. Sooy (Seal)

10

(Three dollars in revenue stamps affixed.)
(ATLANTIC GUARANTY AND TITLE
INSURANCE CO.)

STATE OF New Jersey }
Atlantic COUNTY, } ss.

20

BE IT REMEMBERED, that on this First day of June in the year of our Lord one thousand nine hundred and twenty-three before me, a Notary Public of New Jersey, personally appeared William Frank Sooy, and Hazel M. Sooy, his wife, who, I am satisfied are the grantors mentioned in the above deed or conveyance, and I having first made known to them the contents thereof they acknowledged that they signed, sealed and delivered the same as their voluntary act and deed. All of which is hereby certified.

Thomas M. Davis

Notary Public of N. J.

Com. expires June 13/26

30

App. 4680/159

852 6/2/23

DEED.
WILLIAM FRANK SOOY, et ux
to

HARRY DAVIS,
2204, 2206, 2208, 2210, 2212, 2214, and
2216 Ingersoll Terrace

Dated June 1st, 1923,

Received in the Clerks office of the
County of Atlantic on the 2 day of June
A. D. 1923 at 8 o'clock in the forenoon,
and recorded in Book #714 of DEEDS
for said County, on pages 61 &c.

10

Edwin A. Parker,
Clerk, A. A. J.

ATLANTIC GUARANTY AND
TITLE INSURANCE CO.

In compliance with the statute I have presented
an abstract of the within to the assessor of the tax-
ing district therein mentioned.

EDWIN A. PARKER,

20

Clerk.

EXHIBIT C9, 6/10/24L

ATLANTIC GUARANTY AND TITLE INSUR-
ANCE COMPANY
Atlantic City, New Jersey

STATEMENT OF SETTLEMENT

Between W. Frank Sooy, Seller and Harry Davis,
as of 19

Under application No. 4680 affecting premises sit-
uate 2204-16 Ingersoll Terrace.

Consideration 10000.00

Water at \$35 —Paid to Aug. 1 5.83

30

Sewer at \$32.90—Paid to Oct 1	10.96
Insurance \$1000 Prem. 28.05 to 5/10/26—3 yrs.	27.55
Insurance \$7000 Prem. 303.22 to 9/23/26—3 yrs.	200.82
Taxes 192.40 to June 30	16.04

\$10261.20

Paid on a/c	1000.00
10 Mortgage B & L \$7000—now	6016.22
Mtg.	1000.00
Int. fr May 10	3.34
Rent cr	14.88
Bal. due as shown	2226.76
	<hr/>
	10261.20

Bal due as shown	2226.76
Rec deed	3.00
20 Policy	45.00

\$2274.76

The above statement is hereby approved and settlement thereunder authorized

ATLANTIC GUARANTY AND
TITLE INSURANCE COMPANY

Real Estate and Law Building

Atlantic City, N. J.

STATEMENT OF SETTLEMENT

30

Between

EXHIBIT C10, 6/10/24L.

ARTICLES OF AGREEMENT, MADE THIS
Second day of April in the year of our Lord one

thousand nine hundred and twenty-three BETWEEN William Frank Sooy of the City of Atlantic City, County of Atlantic, and State of New Jersey, party of the first part, and Harry Davis of the City of Atlantic City, County of Atlantic, and State of New Jersey, party of the second part; WITNESSETH, that the said party of the first part, for and in consideration of the sum of TEN THOUSAND DOLLARS (\$10,000.00) to be paid and satisfied as hereinafter mentioned and also in consideration of the covenants and agreements hereinafter mentioned, made and entered into by the said party of the second part, doth agree to and with the said party of the second part, that he the said party of the first part, will well and sufficiently convey to the said party of the second part, his heirs and assigns, by Deed of general warranty free from all incumbrance except as hereinafter mentioned on or before the First day of June, 1923 all that lot, tract, or parcel of land and premises hereinafter particularly described, situate, lying and being in the City of Atlantic City in the county of Atlantic and State of New Jersey

10

20

Consisting of seven houses; five two story brick houses, and two two story frame houses; located at Fairmount and Missouri Aves., Atlantic City, N. J.

AND the said party of the second part for his heirs, executors and administrators, doth covenant, promise and agree to and with the said party of the first part, his heirs, successors assigns, that he the said party of the second part, will pay and satisfy or cause to be paid and satisfied unto the said party of the first part, the said sum of Ten Thousand Dollars (\$10,000.00) as and for the purchase money of the foregoing described land and premises, in the following manner, that is to say:

30

One thousand dollars on the signing of this agreement; receipt whereof is hereby acknowledged.

Subject to a \$7000.00 Building & Loan Mortgage now existing on the said premises.

All adjustments as of the day of final settlement.

Settlement to be made at the Atlantic Guarantee & Title Co.

It is also agreed and understood that the Commercial Realty Co. is to receive a commission of \$100.00 for effecting the above sale, from the party of the first part.

A purchase money mortgage for \$1000.00 and the balance of \$1000.00 in cash on the final day of settlement.

AND IT IS FURTHER AGREED, by the parties to these presents, that the said party of the second part, his heirs and assigns, may enter into and upon the said land and premises on the final day of settlement and from thence take the rents, issues and profits to himself, his and their use.

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

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

SIGNED, SEALED AND DELIVERED }

IN THE PRESENCE OF }

William Frank Sooy (Seal)

Harry Davis (Seal)

STATE OF

COUNTY, }

BE IT REMEMBERED, That on this day of in the year of our Lord one thousand nine hundred and before me

personally appeared who, I am satisfied, the vendor mentioned in the above deed or conveyance, and I having first made known to the contents thereof, 10

acknowledged that signed, sealed and delivered the same as voluntary act and deed. All of which is hereby certified.

STATE OF

COUNTY, } ss.

BE IT KNOWN, That on this day of one thousand nine hundred and before me, the subscriber, a

personally appeared 20 who, being by me duly sworn according to law, did on his oath say that he is the Secretary of the the grantor

mentioned in the foregoing indenture; that he knows the seal of said Corporation; that the seal affixed to the said Indenture is the common seal of the said Corporation; that

is the President of said Corporation and did by its order sign, seal and deliver the said Indenture as its voluntary act and deed, in the presence of said deponent, pursuant to a resolution of the Board of Directors of said Corporation; and that the said deponent did, at the execution thereof, subscribe his name as a witness thereto. 30

Sworn and subscribed before me }
the day and year aforesaid. }

AGREEMENT
FOR SALE OF LAND
WILLIAM FRANK SOOY

TO

HARRY DAVIS

Dated April 2, 1923

10 Received.....19...., and
Recorded in the.....
Office of.....County
at
in Book.....of.....
Folio

I hereby assign all my right, title, and interest, of
this agreement to Robert Wood, for thirteen hun-
dred dollars, (\$1,300.00).

Witness Harry Abramson (Seal)

20 I hereby assign all my right, title, and interest,
of this agreement to Harry Abramson, for seven-
teen hundred dollars, (\$1,700.00).

Witness Dorothy Zendler (Seal)

EXHIBIT C11 6/10/24L.

ATLANTIC GUARANTY AND TITLE INSUR-
ANCE COMPANY

30 Atlantic City, New Jersey

STATEMENT OF SETTLEMENT

Between Lewis Silbert, and Wm. Frank Sooy, as of
May 10 1923

Under application No. 4680 affecting premises sit-
uate

Complainant's Exhibits 205

Consideration	40000.00	
Water at \$145—Paid to Aug—1	32.22	
Sewer at \$70.40—Paid to Oct—1	27.38	
Insurance 25,000 Prem \$1082.44 to 9/23/26—5 years.	729.43	
	40789.03	
Paid on a/c	5000.00	
Mortgage P. M. 3	5000.00	
B & L Mtg. 25000 now	21470.00	10
Taxes 896.88	123.87 (200.17)	
Rev. stps.	19.00	
Comm. Philip Goldstein	400.00	
Comm. Wm. Frank Sooy	400.00	
Rent cr.	84.47	
Bal. due seller	8291.69	
	40789.03	

The above statement is hereby approved and settlement thereunder authorized 20

ATLANTIC GUARANTY AND
TITLE INSURANCE COMPANY
Real Estate and Law Building
Atlantic City, N. J.
STATEMENT OF SETTLEMENT
Between

EXHIBIT C11, 10/14/24L. 30

ARTICLES OF AGREEMENT, MADE THIS Seventeenth day of September in the year of our Lord one thousand nine hundred and twenty-three. (1923).

BETWEEN HARRY ABRAMSON, trading as the Commercial Realty Co., of the City of Atlantic

City, County of Atlantic, and State of New Jersey, party of the first part, and HARRY DAVIS, of the said City of Atlantic City, County of Atlantic, and State of New Jersey, party of the second part, WITNESSETH, That the said party of the first part, for and in consideration of the sum of TWELVE THOUSAND (\$12,000.00) DOLLARS, to be paid and satisfied as hereinafter mentioned and also in consideration of the covenants and agreements hereinafter mentioned, made and entered into by the said party of the second part, does agree to and with the said party of the second part, that he the said party of the first part, will well and sufficiently convey to the said party of the second part heirs and assigns by Deed or general warranty, excepting as may be hereinafter mentioned free from all encumbrance on or before the Seventeenth day of December, 1923, all that lot, tract, or parcel, of land and premises hereinafter particularly described, situate, lying and being in the City of Atlantic City in the county of Atlantic and state of New Jersey, bounded and described as follows:—

BEGINNING at a point in the Westerly line of Virginia Avenue, three hundred feet Northwardly from the Northerly line of Arctic Avenue, and extending thence (1) Northwardly, in and along the Westerly line of Virginia Avenue, twenty-five feet; thence (2) Westwardly, parallel with Arctic Avenue, one hundred and sixty-five feet to the Easterly line of Presbyterian Avenue; thence (3) Southwardly, in and along the Easterly line of Presbyterian Avenue, twenty-five feet and thence (4) Eastwardly, parallel with Arctic Avenue, one hundred and sixty-five feet to the Westerly line of Virginia Avenue, and the place of beginning, being known and designated as No. 122 North Virginia Avenue.

