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## Bill of Complaint.

Filed January 21, 1928.

To the Honorable EDWIN ROBERT WALKER, Chancellor of the State of New Jersey:

The complainants, Morris Edelman and Lena Edelman of the City of Passaic, County of Passaic, State of New Jersey, respectfully show that: 10

(1) On the 29th day of December 1925 William Lamping, being indebted to Morris Edelman and Lena Edelman in the sum of \$1700.00 executed a bond bearing that date to secure that sum payable on December 27, 1927, with interest at the rate of 6% per annum, payable semi-annually from the date of the bond, which said bond was executed also by Peter Fleuchaus and Leopold Bauer. 20

(2) To secure payment of said bond, said William Lamping executed to the said Morris Edelman and Lena Edelman a mortgage of even date with said bond, and thereby conveyed to the said Morris Edelman and Lena Edelman, in fee the lands hereinafter described on the express condition that the said conveyance should be void as the payment should be made according to the terms of the aforesaid bond, which said mortgage, having been first duly acknowledged, was recorded in the Clerk's office of Bergen County on January 2, 1926 in Book 807 of Mortgages, page 45. 30

The mortgaged premises are described as follows:

Premises lying, being situate in the City of Garfield, County of Bergen and State of New Jersey.

Beginning at a point on the southerly side of 40

*Bill of Complaint.*

Passaic Street, distant 101.24 feet, westerly from the southwesterly corner of Passaic Street and Spencer Place, and running thence (1) southerly and parallel with Spencer Place, 204.19 feet more or less to lands of James Hanlon; thence (2) westerly and along Hanlon's line to the right of way of the Bergen County Railroad, thence (3) north-  
 10 erly and along said right of way to the intersection of the easterly side of said right of way with the southerly side of Passaic Street, and thence (4) easterly and along the southerly side of Passaic Street, 56.31 feet to the point or place of beginning.

Being lots 1 & 2 and parts of lots 7, 8 and 10 on Block 2 on Map entitled "Map No. 2 of the property of Gilbert D. Bogart situate at Garfield,  
 20 Bergen County, New Jersey."

(3) On December 29, 1927 the full amount of the mortgage together with the interest thereon at the rate of 6% became due.

(4) The said bond and mortgage contained in a clause that in the event that the interest or principal remain unpaid for a period of 10 days after the due date, then the mortgage shall be in default and the full amount is immediately due.  
 30

(5) Said mortgage is now in default by reason of which complainants are entitled to the full amount of principal and interest from June 29, 1927.

(6) The said Peter Fleuchaus and Leopold Bauer are made party defendants to this suit because they guaranteed the payment of the bond and upon a deficiency in the event of a sale upon  
 40

*Bill of Complaint.*

foreclosure, they will be responsible to the said complainants.

(7) The said William Lamping is married, and his wife's name is Rose Lamping (first name being unknown and fictitious).

(8) The said Rose Lamping (first name being unknown and fictitious) is made a party to this suit because her dower right will be cut off by the sale of the mortgaged premises. 10

(9) The complainants are without adequate remedy in the course of Law and therefore pray:

(1) That the said defendants answer this Bill of Complaint and each statement therein made.

(2) That an account may be taken of the amount due on the complainant's mortgage. 20

(3) That the defendants may be decreed to pay the complainants the amount so found due, with interest and costs, by a short day to be ordered by this Court; and that in default of such payment he be debarred and foreclosed of all equity and redemption and said lands or that a decree may be made for the sale of the mortgaged premises to raise and pay the complainants the amount so found due on his mortgage with interest and costs. 30

(4) That a writ of subpoena may be issued commanding said defendants to answer this Bill of Complaint to abide by such decree as this Court may make in the premises.

HELLER & BOSS,  
Solicitor of Complainants.

JACK RINZLER,  
Of Counsel. 40

*Amended Bill of Complaint.*

Filed Feb. 10, 1928.

To the Honorable EDWIN ROBERT WALKER, Chancellor of the State of New Jersey:

The complainants, Morris Edelman and Lena Edelman, of the City of Passaic, County of Passaic, and State of New Jersey, respectfully shows  
10 that:

1. On the twenty-ninth day of December, 1925, William Lamping being indebted to Morris Edelman and Lena Edelman in the sum of Seventeen hundred (\$1700.00) Dollars, executed a bond bearing that date to secure that sum payable on December 29, 1927, with interest at the rate of 6% per annum, payable semi-annually from the date of the bond, which said bond was executed also by  
20 Peter Fleuchaus and Leopold Bauer.

2. To secure payment of said bond, said William Lamping executed to the said Morris Edelman and Lena Edelman a mortgage of even date with said bond, and thereby conveyed to the said Morris Edelman and Lena Edelman, in fee the lands hereinafter described on the express condition that the said conveyance should be void as the payment should be made according to the terms of  
30 the aforesaid bond, which said mortgage, having been first duly acknowledged was recorded in the Clerk's Office of Bergen County on January 2, 1926 in book 807 of mortgages page 45.

The mortgaged premises are described as follows:

Premises lying, being and situate in the City of Garfield, County of Bergen and State of New Jersey.

40 Beginning at a point on the southerly side of Passaic Street distant one hundred and one feet

*Amended Bill of Complaint.*

and twenty-four hundredths of a (101.24) foot westerly from the southwesterly corner of Passaic Street and Spencer Place; and running thence (1) southerly and parallel with Spencer Place two hundred and four feet and nineteen hundredths of a (204.19) foot more or less to lands of James Hanlon; thence (2) westerly and along Hanlon's line to the right of way of the Bergen County Railroad; thence (3) northerly and along said right of way to the intersection of the easterly side of said right of way with the southerly side of Passaic Street; and thence (4) easterly and along the southerly side of Passaic Street fifty-six feet and thirty-one hundredths (56.31) of a foot to the point or place of beginning.

Being lots one and two and parts of lots seven, eight and ten on Block "Q" on map entitled "Map No. 2 of the Property of Gilbert D. Bogart, situate at Garfield, Bergen County, N. J." 20

3. On December 29, 1927, the full amount of the mortgage together with interest thereon at the rate of 6% became due.

4. The said bond and mortgage contained a clause that in the event that the interest or principal remain unpaid for a period of ten days after the due date, then the mortgagor shall be in default and the full amount is immediately due. 30

5. Said mortgagor is now in default by reason of which the complainants are entitled to the full amount of principal and interest from June 29, 1927.

6. The said Peter Fleuchaus and Leopold Bauer are made party defendants to this suit because they guaranteed the payment of the bond, and upon a deficiency in the event of a sale upon fore- 40

*Amended Bill of Complaint.*

closure, they will be responsible to the said complainants.

7. The said William Lamping is married, and his wife's name is Rose Lamping, (first name being unknown and fictitious).

10 8. The said Rose Lamping (said first name being unknown and fictitious) is made a party to this suit because her dower right will be cut off by a sale of the mortgaged premises.

9. The complainants are without adequate remedy in the Court of Law and therefore pray:

1. That the said defendants answer this bill of Complaint and each statement therein made.

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

3. That the defendants may be decreed to pay the complainants the amount so found due, with interest and costs, by a short day to be appointed by this court; and that in default of such payment he be debarred and foreclosed of all equity or redemption in said lands; or that a decree may be made for the sale of the mortgaged premises to raise and pay the complainants the amount so found due on his mortgage with interest and costs.

30

4. That a writ of subpoena may issue commanding said defendants to answer this Bill of Complaint and to abide by such decree as this Court may make in the premises.

HELLER & BOSS,  
Solicitors for Complainants.

AARON HELLER,  
Of Counsel.

### Answer and Counter-claim.

Filed March 13, 1928.

William Lamping, defendant herein, answering the Bill of Complaint of complainants, says:

(1) He neither denies nor admits paragraph 1 but he leaves the complainants to their proof.

10

(2) He neither admits nor denies paragraph 2 but he leaves the complainants to their proof.

(3) He denies paragraph 3.

(4) He neither admits nor denies paragraph 4 but he leaves the complainants to their proof.

(5) He denies paragraph 5.

(6) He denies paragraph 9.

20

#### FIRST SEPARATE DEFENSE.

That the execution of said bond and mortgage was procured through fraud and deceit practiced by the complainants upon the defendant herein.

#### SECOND SEPARATE DEFENSE.

That the execution of said bond and mortgage was procured through false representations and by means of false pretenses practiced upon the defendants by the complainants.

30

By way of Counter-claim against the complainants, Morris Edelman and Lena Edelman, defendant, William Lamping says that:

#### FIRST COUNT.

(1) On the 29th day of December 1925 the defendant exchanged with complainants, Morris Edelman and Lena Edelman, property owned by him

40

*Answer and Counter-claim.*

at River and Montgomery Streets Paterson, New Jersey, which said property had a monthly income of One Hundred Ninety-nine (\$199.00) Dollars per month for the property described in the Bill of Complaint, which said property consisted of a hotel building and cafe, which was represented to have a steady and regular income of One Hundred  
10 Sixty-five (\$165.00) Dollars per month from said cafe and hotel building.

(2) That complainants represented that said cafe and hotel building were being conducted in a lawful and legal manner and was not violating any State or Federal Prohibition laws and was not involved in any legal proceedings and the title and possession of same were in no wise affected.

20 (3) That the defendant relying upon the said representations and as consideration therefore, executed the bond and mortgage upon which this suit is based, believing the representations to be true.

(4) The said complainants then and there knew that the said representations were false and fraudulent and the complainants made the said representations knowing the same to be false and fraudulent and the defendant relying on said representations, believing them to be true, executed the said  
30 bond and mortgage to his great damage.

(5) That at the time the said representations were made to the defendant herein the said complainants were then and there involved in the United States District Court for New Jersey in a suit affecting the title and possession of said property, a bill for injunction for violation of the National  
40 Prohibition Act having been filed on November 28,

*Answer and Counter-claim.*

1925, the subpoenas having been returned served upon said complainants before the execution of the deed, bond and mortgage upon which this suit is based and for which this action is brought.

(6) That the defendant herein had no knowledge of the pendency of said action or that said property was involved in any suit or that the title or possession of said premises was in any wise affected. 10

(7) As a result of the misrepresentations and fraud aforesaid practiced upon the said defendant, the said premises were padlocked and closed and were forced to remain so for a period of over one (1) year.

(8) By reason of the foregoing, defendant suffered the loss of the rental value of said premises of One Hundred Sixty-five (\$165.00) Dollars per month, which said premises would have brought, but for the wrongful acts herein complained of of the complainants, and thereby defendant suffered a loss of Nineteen Hundred and Eighty (\$1980.00) Dollars. 20

(9) In addition defendant was obliged to retain counsel to petition the Court to reopen the said premises for removal of the said padlock so that the same could be again lawfully occupied, the fees of counsel amounted to One hundred Fifty (\$150.00) Dollars to the damage of the defendant. 30

By reason of the foregoing the defendant suffered a total loss of Two Thousand One Hundred and Thirty (\$2130.00) Dollars.

*Answer and Counter-claim.*

## SECOND COUNT.

10 (1) That on December 29, 1925 defendant purchased from complainants the premises described in the Bill of Complaint filed herein for a good, sufficient and valuable consideration and said complainants thereupon executed to defendant a warranty-deed, wherein the defendant was described as the grantee, and that said warranty deed contained the following warranties, "That the grantee shall have quiet possession of the said lands and that the same are free from all encumbrances;" "That they have done no act to encumber the said lands;" "That they will warrant generally the property hereby conveyed."

20 (2) That complainants breached the said covenants and warranties and knew that the same were breached at the time of the execution of the said warranty deed.

30 (3) That the said complainants knew that at the time of the execution of the said warranty deeds containing the aforesaid covenants and warranties, said property was not free from all encumbrances and said grantee, the defendant herein, could not have quiet possession of the said lands and premises.

40 (4) That at the time of the execution of the said deed said premises were affected by a suit pending in the United States District Court entitled "The United States of America vs. Frank Menikatto, Morris Edelman and Lena Edelman," which said suit was a bill for injunction for the violation of the National Prohibition Act which said violation took place June 12, 1924 through the sale of whiskey and the complainants herein

*Answer and Counter-claim.*

were served with subpoenas on December 10, 1925, which was prior to the execution of the said deed.

(5) That by reason of the foregoing the said premises were ordered by order of the United States District Court closed and padlocked and defendant lost the rental value of said premises to the amount of One Hundred Sixty-five (\$165.00) Dollars per month for a period of over one year and in addition was obliged to expend the sum of One Hundred Fifty (\$150.00) Dollars for counsel fees in order to reopen the said premises. 10

This defendant therefore prays:

(1) That the said complainants, Morris Edelman and Lena Edelman, his wife, may answer this counter-claim and each statement therein made. 20

(2) That the said complainants may be decreed to pay to this defendant, William Lamping, the sum of Two One Hundred Thirty (\$2130.00) Dollars.

(3) If the Court shall find that there is something due on the complainant's mortgage, then the amount found due to this defendant by reason of his losses sustained as set forth in this counter-claim shall be deducted from said amount found due to complainants; or if the amount so found due, this defendant shall exceed the amount of said mortgage debt, then the said complainants may be decreed to pay to this defendant the excess and to deliver up said mortgage for cancellation. 30

SAMUEL ROSENFELD,  
Solicitor of Defendant,  
William Lamping. 40



**Petition of Appeal.**

Filed May 9, 1929.

*To the Honorable Court of Errors and Appeals in  
the Last Resort In All Causes:*

The Petition of William Lamping, the appellant in the above entitled cause, respectfully shows that:

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(1) Petitioner finds himself aggrieved by a final decree made in the Court of Chancery of New Jersey by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date the first day of April, 1929, in a certain cause in said Court of Chancery wherein the said Morris Edelman and Lena Edelman were complainants and the said William Lamping was a defendant, in this respect, to wit, that

20

(a) The said decree adjudges that the said defendant has no just defense to the payment of the said mortgage (referring to the mortgage dated December 29, 1925, affecting the property described in the bill of complaint), together with interest thereon.

(b) That the said decree adjudges that the answer and counter-claim filed by the defendant, William Lamping, is without merit and that the complainants are entitled to the relief prayed for by them in the bill of complaint filed herein.