AND the said party of the second part, for himself, his heirs, executors, and administrators, does covenant, promise and agree to and with the said party of the first part, his heirs, and assigns, that he the said party of the second part will pay and satisfy or cause to be paid and satisfied unto the said party of the first part, the said sum of TWELVE THOUSAND DOLLARS (\$12000.00) DOLLARS as and for the purchase money of the foregoing described land and premises, in the following manner, that is to say: 10

- \$1,000.00 One Thousand Dollars in cash on the signing of this Agreement, the receipt whereof is hereby acknowledged;
- \$5,000.00 Five thousand Dollars by the assumption of a Building and Loan mortgage in said amount, which mortgage has been running from March, Nineteen hundred twenty-one (1921);
- \$3,000.00 Three thousand Dollars by the assumption of a second mortgage in said amount which mortgage will expire in five years from the year Nineteen Hundred Twenty-one, (1921) May 13th, and the balance of 20
- \$3,000.00 Three Thousand Dollars in cash on the day of final settlement as hereinafter mentioned.
- Settlement to be made at the Atlantic Guaranty and Title Insurance Company. All adjustments to be made as of the date of final settlement. 30
- Time is to be considered the essence of this agreement.

It is hereby agreed that the present rental on the house facing Virginia Avenue is One hundred dollars (\$100.00) per month and the rental on the two houses facing Presbyterian Avenue is Twenty-five

dollars (\$25.00) each per month. Above described property is purchased subject to present tenancy.

AND IT IS FURTHER AGREED, by the parties to these presents, that the said party of the second part, his heirs and assigns, may enter into and upon the said land and premises on the final day of settlement and from thence take the rents, issues and profits to himself, his and their use.

- 10 AND for the performance of all and singular the covenants and agreements aforesaid, the said parties do bind themselves and their respective heirs, executors and administrators; and they hereby agree to pay, upon failure to perform the same, the sum of which they hereby fix and settle as liquidated damages therefor.

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

Commercial Realty Co. (Seal)

Harry Abramson

Harry Davis (Seal)

SIGNED, SEALED AND DELIVERED }

IN THE PRESENCE OF }

Dorothy Zendler

STATE OF

COUNTY, } ss.

- 30 BE IT REMEMBERED that on this day of in the year of our Lord one thousand nine hundred and twenty- before me, personally appeared, who, I am satisfied the vendor mentioned in the above deed or conveyance, and I

having first made known to the contents thereof,
acknowledged that

signed, sealed and delivered the same as voluntary
act and deed. All of which is hereby certified.

For the consideration of one thousand dollars
(\$1000.00) I, Harry Davis, hereby assign all my
right, title, and interest in the premises known as
122 N. Virginia Avenue, Atlantic City, N. J., and
the premises in the rear of the same to Meyer Davis
both parties being of the City of Atlantic City, N. J. 10

Signed Harry Davis (Seal)

Dated 17th Sept. 1923

Witness Meyer Davis (Seal)

AGREEMENT

FOR SALE OF LAND

HARRY ABRAMSON, trading as
the Commercial Realty Co.

to

HARRY DAVIS

Dated September 17, 1923 20

Received.....192....., and
Recorded in the.....
Office of.....County,
at
in Book.....of.....
Folio

EXHIBIT C12, 6/10/24L. 30

GOLDSTEIN REALTY CO.

5213 Atlantic Ave. Atlantic City, New Jersey.

This agreement made this thirty-first day of
March, nineteen hundred and twenty-three between
Frank Sooy of Atlantic City, County of Atlantic and
State of New Jersey, and Lewis Silbert, and Bella

Silbert (her mark), his wife of the City of Harrisburg, and State of Pennsylvania, (hereinafter designated as the vendee) Witnesseth, that the vendor hereby agrees to sell and convey and the vendee hereby agrees to purchase, all that lot and parcel of land and premises situated in the City of Atlantic City, County of Atlantic, and State of New Jersey, located and known as follows:—

- Fairmount Ave near Missouri Ave. consisting of
- 10 two brick apartment houses, known as "The Fairmount" & "The Alva," one apartment house consisting of eight apartments of six rooms & bath each and the other apartment house consisting of six apartments of five rooms & bath each also seven rear houses, five brick & two frame, for the sum of Forty thousand dollars (\$40,000.00) payable as follows:— Five thousand dollars (\$5000.00) deposit, upon signing of this contract, receipt of which is hereby acknowledged, assumption of a Twenty-five
- 20 thousand dollar Building & Loan Mortgage now being held on said property; purchase money mortgage to be given by the vendor to the vendee for Five thousand dollars, for three years from the day of settlement, at the rate of 6%, Cash of five thousand dollars (\$5000.00) upon the day of settlement also the back stock of the Bldg & Loan Association to be paid on day of settlement to Mr. Silbert to be on or before the first day of June, nineteen hundred and twenty-three, at the Atlantic Guarantee & Title
- 30 Co. Atlantic City, New Jersey.

And the vendor hereby agrees to deliver or cause to be delivered to the vendee a general warranty deed, properly executed and acknowledged, conveying said premises in fee simple, free and clear of all encumbrances, except as above stated. Said deed is to be delivered and final settlement to be made at

the office of the Atlantic Guarantee & Title Co. Atlantic City, New Jersey, at which time the taxes, sewerage, water rents, interest on mortgages and fire insurance, if any, are to be adjusted; taxes for the current year to be computed on the basis of the Tax Year extending from January to January.

Commission of two per cent of the purchase price to be paid to Philip Goldstein, as agent, on the final day of settlement, by the vendor. In witness whereof, the said parties to these presents have hereunto set their hands and seals the day and year first above written.

x Lewis Silbert

x Bella Silbert

(her mark)

W. Frank Sooy

Sealed and delivered
in the presence of
Philip Goldstein

20

EXHIBIT C13, 6/10/24L.

Spec. inst. MAR 31 1923

Filing time 959 A M Trunk L D

FROM

Place ATLANTIC CITY State

Tel. No. Mrn. 1844

Person Davis

30

TO

Place BAL State Md

Tel. No. Plaza 5747 Note if Collect

Person Abrahamson

Address Name or Address Abrahamson & Ohner

Relesatg

Toll center	Route	
Received	M 3 Mins.	Class
Passed	M This line	
Operator	Other line P	
Dir. Opr. 40	Report	
Recorder 48	Messenger	

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EXHIBIT C14, 6/10/24L.

STATEMENT

Bell Phone 2156-W

Atlantic City, N. J., May 31st 1923

J. H. LEEK

Realtor

RENT COLLECTING A SPECIALTY

22 S. Tennessee Avenue

TO Thomas Davis DR.

20

Apartment 2209 Fairmount Ave

Maryott No 1 Apartment	Paid	\$30.
Plankert No 2	"	30.
Mercer No 3	"	30.
Peters No 4	"	30.
Elbertson No 5	"	30.
Mcdonel No 6	"	30.
Campenella No 7	"	20.
String No 8	"	15.

No 2211 Fairmount

30

Baum No 3 Apartment	"	27.
Ireland No 4	"	27.
Agates No 5	"	27.
Gallo No 6	"	27.
Sooy 2204 Ingersol Terrace	"	10.
Hickman 2206	" " "	21.

Complainant's Exhibits

213

Schelrossa 2208	“	“	“	20.	
Daniels 2210	“	“	“	20.	
Syracusa 2212	“	“	“	20.	
Devine 2214	“	“	“	20.	
Scheloge 2216	“	“	“	15.	
					\$449.
				5% Com	22.45
				B L Dues	290.
				Janitors	25.
				Gas Bills	10.65
					348.10
					10
				Check	\$100.90

EXHIBIT C15, 6/10/24L.

Atlantic City, New Jersey March 31, 1923.
 The Goldstein Realty Co. by Philip Goldstein,
 hereby agrees to pay to Frank Sooy, one and a half 20
 percent of the commission (\$600.00) on the sale of
 North Side property known as "The Alva Apart-
 ments" & "The Fairmount Apartments" & seven
 rear houses, located on Fairmount Ave near Mis-
 souri Ave. Atlantic City, New Jersey, to be paid on
 the final day of settlement, on or before the first day
 of June, nineteen hundred and twenty three.

1921 North 22nd St.

Harrisburg Pa

Lewis Silbert

30

EXHIBIT C16, 6/10/24L.

55-148

NUMBER

EQUITABLE TRUST COMPANY

Atlantic City, N. J. 3-31-1923

Pay to the order of Lewis Silbert \$5000—Five
Thousand Dollars

10

D B Iden

W. F. Sooy.

(Endorsed)

Lewis Silbert

(Stamped on back)

Pay to GIRARD NAT'L. BANK,

Philadelphia, Pa., State

Prior Endorsements Guaranteed

CENTRAL TRUST COMPANY

Harrisburg, Pa.

H. O. MILLER, Treas.

20

Pay to the order of

Nat'l. Reserve Bank of Philadelphia

Prior endorsements guaranteed

THIRD NATIONAL BANK, PHILADELPHIA,

13 APR 3 1923 3-13

Pay to the order of

ANY BANK, BANKER OR TRUST CO.

Prior endorsements guaranteed

Federal Reserve Bank of Philadelphia

Pay to the order of

30

ANY BANK, BANKER OR TRUST CO.

All Prior Endorsements Guaranteed.

(Perforated)

*4*23

EXHIBIT C17, 6/10/24L.

HARRY DAVIS

Meats and Groceries, Dressed Poultry
a Specialty

246 N. North Carolina Ave.

55-144

Number 269

THE CHELSEA NATIONAL BANK

10

Atlantic City, N. J. April 2 1923

Pay to the order of Frank Sooy \$1000.00 One
Thousand Dollars

Dep on Purchase 7 House 5 Brick 2 Frame

Harry Davis

(Endorsed)

Frank Sooy

W. F. Sooy

Pay to the order of

ANY BANK, BANKER OR TRUST CO.

20

All Prior Endorsements Guaranteed

APR 4 1923

EQUITABLE TRUST CO.

55-148 Atlantic City, N. J. 55-148

DENNIS E. KELLY, Treas

(Perforated)

55-144 *4*4 23

30

EXHIBIT C17.

W. FRANK SOOY

Number

Counselor-at-law

395

Atlantic City, N. J. 6-2 1923

Pay to the order of Thos. M. Davis \$5030.12/100

Five thousand thirty & 12/100.....Dollars
 IN PAYMENT OF

W. F. Sooy

To the **EQUITABLE TRUST COMPANY** }
 55-148 Atlantic City, N. J. }

(Endorsed)

Thos M Davis

Pay to the order of

ANY BANK, BANKER OR TRUST CO.

10 All Prior Endorsements Guaranteed

JUN 4 1923

CHELSEA NATIONAL BANK

55-144 Atlantic City, N. J. 55-144

P. N. BESSOR, Cashier.

(Perforated)

PAID *6*4 23

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EXHIBIT D1, 10/31/23

Abramson v. Davis 11/1/23

D-2-W D A

ARTICLES OF AGREEMENT made the 30th day of April, 1923, between THOMAS M. DAVIS of the City of Atlantic City, County of Atlantic, State of New Jersey, party of the first part, and HARRY ABRAMSON, of the same place, party of the second part, as follows:

30 WHEREAS, the said parties above named have on the 24th day of April, 1923, dissolved the partnership subsisting between them by virtue of a verbal agreement made on the 4th day of October, 1922, and

WHEREAS, the said parties above named are each to conduct the real estate and insurance business in all branches, and

WHEREAS, the said Harry Abramson is to conduct his said business in the name of the Commercial Realty Company, at 2 South North Carolina Avenue, Atlantic City, New Jersey, and

WHEREAS, there is now pending a suit for commissions due the Commercial Realty Company from Seward G. Dobbins, which said commissions amount to Ten Hundred Fifty Dollars (\$1050) for the sale of premises at 18 South Virginia Avenue, Atlantic City, New Jersey, and

10

WHEREAS, there is now due to the Commercial Realty Company the sum of Four Hundred Eighty Dollars (\$480) for commission for the sale of premises known as 28 North Virginia Avenue, Atlantic City, New Jersey, which said commissions are payable on the 15th day of June, 1923, and

WHEREAS, there is due to the Commercial Realty Company, the sum of Three Hundred Dollars (\$300) for commissions for the sale of premises on Fairmount Avenue, Atlantic City, New Jersey, which said commissions are payable on the first day of June, 1923, and

20

WHEREAS, there is now pending in the Court of Chancery, a suit involving the premises at 166 South Pennsylvania Avenue, Atlantic City, New Jersey;

Now, therefore, it is agreed by and between the parties hereto, that the said Harry Abramson shall carry on his business at 2 South North Carolina Avenue, Atlantic City, New Jersey, in the name of the Commercial Realty Company and that the said Thomas M. Davis shall not use this said name. It is further understood that if the Court shall decide that there are commissions due to the Commercial Realty Company or to Thomas M. Davis in whose name suit was instituted for the Commercial Realty Company against Seward G. Dobbins, then the

30

amount which shall be due, less counsel fees, shall be divided equally between the parties to this agreement. It is further understood that all of the commissions due from the sale of premises at 28 North Virginia Avenue, and Fairmount Avenue, Atlantic City, New Jersey, shall be divided equally between the parties hereto on the day that these said commissions become due. It is further understood and agreed by and between the parties hereto, that if

10 there shall be any moneys coming due to the Commercial Realty Company or to Thomas M. Davis, or to Harry Abramson, individually, by reason of the decision of the Court of Chancery, in the matter involving the premises at 166 Pennsylvania Avenue, Atlantic City, New Jersey, then this sum of money shall be divided equally between the parties hereto. It is further understood and agreed by and between the parties hereto that the mortgages now held by the Commercial Realty Company or by Thomas M.
20 Davis for the Commercial Realty Company, shall be divided equally between the parties hereto and that the sum of _____ shall be paid to Harry Abramson by Thomas M. Davis, by reason of the fact that the amounts involved in said mortgages make it impossible to have them divided equally.

It is further understood and agreed by and between the parties hereto that should it be necessary for either of the parties to assign to the other party any
30 mortgage at any time hereafter, that they shall so assign said mortgage when it becomes necessary.

It is further understood and agreed by and between the parties that all of the assets of the Commercial Realty Company shall be divided equally after expenses have been paid and that said assets are to be divided as of the 24th day of April, 1923.

In WITNESS whereof the said parties hereto have hereunto set their hands and seals the day and year first above written.

Thomas M. Davis (L. S.)
Harry Abramson (L. S.)

Signed, sealed and delivered in the presence of
Isadore Sacks

10

EXHIBIT D2, 6/10/24L.

May 24, 1923.

Mr. Harry Abramson,
Segal Building,
Atlantic City, N. J.

Dear Sir:

I find that the amount of actual cash you will need to make settlement on the Fairmount Avenue apartments will be roughly \$16,500, and that Mr. Davis will need \$2100.

20

I have thought over the matter of postponing the Davis settlement for thirty days, but cannot see how I can do so without causing myself a great deal of embarrassment. I have made arrangements and promises based on this settlement, and do not feel as if I could withdraw from the promises.

I will give you further details on Friday, after I have gotten the complete Building & Loan statement.

30

Very truly yours,

WFS a

EXHIBIT D6.

	W. FRANK SOOY	Number
	Counselor-at-Law	378
	Atlantic City, N. J. May 10 1923	
	Pay to the order of ATLANTIC GUARANTY AND TITLE INSURANCE CO. \$8894.49	
10	Eight thousand eight hundred and ninety-four 49/100Dollars	
	In payment of.....	
	W. F. Sooy	
	To the EQUITABLE TRUST COMPANY }	
	55-148 Atlantic City, N. J. }	
	FOR DEPOSIT	
	To the Credit of	
	Atlantic Guaranty and Title Insurance Co.	
	(Perforated)	
20	PAID *5 11 23	

DEFENDANT'S EXHIBIT NO. 7.

	W. FRANK SOOY	Number
	Counselor-at-Law	396
	ATLANTIC CITY, N. J. 6-2-1923	
	Pay to the Order of E. D. Rightmire	\$30 00/100
	Thirty & 00/100.....	DOLLARS
30	IN PAYMENT OF	
	W. F. Sooy	
	To the EQUITABLE TRUST COMPANY }	
	55-148 ATLANTIC CITY, N. J. }	

(Endorsed)

E. D. Rightman

(Stamped on back)

PAY ANY BANK OR BANKER
OR ORDER

All Prior Endorsements Guaranteed

55-145 JUN 11 1923 55-145

MARINE TRUST CO.

Atlantic City, N. J.

Ernest A. Lord, Sec. & Treas.

10

(Perforated)

PAID 6 11 23

DEFENDANT'S EXHIBIT NO. 8.

ATLANTIC GUARANTY AND TITLE
INSURANCE COMPANY

Atlantic City, New Jersey

20

STATEMENT OF SETTLEMENT

Between Lewis Silbert and William Frank Sooy,
as of May 10th, 1923,

Under application No. 4680 affecting premises situ-
ate

Consideration	40,000.00	
Water at \$145.00 Paid to	32.22	
Sewer at \$ 70.40 Paid to October 1st,	27.38	
Insurance & Tornado Ins. \$25000 prem. 1082.44 to 9/23/26—5 yrs.	729.43	30
	<hr/>	
	40,789.03	

Water 2209—\$146.61

rear— 175.79

Paid on a/c

5,000.00

Mortgage P. M. (3)

5,000.00

Bldg. & Loan Mortgage, \$25,000		
now reduced	21,470.00	
Taxes, \$896.88	123.87	
Rent Credit,	84.47	
Balance due seller,	9,110.69	
	<hr/>	
	40,799.03	
Balance due seller as shown,		9,110.69
Recording Deed,		3.00
10 Recording 3 mortgages,		5.25
Title Policy		45.00
Revenue Stamps,		2.50
Drawing 3 mortgages,		15.00
Fire Insurance,		113.05
		<hr/>
		9,294.49
	Commissions,	400.00
	Pd. \$8,894.49	
	Goldstein	10.00
		<hr/>
20 Atlantic Guaranty and Title Insurance C.		8904.49
	E. B. Mitchell	
	Asst. Sec.	

THE ABOVE STATEMENT IS HEREBY APPROVED AND SETTLEMENT THEREUNDER AUTHORIZED

200.00 due us on
Taxes

\$300.00

Due us

ATLANTIC GUARANTY AND
TITLE INSURANCE COMPANY

Real Estate and Law Building
Atlantic City, N. J.

STATEMENT OF SETTLEMENT

Between

EXHIBIT D9, 6/17/24L.

W. E. MATHIS & CO. No. 4787

J. H. LEEK, Mgr.

REALTOR 22 S. Tennessee Avenue

ATLANTIC CITY N. J. May 31 1923

Pay to the order of Tom Davis \$100.00

One hundred 00/100.....DOLLARS

IN PAYMENT OF Rents 10

J. H. Leek

THE CHELSEA NATIONAL BANK,

55-144 ATLANTIC CITY, N. J.

(Endorsed)

Tom Davis

by W. F. Sooy, Atty.

W. F. Sooy

(Stamped on back)

Pay to the order of

ANY BANK, BANKER OR TRUST CO. 20

All Prior Endorsements Guaranteed

JUN 4 1923

EQUITABLE TRUST CO.

55-148 Atlantic City, N. J. 55-148

Dennis E. Kelly, Treas.

(Perforated)

55-144 *6*4 23

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NEW JERSEY COURT OF ERRORS
AND APPEALS.