30

(c) That the said decree adjudges that the counter-claim of the defendant, William Lamping, be dismissed.

(d) That the said decree adjudges and decrees that the complainants are entitled to have the sum of \$1,700 together with interest from June 29,

40

*Petition of Appeal.*

1927 amounting to \$178.50, making a total of \$1878.50, together with interest from the date of said decree and together with the complainants' costs to be taxed, raised and paid out of the mortgaged premises in the said bill of complaint described, together with counsel fees in the sum of \$200.00.

10

(e) That the said decree adjudges and decrees that said counsel fee should be taxed, raised and paid out of the mortgaged premises and in default thereof that said William Lamping pay to Heller & Boss, Solicitors of Complainants said counsel fee, together with taxed costs.

20

(f) That the said decree adjudges and decrees that the mortgaged premises be sold to raise and satisfy the said debt, interest and costs and that a writ of fieri facias issue for that purpose out of the Court of Chancery directed to the Sheriff of the County of Bergen demanding him to make sale of so much of said mortgaged premises as will be sufficient to satisfy the said debt, interest and costs.

30

(g) That the said decree adjudges and decrees that the defendant stand absolutely debarred and foreclosed of and from all equity of redemption in hand to so much of the said mortgaged premises as shall be sold as aforesaid by virtue of said decree.

(2). Petitioner appeals from the decree of the Chancellor which decree as aforesaid, upon the ground that the same is erroneous in that:

40

(a) That the said decree should not have adjudged that the said defendant has not a just de-

*Petition of Appeal.*

fense to the payment of the said mortgage (referring to the mortgage dated December 29th, 1925), affecting the property described in the bill of complaint), together with the interest thereon.

(b) That the said decree should not have adjudged that the answer and counter-claim filed by the defendant, William Lamping is without merit and that the complainants are entitled to the relief prayed for by them in the bill of complaint filed therein. 10

(c) That the said decree should not have adjudged that the counter-claim of the defendant William Lamping, be dismissed.

(d) That the said decree should not have adjudged and decreed that complainants are entitled to have the sum of \$1700.00 together with interest from June 29th, 1927 amounting to \$178.50 making a total of \$1878.50, together with interest from the date of said decree and together with the complainants' costs to be taxed, raised and paid out of the mortgaged premises in the said bill of complaint described, together with counsel fees in the sum of \$200.00. 20

(e) That the said decree should not have adjudged and decreed that the said counsel fee should be taxed, raised and paid out of the mortgaged premises and in default thereof that the said William Lamping pay to Heller & Boss, solicitors of complainants said counsel fee, together with taxed costs. 30

(f) That the said decree should not have adjudged and decreed that the mortgaged premises be sold to raise and satisfy the said debt, interest 40

*Petition of Appeal.*

and costs and that a writ of fieri facias issue for that purpose out of the Court of Chancery directed to the Sheriff of the County of Bergen demanding him to make sale of so much of said mortgaged premises as will be sufficient to satisfy the said debt, interest and costs.

10 (g) That the said decree should not have adjudged and decreed that the defendant stand absolutely debarred and foreclosed of and from all equity of redemption in hand to so much of the said mortgaged premises as shall be sold as aforesaid by virtue of said decree.

(h) The decree denied the relief prayed for in the counter-claim, whereas the decree should have sustained the counter-claim and should have  
20 awarded to the defendant the relief therein prayed for.

(3) Petitioner appeals from the Court's rule upon evidence offered by the complainants and erroneously permitted and allowed to be introduced by said complainants in the following respects:

(a) The Court allowed to be introduced into  
30 evidence the contract of sale dated December 26, 1925 in violation of the parol evidence rule and permitted parol evidence to alter, vary and contradict the written terms and covenants of the deed dated December 26, 1925.

(b) That the Court erroneously overruled the objections of the solicitor for the defendant upon objections made to the introduction of irrelevant, incompetent and immaterial matters offered as evidence and proof.

40 (4) Petitioner appeals from the decree of the

*Petition of Appeal.*

Chancellor as aforesaid upon the ground that the same is erroneous in that:

(a) The decree should have denied the relief prayed for in the bill of complaint and should have dismissed the same.

(b) The decree should have allowed the counter-claim of the defendant and awarded the relief prayed for therein. 10

(c) The decree should have deducted the amount found due upon the counter-claim from the amount found due upon the mortgage of the complainants and should have awarded the further relief prayed for in the counter-claim of defendant.

Petitioner therefor prays that the above mentioned portions of said decree, by which petitioner is aggrieved as aforesaid, may be wholly reversed, set aside and for nothing holden and that petitioner may have such other relief in the premises as to this Court shall seem proper. 20

SAMUEL ROSENFELD,  
Solicitor of Appellant.

ELMER FRIEDBAUER,  
Of Counsel with Appellant. 30

**Answer to Petition of Appeal.**

Filed May 22, 1929.

The answer of Morris Edelman and Lena Edelman, the above named appellees, to the Petition of Appeal of William Lamping, the above named Appellant.

10 These Appellees, not admitting the truth of all or any of the matters in the said Petition of Appeal contained, for answer thereto nevertheless admits that a decree was on the first day of April, 1929, made and entered in the Court of Chancery of New Jersey, in the above entitled cause, for the purposes in said petition mentioned and as therein set forth; but as to the substance and form of said decree, the appellees beg leave to refer thereto when the same shall be produced.

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

HELLER & BOSS,  
Solicitors of Appellees.  
AARON HELLER,  
Of Counsel.

30

40

**Final Decree.**

Filed April 1, 1929.

This cause coming on to be heard in the presence of Aaron Heller of the firm of Heller & Boss, solicitors of the complainants, and Samuel Rosenfeld, solicitor of the defendants, and the Court having examined the pleadings and having taken proofs orally and in open court and heard and considered the arguments of counsel thereon, and

10

It appearing that the complainants are the holders of a mortgage dated December 29, 1925, and recorded on January 2, 1926 in the Clerk's Office of Bergen County in Book 807 of Mortgages, page 45, affecting the property described in the Bill of Complaint, and it further appearing that the said defendants have no just defense to the payment of the said mortgage together with interest thereon; and

20

It further appearing that the defendants, Rose Lamping, (first name being unknown and fictitious), Peter Fleuchaus and Leopold Bauer, have failed to file an answer, although process was duly served, it is on this 1st day of April, 1929, Ordered that the said bill of complaint be taken as confessed against said defendants, Rose Lamping, Peter Fleuchaus and Leopold Bauer.

30

It is Ordered that the counterclaim of the defendant, William Lamping, be dismissed.

It is Further Ordered, adjudged and decreed that the complainants are entitled to have the sum of \$1700.00 together with interest from June 29, 1927 amounting to \$178.50 making a total of \$1878.50 together with interest from the date hereof and together with complainants costs to be taxed, raised and paid out of the mortgaged premises

40

*Final Decree.*

in said bill of complaint described, together with  
 counsel fees in the sum of \$200.00 which said coun-  
 sel fee should be taxed, raised and paid out of the  
 mortgaged premises and in default thereof, it is  
 ordered that the said William Lamping pay to  
 Heller & Boss, solicitors of complainants said  
 10 counsel fee together with taxed costs.

It is Further Ordered, adjudged and decreed  
 that the mortgaged premises be sold to raise and  
 satisfy the said debt, interests and costs, and that  
 a writ of fieri facias issue for that purpose out of  
 this court directed to the Sheriff of the County of  
 Bergen demanding him to make sale according to  
 law of so much of the said mortgaged premises as  
 will be sufficient to satisfy the said debt, interests  
 and costs, and that in case more money shall be  
 20 raised by said sale than shall be sufficient to an-  
 swer the said payment, such surplus may be  
 brought into this Court unless otherwise previous-  
 ly disposed of by this Court and that the Sheriff  
 make return without delay of the proceedings by  
 virtue of said writ.

It is Further Ordered, adjudged and decreed  
 that the defendants and each of them stand abso-  
 lutely debarred and foreclosed of and from all  
 30 equity of redemption in hand to so much of the  
 said mortgaged premises as shall be sold as afore-  
 said by virtue of this decree.

E. R. WALKER,  
 C.

Respectfully advised,  
 JOHN BENTLEY,  
 V. C.

**Testimony.**

IN CHANCERY OF NEW JERSEY.

<p>Between  MORRIS EDELMAN and LENA  EDELMAN,  Complainants-Respondents,</p> <p style="text-align: center;">and</p> <p>WILLIAM LAMPING, ROSE LAMP-  ING (first name being unknown  and fictitious) PETER FLEU-  CHAUS and LEOPOLD BAUER,  Defendants-Appellants.</p>	}	<p style="text-align: right;">10</p> <p style="text-align: right;">On Bill &amp;c.  Transcript.</p>
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Transcript of the testimony taken in the above- 20  
stated cause, on final hearing, at the Chancery  
Chambers in Jersey City, on October 24, 1928, at  
10 o'clock in the forenoon, before his Honor JOHN  
BENTLEY, Vice-Chancellor.

APPEARANCES.

<p>Messrs. HELLER &amp; BOSS, Solicitors,  AARON HELLER, ESQ., of Counsel,  For the Complainants.</p>	30
<p>SAMUEL ROSENFELD, ESQ.,  For the Defendants.</p>	

The Court: Are you ready in this case of Edel-  
man v. Lamping?

Mr. Heller: Yes, your Honor.

The Court: What is this case about? I see 40  
there is a final decree.

*Testimony.*

Mr. Heller: After they filed an answer I moved to strike out the answer.

The Court: Did you serve him with notice?

Mr. Heller: Yes, and on the return day of that notice he comes in and wants to reargue the motion. That is the reason you have the master's report and decree nisi and all that.

10 The Court: That was advised by Vice-Chancellor Lewis?

Mr. Heller: I think so. I was going to move to strike out the answer anyway and I think it came on before Vice-Chancellor Lewis and he laid the matter over for final hearing. So that, before taking up this case I am going to move again that the answer filed by Mr. Rosenfeld be stricken out.

20 Mr. Rosenfeld: Notice was left at my office while I was away, and, of course, when I came back I had it formally reopened. There is an order setting aside the decree nisi and then the matter was set down for final hearing.

The Court: Well, that is of no moment now.

Mr. Rosenfeld: My impression is that Vice-Chancellor absolutely denied the motion.

Mr. Heller: There is the order which he signed, your Honor, with the papers there.

30 The Court: I have it right here, on the 28th of May of this year, and it says, "that the application be and the same is denied" and then there is interlined "to stand over until final hearing" and the decree nisi vacated.

40 Mr. Heller: It was to stand over until final hearing. The situation in this case is this: In December, 1925 the complainant and defendant entered into a certain contract of exchange, under the terms of which contract, and which are not disputed—

*Testimony.*

The Court: Is this a bill for specific performance?

Mr. Heller: No, a foreclosure; and there is a clause in the contract: "The party of the second part is not responsible for any padlock of the premises", the party of the second part being the complainant. He took back a mortgage covering the property. Then, I think three or six months later the place was padlocked. The interest on the mortgage had been paid according to the terms thereof every six months, in February and December, and then for the first time the defendants refused payment, although they had been paying interest right along and when they came to make the last installment on the mortgage they refused to pay, and then they set up that their signatures were procured by fraud because of the padlocking I don't believe there is any question of fact for you to determine; all the facts are admitted. The place was padlocked a long time later and the complainant was in the place when it was padlocked and they don't deny that they kept on paying the interest on the mortgage; and then they didn't assert their rights until a long time afterward.

Mr. Rosenfeld: Mr. Heller has told your Honor that we don't deny all these things. We do deny them. The situation is this: There was an exchange. The difference between them, \$1700., was to be taken care of by the mortgage. We say that we received a deed and that the deed was a full warranty deed.

The Court: I think I will hold the motion to strike out the answer and listen to the proofs. My understanding of the taking recourse to that provision in the rule that it may be allowed to stand over for final hearing is to get the benefit

*Morris Edelman—Direct.*

of the final hearing and then determine whether it is to be stricken out as sham. You may call your witnesses.

\*10 MORRIS EDELMAN, sworn in his own behalf testified as follows:

*Direct-examination by Mr. Heller:*

Q. Mr. Edelman, you are foreclosing the mortgage against William Lamping?

Mr. Rosenfeld: I object.

The Court: Well, I will allow that.

A. Yes.

20 Q. I show you a mortgage made by William Lamping to Morris Edelman, dated December 29, 1925, in the sum of \$1700, payable on December 27, 1927; is that the mortgage that you received?

A. Yes.

Q. And this is the bond that you received with it? A. Yes.

Mr. Heller: I offer the mortgage and bond in evidence.

(The mortgage is marked Exhibit C-1 and the Bond, C-2).

30

Q. After the signing of this bond and mortgage did you ever get any interest? A. Yes.

Q. And when did you get your interest? A. I got it every six months.

Q. Did he pay you the interest after the first six months? A. Yes.

Q. Did he pay after that? A. Yes.

40 Q. When was the first time that he refused? A. The last payment was in the month of June.

*Morris Edelman—Cross.*

Q. And the last interest payment he did not pay? A. He did not pay.

Q. How much is due on this mortgage now? A. The full amount of \$1700.

Q. Plus interest from the last day, which would be June 29, 1927? A. Yes, that's right.

10

*Cross-examination by Mr. Rosenfeld:*

Q. Mr. Edelman, who bought this place from you? A. Mr. Fleuchaus.

Q. Can you read, Mr. Edelman? A. No.

Q. Did you ever read? A. No.

Q. Do you know that the mortgage is made by one William Lamping? A. Yes, I know that.

Q. You know that the deed you made was to William Lamping? A. The deed was made to William Lamping? I guess so; I'm not sure. 20

Q. Don't you know whom you sold the place to? A. I know he bought it from William Lamping, the way I understood it.

Q. Who bought it from William Lamping? A. The other man there.

Q. They were agents for Lamping? A. I don't know. He bought it for himself.

Q. Did you ever see Mr. Lamping? A. No, sir. 30

Q. Never saw him? A. No.

Q. Did you ever demand any payment of interest from him? A. No, sir; not from Lamping. I received payment from Mr. Fleuchaus.