Between
HARRY ABRAMSON,
Complainant-Respondent,
and
THOMAS M. DAVIS,
Defendant-Appellant.

Between
HARRY ABRAMSON,
Complainant-Appellant,
and
THOMAS M. DAVIS,
Defendant-Respondent.

ON APPEAL FROM CHANCERY.

BRIEF OF BOURGEOIS & COULOMB,
SOLICITORS FOR THOMAS M.
DAVIS.

STATEMENT.

The bill in the above stated cause was filed on or about the 2nd day of October, 1923.

The bill alleges that Abramson, complainant, and Davis, defendant, on and prior to the 31st day of March, 1923, were partners in the real estate business.

The testimony shows that the partnership was carried on under the name of Commercial Realty Company.

The testimony also shows that the partners purchased and held real estate individually.

The bill alleges that on the 30th day of March, 1923, Abramson left Atlantic City and went to Baltimore, and on the next day he was called on the telephone by Davis, defendant, and informed that he, Davis, was about to purchase a property for him, Abramson, which W. Frank Sooy had in charge, representing an estate, for the price of \$40,000, and that an initial deposit of \$5,000 would be required to complete the agreement, and that Abramson, complainant, directed him, Davis, to get the \$5,000 from Abramson's father-in-law, William I. Segal, and that Davis did get the \$5,000.

The property consisted of Nos. 2209-2211 Fairmount Avenue, Atlantic City, New Jersey, and some small houses in the rear thereof, numbered 2204, &c., Ingersoll Terrace.

The bill further alleges that the property belonged to Louis Silbert, and that it was in the hands of one Goldstein, real estate agent, Atlantic City, for sale, who offered to sell the property to Davis on the 31st day of March, 1923.

That on said date, Louis Silbert and his wife agreed to convey the property to W. Frank Sooy for the above mentioned price.

That the agreement between Silbert and Sooy was actually signed on April 2nd, 1923;

That Goldstein made the initial deposit to Silbert with W. Frank Sooy's check, drawn on the Equitable Trust Company, of Atlantic City, for the \$5,000, which was deposited in Harrisburg on April 3rd; and alleges that complainant does not know if the check drawn by Sooy was his own money or had been previously advanced for that purpose by Davis.

The bill further alleges that on the 2nd day of April, 1923, defendant Davis sold the rear dwelling houses to Harry Davis, for the sum of \$10,000; and that on April 3rd, 1923, Abramson returned from Baltimore, and defendant Davis sold the two front houses on Fairmount Avenue to complainant Abramson for \$40,000, the initial payment being \$5,000, paid by the check of Commercial Realty Company to the order of W. Frank Sooy.

The bill charges that although Sooy appeared in said writing as the purchaser of said property, he was not such, in fact had no property right or pecuniary interest therein, and that said Sooy really represented in said transaction the said defendant Thomas Davis, and was unwittingly being used by said Davis to further his design and to consummate a fraud upon complainant; and further charges that although Louis Silbert and wife conveyed the property to Sooy, and Sooy conveyed part of it to Harry Davis, and a part to complainant, yet, in truth and fact, he (Sooy) was only nominally concerned therein, and had no real substantial interest, whatever, in any of said transactions; that he permitted his name to be used for the accommodation and con-

venience of said Davis (defendant), who alone was beneficially interested in said transaction, and who, to avoid disclosure to and forestall inquiry by complainant respecting said purchase of property originated and contrived the false and fraudulent representations that said Sooy had charge of the property of an estate, and to close the estate must dispose thereof, by which he, said Davis, was enabled to use complainant's money with which to speculate in the purchase of said property, dispose of a part thereof for his own benefit without the knowledge of complainant, and thus perpetrate a fraud upon complainant; and charges that defendant, being a partner, was in duty bound to fully disclose the transaction to complainant, and that complainant had but recently, to wit, during the month of August, learned of the fact; and prayed that Davis be decreed a trustee for complainant as to all such profits so made, and that he account therefor and pay the same to complainant.

Sooy was not made a party to the suit.

On April 24th, 1923, complainant and defendant dissolved their partnership, which had subsisted between them from the 4th of October, 1922. The partnership dissolution agreement was dated on the 30th day of April, 1923, but recites that the parties dissolved on April 24th, of that year, Abramson to continue the business under the name of Commercial Realty Company.

The partnership agreement recites the manner in which the outstanding accounts and properties were to be divided between the two partners. Among the items is one of \$300 alleged to be due to Commercial Realty Company for commissions for the sale of premises on Fairmount Avenue, Atlantic City, N. J., that being the property in question.

The property was purchased by Sooy, and his money was used for the first payment of \$5,000.

About two weeks after the dissolution of partnership between Abramson and Davis, to wit, on or about the 5th or 6th of May, 1923, Sooy became convinced that he would need to raise money to make settlement, which was due on the 1st day of June, and agreed with Davis that if he, Davis, would assist him in raising the amount of money necessary to make settlement, that he, Sooy, would divide the profits on the transaction with him.

This agreement was carried into effect by Davis going on a promissory note for the required amount, on which they secured the needed money to make final settlement with Silbert, and the profits were divided.

The case was heard before Vice-Chancellor Ingersoll, who (p. 169, l. 10) concluded that on the 31st of March, Davis discussed the question of the purchase of the property with Sooy at his home, and that Sooy decided to buy the property and gave Davis a check for \$5,000 to apply on account of the purchase price, and the agreement from Silbert was obtained.

The testimony shows that Sooy, at that time, had on deposit \$6543.78 (p. 122, l. 18), from which the check of \$5,000 was paid.

The Vice-Chancellor concluded (p. 169, l. 30):

“I am entirely convinced that Sooy is entirely innocent in this matter.”

And decreed that Davis, defendant, should pay to Abramson all of the profit that he, Davis, had received from Sooy in the transaction.

From this decree, defendant appeals, and because the Court of Chancery did not decree that Davis

should pay to Abramson the entire profit on the transaction, to wit, the amount that Sooy received, as well as the amount that Davis received, complainant appeals.

Both appeals are printed in the book, although the outside cover shows but one.

ARGUMENT.

The vital question in this appeal is: "Did complainant prove the charges of his complaint?" These charges were that Sooy, though appearing as the purchaser of the property, was not, in fact, the purchaser, and had no property right or pecuniary interest therein; that he was only nominally concerned, without substantial interest in it, and had permitted his name to be used for the accommodation and convenience of Davis, and to enable Davis to defraud Abramson, and that Davis, only, was beneficially interested in said transaction.

The entire bill is founded upon complainant's charge that Davis in fact purchased and was the owner of the property, and that Sooy was a straw man.

To succeed, complainant must show that Davis was in fact the purchaser, and also must show a fraud practiced on Abramson.

There is no testimony touching the scope of their partnership agreement, but from the agreement of dissolution it clearly appears that their fiduciary relations were confined to the partnership business, and neither was the agent of the other, except in partnership affairs.

There was no fiduciary relationship between

Davis and Abramson outside of the scope of their partnership business. As a partner, Davis must account to the partnership for any benefit, and hold as trustee for it any profits derived by him, without the consent of the other partner, from any transaction connected with the formation, conduct or liquidation of the partnership, or from any use by him of its property. In this case, there is no allegation of any improper conduct on Davis' part concerning the partnership, and as to Abramson, independent of the partnership, they stood and dealt at arms' length.

To support complainant's claim of fraud, he testified (p. 20, l. 16), as follows:

“Q. Who first introduced to you the matter of buying the property described in those two papers?

A. Mr. Davis.

Q. The defendant?

A. Yes, sir.

Q. And when was that?

A. That was on the thirtieth of March.

Q. 1923?

A. 1923.

Q. And where were you?

A. I was right here in Atlantic City.

Q. Tell us what he said to you?

A. He told me at that time that he thought he had some property, that was an estate, and at that time I was looking for an investment, and we were going to buy it for me, at that time Mr. Davis had some real estate, and we thought that when business would be quiet it would be a good idea for each one of us to have an investment for ourselves, and in that way he mentioned to me that possibly he could buy some property for me.

Q. Did he tell you who represented that property, in whose hands it was?

A. He told me that Frank Sooy was the trustee for that estate.

Q. The Frank Sooy named in the agreement and deed?

A. Yes, sir.

Q. Now, is that all that was said to you at that time? If not, tell us the whole story.

A. That is all that was said to me at that time.

Q. When did you next hear from him?

A. I heard from him the following day.

Q. And where were you?

A. I was in Baltimore at the time.

Q. And in what way did you hear from him?

A. He called me on the phone.

Q. And where was he?

A. In Atlantic City here.

Q. What was the conversation that passed between you?

A. He told me that he had a piece of property or had some property that he was talking to me about, and that it would be a wonderful buy, if I would buy it at that time, and I said to him, 'Well, if you think it is a good deal, use your judgment and buy it for me,' and he told me it was a wonderful deal, that the money I would put up at this time could be easily raised by increasing the larger mortgage, the mortgage at that time was inadequate because it was an estate, and they didn't know how to run it, and for him to buy it, and I told him to go into my father-in-law's, and get a check for five thousand dollars, which he demanded at that time over the phone, and that is exactly what happened.

Q. At that time did you know just where the property was?

A. No, sir, I did not.

Q. Did he tell you on either of the occasions, either over the telephone or the day before, what the property consisted of?

A. No, sir, he did not.

Q. Did you rely upon his statement to you about that?

A. I positively did.

Q. Did he tell you how much the property could be bought for?

A. He told me around forty thousand dollars.

Q. I show you check of William I. Segal to your order for five thousand dollars, and ask you whether that is the check that Mr. Davis procured as a result of your talk over the telephone?

A. Yes, sir.

Q. Has that check been through bank?

A. Yes, sir.

Q. And paid?

A. Yes, sir.

Q. Charged to Mr. Segal's account?

A. Yes, sir."

It will be noticed that in his direct testimony, he did not ask the price of the property, nor where it was, although he claims the conversation took place with Davis while they were both in Atlantic City, on the 30th of March, 1923.