Q. He is the only man that paid you interest? A. Mr. Fleuchaus or Mr.—the other fellow; I have forgotten his name.

Q. You knew that the deed you gave was a full warranty deed? 40

*Morris Edelman—Cross.*

Mr. Heller: Show him the deed.

The Court: But he can't read, even if he does see it.

Mr. Heller: I will admit it in evidence.

10 Q. You know it was a full warranty deed, don't you?

Mr. Heller: I object to that. You had better offer the deed.

Mr. Rosenfeld: I will show him the deed.

The Court: But he says he can't read and Mr. Heller has no objection to your offering it.

Q. You have been in the real estate business many years? A. Yes.

20 Q. You know what a warranty deed is, don't you? A. You say this is.

Q. No, no—

The Court: You answer the question: You know what a warranty deed is? A. Yes.

Q. You gave him a warranty deed?

30 Mr. Heller: I object to that. This is three years ago. Let us see the deed. I can't remember myself.

Q. Do you know whether you gave him a warranty deed in this case? A. No, I couldn't remember that.

Q. At the time you sold this place there was a tenant in this building, wasn't there? A. Yes.

Q. What was his name? A. I couldn't tell you.

40 Mr. Heller: I object to that.

*Morris Edelman—Cross.*

The Court: Mr. Heller, it is discretionary to permit the cross-examination to go beyond the scope of the direct where the witness is a party to the proceeding. I will allow it.

Q. Was this paper served on you (exhibiting paper to the witness)? A. I don't know; I couldn't say "yes" and I couldn't say "no". 10

Q. Were you served with any papers affecting these premises in Garfield, by the Marshal in the U. S. District Court prior to the time that you gave this deed? A. I couldn't remember.

Q. You don't remember? A. No.

Q. Isn't it a fact that on December 10, 1925 you were served by a United States Marshal with a subpoena affecting the premises you are suing upon? A. I couldn't remember if I received any paper or didn't receive any paper. 20

Q. You don't know? A. I don't know.

Q. At the time you gave the deed to Mr. Fleuchaus where did you give it to him? A. Mr. Rust's office.

Q. You are sure you gave it to Mr. Fleuchaus? A. He is the only one.

Q. I mean Mr. Bauer. A. Mr. Bauer and Mr. Fleuchaus. 30

Q. They were both there? A. Yes.

Q. Did you tell him anything about being served with papers at the time of being padlocked? A. That is what I told him, and that is why I put it in my contract.

The Court: "I did tell him" may stand, and the other part may be stricken out as not responsive. 40

*Morris Edelman—Redirect.*

Q. Whom did you tell that to? A. Mr. Fleuchaus.

Q. That was the day the deed was given? A. No, that was the time we made the contract.

10 Q. I am talking about the day you made the deed; did you tell him anything then about padlocking the place? A. I can't recall that. I just told you about the deed.

*Redirect-examination by Mr. Heller:*

Q. I show you this contract and ask you if that is your signature? A. Yes.

20 Q. This is a contract made to William Lamping and signed by Peter Fleuchaus, dated December 26, 1925, witnessed by Herman C. Rust? Is that the contract? A. Yes.

Q. And subsequent to the signing of this contract, the deed and the mortgage in question were delivered; is that right? A. Yes.

Mr. Heller: I offer this contract in evidence.

Mr. Rosenfeld: I object to it.

The Court: On what ground?

30 Mr. Rosenfeld: On the following ground, sir: This is a suit on a purchase-money mortgage given. There is not one word in this bill of complaint concerning any contract of sale. There is no such issue. Our counterclaim has nothing to do with the contract. Our counterclaim simply rests upon the breach of the covenants contained in the warranty given to us. The question solely presented on the counterclaim is, is the  
40 amount due on the mortgage executed by

*Morris Edelman—Redirect.*

the defendant. The defense is that the deed given to the defendant is a full warranty deed and that the defendant breached the covenants of the deed. That is the sole issue.

The Court: I thought also the issue of fraud.

10

Mr. Rosenfeld: Yes, sir; the issue of fraud, too.

The Court: That the deed and mortgage were procured by fraud?

Mr. Rosenfeld: Yes, sir.

The Court: It seems to me it is admissible on that phase of the case, to attempt to rebut the charge of fraud. I assume that is the purpose of it?

20

Mr. Rosenfeld: There is no question presented as to the amount due on this mortgage; the contract had no place. The deed that has been executed is a warranty deed—

Mr. Heller: We don't know that.

Mr. Rosenfeld: —executed in the latter part of December, 1925. The contract is dated some days previous to the execution of this deed. It has no place in the present situation at all.

30

The Court: Well, I can hardly accuse you of having fraudulently obtained my consent to the contract where you are able to show that I was fully aware of the entire state of affairs.

Mr. Rosenfeld: That is not our defense; our defense is that the mortgage was procured by fraud.

The Court: Your objection is to the con-

40

*Peter Fleuchaus—Direct.*

tract. Of course, any contract obtained by fraud may be set aside. For the present I will sustain the objection.

Complainants Rest.

10

PETER FLEUCHAUS sworn on behalf of the defendants, testified as follows:

*Direct-examination by Mr. Rosenfeld:*

Q. Mr. Fleuchaus, do you know Mr. Edelman?

A. Yes.

Q. How long have you known him? A. About 8 or 9 or 10 years.

20

Q. How do you know him; in what way? A. Through real estate. He owns real estate and so we met and then talked business over.

Q. Do you remember making an exchange with him for a parcel of real estate in Paterson for property in Garfield? A. Yes.

Q. And did you receive the deed to the Garfield place? A. That deed was given by him three or four days later than the contract.

Q. Did you receive it? A. No.

30

Q. Who received it? A. He sent Mr. Bauer to clean up—not to clean up but to satisfy that deed.

Q. Was the deed ever returned to you by Mr. Edelman? A. No.

Q. But you know there was a deed given? A. Oh, yes, in Mr. Rust's office.

Mr. Rosenfeld: At this time I wish to offer in evidence a certified copy of the deed to the Garfield place, certified by the Clerk.

40

Mr. Heller: Where is the original deed?

*Peter Fleuchaus—Direct.*

Mr. Rosenfeld: Nobody knows.

Mr. Heller: The witness was just about to say something.

The Court: What difference does that make, Mr. Heller. Is that a certified copy?

Mr. Rosenfeld: Yes, sir.

The Court: I will allow you, Mr. Heller, 10  
to cross-examine him if you want to. Otherwise it will be admitted.

(The same is marked Exhibit D-1)

Q. Now, was Mr. Lamping present at the time the deed was delivered? A. No.

Q. And who handled this whole transaction for him? A. The title company and Mr. Bauer.

Q. Who did the closing of the transaction? A. I did. 20

Q. Are you any relation to Mr. Lamping? A. Yes, he is my brother-in-law.

Q. And have you bought any real estate from him before? A. Yes.

Q. Now, there was a mortgage given—the mortgage that the complainant says was for \$1700. Do you know about that? A. Yes.

Q. Was Mr. Lamping present when that was delivered to Mr. Edelman? A. No. 30

Q. Do you know whom the mortgage was given to? A. Mr. Bauer.

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

Q. Was Mr. Lamping there? A. No.

Q. Where was the mortgage executed? A. In Mr. Rust's office.

Q. When you say Mr. Lamping wasn't there how could he execute it in Mr. Rust's office? Do you understand my question? A. Yes.

Q. You say Mr. Lamping wasn't present in Mr. 40

*Peter Fleuchaus—Direct.*

Rust's office? A. Yes.

Q. Well, did he execute the mortgage there? A. (The witness pauses).

Q. Do you know? A. I don't, no.

Q. Do you know what the income of the Garfield place was at the time of the delivery of the deed? A. \$165 a month.

Q. Was the place occupied? A. Yes.

Q. As what? A. As a hotel.

Q. Downstairs? A. Downstairs a saloon and hall and kitchen, and then about 10 rooms upstairs.

Q. Did you have any conversation with Mr. Adelman on the day that the deed was delivered? Did you talk to him at all on the day the deed was delivered? A. Not on that day.

Q. And what happened to the place after the deed was delivered; do you know? A. Well, all at once—

Mr. Heller: Just a minute: If your Honor please, I don't think that is material, what happened after the mortgage was delivered. There is nothing to indicate that he was responsible, if anything did happen to it. If the building burned down six months later, or something else, how would that be binding on us?

The Court: Suppose he said that somebody that claimed paramount title came and demolished it? I will hear what he says.

Q. What happened to it? A. The sheriff ordered it to be padlocked.

Q. By whom? A. Well, from Newark.

*Peter Fleuchaus—Direct.*

Q. Do you know whom he represented? Was it from the City or State? A. From the State, on account of selling liquor.

Q. Were you there when the place was padlocked? A. I wasn't there that day.

Q. When did you come there? A. When I heard it I called Mr. Edelman up. 10

Q. I am asking you, did you see the place padlocked? A. Yes.

Q. When? What month? A. That was July, 1926.

Q. What did you do? Anything? A. Well, they wanted to make—they promised everything free and clear, and then I called up Mr. Edelman on the telephone and the girl told me Mr. Edelman isn't in. And so I called him up in the office again. 20

Q. Did you talk with him? A. Yes.

Q. What was the conversation? A. Well, he told me—

Q. Did you know Mr. Edelman's voice? A. Yes.

Q. Did you recognize the voice you heard over the telephone as the voice of Mr. Edelman? A. I could recognize that out of a hundred.

Q. What was this conversation? What did you tell him and what was said by him? A. I told him, "Why didn't you tell me about this before"? 30

Q. What did he say in reply? A. Then we talked a little bit more and then we made an agreement with the Passaic National Bank—

Q. What did he say? A. Well, I didn't know anything about it. He said "We will meet tomorrow and I will tell you what I will do".

Q. Did you meet him the next day? A. I met him the next day.

Q. And have a talk with him? A. Yes. 40

*Peter Fleuchaus—Direct.*

Q. What was the conversation? A. He said he thought he wanted to see what he could do about it, because all he heard about it was last night over the telephone; and I give him one day more, and we met again at the same place, and he says he will let me know what he can do.

10 Q. Well, did you meet him again? A. I came there the next day and he didn't come.

Q. Now, there has been some testimony that you paid interest on this mortgage. A. Yes, I did.

Q. Can you explain how that happened, or who paid it, whose money it was, and so on? A. I paid that because he meant all right and didn't cheat me, and he trusted me with his money to invest it for him, and, therefore, I paid the interest because I thought he would like it. I didn't know  
20 he was in that fix.

Q. Did you have any interest in this mortgage? A. No.

Q. Did Mr. Lamping ever pay any interest on this mortgage?

Mr. Heller: Oh now, he says Mr. Lamping entrusted all his money to this man.

A. Well, he got the deed.

30 Q. Did Mr. Lamping give you any money to pay this interest? A. No.

Q. Whose money was it? A. My money and I invested it for him.

Q. Did Mr. Lamping know that? A. Did Lamping know that?

Q. Yes, that you were paying this money? A. Yes, when he came to me.

Q. Are you acquainted with the values of real estate in Bergen County? A. Yes.  
40

*Peter Fleuchaus—Direct.*

Q. How long have you been in the real estate business? A. 24 years.

Q. Do you know the value of real estate of that character, with that kind of buildings? A. Yes.

Q. Do you know the rental value of it? A. Yes.

Q. In June of that year, or during the summer before this place was raided what was the reasonable rental value of the place in question? A. Twenty-five or twenty-six hundred a year. 10

Q. Do you know how long it was padlocked? A. No.

Q. Do you know what rent the tenant paid before it was padlocked? A. \$165.

Q. Was there any other expense attached to the padlocking of the place? A. There was \$150. lawyer's fees. 20

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

Q. Whom did he pay it to? A. To you, Mr. Rosenfeld.

Q. Paid it to me? A. Yes.

Mr. Rosenfeld: At this point I wish to introduce in evidence certified copy of subpoena, in the District Court of the United States for the District of New Jersey, showing service made upon the complainant. 30

Mr. Heller: I object, on the ground that it isn't material to the issue in this case, whether a subpoena was issued or was not issued. The testimony is that the place was padlocked from the following July until this subpoena is dated in November.

The Court: Didn't he say it was padlocked in June?

Mr. Heller: June and July. 40

*Peter Fleuchaus—Direct.*

Mr. Rosenfeld: I offer it as affecting the credibility of the complainant's testimony.

Mr. Heller: If you offer it to affect his credibility I am going to object to it, because this is an improper way to prove service.

10 The Court: It is certified by the District Court.

Mr. Heller: I object to the part where the service is certified. The party is here to testify.

The Court: I don't know of any better way to prove it. I will allow it.

(The same is marked Exhibit D-2)

20 Mr. Rosenfeld: I offer in evidence a bill for injunction, filed in the United States District Court for the District of New Jersey, against Frank Menikatto, Morris Edelman and Lena Edelman.

(Admitted and marked Exhibit D-3)

30 Mr. Rosenfeld: I also wish to introduce in evidence certified copy of decree, in the U. S. District Court of the District of New Jersey, between the same parties, declaring said premises to be a nuisance and ordering the padlocking.

(Admitted and marked Exhibit D-4)

*Cross-examination by Mr. Heller:*

Q. Mr. Fleuchaus, you were at this time the authorized agent for Mr. Lamping, weren't you?

A. Yes.

40 Q. As a matter of fact, you even had a power of attorney to sign his name? A. Yes.

*Peter Fleuchaus—Cross.*

Q. You had a power of attorney to make any contract that you pleased? Don't look at Mr. Rosenfeld; look at me. To make any contract that you pleased and invest his money in any way you wanted to? A. Yes.

Q. And the fact of the matter is, that the deal between you and Mr. Edelman in which Lamping was involved was done by you without any knowledge on behalf of Lamping at all and he didn't know anything about it? A. Oh yes, he knew what kind of business he had. 10

Q. Did you show Mr. Lamping the contract?

Mr. Rosenfeld: I object to that, sir.

Mr. Heller: He says he does know about it. I want to know whether he knew about the contract. 20

Mr. Rosenfeld: That has nothing to do with this case and it is not proper cross-examination.

Mr. Heller: I ask that the contract be marked for identification.

(The same is marked C-3 for Identification)

Q. Did Mr. Lamping know anything about the contract marked C-3 for identification? 30

Mr. Rosenfeld: I object to the question.

The Court: I want to get the full details of this transaction. I will overrule the objection.

Mr. Rosenfeld: I was under the impression that your Honor was going to hold in abeyance any question in regard to the contract until we went into the question of 40

*Peter Fleuchaus—Cross.*

fraud. Your Honor so stated, I believe. So far, I have not gone into any question of that kind.

The Court: Well, I am not going to make him call this witness back. I am going to allow that.

10

Q. What is your answer, Mr. Fleuchaus? Did Mr. Lamping know about that? A. Yes, I showed it to him.

Q. Did you show him the contract? A. I explained everything what the deed will be.

Q. Did you explain to him this clause which I will read to you: "Party of the second part is not responsible for any padlock of the premises". Did you explain that; yes or no.

20

Mr. Rosenfeld: I object to that, if your Honor please.

The Court: On the same ground?

Mr. Rosenfeld: No, sir; on the ground that the deed has taken the place of this contract, and it is wholly irrelevant.

The Court: Well, my offhand impression is that that is so, but I am going to allow it and deal with it later when I come to decide this case.

30

Q. What is the answer to my last question?

(Question read by the stenographer).

A. Mr. Edelman told me—

Q. Yes or no, did you explain that to him? A. Yes, what Mr. Edelman told me; but he told me before about it or I wouldn't be in it.

Q. After the execution of this mortgage who  
40 took care of the interest on the first mortgage and

*Peter Fleuchaus—Cross.*

the interest on the second mortgage? A. I did.

Q. And did Mr. Lamping give you money with which to pay the interest on the first mortgage and second mortgage? A. I paid it out because I collected it.

Q. In other words, you collected the rent and with that you paid the interest? A. Yes. 10

Q. When the place was first padlocked you didn't collect the rent? A. Yes.

Q. Who paid the interest then? A. I paid the interest.

Q. Was it Lamping's money or your money? A. Never from Lamping any more; I paid from the money left and I paid the interest out of my own money to Mr. Edelman.

Q. And you also paid the interest out of your own money on the first mortgage? A. Sure. 20

Q. Did Mr. Lamping know that you were paying the interest? A. On the second mortgage.

Q. Who paid the interest on the first mortgage? A. I did.

Q. Was that paid out of Lamping's money or your money? A. Mr. Lamping's money.

Q. Didn't the money you collected apply to the second mortgage and the taxes and insurance? A. No, no, Mr. Edelman's money. He didn't put a cent in any more. 30

Q. You paid that? A. Yes.

Q. Out of your own pocket? A. Yes.

Q. You didn't ask for anything more from Mr. Lamping, so far as that is concerned? A. Oh yes, later on. We didn't figure it out every month.

Q. Now, this place was padlocked only in front of this big building, wasn't it? A. Well, it is a 40

*Peter Fleuchaus—Cross.*

hotel. If the front is padlocked everything is padlocked.

Q. Was the big downstairs hall in the back padlocked? Yes or no. A. It was not.

Q. That is all. Were the rooms upstairs padlocked? A. They weren't, but you can't run it  
10 much otherwise.

Q. The only part that was padlocked was only one small place in front, 10 by 20 feet? Will you answer that "yes" or "no", if you can answer it that way. A. There was a padlock on the front. There wasn't a padlock on every door in the house.

Q. I am asking you to answer "yes" or "no". A. The hotel was padlocked, yes.

Q. You want to tell us the hotel—the main, important part with this big room was padlocked?  
20 A. Yes.

Q. How many rooms upstairs are there? A. Nine or ten.

Q. Entrance is gained to these rooms by a side or rear door? A. Yes, but—

Q. You said "yes", didn't you? A. Yes.

Q. And you said there were 9 or 10 rooms up there? A. Yes.

Q. And the entrance hall is also obtained  
30 through the rear and not through the front? A. Yes.

Q. And who occupies that place now? A. That isn't rented.

Q. Who— A. The whole place?

Q. Who occupies it? A. Mr. Bauer.

Q. Mr. Bauer? A. Oh, at the present time Mr. Mendelsohn.

Q. What is his first name? A. His first name,  
40 really I don't know exactly.

*Peter Fleuchaus—Cross.*

Q. Do you collect the rent? A. Yes.

Q. Give the receipts? A. Yes.

Q. What is his first name? Where does he live, if you can't answer that one? A. We see one another every day—not every day, but nearly every week. He comes down.

Q. You understand English, Mr. Fleuchaus? 10  
A. Yes.

Q. Where does he live? A. He lives on 12th; because it is a new building.

Q. What did you mean when you answered a moment ago "Mr. Bauer"? A. Mr. Bauer rented the place right after the padlocking.

Q. And when you slipped and said "Mr. Bauer" you meant he rented the place to Mr. Mendelsohn? A. Yes.

Q. Right after the padlocking? A. Yes. 20

Q. When you first took over the place who was the tenant there? A. That tenant was an Italian fellow in there.

Q. How long was the Italian fellow in there? A. He was in there about two or three months.

Q. And after the Italian fellow got out who went in there? A. A man by the name of Rose.

Q. And when the place was padlocked who was in there? A. Rose. 30

Q. It was your place? In other words, your place was padlocked; the man that Edelman had was no longer there? A. No, he was gone for about two months.

Q. And then your tenant Mr. Rose was there? A. Yes.

Q. What kind of business was he operating? A. The same business.

Q. And what kind of business was that? A. 40  
Hotel. He rented the whole place for \$165.

*Peter Fleuchaus—Cross.*

Q. And what kind of business was he operating?

A. He had a saloon in front and a hotel in the whole place.

Q. And he rented the whole place? A. He rented the whole place for \$165.

Q. And you rented it to Mr. Rose for a saloon?

10 A. Everything together—toilet, kitchen, and everything.

Q. Do you recall after Edelman's tenant went out of the premises—let me ask you, first, did you put him out? A. I think it was a lawyer who put him out, wasn't it? Which one?

Q. Edelman's tenant? A. Yes, because he paid no rent.

Q. And who was it? A. I think you put him out.

20 Q. After I put him out do you recall seeing the subpoenas from the U. S. Court? A. I don't remember. I came to you and opened the place.

Q. You do recall, however, hiring me to reopen the place? A. Yes.

Q. Before the padlock was put on? A. That I don't know exactly. No, it was padlocked.

30 Mr. Roseneld: Just a minute: Whether Mr. Heller agreed to open the place or didn't agree to open the place has no bearing on this case.

40 Mr. Heller: I was not the attorney for this man Edelman. I don't think I knew him. They came to me and asked me. I am going to show how it is material: They came to me with the subpoenas and asked me if I couldn't dismiss the bill for injunction because they knew something was going to happen. This was long before the

*Peter Fleuchaus—Cross.*

padlocking of the place; and then I am going to get from him the date they put on the padlock.

Mr. Rosenfeld: Counsel makes a statement as to what he did. I think it is entirely improper.

Mr. Heller: I want to get all the facts, 10  
and I think your Honor wants them.

The Court: He is outlining to me what he intends to prove by this witness, to show its materiality, and I think I can see how it can be material. I overrule the objection.

Q. Now, do you recall coming to my office with this man Bauer with subpoenas issued out of the United States court and asking my advice? A. I went to your office and you were out in Newark and when we got in the office was closed, and we asked you why didn't you attend to your business, and you said you were busy in Hackensack, and when we went over to Hackensack you were in Newark and you told me to come over on that day, but we found out there wasn't any sitting over there. 20

Mr. Heller: I ask that that voluntary remark be stricken out. 30

The Court: It may be stricken out.

Q. Yes or no, answer the question: Do you recall coming to my office and showing me a subpoena to appear in court? Do you remember that? A. I don't remember, but I remember I opened up the place.

Q. Do you remember after that you and I and Mr. Bauer went to the U. S. District Court at Newark? A. At Newark, yes. 40

*Peter Fleuchaus—Cross.*

Q. Was that before the place was closed? A. That was after the place was closed.

Q. You say that was after the place was closed?  
A. Yes, I didn't know nothing about the place. I couldn't get something out of the air.

Q. You realize you are under oath now, don't you? A. Yes.

Q. Do you now say that that was after the place was closed that I went with you to Newark in response to that subpoena? A. Yes.

Q. You are sure about that? A. Yes.

Q. Do you remember what month it was? A. Yes.

Q. What month was it? A. (The witness mumbles something that was unintelligible to the stenographer).

The Court: Now listen: If you don't answer the questions I shall have to do something to make you. The question that you were asked is "What month was it". Now, there is no occasion for you to make a long story.

A. That wasn't so long.

Q. It was in July, you say? A. Around that.  
I say July or the beginning of August; within a week or two.

(The Court refers to papers)

Mr. Heller: I was looking for that, too. This subpoena was returnable on the day that we were there.

The Court: That would be about the 10th of December.

Q. Do you recall whether or not it was on De-

*Peter Fleuchaus—Cross.*

ember the 30th, 1925, or around that time, that you and I went to Newark in response to that subpoena? A. Absolutely not.

Q. It was not that day or around that time? A. No.

Q. You said it was in July? A. Around there.

Q. Do you remember what day of the week it was? A. I don't know exactly the date. 10

Q. Well, you did say that I was busy in Hackensack on that day? A. One day I went out to Newark and you were busy and they say in your office that we call up Newark and you were in Hackensack.

Q. And don't you remember whether it was a warm day or a cold day? A. Warm day.

Q. You didn't have your overcoat on? A. That I can't remember. Sometimes I don't wear one on the coldest day; sometimes I wear one in summer. 20

Q. You don't know whether it was in summer? A. It was about July.

Q. You say it was after the place was padlocked? A. Yes.

Q. How soon after the place was padlocked? A. About a week, I guess.

Q. About a week after your place was padlocked? A. Yes, sir; we went to it right away. 30

Mr. Rosenfeld: He keeps calling this place Mr. Fleuchaus' place.

Q. You know what I mean, the Lamping place: about a week after? A. Yes.

Q. You are sure it wasn't a week before? A. Oh no, it was after; otherwise we wouldn't come to you. We were then recommended to you. 40

*Peter Fleuchaus—Cross.*

Q. By whom? A. I think John Natisovsky.

Q. And you explained to Mr. Natisovsky about the place? A. Yes.

Q. What did you want, to settle? A. If I did that I would go to Adelman first; I wouldn't go to the lawyer.

10 Q. You say you didn't? A. I says, "What is the matter with that place; the place is padlocked. How can we get out of that trouble?" and he said "Heller is a good man for that."

Q. Were you present when this contract was drawn that is marked C-3 for identification? A. Yes.

Mr. Rosenfeld: I object.

The Court: Your objection goes to all of this line.

20

Q. Nobody forced Mr. Lamping to sign these bonds and mortgage, did they?

Mr. Rosenfeld: I object to that.

The Court: I will sustain the objection.

Q. What happened after you and I went down to Newark, do you know, in reference to the padlocking?

30

Mr. Rosenfeld: I object to that. That is too vague and indefinite.

Q. Who was the tenant in Mr. Lamping's store at the time you and I went down to Newark about the padlocking the place? A. Mr. Rose.

Q. He was the tenant? A. Yes.

Q. Do you recall you and I and Mr. Bauer going down to Garfield to this store and I talking to Mr. Rose and you and Bauer at this store? A. Absolutely not.

40

*Peter Fleuchaus—Redirect.*

Q. Do you recall when the Federal agents came down to padlock the place you telephoned me, and my immediately going down there? A. I wasn't there. Maybe Mr. Bauer was.

Q. Do you recall my having the matter postponed for a day? A. I do not remember and I was not there.

10

Q. Do you know whether Mr. Bauer was there? A. I don't know that.

*Redirect-examination by Mr. Rosenfeld:*

Q. You said there is a side door that leads back to the hall and upstairs; is there any other door that leads there? A. There is all kinds of doors in a hotel. The place has got to be built according to the building code.

20

Q. Is there any door leading from the saloon in back? A. Yes, to the water-closet and toilet.

Q. Is there a door leading to the back door? A. Yes.

Q. And you can go upstairs through that door that leads from the saloon? A. You go in the hall and then upstairs.

Q. That leads to every part of the hotel? A. To every part of the hotel?

30

Q. So that the side door is not the only entrance? A. No, no.

Q. Now, this back door downstairs, is that a part of the saloon? A. That is a part of the saloon.

Q. Is that used in connection with the saloon? A. Absolutely.

Q. What is in this back room? A. That is a big hall called the dining-room.

Q. All right; now, what is there in it? A. 40

*Peter Fleuchaus—Redirect.*

Tables and chairs for the dining-room.

Q. And when the saloon was open did they use the back of it for serving? A. Sure, for dinners or suppers and meetings they use the dining-room. You can't enter it otherwise.

10 Q. Was it always used in connection with the saloon? A. Everything; the kitchen, the dining-room, the hall and saloon has got to go together.

Q. And can the rest of the building be used without the saloon? A. No, because the rooms upstairs are laid out for a hotel.

Q. Is there a sign on that building? A. Yes.

Q. What is the sign? A. "Garfield Hotel".

Q. So that the whole place is a hotel, isn't it? A. Yes.

20 Q. And the saloon is the heart of the place? A. If the saloon is padlocked the whole thing is closed; except you have a man there for nothing to watch the place the boys would knock the windows in and everything would be destroyed.

Q. And when the saloon is running who takes care of the upstairs rooms and so on? A. The saloon or the hotel man.

Q. Now, you said that you made payments of interest on the mortgage to Edelman? A. Yes.

30 Q. How about the payments on the first mortgage? That wasn't held by him, was it? A. No, it was held by a private party.

Q. Did Mr. Lamping make any payments on the first mortgage? A. He paid the interest.

Q. Do you know Mr. Lamping's signature? A. Yes.

40 Q. I show you a check for \$500 to the order to Joseph E. Blumberg; what was that the payment on? A. That was on the mortgage.

*Peter Fleuchaus—Redirect.*

Q. What mortgage was that? A. I think it was the second mortgage.

Q. They are both dated August 17, 1927.

Mr. Heller: I don't see how that is material.