On p. 29, he testified to a conversation between Davis and himself, touching this property, and the fact that he did not receive the rear properties, but nowhere in that conversation did he claim that he

had been defrauded, and on the same page, he states that nothing was said to him in the telephone conversation, which he alleges took place, about the front or the rear properties; and on cross-examination (p. 31, l. 10) it was shown that he could not remember where the conversation took place, if it did take place. At p. 32, l. 1, he testified as follows:

“A. Well, I only remember I had that conversation with him, we often walk along the street and talk matters over, you know, don’t always talk on the inside.

Q. You claim to remember of having had a conversation but you don’t recall where it was nor the time it was?

A. No, just a casual conversation.

Q. What was it he said to you?

A. Well, just that in view of the fact that I was looking for an investment, that he had in mind some property that Mr. Sooy had charge of.

Q. And where did he say the property was?

A. He didn’t tell me.” .

At p. 33, l. 5, he testified as follows:

“A. Well I—he told me that he would have to have a check for five thousand dollars, and I told him to go into my father-in-law—our place of business is right in the building—and get a check from him for five thousand dollars, and he did that.

Q. And you say that was on what date?

A. Thirty-first.

Q. Check was on the thirty-first?

A. Yes, sir.

Q. Of course, I don’t suppose you know per-

sonally whether your father-in-law gave this check to Mr. Davis or not?

A. I understand he did."

It appears (p. 33, l. 25) that he returned home on the night of April 2nd, but that he did not go down to look at the property he claims he thought he was buying until after the agreement of purchase was executed, and that was when he desired to make some improvement; but claims he thought he was buying the whole property, and did not learn otherwise until sometime in August, his testimony being as follows (p. 33, l. 25):

"Q. When did you return here, when did you return to Atlantic City?

A. On the second of April, I think.

Q. What time of the day did you get in on the second of April?

A. I don't remember any more.

Q. Was it in the morning or afternoon or in the evening?

A. It must have been late in the evening, some time.

Q. How soon after that did you go down to look at the property which you thought you were buying?

A. I didn't see the property at all, sir.

Q. Didn't you go down there at all?

A. No, sir.

Q. Never go down there?

A. No, sir.

Q. Who did go to look at it?

A. I don't know.

Q. Did anybody?

A. I don't know. I know that I didn't.

Q. Didn't you ever go down there in the pres-

ence or company of your wife and of your father-in-law?

A. Some time after the property was purchased, yes.

Q. Now, when was that?

A. That was quite some time later.

Q. And you wanted to make some improvements there, didn't you, at that time?

A. Possibly.

Q. You knew then that you were buying simply the front property, didn't you?

A. I did not.

Q. What did you think you were buying?

A. I thought I was buying the whole lots.

Q. When was it you first found out you were not buying the whole lot?

A. Some time in August."

The agreement of purchase between Sooy and Abramson (Exhibit C2, p. 186) at l. 20, distinctly describes the properties purchased, as follows:

"All that certain premises known as the Alvin Apartments, and the Fairmount Apartments, situated on Fairmount Avenue between Missouri Avenue and Mississippi Avenue. The first apartment house containing eight apartments; and the second apartment house containing six apartments."

In view of the fact that there were six or seven two-story buildings in the rear of these apartment houses, and in view of his agreement of purchase, which specifically and particularly describes the two apartment houses, it is difficult to understand how he could expect the Court to believe that he thought the rear buildings were included within his purchase.

It will be observed on p. 22, l. 22, that he switches the Segal check from its alleged application to the purchase of the property by Sooy from Silbert to the actual purchase of the property to himself, Abramson, from Sooy.

Then, for the purpose of further supporting the allegation of fraud, the question of the Segal check was brought into the case: Mr. Abramson having testified that he had instructed Davis to go to his father-in-law, Mr. Segal, and get the check for \$5,000 to make the initial payment. Mr. Segal, testified concerning the check as follows (p. 105, l. 12):

"A. Oh, yes, exactly. You know I was busy at that time, and he came in and he says, 'I got a deal for Harry, for your boy, for your son-in-law,' and he says, 'I haven't got no money.' says, 'You ain't got no money?' I says, 'I can't help it.' I was busy that morning and he tortured me and bothered me and everything, just so, you know, and everything, and I says, 'With whom have you got the deal with?' and he says, 'He wouldn't know it, don't know the name.' After he came back again he says, 'Well, I am going to tell you,' he says, 'W. F. Sooy.' I says, 'Mr. Frank Sooy, the City Solicitor?' He says, 'Yes, he represents an estate, and it must be done at once,' he says, 'And I must have a check.' I says, 'I don't know anything about it, Harry didn't say anything to me if I shall give you a check,' but since he said Frank Sooy, I said, 'Frank Sooy is good enough for a check,' so I went and I made out on the name Harry Abramson, I got the bookkeeper to make out, he made a couple of statements there, got to put down where I am going to get the bookkeeper, and my manager on here about every-

thing, and I made out on the name Harry Abramson, so that shall be deposited on his name. Of course, after I dated that check I didn't know what he done with it.

Q. Did you give the check to him?

A. I gave it to that gentleman right here on Saturday morning, in my store, and my bookkeeper, if you would have time to have one of the bookkeepers, I would have right here, to testify right here, I say, when he was there, also my manager, he mentioned another word, said about me traveling with them in automobiles, so I did give him that check on Saturday morning, that was that date.

Q. Who were there when you handed him the check?

A. Why, I will tell you, my boy came over to me and he says, 'Pop, what are you going to trust him with that fellow with a check?' I says, 'I made out that check to Harry, and I don't know what he is going to do, and he can't endorse Harry's name.' "

Mr. Davis, the defendant, testified as follows (p. 91, l. 30):

“Q. Did you get the Segal check for five thousand dollars?

A. I did not.

Q. Do you know who did?

A. Mr. Abramson himself.

Q. Harry Abramson?

A. Harry Abramson himself received from W. I. Segal the check.

Q. Did you know it had been deposited to the Commercial Realty?

A. It was deposited with the Commercial

Realty Company because Mr. Abramson got a check from the Commercial Realty Company for five thousand dollars and we didn't have the five thousand in bank, and Mr. Segal owed Mr. Abramson five thousand dollars and he went there and wanted his father-in-law to give it to him so we could make good this check he gave Mr. Sooy."

The check given by Mr. Segal is marked Exhibit C3, and appears on p. 190, and if the testimony of Abramson and his father-in-law, Segal, is true, to the effect that the telephone conversation did take place, and Abramson did tell Davis to get the check from Segal so that he could make the deposit and secure this property, and Davis told Segal, as Segal says he did, practically the same thing, then the pertinent question arises: "Why did Segal give to Davis a check that Davis could not use?"

Segal testified that when Davis told him he was buying the property from Mr. Sooy, he said (p. 105, l. 28):

"I don't know anything about it, Harry didn't say anything to me if I shall give you a check,' but since he said Frank Sooy, I said, 'Frank Sooy is good enough for a check.'"

If Segal's testimony were true, it is mighty strange that, knowing that the check was to be used for the initial deposit in the purchase of a property from Mr. Sooy, and having confidence in Mr. Sooy, even though he did not have confidence in Mr. Davis, that he didn't make the check payable to Mr. Sooy, so the property could be secured. Further, if Abramson's testimony were true, that he had spoken to Mr. Davis about buying this property on Friday

before he left for Baltimore, and he had not the money with which to make the investment and was relying on his father-in-law for it, it is strange that he did not get the check from his father-in-law on Friday, so that it would be available for the purchase, and even stranger that he did not speak to his father-in-law about wanting to use the money which the father-in-law owed to him.

On the other hand, the checks bear out the contention made by Mr. Davis. It appears that Segal's check to Abramson was paid on the 4th of April, and, according to the testimony of the bank witnesses, it must have been deposited on the 3rd of April. The check paid to Mr. Sooy for the initial payment under the agreement between Sooy and Abramson was the check of the Commercial Realty Company (Exhibit C4, p. 191), for the front houses, and was dated the 3rd of April.

It is submitted that the testimony concerning the check does not support the allegations of the bill.

Complainant also testified that he was ignorant of the transaction at the time he entered into the agreement to purchase the front houses from Mr. Sooy, and did not learn of the transaction, according to the allegation of his bill, until August of 1923. The testimony shows that he entered into the agreement with Mr. Sooy to purchase the front houses on the 3rd day of April, 1923 (See Exhibit C2, p. 185). This agreement is made between W. Frank Sooy, of the first part, and Harry Abramson, of the second part. There is no mention of any trustee in that agreement, and if Davis had the conversation with Abramson, which Abramson said he had, then Abramson at the time of entering into that agreement must have known that Davis' statement about Sooy's trusteeship was false. Notwith-

standing that fact, he proceeds with the agreement, and pays the \$5,000 to Sooy as the seller.

On the day previous, Mr. Sooy had entered into an agreement of sale with Harry Davis for the rear properties (Exhibit C10, p. 200). The agreement between Mr. Sooy and Harry Davis for the sale of the rear properties, as well as the agreement with Abramson, the complainant, for the front properties, provided for settlement on the 1st of June, 1923, at the office of the Atlantic Guaranty Title & Insurance Company.

The agreement between Sooy and Davis for the rear properties was assigned by Davis to Robert Wood, and complainant Abramson witnessed the assignment; and the agreement was further assigned to Harry Abramson, and Dorothy Zandler appears to have witnessed the assignment, although neither Abramson's nor Wood's signature appears on the assignment. Wood testified, however, as follows:

“Q. What is your business?

A. Assistant in the city comptroller's office.

Q. I show you an agreement marked ‘C10,’ and call your attention to the assignment on the back of it where it says ‘I hereby assign all my right, title and interest in the agreement to Robert Wood for \$1300,’ and another assignment ‘I hereby assign all my right, title and interest in my agreement to Harry Abramson,’ and I ask you to tell the Court what you know about those agreements and those assignments?

A. Mr. Davis brought this agreement to sell to me for \$1300, and I agreed to buy it, which the first assignment shows. Mr. Abramson offered to assist me at the date of settlement if I happened to be short of funds. Now, a few days before the date of settlement I told him

that it would be very difficult for me to make the settlement and he said that he had a client that would buy it but he at the time was very short and probably would not be able to handle their share, but he would take care of it and he would give me \$200 profit on the agreement of sale.

Q. In other words you paid to Davis \$1300 for it?

A. Yes, and inasmuch as he said that he was going to assist this party to buy this piece of property and his son being tied up too, I gave him my check for \$700 and in return he gave me his check for \$2200, which I held for a little time and deposited; that is where my interest ended in the matter.

Q. So that he gave you \$1500 net and you transferred it over to Abramson?

A. Yes, sir.

Q. Were these signatures of Harry Davis and Robert Wood scratched out at the time that you had this agreement or after you delivered it to them?

A. No, this was not scratched out.

Q. Of course, you knew this when you got the money from Abramson; didn't you write your signature?

A. That is not my signature.

Q. Whose signature is that, do you know?

A. I don't know; that is not mine.

Q. When I was speaking of Davis I meant Harry Davis, you understood that?

A. Surely.

Cross-examination.

By Mr. Cole:

Q. You have told the whole story as far as you are concerned, concerning that agreement?

A. Well, I might add if it will make it any clearer that at the time I took Mr. Abramson's check for \$2200, he had that agreement and I left it in his care; so far as I was concerned. I had my \$200 profit and that was where the matter ended. I had made the agreement and he agreed to help me out with it and I left the agreement with him.

Q. Then you never assigned the agreement at all; you just left the agreement with him?

A. Yes, sir."

Abramson having purchased Harry Davis' agreement of purchase of the rear properties a few days before the day of settlement, which was on June 1st, 1923, flatly contradicts the allegations of his bill that he did not know of this transaction until the month of August.

In view of the instances shown in the testimony of the many inaccuracies or false statements, as the case may be, of Mr. Abramson's testimony, and the high improbability of the accuracy of Mr. Segal's testimony, it is difficult to understand how the Vice-Chancellor should have given it the stamp of truth, when being contradicted as it was by the testimony of Sooy and Davis, whose testimony was corroborated by all the documentary evidence in the case.

Defendant Davis was called as a witness for complainant, and on p. 93, l. 25, testified as follows:

"Q. Mr. Davis, you have been asked about

this property, when did you first know that this property was in the market for sale?

A. That was on Saturday, March thirty-first around the hour of between twelve and one.

Q. From whom did you learn it?

A. I learned that from Mrs. Goldstein, that was the first time I ever knew of that property.

Q. What did you do with relation to that?

A. I went down and looked at that property there, and I knew it was cheap, and I came back and I made them an offer of forty-five thousand dollars, I didn't have the money but I made them an offer, I didn't think they would accept it anyhow, but after Mrs. Goldstein told me they did accept it I went and told Mr. Sooy about it. I had no money. My account will show it, and I said to Mr. Sooy, 'There is a good buy that I think you can make some money out of.' So I says, 'You need five thousand dollars for deposit,' and I says, 'You will need about ten more thousand at the time of settlement, including adjustments and stuff like that.' He says, 'All right.' We were playing rum.

Q. Playing it or drinking it?

A. Playing it and drinking it.

Q. Both?

A. Playing and drinking it, and I called up Mrs. Goldstein and told her that I can sell the property for her but that this commission would have to be split with Mr. Sooy, so she agreed to do that.

Q. And then what?

A. Mr. and Mrs. Goldstein brought the typewriter down to Mr. Sooy's house, and I was still there.

Q. Did they bring it down when they came, or come first and send back?

A. Yes, they came first and after a talk with Mr. Sooy and myself in Mr. Sooy's they went back and got the typewriter and came back. We were still playing rum and drinking it, and we dictated the agreement, I dictated some of the words, Mr. Sooy dictated the others, and we were both, I think, pretty well under the weather, and Mr. Sooy made out a check for five thousand dollars and told Mrs. Goldstein to go ahead and get it, that is all.

Q. That is on Saturday night?

A. That is on Saturday night, the thirty-first day of March, 1923.

Q. At what time that night did Mr. and Mrs. Goldstein leave Mr. Sooy's home?

A. That was about eleven o'clock that evening, eleven or eleven-thirty.

Q. Is this check, Exhibit C16, is that the check that Mr. Sooy gave?

A. Yes, sir, that is the check.

Q. When did you first learn that Mr. Silbert had agreed to sell the property to Mr. Sooy?

A. When Mrs. Goldstein called me up about six o'clock that evening or seven o'clock.

Q. What evening?

A. Called me at Mr. Sooy's house, he tried to get me at home, which is next door, and the wife told them I was next door and transferred the call over to Sooy's.

Q. What day was that?

A. That was Saturday night, the thirty-first day of March, that is the first.

Q. I want to know when you learned that Mr. Silbert had agreed to sell to Sooy?

A. I told you I learned that night he agreed to accept Mr. Sooy's price.

Q. Over the phone?

A. Over the phone from Mrs. Goldstein, then I told them to come down here and we had the agreement drawn.

Q. Then you had known it was going to go through before the Goldsteins came down?

A. Yes, sir."

At p. 98, l. 1, he testified as follows:

"Q. Did you have any property interest in the agreement at the time Mr. Sooy entered into the agreement of the sale of the property to Mr. Abramson?

A. I did not except the commission which Mr. Sooy agreed to pay me, two hundred dollars on the sale to Mr. Abramson and one hundred dollars on the sale to Harry Davis, and Harry Davis was the one that persuaded Mr. Sooy to give us a commission. Mr. Sooy didn't wish to do that."

Mr. Sooy, who was likewise called as a witness for complainant, testified as follows (p. 118, l. 20):

"Q. When did Davis discuss the purchase, on the thirtieth or the thirty-first?

A. The thirty-first.

Q. What time of the day or night was that?

A. That was during the time I was eating dinner.

Q. The evening meal?

A. Yes, sir.

Q. Did you discuss the figures with him as to how it would be worked?

A. I, at first, refused to consider it, as I re-

member it, and then Davis came back and talked the situation over with me and said if he had the money he would buy it himself, and that it was a good buy and he told me that there were a certain number of apartments and a certain number of houses in the rear and even if it were not sold quickly during the boom, that it would more than carry itself and net a return on the investment in addition. I at the time had not seen the property at all but I rather absorbed some of his enthusiasm and finally agreed to purchase it.

Q. Weren't you at all acquainted with the property?

A. I did not know anything more about it and had no more idea about the property than you who have never seen it. I had never seen it and could not visualize it. I did have a sort of hazy idea that somewhere around there were apartment houses.

Q. In his talk to you did he mention Abramson at all at the time?

A. No.

Q. How did this condition of commission on the sale by Goldstein come about?

A. As I remember it Davis suggested that I would have to pay forty thousand dollars for the property but that I could get that reduced by half of the commissions. That is the way I recall it and I, of course, wanted to get everything off I could and that is why the commission came off to Goldstein.

“There is an exhibit here of the rent statement as of May the thirty-first; did you get that money?

A. I, at the settlement, got everything that

was coming to me and I got the rents as well as other adjustments; I do not remember any particular specific item, but I know that at the time of the settlements there was a discussion about the rents; there was some apartments that were back in their rents and Mr. Rosenberg representing Mr. Silbert, brought in, in some way or other, about assuming those back rents and I refused to do it and whatever rents were coming at the time, I got''

Sadie Goldstein, likewise a witness produced by complainant, testified as follows (p. 49, l. 15):

“A. I received a letter from Mr. Silbert, about it Saturday morning, March thirty-first. I have it here in my pocket, and in this letter he requested me to try and sell the property for him, and he said he was building in Harrisburg and didn't need it—

Q. We don't care about that. Did you meet Mr. Davis that day?

A. I received the letter, I sent for Mr. Davis, and he came to my office.

Q. Tell us what took place—was that on that same day?

A. That same day?

Q. Tell us what took place between you?

A. I told Mr. Davis I had a north side property which I considered a bargain, and he asked me where it was and I told him, told him it was located on Fairmount Avenue between Missouri and Mississippi, and consisted of two brick apartment houses facing Fairmount Avenue, also seven houses in the rear on Ingersoll Terrace. I told him that they were listed in my office for forty-five thousand dollars, but that

the owner wanted more money and he was open to an offer, and he questioned me about the properties, and I had the listing card in my hand, and I told him. He says, 'Let me see that,' and I showed it to him too, and I also showed him the letter that Mr. Silbert wrote to me, and he said to me, 'What do you think they could be bought for?' I said, 'I really don't know, Mr. Davis. The owner is open to an offer. Give me an offer backed by a check and I will try and get them for you.' He said, 'Do you think'—from my description of the property he thought it was a good buy, so he asked me, 'Did I think it could be purchased for forty-five thousand dollars. I said, 'If you will give me a check backed by that, I will try to get it for that price.' So I said, 'Well, supposing you go down there and look at those properties.' So Mr. Davis went in his car and he went down there and he looked at the properties. He came back in a short while and he said, 'Those properties are in a terrible condition. I don't think they are worth forty-five thousand dollars. Do you think they could be gotten'—he says, 'He gave me an offer of forty thousand dollars.' These properties had buildings and loans against them for twenty-five thousand dollars, in three separate properties, there were ten on one, eight on the other and seven on the rear houses, making a total of twenty-five thousand dollars, and Mr. Davis' offer to me was this, he was going to pay all cash above those mortgages, and a five thousand dollar check on the signing of the agreement, so I said, 'All right, I will get in touch with the owner.' So he says, 'Well,' he says,

'What is the use doing that,' he says, 'Why don't you call the owner right now?' So he had read the letter and it was on the stationery of the Senate Hotel in Harrisburg, and I called the Senate Hotel in Harrisburg right in his presents. Mr. Silbert wasn't there, so I left a message for Mr. Silbert to call me. Mr. Davis sat in the office and he chatted with us for a while, and he was figuring out what it would cost to put these properties in proper condition. The telephone call that he was waiting for didn't come, and he started to go away but before he went away he made me another proposition, he said, 'Mr. Goldstein, if you can succeed in getting those properties for me for forty thousand dollars, I am going to make it worth your while, I will give you a thousand dollars extra for your trouble,' and I thought that was a very liberal offer. Immediately Mr. Goldstein was called from the office, he had an appointment to show some property, and I sat in the office waiting for Mr. Silbert's call, and I waited quite a time, and finally Mr. Silbert did call me, and I submitted the offer to him. Mr. Silbert wasn't at all pleased with that offer. He said the properties had cost him forty-eight thousand dollars, and that if he sold for forty and paid a commission he would be out a lot of money. So I said, 'Well, Mr. Silbert, you are building in Harrisburg, you need cash, fifteen thousand dollars is a lot of money, besides you will get some building and loan back.' He says, 'Well, I will tell you what you do, try and do better,' he says, 'Forty-five thousand dollars, I am ready to close, but do the best you can for me.' So—but before Mr.