Mr. Rosenfeld: I am calling this to his attention. They talked about a first and second mortgage and I think everybody is under the impression that this purchase-money mortgage was a second mortgage; whereas, the purchase money was the second and third mortgage. He didn't pay Edelman. 10

The Court: I will allow it. The first is a check for \$500, dated August 17, 1927.

(Admitted and marked Exhibit D-5) 20

The Court: The second is a mortgage to the same payee for \$75. on the same.

(Admitted and marked Exhibit D-6)

Q. Do you know what the \$500 payment was for? A. For the mortgage.

Q. Do you know what the \$75. payment was for? A. Interest on that.

Q. Did you deliver these checks to Mr. Blumberg? A. No. 30

Q. Did you leave them with anybody? A. I didn't.

Q. Are the rooms in this hall, the back room in back of the saloon, of any value without the saloon in front? A. No.

Mr. Rosenfeld: At this point, your Honor, I want to be enlightened on one thing, and I want to make this statement to your Honor: Mr. Heller has brought out something on 40

*Peter Fleuchaus—Recross.*

his cross-examination regarding padlocking. I don't want to be prejudiced by not clarifying the situation, and yet I don't want to go into it because my contention is that it is no part of the case.

10 The Court: I am not going to apply the rule sharply, and if it becomes necessary for you to recall him for that purpose you may do it.

*Recross examination by Mr. Heller:*

Q. Where does Mr. Rose live? A. I don't know.

Q. He was the tenant there? A. Oh, you mean Mr. Rose; he is working in Jersey City.

20 Q. Do you know where he lives? A. That I don't know.

Q. Can you get him here today? A. No.

Q. Can you get him here on any other date? A. I don't think so. He had trouble about bad debts and then I hear he was working in Jersey City.

Q. Then Kelley was the name of the other tenant? A. The first one.

Q. That was the tenant that was in there when Lamping bought it? A. Yes.

30 Q. And he put Kelley out? A. Yes, he didn't pay the rent.

Q. In other words, Lamping had hired me and Bauer and yourself to throw Kelley out? A. Yes.

Q. And wasn't it around that time that you discussed with me the matter of doing away with this in the United States District Court? A. Absolutely not. I didn't know anything about it.

40 Q. And wasn't that one of the reasons why I suggested that we put that tenant out? A. He didn't pay no rent.

*Peter Fleuchaus—Recross.*

Q. Then your answer is "no"? A. Yes.

*By the Court:*

Q. What did you do about settling up with Lamping? Did you have a settlement every few months on the rent that you collected for him?  
A. Yes, sir.

10

Q. Did you take care of the payments on all the mortgages? A. Yes, mostly.

Q. Now, as I understand it, the mortgage that is in dispute for \$1700 was a third mortgage, wasn't it? A. Third mortgage.

Q. And after the padlock proceedings were over, and after the padlock had been taken off that saloon, have you had any settlement of the amounts that you have collected? A. Since that time; yes, sir.

20

Q. Now, during the time that Lamping didn't do it you said you advanced the money out of your own pocket to pay the interest on the third mortgage? A. Yes, sir.

Q. Have you gotten credit for that since? A. No, that money I didn't get back for that third mortgage interest.

Q. Well, you have tried to get it from Lamping? A. Yes.

30

Q. You asked him for it? A. Yes.

Q. When? A. A couple of times and he said he wouldn't pay a cent on that mortgage because it is misrepresented.

Q. Do you still collect the rent? A. Yes.

Q. You haven't attempted to take it out of the rent you collected since the building was— A. I did, but he wouldn't let me.

40

*Morris Edelman—Recalled—Direct.*

Mr. Rosenfeld: Now, I want to call the complainant.

10 Mr. Heller: I sent him outside to watch a witness that I have subpoenaed, and I don't want him to go away. I was going to ask your Honor if I could call him and ask him to stay until I put him on the stand.

(The Court announces to a man in the audience that he shall stay until he is called.)

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MORRIS EDELMAN recalled on behalf of the defendant, testified as follows:

20 *Direct-examination by Mr. Rosenfeld:*

Q. Mr. Edelman, you sold this mortgage, didn't you—the mortgage you are suing on here to A. He gave it as security and then he took it back again. I loaned money to him and I took it as security and then he took it back.

Q. Well, you signed a deed October 14, 1926, did you not? A. Yes.

Q. And you say you got it back? A. Yes.

30 Q. When did you get it back? A. When did I get it back?

Q. Yes. A. I can't remember when I got it back.

Q. A month ago? A. No; I couldn't remember.

Q. A year ago? A. I couldn't remember.

Q. You don't know how many years it is? A. Only a short time, when he got the mortgage.

Q. You got it back soon? A. I didn't sell the mortgage; I just loaned the money.

40

*Morris Edelman—Recalled—Cross.**By the Court:*

Q. You mean you borrowed money? A. Yes.

*Cross-examination by Mr. Heller:*Q. As a matter of fact, you assigned other mortgages as security for money that was borrowed? 10  
A. Yes.

Q. This wasn't the only one? A. No, sir.

Mr. Rosenfeld: I only asked it for this purpose: We don't want somebody to come in and claim to be the owner of it. All right; that's all.

Mr. Rosenfeld: Mr. Heller, I would like to call a witness out of order.

20

LEO R. BAUER sworn on behalf of the defendants, testified as follows:

*Direct-examination by Mr. Rosenfeld:*

Q. Mr. Bauer, you know Mr. Lamping? A. Yes.

Q. And you also know Mr. Edelman? A. Yes.

Q. Were you present when the deed given by Mr. Edelman to Mr. Lamping was delivered? A. Mr. Lamping was not there when the deed was delivered. The deed was given and agreement was made and the contract. 30

Q. I am not asking you about the contract; I am asking you about the deed. Were you present when the deed was given? A. Yes.

Q. Who was with you? A. Mr. Miskovsky, the

40

*Leo R. Bauer—Direct.*

typewriter, the stenographer, and Mr. Edelman and me.

Q. Was Mr. Rust present? A. Mr. Rust was not present, no; he went to Europe.

10 Q. Now, was there any search made before the deed was given? A. There was a search, only the girl said the search could not be available because there was only a couple of days.

Q. You didn't have any search made, then? A. No. Mr. Fleuchaus ordered the search.

Mr. Rosenfeld: I asked him whether there was a search made and he says "no."

The Court: Everything except the word "no" may be stricken out.

20 Q. Mr. Bauer, let me ask you about this again. Don't tell me about Mr. Fleuchaus; tell me about what you know: Did you have any talk with Mr. Edelman when the deed was given? A. Yes.

Q. About what? A. Oh, there was a little dispute about the mortgage. He say too bad the property was wrong and he wanted cash for it and he says he would take so much money.

Q. Was there any talk about padlock? A. No.

Q. Did you look at the deed you got? A. Yes.

30 Q. What kind of a deed was it? A. Warranty deed.

Q. Who asked you about the deed? A. Mr. Fleuchaus.

Q. Was he there? A. No, he was not there.

Q. Did he tell you what you were to do or what you were to get? A. He come to me and asked me to go down. I have got to go to Brooklyn; I have got telephone calls there, and he tell me to go to Mr. Rust's office for that.

40

*Leo R. Bauer—Direct.*

Q. Did he tell you what you were to do at Mr. Rust's office? A. I have got to get a warranty deed and Edelman got something and things in the contract about the padlock, if they put something in the deed, and if they don't put something in the deed don't accept it and say nothing, because he said to me two days before that is only a comeback; "I will give you a warranty deed" 10

Q. Did you have any papers with you when you came there? A. Yes, I guess I had the contract for the River Street property. That was an exchange.

Q. Didn't you give Mr. Edelman a deed to this River Street property? A. Yes.

Q. What papers did you give him? A. All the papers; the insurance papers and the whole thing upon the real estate property. 20

Q. Did you give him the mortgage? A. The mortgage we have.

Q. This mortgage that due for \$1700? A. Yes, and gave him \$180 cash, so that the mortgage figured \$1888.

Q. So that all the papers Mr. Edelman had were got from you? A. Yes.

*Cross-examination by Mr. Heller:* 30

Q. Who collected the rent of that property? A. A. Mr. Fleuchaus collected it and Mr. Lamping and me.

Q. You weren't one of the persons who collected the rent on that property, were you? A. Not steady.

Q. Well, sometimes? A. Sometimes I collected it and sometimes Mr. Lamping and I said I would run down to Garfield and see what I could do—see 40

*Leo R. Bauer—Cross.*

what is going on in Garfield, because he couldn't get away.

Q. You remember engaging me as the attorney for Mr. Lamping to collect the rent in Garfield?

A. Yes, yes.

10 Q. Just answer "yes" or "no". And you remember my collecting some of the rent there? A. Yes, that's right.

Q. You said "yes"; and you got the check, too, for the rent that I collected? A. Part of it you bring to me.

Q. In whose name did I issue the check? A. You might give it to me. I couldn't swear to that. I guess you give it to me.

20 Q. Did Mr. Lamping appear at the trial of this case that I had against the tenant? A. No, he did not appear.

Q. Who were the persons that appeared? A. You mean East Rutherford?

Q. Yes. A. I and Mr. Fleuchaus.

Q. You were the one? A. I and Mr. Fleuchaus was in East Rutherford.

Q. And we finally succeeded in putting him out? A. Yes.

Q. Do you remember when he got out? A. Yes.

30 Q. When? A. Well, some three months later he moved out.

Q. Then it must have been about March that he moved out? A. Yes.

Q. Is that correct? A. Yes.

Q. Do you remember the tenant Mr. Rose,—the tenant that you secured? A. I didn't engage him exactly.

40 Q. Well, he ran that business that Mr. Lamping was in? A. Well, not—

Q. Did he or not? A. No.

*Leo R. Bauer—Cross.*

Q. Did he have a saloon in front, with a store and a bar? A. Yes.

Q. And he sold intoxicating liquors there, didn't he? A. No, sir, he didn't have it. I know that.

Q. Now, do you recall the time when the padlock men—the agents of the U. S. Government—came down to padlock the place? Don't you remember that day? A. Yes, very good. 10

Q. And you called me up to come down there that day? A. I called you up and I went down myself to you with a taxi.

Q. You went with a taxi and got me? A. Yes.

Q. You and I went down to Garfield and there we saw the agent that was padlocking this store? A. No, it was Marshal Snyder from your Uncle Sam. 20

Q. And this Marshal was putting signs on when I got there with you? A. Mr. Edelman was there—

Q. Just a moment, please. Wasn't the marshal there putting signs on when I got there with you? A. No.

Q. Wasn't he there padlocking the place? A. No.

Q. Did he padlock the place that day? A. No. 30

Q. Why? A. Because you arranged with the marshal there.

Q. How soon before that—how many weeks, or days, or months before that were you and I in Newark? A. I cannot tell that for sure.

Q. Was it at least a month before? A. I don't know when it was. I remember now that he go over there and I told you about it.

Q. I know that, but I am trying to find out— 40

*Leo R. Bauer—Cross.*

A. (Interrupting) You sent the girl over there and she lay the case over and she takes the subpoena and say I must go to Hackensack for sure.

10 Q. What I am trying to find out is how many weeks or months was it before that when the marshal came down to the place did you go to Hackensack? A. It was a week before or something like that.

Q. Do you remember what day of the week it was? A. No.

Q. Do you remember whether it was on a Friday? A. It was in the middle of the week; something like that.

20 Q. Do you recall the reason I stated I had to go to Hackensack because I had a jury case specially set down that day? A. I don't recall it; I don't know that.

*By the Court:*

Q. What is your answer to that question? A. It was something in Hackensack; I don't know what Mr. Heller's business was.

*By Mr. Heller:*

30 Q. When I went to Hackensack I took you with me, didn't I? A. Yes.

Q. And from Hackensack we went over to Newark? A. No, we went to Passaic and you called up from your office.

Q. At any rate, I took you with me to Hackensack and then we went to Newark? A. To Passaic, not to Newark.

Q. And then from Passaic to Newark? A. No, you called up from the office.

40 Q. I didn't go to Newark that day? A. No.

*Leo R. Bauer—Cross.*

- Q. You don't recall that? A. No.
- Q. Did I go with you at any other time? A. Mr. Fleuchaus and you went the next week, yes.
- Q. Was it after that— A. After the padlock?
- Q. After the padlocking that I went? A. Yes.
- Q. Before what judge did we appear? A. I don't know that. I know we were all in court the same day, I, and Mr. Heller, and Mr. Fleuchaus went to Newark. 10
- Q. Do you know how long it was before the place was padlocked that we were supposed to go to Newark and we went to Hackensack instead? A. It was a week before.
- Q. You think about a week? A. About, yes.
- Q. Did you engage me to lift the padlock before the padlock was on? A. No.
- Q. Just a moment: Can you tell me why it was that I was to go to Newark with you the week before the padlock was on? A. He had papers there for Edelman to appear in court and I said we would like to see what is going on there. You said "We can look it over the same day." 20
- Q. Who gave me those subpoenas? A. Mr. Miskovsky.
- Q. Inasmuch as you know Miskovsky gave me the subpoenas he was your agent? A. He was not for me. 30
- Q. He was your agent in recommending you to me? A. Yes.
- Q. So that Mr. Miskovsky recommending you to me handed me these subpoenas, and it was because of these subpoenas that I was supposed to go with you to Newark a week before the padlocking of the place? A. Yes, but it was Edelman that was subpoenaed in court. 40

*Leo R. Bauer—Cross.*

Q. You mean the name on the subpoena was Mr. Edelman's name? A. Yes.

Q. And then do you recall asking my advice as to what could be done about the subpoena and the bill filed? A. No; whatever is supposed to be done.

10 Q. And do you remember my telling you if you had this tenant out and had a new one I could easily dissolve the injunction, if there was going to be one? A. Yes.

Q. And isn't that the reason Mr. Kelly was put out of the place? A. No. You know that yourself.

Q. You have said enough. You never said anything to me about this mortgage of Edelman's during all this time? A. What?

20 Q. You never said anything to me about the \$1700 mortgage which Mr. Edelman held, did you? A. No, I never had anything to do with this.

Q. You yourself paid me for the work I have done? A. Yes, you received \$15.

Q. \$15? A. For going to Newark.

Q. I thought you said I didn't go to Newark. A. For going to Newark the second time, when you and Fleuchaus went over there.

30 Q. Wasn't the sergeant-at-arms there? A. I wasn't there.

Q. Don't you know that Thomas A. Hopkins, the sergeant-at-arms of the District Court was there? A. No, I never saw the man.

Q. Mr. Bauer, you attend this place yourself? A. Yes.

Q. And aren't you a tenant there? A. I am working for the man.

40 Q. What is this man's name? A. Max Menzer.

*Leo R. Bauer—Cross.*

Q. Does he pay you by check or cash? A. He doesn't pay me, but from the Building & Loan to straighten up things and he pay the money to Mr. Lamping and he pay the building and loan.

Q. In other words, you are working for Mendelsohn and he doesn't pay you anything? A. He pay me salary.

10

Q. How much do you get? A. \$25. a week.

Q. Are you there all day? A. No, in the morning and afternoon.

Q. Did you rent the place to Mr. Rose? A. There was a sign on it for rent.

Q. Who rented it? A. I rented it and Mr. Fleuchaus rented it.

Q. Was it you or both of you? A. Both together.

Q. Did you give him a lease? A. Mr. Fleuchaus give the lease.

20

Q. Who signed the lease? A. I guess Mr. Fleuchaus.

Q. You say Mr. Fleuchaus did? A. Yes.

Q. Didn't you sign it, too? A. No.

Q. Mr. Rose was in the place at the time it was padlocked? A. Yes.

Q. And he was operating the saloon? A. Yes.

Q. By the way, there was a separate entrance to the upstairs and the rear hall? A. Yes.

30

Q. The place that was padlocked was the small space in front? A. It was the main part of the building.

Q. The main part of the building which consisted of about 10 feet front and 15 feet in depth; is that so? A. No, I don't say 10 foot; 20 foot front.

Q. How much is the whole property? A. 56 feet frontage.

40

*Leo R. Bauer—Cross.*

Q. The building stands on 56 feet? A. No, the ground is 51 and the building is 40 foot.

Q. The bar is the entrance? A. Yes.

Q. Isn't there a hall there? A. The hall is in the rear.

10 Q. Assuming that that wall is the front of the building, how far in does the bar-room extend?  
A. It takes the whole front.

Q. How far in this way? Show me and point out over there where the bar-room extends? A. It is 40 foot by 18 by 20 foot deep.

Q. I am asking you to point out in this room how far it is. A. Well, the entire building must be around 100 feet, and the bar-room is about where the coats hang there.

20 Q. It is over a hundred feet, isn't it? A. Oh yes.

Q. About 150 feet? A. No, about 110.

Q. The building stands on a 150 plot? A. No, 135, and the whole land is 208.

Q. Were you present when the contract was drawn? A. I can say "yes" and I can say "no".

Q. You don't remember? A. Yes, I remember everything.

30 Q. Were you there? A. I can say "yes" and "no".

Q. When this contract C-3 was drawn and signed by Mr. Fleuchaus and Mr. Edelman and witnesses by Mr. Rust were you there? A. That was when it was half drawn already.

Q. Were you there when it was signed? A. If it was signed, yes, I was there.

40 Q. What do you mean "if it was signed"? A. The contract was completed when I walked in the door and I walked out.

*Leo R. Bauer—Redirect.**Redirect-examination by Mr. Rosenfeld:*

Q. Do you know what a saloon at that time with that much space was worth per month, from June, 1927 to July, 1927? A. That means it is occupied?

Q. Yes, if it was occupied. A. \$165.

Q. I mean just the saloon. A. Well, the way you take it, if you don't get the saloon in front the main entrance is cut off. 10

Q. Let us assume that the rest of the house is padlocked, just the reverse—the rest of the house is padlocked, the rooms upstairs, and the four rooms in back, and the hall was padlocked, what would the front be worth—just the front?

Mr. Heller: Is this man qualified to say that? 20

Mr. Rosenfeld: Well, I will qualify him.

Q. Have you rented any saloons? A. Yes, I know the hotel business for 27 years.

Mr. Rosenfeld: Do you admit his qualifications?

Mr. Heller: No.

Q. Have you owned real estate? A. Yes.

Q. How long? A. Six years. 30

Q. Have you leased any stores or buildings of that kind? A. Yes.

Q. And have you leased any saloons before? A. Yes, I made a three-year lease.

Q. Have you dealt in any real estate in Bergen County? A. Yes.

Q. At that time, June, 1927, what would you say this saloon, the front part—just the saloon and nothing else—not the rest of the building—was worth in rent per month? 40

*Leo R. Bauer—Recross.*

Mr. Heller: I object to that. I don't think the man is qualified. He hasn't had any experience at all in Garfield.

The Court: It is all a matter of opinion and I can deal with the weight to be given to it later.

10 Q. How much do you think it is worth? A. Worth \$130.

*Recross-examination by Mr. Heller:*

Q. And nine rooms and bath are worth about \$30? A. Yes; you couldn't get more than that for it for a flat.

20 JOHN MISKOVSKY sworn on behalf of the complainant, testified as follows:

*Direct-examination by Mr. Heller:*

Q. What is your business, Mr. Miskovsky? A. Real estate.

Q. And where are you located? A. 102-2nd Street, Newark.

30 Q. You were subpoenaed in this case by Mr. Lamping? A. I was not subpoenaed; I was called.

Q. You came at his request? A. Yes.

Q. Do you recall, sometime back, this transaction between Edelman and Lamping? A. I do, some of it.

Q. Were you present when the contract marked C-3 was drawn? A. Yes, sir.

40 Q. I show you Exhibit C-3 and ask you whether

*John Miskovsky—Direct.*

you recognize that as the contract that was drawn?

A. That's it.

Q. Now, I call your specific attention to one clause which reads as follows: "Party of the second part is not responsible for any padlock of the premises". Do you remember any talk before that clause was put into the contract? A. There was some discussion. 10

Q. And will you give us some idea as to what that discussion was.

Mr. Rosenfeld: I make the same objection.

A. I do remember the discussion of some padlocking that he wanted to have inserted in the contract, and, of course, it was inserted by Mr. Rust.

Q. At whose request was that inserted into the contract? A. By Mr. Adelman's. 20

Q. And was Mr. Fleuchaus present and Mr. Bauer present? A. Yes.

Q. And did they raise any objection to that clause? A. That would be the understanding up there.

Q. You mean that was their understanding that that should be in the contract? A. That was the understanding that was there. 30

Q. That they were to take it subject to the padlock proceedings?

Mr. Rosenfeld: I object to that.

Q. Now, later on, Mr. Miskovsky, do you recall Mr. Baer or Mr. Fleuchaus coming in to see me, with yourself or without yourself?

Mr. Rosenfeld: I object to that, sir. That is immaterial whether Mr. Bauer or Mr. 40

*John Miskovsky—Direct.*

Fleuchaus came. And there is no time fixed.

Mr. Heller: I am going to fix the time.

Mr. Rosenfeld: What is the materiality of it?

10 The Court: I don't know, but I will allow it. (Addressing the witness) The question is, Mr. Miskovsky, whether you recall having been to Mr. Heller's office, or having seen Mr. Bauer or Mr. Fleuchaus there.

A. I do recall, and I recommended Mr. Heller.

Q. Did they explain to you why they wanted me as their lawyer?

Mr. Rosenfeld: I object to that.

20 The Court: It is admissible if it was within the scope of his duties.

Q. What was the conversation? A. I think that Mr. Bauer and Mr. Fleuchaus came to me and said that they were served with some papers and asked me what was the best thing to do.

Q. For what? A. The padlocking.

Q. And was it because of that that you sent them to me? A. Yes, I recommended Mr. Heller.

30 Q. Do you recall when this place was padlocked, relative to the time that these people came to me?

A. I think it was sometime afterwards.

Q. What was sometime afterwards? A. That they went to you.

Q. When they came to me it was some time after they were padlocked; is that what you said? A. Yes, sir.

40 Q. By the way, Mr. Miskovsky, you and Mr. Adelman are not on good terms at the present time, are you? A. No, sir.

*John Miskovsky—Cross.*

Q. You and he had quite an argument sometime ago and as the result of which you are not at all friendly? A. That's right.

Q. As a matter of fact, you are now bitter enemies? A. That's right.

*Cross-examination by Mr. Rosenfeld:*

10

Q. But you are not on bitter terms with Mr. Heller? A. No.

Q. When you were asked the conversation you said "I think I sent Mr. Fleuchaus to Mr. Heller"; now, which was it? A. Just as I said.

Q. Then you're not sure? A. Just what I said.

Q. Then you are not sure about what you said? A. Most of it.

Q. Do you now say you are sure that Mr. Fleuchaus was sent by you to Mr. Heller after the padlocking? A. I couldn't say. 20

Q. Do you know whether it was winter or summer? A. I couldn't say.

Q. And did Mr. Fleuchaus have any papers or subpoenas with him? A. He had some subpoenas.

Q. But you don't know the names on the subpoena? A. No.

Q. Did he discuss this thing with you as to what was said? A. Just what I said. 30

Q. Isn't it a fact, Mr. Miskovsky, when I spoke to you this morning and asked you what you knew about this, that you told me it was all vague in your memory? A. I did make the statement that I don't remember everything.

Q. You were talking today with Mr. Heller in the corridor of this building, were you not? A. Yes. 40

*John Miskovsky—Redirect.*

*John Miskovsky—Recross.*

*Redirect-examination by Mr. Heller:*

Q. Did I discuss the facts of this case with you, Mr. Muskovsky? A. No, sir.

10 Q. Any any time, either today or at any other time? A. No, sir.

Q. The first time that I saw you in this case was when? A. Well, you did tell me about three weeks ago that you might use me as a witness.

*Recross-examination by Mr. Rosenfeld:*

Q. You didn't come here to help anybody? A. No, sir.

20 Q. You just came here to testify to what you know? A. Sure.

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HERMAN C. RUST sworn on behalf of the complainant, testified as follows:

*Direct-examination by Mr. Heller:*

Q. Mr. Rust, you are a member of the bar of the state of New Jersey? A. Yes.

30 Q. And have been for how long? A. Oh, 15 or 20 years.

Q. I show you a contract, which has been marked C-3 for identification, and ask you whether or not you drew that contract? A. That is my signature on there, yes.

Q. And that was drawn in longhand? A. Yes.

Mr. Heller: I offer this contract in evidence.

40 The Court: Well, so that I may consider

*Herman C. Rust—Direct.*

*Herman C. Rust—Cross.*

it, I am going to overrule the objection.

(C-3 for identification is now marked Exhibit C-3).

Q. Mr. Rust, you said you drew this contract in your handwriting? A. Yes.

10

Q. Why did you put that clause in there, "Party of the second part is not responsible for any padlock of the premises"? A. Well, I guess something was said about that.

Q. I suppose the contract was drawn after they had discussed its terms? A. Yes.

*Cross-examination by Mr. Rosenfeld:*

Q. Do you remember what was said? A. No, they talked among themselves. 20

Q. Do you remember whether you read the contract or not? A. I generally read all the contracts and I assume I did with this.

Q. You didn't have anything to do with the delivery of the deed? A. I think I advised that.

Q. The girl? A. Yes.

Q. Did you prepare the deed? A. I presume she did, but I told her what to do.

Q. You represented whom? A. Well, that is pretty hard to say. 30

Q. Well, who paid you your fee? A. I can't recall now.

Q. Do you know who came to you first about this transaction? A. I think they all came the same time.

*By the Court:*

Q. Can any light be thrown on this question as 40

*William Lamping—Direct.*

to why the clause to which your attention has been called was not written in the deed that was given as the result of the execution of that contract? A. No, I cannot.

*By Mr. Heller:*

10 Q. You weren't there when the deed was signed?  
A. No, I don't think so. I notice the mortgage was signed out of my office; I don't know whether the deed was or not.

Q. This deed is acknowledged by Caroline A. Balik. A. Yes, that is a stenographer in my office.

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20 WILLIAM LAMPING sworn on behalf of the defendant, testified as follows:

*Direct-examination by Mr. Rosenfeld:*

Q. Mr. Lamping, is Mr. Fleuchaus your brother-in-law? A. Yes.

Q. What did he have to do with this exchange of real estate? A. Well, he handled a couple of houses before for me.

Q. Did you own any property before in Paterson in December, 1925? A. In Paterson, yes.

30 Q. Did you have any property in Paterson? A. Oh yes, I got three there.

Q. What is the one that was exchanged in this deal? A. 245 and 247 River Street.

Q. Is that yours? A. Yes, sir.

Q. Did you make the arrangements for this exchange? A. Yes, sir.

Q. Did you yourself make them? A. Fleuchaus did it.

40 Q. Did you have anything to do with it, I mean;

*William Lamping—Direct.*

did you make any arrangements about it with Mr. Edelman? A. No.

Q. Did you see him at all? A. No.

Q. Did you see him once? A. No.

Q. Did you ever receive any letters from his lawyer, Mr. Heller? A. No.

Q. Did he ever come to your house? A. No. 10

Q. So that you never made any payments on this mortgage to Edelman's lawyer? A. No.

Q. How about the other mortgages, the first and second? A. Sometimes I went down and paid it and sometimes I had Fleuchaus do it.

Q. Whose money was used for that, I mean. A. My money.

Q. Did you ever give Fleuchaus any money to pay Edelman interest on that mortgage? A. No.

Q. Where did you sign the deed to this River Street property that you gave to Edelman? A. We were down in Passaic. 20

Q. Were you there? A. Yes.

Q. When? A. Oh, couple of years back. I don't know what he was doing up there.

Q. Where did you sign this mortgage. A. I signed that home.

Q. Isn't that where you signed the deed?

Mr. Heller: I object to that as leading. 30

Q. Did you sign a deed at the same time? A. Yes.

Mr. Heller: He testified that he signed the deed at that time in Mr. Rust's office.

Q. Did you sign the deed at Mr. Rust's office?  
A. I couldn't tell you about that. I know that I received some papers home. He brought the papers down because I had no time.

40

*William Lamping—Direct.*

Q. Who brought them down? A. What was here before, just the deed on the real estate. I don't know his name.

Q. Who do you mean; which man? A. I don't know his name.

*By the Court:*

10

Q. Has he been here today? A. Yes.

Q. Did he testify? A. Yes.

Q. What did he testify about when he was on the witness stand this morning? A. I didn't listen to him enough.

Mr. Heller: He means Mr. Moskovsky.