Davis left the office he said, 'Just as soon as you get word from Harrisburg, you call me,' When I got Mr. Silbert's message, I tried very hard to get Mr. Davis, and it was almost two hours before I heard from him. He finally called me. He said 'Mrs. Goldstein, how did you make out?' I said, 'Mr. Silbert was not at all pleased with your forty thousand dollar offer. It is not enough, he claims he will be losing considerable, but he will close at forty-five.' With that, before I got a chance to say anything more, Mr. Davis said, very excitedly to me, he said, 'Why, Mrs. Goldstein' he says, 'You are mistaken, Mr. Silbert did accept my offer for forty thousand dollars.' He said, 'What is more, he also agreed to take back a second mortgage of five thousand dollars for three years in the bargain.' Oh, yes—when I asked him where he got that information, he told me he had talked to Silbert himself. He said, 'I will call you up in a little while, and I will let you know whether Phil goes to Harrisburg tonight or not.'

Q. Whether Phil goes to Harrisburg or not?

A. Or not.

Q. Meaning your husband?

A. Meaning my husband. I didn't know just what to make about it. Mr. Silbert didn't accept my forty thousand dollars offer, and I was mystified how Mr. Davis got him to agree to take the forty, and also to take back a second mortgage of five. So I talked to my husband what will we do about this, 'Phil, the best thing for you to do it to call up Harrisburg and verify what Mr. Davis said,' so Mr. Goldstein called Harrisburg and he asked Mr. Silbert had he

accepted—no, I called Harrisburg and Mr. Silbert answered me, and I said, 'Mr. Silbert, is that true you have accepted forty thousand dollars for the property?' He said, 'Yes, I was just talking to your husband.'

Q. Now, had he just been talking to your husband?

A. He had been talking to Mr. Davis but he was under the impression—

Q. Just a moment, how do you know he had been talking to Mr. Davis?

A. Because—how do I know? Just because Mr. Davis told me he had talked to Mr. Silbert and represented himself as my husband.

Q. Did Mr. Davis tell you that he had represented himself to be Mr. Goldstein?

A. Yes, he said, 'I talked with Mr. Silbert myself, and the joke of it was he thought he was talking to Philip Goldstein.'

Q. Then what followed that?

A. Then I was waiting for him to tell me whether Mr. Goldstein was to go to Harrisburg or not. After while Mr. Davis called me up again and he said, 'Mrs. Goldstein, I have reconsidered the matter and I have decided that I don't want those properties. I don't want to buy them at all.' I said, 'How is that?' 'Well,' he says, 'I don't want them,' he says, 'I will tell you what I will do.' He says, 'I have a friend who will buy them at that price, and on those terms, on condition that you will split your commission with that party.' Well, I didn't want to lose the sale entirely, so I agreed to do so, and he asked me to come up to his house. Came up to his house and he wasn't there. I asked the children where he

was and they said, 'He is at Mr. Sooy's house next door, and will be right back.' So we waited quite a while and Mr. Davis came back, and was all flushed up and excited, he said he hadn't eaten any supper, if we would excuse him he would have his supper, and then he would bring us to the party who was going to buy the property. When he was through with the supper, he took us next door to Mr. Sooy's house, and he introduced us to Mr. and Mrs. Sooy. He said this was the party was going to buy the property. He said Mr. Sooy was ready to do business right here. So I said, 'I will go to the office and draw up the agreement.' He said, 'No, that is not necessary, you can draw the agreement right here.' I said, 'Have you a typewriter here in the house?' He said, 'No' so I sent Mr. Goldstein to my office to get the typewriter, we only live about ten squares from Mr. Sooy's house. So I drew up the agreement, I drew up two agreements, and when I was through I gave one to Mr. Sooy and one to Mr. Davis.

Q. Now, is the agreement we have offered in evidence the agreement you drew up?

A. Yes, sir.

Q. In whose house?

A. In Mr. Sooy's house.

Q. On the typewriter?

A. On my typewriter, and Mr. Sooy signed both agreements and gave Mr. Goldstein a check for five thousand dollars and Mr. Davis signed as a witness to that agreement.

Q. Now, then, your husband went to Harrisburg with a check and brought the agreement back signed?

A. Yes, but there is one thing I would like to offer right now. Yes, after I had—after the agreements had been signed Mr. Davis said to me, 'Well, how about that commission that Mr. Sooy is to get, I want you to give me a writing to that effect.' and I did, I wrote Mr. Sooy a little agreement that I would give him six hundred dollars of my commission.

Q. Have you got a copy of the paper?

A. I gave it to you in your office this morning."

On page 59, 1.35, Mrs. Goldstein testified as follows:

"Q. Now, did Mr. Goldstein start right off that night to go to Harrisburg?

A. They wanted him to but he was so tired that I said to him, 'You better go Sunday morning.'

Q. And he left Atlantic City what time, about?

A. The first train out, which was around eight o'clock, I think.

Q. Well, you had been there with Mr. Sooy on the evening previous, that is on the Saturday night, Mr. Sooy handed you this check for five thousand dollars, first payment on them, did he not?

A. Yes.

Q. Was it handed to you or was it handed to your husband?

A. It was handed to Mr. Goldstein.

Q. And he took it away with him that evening?

A. Yes.

Q. Of course, he had it all that night and the next morning took it over to Harrisburg?

A. That was Easter Sunday.

Q. And he got back here when, Monday what time?

A. Monday between, say four and five, but I am not sure as to the exact time."

At p. 64, l. 3, Philip Goldstein testified as follows:

"Q. You and your wife are one in law, but not one in testimony, you testify separately even though the law makes you one. Keep in mind that you are to testify what you said and did or what may have been said and done by your wife, in Mr. Davis' presence. Now, if you understand that, go ahead.

A. I called up Mr. Tom Davis' house and told him that I had a piece of property for sale and Mr. Tom Davis wanted to know where it was and I told him if he would come to the office we will explain it to him. And didn't take five minutes before he did come up to our office, and we explained the property to him. Furthermore, Mrs. Goldstein——

The Court: You said 'We explained the property to him.'

A. That I did, and Mrs. Goldstein took the listing out of the drawer and showed Mr. Davis the listing we had on that property, and we had it listed for forty-five thousand dollars, then Mrs. Goldstein was doing the talking, and trying to show Mr. Davis, tell him all the particulars about the property, and asked Mr. Davis to go down and look at the property, which he did.

Q. Did you go with him?

A. No, sir.

Q. Went alone, did he?

A. Went alone, and he came back and told us the condition the property was in, and then he heard, he asked whether that property couldn't be bought for forty-five thousand dollars, so I said we didn't know, but if he would give us a check on it we would get in touch with the owner and find out whether we can get it for him at that price. So he says, 'Well, what do you want to get in touch with him that way.' He says, 'Can't you get him at the telephone?' So then Mrs. Goldstein rang up Mr. Silbert from Harrisburg, but I don't believe he was in then, but she left a message for him when he comes to ring us up, that is ring Mr. Goldstein up, our office. Well, I believe I was out then, if I am not mistaken.

Q. What next happened, so far as you were concerned?

A. Mr. Davis, while I was there, Mr. Davis he came back and told us the condition of the property, he said the property wasn't worth any more than forty thousand dollars, he said if we could get the property for forty thousand dollars that he would make us a present of a thousand dollars, and we should see what we could do for him. So Mrs. Goldstein said she believed it would be impossible to get it for that price because the property cost Mr. Silbert more money than that, if he would do a little bit better, so I said, 'Tom,' I says, 'Here is a property is a bargain at forty-five thousand dollars, cheap,' so yes, but he says, 'Look at the improvements I have got to put in there, I have got to spend about fifteen thousand dollars on that property to put in decent shape,' so he says, 'The only thing I could do,' he says,

'I will buy it for forty thousand dollars if you can get the sale through.' So then Mrs. Goldstein rang up Mr. Silbert and put the proposition before him. Mrs. Goldstein had the conversation with him. I did not.

Q. Were you there when she talked over the 'phone?

A. Yes, sir.

Q. What did you hear her say through the 'phone?

Mr. Bourgeois: I object.

Mr. Cole: Was Mr. Davis there?

A. Mr. Davis was there too, yes, sir.

Q. While she was talking on the 'phone?

A. Yes, sir.

Q. Go ahead, tell us what was said then.

A. Mrs. Goldstein—I just can't recall it now, he offered forty thousand dollars for it, and then he promised that we could get—

Q. You have told us that.

A. I didn't want to get that paragraph—

Q. What did you hear Mrs. Goldstein say over the telephone, while Mr. Davis was there?

A. She was telling him about the—

Mr. Bourgeois: I object to that. That is a conclusion.

Q. If Mr. Davis was there it is all right for him to tell what she said, repeat her language.

A. Said to Mr. Silbert?

Q. Whatever she said on the phone, you can repeat that.

A. Yes, sir, she told Mr. Silbert that Mr. Davis was willing to give him cash above the mortgage and five thousand dollars deposit, and give him cash about the mortgage.

Q. Now, did Mrs. Goldstein tell Mr. Davis that?

A. She told that to Mr. Silbert.

Q. Mr. Davis was there, you say?

A. Mr. Davis was there.

Q. What did Mrs. Goldstein say, if anything, to Mr. Davis as to what Mr. Silbert had said? What did she report to Mr. Davis?

A. Mrs. Goldstein told Mr. Davis that it would be impossible for him to sell that property for forty thousand dollars, that he would be losing too much money.

Q. Now, did you, after that, and during that day, talk to Mr. Silbert yourself?

A. No, sir.

Q. Were you there at the house at any time after that when your wife talked over the telephone?

A. Yes, sir.

Q. How long was that after the conversation you had just related?

A. That wasn't very long, right after that.

Q. How many telephone conversations did you have, about, as happening on that day, between your office and Mr. Silbert?

A. Two.

Q. And only two?

A. Yes, sir.

Q. Do you know anything about a telephone conversation that is supposed to have been had between Mr. Davis and Mr. Silbert?

A. No, sir.

Q. You didn't talk to Mr. Davis about that?

A. No, sir.

Q. And he didn't with you?

A. No, sir.

Q. Now, when did you first know Mr. Sooy in the transaction?

A. The only time I ever knew Mr. Sooy, when we were called down to Mr. Davis' house Saturday night, and when he took us over to Mr. Sooy's house and introduced Mrs. Goldstein and myself to Mr. and Mrs. Sooy.

Q. Now, tell us what was said at that time to Mr. Sooy, and Mr. Davis and yourself being present?

A. Mr. Davis, when we were to Mr. Davis' house and he told me that, 'I am going to take you into a friend of mine who is going to buy the property from you.'

Mr. Bourgeois: From you?

A. Not from me, but property we have listed from Silbert, so we went next door with Mr. Davis into Mr. Sooy's house and there is where the whole transaction drawing up the agreement took place.

Q. Now, after the agreement had been signed and you had delivered it, as I understand, to Mr. Davis, you say after it had been signed, to Harrisburg, did you deliver it to Mr. Davis?

A. Yes, sir, I came home right from Harrisburg and I went to my office, and I had something to eat and just then Mr. Davis rang me up and find out whether I was back, and Mrs. Goldstein told him yes, I am just taking a little to eat, and I will come right down, so he says, 'How long will he take before he come down?' I told my wife to tell him in ten minutes, so when I was through I went right down to Mr. Davis' house, into his house, gave him the agreement, and he took us next door, to Mr. Sooy, and then Mr. Davis gave Mr. Sooy the agreement."

It will be observed that the testimony of Philip

Goldstein, touching the conversation between Mrs. Goldstein and Silbert, in which he says that Mr. Davis was present (found in printed book, p. 66) is contradicted by the testimony of his wife, Sadie Goldstein, on p. 51.

At p. 121, Mr. Sooy testified as follows:

“Q. What was your arrangement with Davis touching this property as to his interest in it?

A. No arrangement at all; at first Davis said that he had opportunity to buy this property; that he considered it a good investment but he did not have the money; that his money was invested in such a manner that he could not get it out and that he had already gone to the bank for loans and he suggested that I should buy it. After some persuasion on his part I consented to buy it, but with no arrangement between Davis and myself as to any interest he had in the property; Davis is mistaken as to that. He did say to me that in financing the thing he would assist me by lending me his name in case I had to discount any paper. That is the situation as it existed up until a few days before the settlement.

Q. What are those statements?

A. January, February and down to April—in fact I have got them from December on.

Q. Do you mind telling me if you know approximately your balance when you paid the five thousand dollar check?

A. \$6543.78.

Q. You have figured it out?

A. No, I have that from this slip.

Q. And your balance because of the checks that were drawn afterwards did not change?

A. No.

Q. When you paid the five thousand dollar check you had over six thousand dollars balance?

A. Yes, sir."

Complainant endeavors to substantiate the charges in his bill by attempting to show that defendant talked with complainant over the telephone on Saturday morning, March 31st, 1923, about the purchase of these properties, and that in pursuance of that conversation Davis went to William I. Segal, complainant's father-in-law, to get \$5,000 to make the initial deposit. This testimony is all flatly denied by Davis, and it is submitted that Davis' testimony is corroborated by the other testimony in this cause.

For the purpose of supporting complainant's statement that Davis had talked with him about this property on the morning of March 31st, 1923, complainant produced the original telephone slip (Exhibit C13, p. 211), which shows that the telephone call was addressed to Abrahamson & Ohner, Real estate, sent on March 31, 1923, by person by name of Davis, and time of filing of the call was 9.59 A. M., Long Distance Line.

The testimony of Mrs. Goldstein, who was the agent having the property for sale, touching the sale of the property to Davis, was as follows:

"A. I received a letter from Mr. Silbert about it Saturday morning, March thirty-first. I have it here in my pocket, and in this letter he requested me to try and sell the property for him."

At p. 61, l. 5, she testified as follows:

“Q. You received that about what time in the morning?”

A. I received that in the first mail.

Q. About nine o'clock?

A. Nine o'clock.

Q. Written on the thirtieth at nine o'clock?

A. Nine o'clock.

Q. Written on the thirtieth, you received it on the next day, Saturday, the thirty-first?

A. Yes, sir.”

At p. 60, l. 25, she testified as follows:

Q. Now, it was about two o'clock in the afternoon, I think, when you first got in touch with Mr. Davis about trying to sell these properties, on the second?

A. In my recollection I think it was before noon.

Q. Before noon?

A. Before noon.

Q. According to your best recollection about what time before noon?

A. I should judge, when I got in touch with Mr. Davis, you mean?

Q. Yes.

A. Around eleven o'clock, I think.

Q. Do you have the letter here which you say that you got from Mr. Silbert?

A. That Mr. Silbert wrote to me?

(Letter produced.)”

Defendant Davis testified as follows (p. 93, l. 30):

“Q. Mr. Davis, you have been asked about this property, when did you first know that this property was in the market for sale?

A. That was on Saturday, March thirty-first, around the hour of between twelve and one.

Q. From whom did you learn it?

A. I learned that from Mrs. Goldstein, that was the first time I ever knew of that property."

In view of the fact that Mrs. Goldstein did not receive the letter concerning the sale of the property until nine o'clock Saturday morning, and that she did not communicate with Mr. Davis about it, according to her testimony, until eleven o'clock, and according to his until between twelve and one o'clock, and that he had not known of the property until she communicated with him about it, Abramson must have been mistaken when he testified that Davis had talked with him about it on the 'phone at 9.59 in the morning. The testimony corroborates Davis.

It is submitted that the testimony in this cause shows conclusively:

That Abramson's testimony to the fact that he talked with Davis on Friday, the 30th day of March, about the purchase of this property was inaccurate and unbelievable.

That Abramson's testimony that he had a telephone conversation with Davis about the property on Saturday morning, the 31st, at 9.59 A. M., was inaccurate and unbelievable.

That Segal's testimony that he had given a check for \$5,000 to Davis on Saturday, the 31st of March, 1923, payable to the order of Harry Abramson, was inaccurate and unbelievable.

That the allegation of the bill, that the property was purchased in fact by defendant Davis, is not supported by any of the testimony.

There is an entire lack of evidence or testimony from which an inference might be drawn that Davis at the time the property was purchased by Sooy

was entitled to or contemplated any profit, whatever, out of the transaction. In fact, the Vice-Chancellor, in his conclusions (p. 169, l. 35) says:

“I am unable to determine whether Davis anticipated what actually did occur, that is an opportunity to secure part of the profits Sooy was to obtain, or whether he saw an opportunity to make some money for his friend.”

There is no testimony in this case that Abramson, complainant, did or failed to do any act concerning this property, by reason of the statement alleged to have been made to him by Davis, except to tell Davis to go to Segal to get the check for \$5,000, which check Segal testifies was drawn to Abramson, so that it could not be used by Davis.

Hence, Davis, not being the purchaser of the property, Abramson not having put any money into the purchase of the property, and not having, by reason of the alleged statements of Davis, placed himself in a position where he was injured by reason of having done something or refrained from having done something, relying on Davis' statements, there was no fraud perpetrated upon him, and without fraud, there cannot be a constructive trust.

On the other hand, the testimony shows conclusively that the property was purchased by Mr. Sooy, and that Mr. Davis had no interest therein at the time of purchase.

Hence, there is no liability on Davis to respond to Abramson.

The Vice-Chancellor found that Sooy was innocent in the transaction, and could not determine whether Davis anticipated an opportunity to share in the profits. In view of the fact that Sooy was a bona fide purchaser, and Davis acquired no interest

in the matter until after his partnership with Abramson had terminated, upon what theory can he be liable to Abramson? Surely, not simply because he may have entertained a hope of sometime making a profit out of the property. It is true he had at one time been Abramson's partner, but that raised no fiduciary relation outside of the partnership business, and that fiduciary relation ceased upon the dissolution of the partnership. Touching their private matters, they were strangers.

The Vice-Chancellor cites the case of *Harrop v. Cole*, which was a case of agency, and which was affirmed by this Court in 96 Equity, at p. 250, wherein the Court said:

“The learned Vice-Chancellor, before whom the case was tried, found from the evidence before him that the averment of the bill with relation to the agency was true, in fact.”

In the case at hand, the testimony does not support the allegation of agency, fiduciary relationship or fraud, and without fraud there can be no constructive trust.

It is, therefore, respectfully submitted that the final decree, wherein it is decreed that Davis pay to Abramson \$4727, with interest from the 1st of June, 1923, and a counsel fee of \$250, together with taxed costs, should be reversed, and complainant's cross appeal should be dismissed.

BOURGEOIS & COULOMB,
Solicitors for and of Counsel
with Thomas M. Davis.