Q. Did you receive any rent from the time the building was padlocked until it was opened again?

20

A. No.

Q. Did you have any expenses reopening it? A. Yes, sir.

Q. How much? A. I paid \$250.

Q. Were you ever served with any papers about padlocking this place? A. No.

Q. Did you ever go to Mr. Heller's office? A. No.

30

Q. Why did you let Mr. Fleuchaus do all this? Why did he act for you? A. I am working 18 or 20 hours a day.

Q. Is that the only reason? A. I can't attend to it.

Q. Do you know anything about real estate? A. No.

Q. Does Mr. Fleuchaus know more about real estate than you do? A. Oh yes, he handled two more houses for me and he made good, and I give him this house to exchange on River Street.

40

Q. Did he handle any other real estate for you?

*William Lamping—Cross.*

A. Yes, Madison Avenue and another property.

Q. Did he make good on those? A. Yes.

*Cross-examination by Mr. Heller:*

Q. Did you ever pay Mr. Fleuchaus for his work?

A. No.

Q. He got nothing and his work was gratuitous? A. He is my brother-in-law.

10

Q. So he buys property for you and sells property for you, collects rents and takes care of everything for you free of charge? A. Right.

Q. He was your agent, together with Mr. Bauer, wasn't he? A. Yes.

Q. Is Mr. Bauer any relation of yours? A. No.

Q. How much was he paid? A. \$165.

Q. You mean Bauer pays you \$165. a month for rent? A. Yes.

20

Q. And he is the tenant paying you the rent? A. Yes.

Q. And he is the man who pays you today? A. No, I have different man today.

Q. Who is in there now? A. That is Mendelsohn.

Q. How long has Mendelsohn been in there? A. Well, I don't know exactly how long.

Q. A month? A. Oh, more than that.

30

Q. Six months? A. Not that long.

Q. Three months? A. Something like that.

Q. Before the three months who was the tenant, Mr. Bauer? A. Bauer.

Q. How long had Mr. Bauer been the tenant there? A. About February, I guess.

Q. Since February? A. I think so.

Q. Now, you remember when this place was pad-

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*William Lamping—Cross.*

locked, don't you? A. All I know is what Fleuchraus told me.

Q. At the time when it was reopened? A. Yes; I had to pay \$250.

Q. Were you ever down in this building in your life? A. Yes.

10 Q. How many times have you been there? A. About 10 times.

Q. Now, you remember the place was opened after it was padlocked; who rented the store after it was padlocked? A. Well, Rose was in there, but he didn't pay any rent.

Q. Well, Rose was in there and the place was padlocked, and then the place was closed for a long time, and then it was opened and Mr. Bauer was in as tenant? A. Yes.

20 Q. Before that, Mr. Bauer used to take care of the rent from the other tenants? A. He didn't have any.

Q. Mr. Menikatto paid rent, didn't he? A. No, he didn't.

Q. You say Mr. Menikatto didn't pay a dollar's worth of rent? A. Not while I had it.

Q. Did you know that he gave Mr. Bauer a check for the rent? A. I don't, no.

30 Q. You never got that even if he did get that check? A. No check came in.

Q. Was it figured up? A. I will have to look that up in the paper.

Q. Where is the paper? A. I haven't got it here.

Q. Where is it? A. I got the paper home.

Q. In whose handwriting is that paper? A. I put it down in pencil.

40 Q. It is in your handwriting? A. Yes.

*William Lamping—Cross.*

Q. And on that paper you have got the money that Bauer paid to you and the money which Fleuchaus paid to you? A. Yes, and what they paid off on the loan and the second mortgage I figured it up.

Q. You have such a paper made in your own handwriting? A. Just a slip of paper with pencil. 10

Q. Of course with pencil, but it was made by you in your handwriting? A. Yes.

Q. Can you read and write English? A. Oh, yes.

Q. And all that you have in your own handwriting, so much for rent, so much for insurance, and so much for interest on mortgages, and all that? A. Yes. 20

Q. You have a record of all the moneys which you gave to Fleuchaus? A. Yes.

Q. When Mr. Fleuchaus purchased this property you hadn't seen it before he got it? A. No.

Q. In other words, he had authority to go out and buy property without looking at it? A. I told him if it is a good bargain.

Q. Did he have authority to buy property without your looking at it? A. Yes.

Q. And he had authority to pay the interest on mortgages as it came due? A. Yes. 30

Q. And he had exclusive authority with Mr. Bauer to collect rent? A. He is supposed to collect rent.

Q. Fleuchaus and Bauer are friends of yours, aren't they? A. Bauer is not as good friend as Fleuchaus.

Q. Wasn't Bauer working for you also? A. Fleuchaus and he together, yes.

Q. How much money did Bauer get from you for 40

*William Lamping—Cross.*

the work he did? A. I didn't tell him to do anything.

Q. You paid him nothing? A. No.

Q. You know that Bauer was instrumental in getting the padlock lifted, don't you? A. I don't, no.

10 Q. Bauer went to hire the lawyers and saw about a petition? A. Yes.

Q. And Bauer went and put out Menikatto, the tenant? A. Fleuchaus did.

Q. And you know that Bauer did too, don't you? A. Yes.

Q. And you know that Bauer was the one that came and testified about this tenant Menikatto? A. Yes.

20 Q. And he got nothing from it, so far as you were concerned? A. No.

Q. You yourself don't know anything at all about real estate? A. No.

Q. And therefore you left it all in the hands of Mr. Fleuchaus? A. Yes.

Q. It was up to him to pay the interest and taxes and all that? A. Yes.

Q. And for that nothing was paid to him? A. No.

30 Q. You had never seen Mr. Edelman until today, had you? A. No.

Q. Today is the first time you ever saw him in your life? A. Yes, sir.

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

Q. What is your business? A. Take care of the church and office building.

Q. Take care of church and office building; is that what you do? A. Yes. I fire boilers in the church and office building, and cleaning.

40

*William Lamping—Cross.*

Q. And in December of 1925 was that your business also? A. I was a watchman at that time.

Q. And you say you have other properties and Mr. Fleuchaus took care of all the other properties? A. No. He bought it for me and he sold it for me.

Q. How long has Mr. Fleuchaus been taking care of the property he buys for you? A. Since I have been in Paterson. 10

Q. How long is that? A. Six or seven years.

Q. How much money did you give him all together? Have you a record of that? A. I couldn't tell you.

Q. You kept a record, didn't you? A. Of this house here.

Q. Only this house? A. Yes.

Q. How about the other houses? A. Well, I kept the records. 20

Q. Well, have you got the records of those? A. I don't know.

Q. Now, how many properties in all did Mr. Fleuchaus manage for you in the past six years? A. Madison Street—

Q. How many were there, five or ten? A. Three but all different times. I sold one at one time and one at another time. 30

Q. Now, on these three transactions he collected the rent, didn't he? A. Sometimes and sometimes I went down. At that time I had more time to do it.

Q. When he collected the rent and looked after the repairs did he tell you how much the repairs were and give you the balance? A. At that time I did most of the repairs myself.

Q. What time was it that you paid the interest 40

*William Lamping—Cross.*

on the mortgages? A. That was before; but now I am very busy.

Q. You take care of the cleaning and firing boilers and you have no time to mail a check for interest on the mortgages? A. Well, I used to do it.

10 Q. You didn't pay every interest payment on the mortgage, did you?

Mr. Rosenfeld: Which one.

Mr. Heller: On all the mortgages.

A. Yes, Fleuchaus took care of that.

Q. Of course, he did; and Fleuchaus would tell you how much to make out a check for? You didn't know how much to make out a check for? A. No.

20 Q. Fleuchaus would tell you how much. As a fact, Mr. Lamping, Mr. Fleuchaus had some trouble and he gave all his property to you and then he ran it in your name; isn't that so?

Mr. Rosenfeld: I object to that.

Q. Is Fleuchaus married? A. Yes.

Q. Is he living with his wife? A. Yes.

30 Q. And whose money is it that bought these properties, yours or Fleuchaus and Bauer's? A. This here property?

Q. Yes. A. I only paid \$180.

Q. Who owned the River Street property? A. I did.

Q. With whose money did you buy it? A. With my money.

Q. Fleuchaus or Bauer didn't give it to you? A. No.

40 Q. You know that Bauer had a lot of trouble with his wife, don't you?

*William Lamping—Cross.*

Mr. Rosenfeld: I object to this. Mr. Bauer is not married, to begin with.

Mr. Heller: I beg pardon, if you want me to tell you what it was. Mr. Bauer was named as a corespondent in a divorce case, and they were afraid they would take away the property.

10

Mr. Rosenfeld: Now, I object to that also.

Mr. Heller: Let's see if he knows it.

A. No, sir.

Mr. Rosenfeld: I know, but I want your Honor's ruling on the question. The entire contention on both sides has been that Fleuchaus has been the agent of Lamping and nothing else; and now Mr. Heller wants to know about Mr. Bauer's relationship, whether he is married and so forth, and I don't think it is material.

20

The Court: I think you stipulated this morning that Fleuchaus was agent for this man.

Q. Let me ask you another question: As a matter of fact, you never looked at any property before it was bought; you left it all to Fleuchaus and Bauer? A. I don't know. The other house I looked at. I don't know the value of it.

30

Q. You never looked at the Garfield place before it was purchased? A. No, he spoke about it when he came down, and I asked him "is it a good bargain."

Q. What is your wife's name? A. Margaret.

Q. Does your wife work? A. No, she takes care of the four kids.

40

*William Lamping—Cross.*

Q. What was your business before you were a watchman? A. Well, I worked over in Brooklyn.

Q. What was our business before you were a watchman? A. Well, I worked over in Brooklyn.

Q. Where? A. B. R. T.

Q. What did you make? A. 42 and 44.

10 Q. \$42 and \$44 a week? And you have four children?

Mr. Rosenfeld: I object. This isn't supplemental proceedings, if your Honor please. That is not an issue raised in the answer.

The Court: No, but as proof that Fleuchaus was the beneficial owner it might have some value.

20 Mr. Rosenfeld: But that is not the question here, sir. He is going back six years and asking him what he did in Brooklyn. If that is so I would be obliged to show how this money got into the bank, what bank it was in; and, besides, they have a mortgage and they are suing on that mortgage. They say it is not the mortgage of William Lamping but it is the mortgage of Peter Fleuchaus.

30 The Court: I will allow it.

Q. You say you worked for the B. R. T. and received \$42. a week? A. 42 and 44.

Q. And you have four children? A. I had none at that time.

Q. How long have you been married? A. 11 years.

Q. And you say six years ago you had no children? A. I had little children then, two.

40

*William Lamping—Cross.*

Q. How long had you worked for the B. R. T.?

A. I guess 14 years.

Q. Did you ever buy any property while you were working for the B. R. T.? A. I bought one at Maspeth, Long Island.

Q. Did you buy it or did Fleuchaus buy it? A. (No answer).

10

*By the Court:*

Q. Did you buy the Maspeth property for yourself? A. Yes, sir.

Q. Or did Fleuchaus buy it for you? A. No, I bought it.

*By Mr. Heller:*

Q. Fleuchaus had nothing to do with that? A. No.

20

Q. You were then your own boss and looked at it and bought it? A. Yes.

Q. And at that time you were working for the B. R. T.? A. Yes.

Q. Working days or all night long? A. No, days.

Q. Is this the only piece of property you have bought before you came to Paterson? A. And then I sold that.

30

Q. Is that the only piece you have bought before you came to Paterson? A. Yes.

Q. Before you came to Paterson you sold that? A. Yes.

Q. Do you remember when it was? A. Seven years ago—six or seven.

Q. You sold that and made a profit? A. Yes.

Q. And then when you came to Paterson you invested your moneys and you didn't know anything about real estate? A. I brought Fleuchaus there.

40

*William Lamping—Cross.*

Q. And henceforth, forever after, when you dealt in real estate you left it all to Fleuchaus? A. Correct.

Q. Did Fleuchaus ever give you any money? A. He is my brother-in-law.

10 Q. Did he ever give you any money—a lot of money at one time, like \$5,000 at one time? A. I paid him \$500.

Q. Did he ever give you \$300 at one time? A. No.

Q. Did he ever give you \$200 at one time? A. No.

Q. In other words, he never gave you any money? A. Oh yes.

20 Q. How much was the largest amount he ever gave you at one time? A. Well, I had water to pay, taxes to pay; I guess about \$80 at one time was the highest amount.

Q. That is the highest amount you would get at one time? A. Yes.

Q. You had no other income during the past four years except from your work as a boiler firer or something like that? A. This here house is only three years.

30 Q. I know, but in the last five years the only income that you had was from your work as fireman? A. Before I came here I bought some from Fleuchaus.

Q. And you paid him for it? A. I paid him \$1,000 down.

40 Q. And you bought that from your brother-in-law? A. Yes, and then I had another thousand dollars left in Liberty Bonds, and when I came over here my wife bought that Madison Avenue house and I paid \$1,000 on that.

*William Lamping—Redirect.*

Q. Did you pay the taxes on this house in Garfield? A. Fleuchaus paid the taxes.

Q. Why didn't you pay them with your checks? A. When I got the money.

Q. Didn't you have the money to pay? A. Yes. I took the money and interest and goes down and pays it when Fleuchaus didn't pay.

10

Q. And the highest you ever got was \$80, although the rent was \$165? A. Nobody gave any rent.

Q. Didn't Bauer pay you any rent? A. Oh yes.

Q. Then he didn't pay it to anybody? A. He got behind in the rent.

Q. Can you get that record you have in your own handwriting? A. Yes.

Q. What kind of paper is it on? A. About 6 x 12, something like that (indicating legal cap size).

20

*Redirect-examination by Mr. Rosenfeld:*

Q. Did you know anything about the values of real estate in New Jersey when you came here? A. No.

Q. How much money did you have when you came to New Jersey six or seven years ago? A. I had \$2,000, what I invested.

30

Q. Have you made any money on that money since? A. Yes, sir; Fleuchaus sold me out in Garfield and I got \$4,000 cash out of it.

Q. How much did you make more on that deal? A. \$2,000.

Q. On your \$2,000 investment? A. Yes.

Q. Did Fleuchaus, after this padlocking, try at any time to make you pay interest on this mort-

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*William Lamping—Recross.*

gage of Edelman's? Did he try to figure out the account? A. Yes.

Q. Did you give him any money for that? A. No.

*Recross-examination by Mr. Heller:*

10 Q. You didn't know anything about that padlocking; did Fleuchaus tell you anything about that? A. No.

Q. You didn't know anything about that padlocking until Fleuchaus told you? A. No.

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20 PETER FLEUCHAUS recalled on behalf of the defendant, testified as follows:

*Direct-examination by Mr. Rosenfeld:*

Q. Were any subpoenas served on you in a padlocking proceedings on this property? A. No.

Q. Did you ever sell any lands? A. Yes.

Q. Were they in Bergen County? A. Yes.

Q. Where? A. In Wortendyke and in Garfield.

Q. Do you have any property in Bergen County containing a saloon? A. Yes.

30 Q. Where? A. That was in Hackensack.

Q. Are you acquainted with the value of renting real estate? A. Absolutely, because I get the Bergen County Recorder all the time and I follow that up.

Q. What was the rental value, beginning with June, 1927 of a saloon located as the one in question was located? A. \$125. a month.

40 Q. Did you know this man Menikatto? A. Yes, some.

*Peter Fleuchaus—Recalled—Cross.*

Q. Have you got any money invested in the building in question in Garfield? A. No.

*Cross-examination by Mr. Heller:*

Q. You are in the real estate business? A. I am.

Q. You say that you bought that property? A. My business books show 408 properties in different parts of the county.

Q. Did you enter any property in your own name? A. 31 of them, includnig farms and factory.

Q. Give me one piece of property that you held in your own name. A. 76 Grant Street, Garfield.

Q. This property in Paterson which you say you own, whom did you buy that of? A. That property I bought with Morris Cohn.

Q. Who owns it, you or Morris Cohn? A. I own everything.

Q. Don't you know that there are suits pending against you and you don't have any property in your own name? A. That is not true. I need nobody to protect me; I can protect myself, and my wife and I have our own property. We don't do such a thing as take property and turn it over to my wife to defraud customers.

Q. Did you ever own any saloons? A. I have three at present.

Q. You told us your business was real estate. A. I own the property; I don't run the saloons. I have three saloon properties now, but I don't run the business.

Q. When did you buy them? A. About five years ago.

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*Peter Fleuchaus—Recalled—Cross.*

Q. Is any of that property under foreclosure?

A. No.

Q. Is there any suit to set aside a conveyance?

A. Not on this one.

Q. From whom did you buy that from in Paterson, the saloon. A. This came either through  
 10 Sam Packer or someone else.

Q. What is the name of the street in Paterson?

A. 24 and 26 Holtsman Street.

Q. Do you keep a bank account, Mr. Fleuchaus?

A. I do sometimes. I have a little bit sometimes and sometimes I have nothing.

Q. I mean, you have a check account? A. Yes.

Q. And sometimes you have nothing? A. Well, it runs down to \$20 or \$30.

Q. Did you ever pay money instead of check?  
 20 A. Yes.

Q. Did you ever give Mr. Lamping more than \$50 in cash? A. Mostly I pay him cash.

Q. Have you a record of all the different moneys which you gave him and he gave you? A. I guess I have.

Q. In whose handwriting is that record? A. In mine.

Q. Was the record made by you or by him? A.  
 30 Well, I put down what I give him.

Q. Do you give him a record of that? A. Yes.

Q. And that is the only record he has got? A. Yes.

Q. And is that the only record you give him? A. Yes.

Q. Does he make a record also? A. I don't know.

Q. You are quite experienced in saloons and padlocking of saloons? A. Not with padlocking.  
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*Peter Fleuchaus—Recalled—Redirect.*

I have got three saloons, and if you offered me \$1,000 in money I wouldn't run one.

Q. The fact is when Edelman told you that he wasn't going to be responsible for any padlocking, didn't you say you weren't worrying about that?

Mr. Rosenfeld: I object.

Q. Is that your name (showing witness Exhibit C-3)? A. Yes.

Q. Did you see this when you signed your name: "Party of the second part is not responsible for any padlock of the premises"? A. Yes.

Q. You had made quite a good number of contracts before this one was signed, had you not? A. Yes.

Q. And you were familiar with that clause, weren't you, when it was put in there? A. Yes.

*Redirect-examination by Mr. Rosenfeld:*

Q. After that contract was signed did you have any conversation with Mr. Edelman? A. Yes.

Q. When? A. We met the next day.

Q. What was that conversation about? A. I told him that I didn't like that clause in there and we ought to make a new contract otherwise I wouldn't let the deed go through.

Q. Did you have a conversation with him at the time this contract was drawn? A. Yes, right away. That was in the morning.

Q. What was the conversation? A. The conversation was, "What for did you put that in there", and so he said "I don't want to be responsible for the padlock proceedings". I says, "What do you mean by that; what is wrong about it?" And so he said, "Nothing wrong about it, but may-

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*Peter Fleuchaus—Recalled—Redirect.*

be the man stays there and sells liquor and there is going to be trouble, and so I don't want to be responsible for that". And I says, "is there anything like that now"? and he says, "no, maybe when I sell that property maybe the man do something with whiskey and so I don't want to be responsible for that".

10 Q. And the next day you talked to him like that and you didn't like the clause in there? A. I said: "Listen, if we are going to make a different agreement that thing has got to be out of the contract", and so we go up to Rust's office and I pay for that agreement. Well, he said, "Fleuchaus, as I told you before, when we make the deed, that takes only two or three days, and that wouldn't be in the deed. What is the use of going to the trouble of making a new agreement when that will be delivered in a couple of days?" Then I says, "you will attend to it?" He says, "I will see to it that it will not go into the deed."

20 Q. Did he tell you what kind of a deed he was going to give you? A. I wouldn't accept nothing else but a warranty deed.

Q. Did he tell you what this clause means, about not being responsible for padlocking the premises?

30 A. That is what he said. He said in case the man what is in it now do something against prohibition, then he doesn't want to be responsible.

Q. Did he tell you anything about subpoenas being served? A. Absolutely not. I wouldn't buy a lawsuit. It is bad enough sometimes without buying a lawsuit. Anybody can do that.

*Peter Fleuchaus—Recalled—Recross.*

*Recross-examination by Mr. Heller :*

Q. As a matter of fact, this property was sold to you very cheaply because of that fact, and Mr. Edelman didn't want to have any trouble with the Government? A. No, sir, he had no right to sell it. It was not sold cheaply.

10

Q. Then it was not sold at a reasonably low price? A. No, sir.

Q. Are you still willing to turn back the property at the price it was sold at? A. Yes, sir, if he takes it we will settle. If he does that we will settle.

Q. You will take your property back if we take our property back? A. Yes, sir.

Q. You didn't understand what that clause in the contract meant, about the party of the second part not being responsible? A. I asked him.

20

Q. Asked who? A. This man here.

Q. He didn't write it in the contract? A. Mr. Rust wasn't there.

Q. Why didn't you ask Mr. Rust what it meant? A. I asked Mr. Edelman.

Q. But Mr. Edelman didn't write it; Mr. Rust wrote it. A. Yes.

Q. You have had experience in hundreds of these contracts; why didn't you ask Mr. Rust what he meant by it? A. After the seller gives the order to the lawyer should I go to the lawyer.

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Q. This matter was discussed right in the lawyer's presence, wasn't it, and the lawyer drew it in his own language? A. It wasn't discussed at all.

Q. Did Mr. Rust get it out of his head? A. He put it down when they were talking with Mr. Bauer, and Mr. Rust said "You can read it or you

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*Peter Fleuchaus—Recalled—Recross.*

can have it read over", and when I read the paper over I told him, "Is everything all right" and he said, "If there is anything wrong, what's the use wasting your time and my time in having it changed because it can be changed in the deed". That is what he said to me right in front of Mr. Rust's desk in his office when I was sitting there with him.

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Q. Now, did you get everything off your chest that you want to say? A. Yes.

Q. Now, see if you can answer just "yes" or "no". That is very simple, just "yes" or "no". Mr. Rust wrote this in the contract? A. Yes, he did.

Q. Mr. Edelman did not write it? A. No.

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Q. Despite the fact that Mr. Rust wrote it in his own words and you were right there in the presence of Mr. Rust, you said to Mr. Edelman "What do those words mean?" Yes or no. A. He hurried out in the other room and I started to talk to Mr. Edelman, and I says "Why is this in here"

Q. Was that before or after you signed it? A. What?

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Q. This contract? A. I asked Mr. Edelman right away in the office, and I says, "What is that in there for"?

Q. Will you please answer the question; we can't stay here all night. Please answer the question; I'm not trying to fool you. I asked you whether or not he hurried out of the room before you signed it or after you signed it. Now, he went in either before or after; which was it? A. Before I signed it.

40

Q. After he hurried out of the office then you signed it? A. Yes. Of course—

*Peter Fleuchaus—Recalled—Recross.*

Q. Did I ask you why? A. No.

Q. Now, will you swear— A. I want to give you the reason why. I told Edelman it is best we talk there than talk in the court-room—

Q. I'm going to give you another chance to answer my question— A. I didn't talk that any more. We had to get out in the meantime. I come in contact with him every day and he agreed to fix it up if anything was wrong. 10

Q. In spite of the fact that you had to get out— A. I asked him what he means by that, that there is nothing against the property, and he says that is in case they run against prohibition or do something wrong by my own tenants he don't want to be responsible.

Q. Why didn't you tell Mr. Rust about that thing? A. I said so. 20

Q. To Mr. Rust? A. I said so in the room.

Q. Did you say— A. Mr. Rust—

The Court: Wait a minute until he finishes his question before you answer.

Q. Did you say to Mr. Rust, "You put that in the contract; does that mean there is nothing against the property now?" A. Mr. Rust heard it too. I talked pretty loud and everybody heard it. 30

Q. Did you ask Mr. Rust to write it in? A. Oh no, you know that.

Q. Can't you say "no" and then stop? If you didn't ask him, then say "no" and stop after that. You paid Mr. Rust for drawing up the contract, didn't you? A. Half and half.

Q. You have had quite a large and varied experience with contracts and litigation in courts, haven't you? A. I did so. 40

*Peter Fleuchaus—Recalled—Recross.*

Q. And with all your varied experience with contracts and litigation yet you made that agreement? A. I did.

Q. Did you tell that to your lawyer? Yes or no.  
A. The second day I met Edelman—

10 Q. Please answer "Yes" or "no". A. Yes. I don't know whether I told it to him; I talked to Edelman about it and told him.

Q. Do you remember signing an affidavit on May 16, 1928 in this case? A. Yes.

Q. Did you state in that affidavit—now, "yes" or "no" no long speeches— A. I don't know whether I stated it or not. The statement is true if I made it. I made about 20 contracts since that contract. I don't know what is in that thing.

20 Q. Have I asked you anything. The affidavit, which is about 4 pages long, isn't in there with the papers. Mr. Fleuchaus, you know Mr. Bauer does not take any real estate in his own name because he was being sued as a corespondent in a divorce case; do you know that?

Mr. Rosenfeld: I object to the question, if your Honor please, as to whether or not Mr. Fleuchaus knows that Bauer has some suit pending.

30 Mr. Heller: That is all.

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LEOPOLD BAUER recalled on behalf of the complainant, testified as follows:

*Direct-examination by Mr. Heller:*

40 Q. Mr. Bauer, you don't have any interest in this real estate in Garfield, do you? A. In Garfield, no.

*Leopold Bauer—Recalled—Direct.*

Q. Do you own any property in your own name?

A. Yes, I do.

Q. Where? A. In Godwin Street, a factory.

Q. When did you buy it? A. Oh, I got it quite a while ago.

Q. Five years? A. No, I didn't get it five years ago. Two years or something like that.

10

Q. Have you any property in your own name now? A. Yes, I got property right along in my name.

Q. What properties did you have in 1925? A. I can't tell you that.

Q. Do you remember talking with me one day and telling me that you were being sued as correspondent in a divorce case? Did you ever tell me that? A. No, I never did.

Q. Isn't it a fact that you were sued in the Court of Chancery of the State of New Jersey as corespondent? A. No.

20

Mr. Rosenfeld: I object to the question, if your Honor please.

Mr. Heller: He has answered the question.

Mr. Rosenfeld: He didn't say anything.

The Court: You expect to prove by that that he owns this particular property?

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Mr. Heller: No, to show that the man answering me said "no", when I can go to Trenton and get the records.

The Court: I don't know that you can cross-examine and impeach your own witness.

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*Morris Edelman—Rebuttal—Cross.*

MORRIS EDELMAN recalled in his own behalf, in rebuttal, testified as follows:

*Direct-examination by Mr. Heller:*

Q. Mr. Edelman, after signing this agreement did you say, or in words to that effect, "Don't worry about that clause; I won't put it into the deed"? A. I never seen him.

Q. Was there anything further said in respect to the clause after the contract was signed? A. No, sir; he agreed to take it over the way he was told to take it over.

Q. By the way, after this mortgage became due did Mr. Fleuchaus speak to you about paying it? A. Yes.

Q. How much did he offer you?

20 Mr. Rosenfeld: I object to this. This is not rebuttal.

The Court: This was to be a one-hour case, and now it is 20 minutes to 3.

Mr. Heller: That is all.

*Cross-examination by Mr. Rosenfeld:*

Q. Do you know what a crime is? A. I don't understand what you mean.

30 Q. Were you ever convicted of a crime? A. I don't understand what you mean.

Mr. Rosenfeld: That is all.

*Redirect-examination by Mr. Heller:*

Q. Were you ever arrested in a criminal case for doing anything wrong? A. No, sir.

Mr. Rosenfeld: I object.

40 The Court: He doesn't know what a crime is.

Mr. Heller: That is all.

Case Closed.

**Exhibit C-1.**

This Indenture, made the twenty-ninth day of December in the year of our Lord, One thousand nine hundred and twenty-five

Between William Lamping of the City of Paterson in the County of Passaic and State of New Jersey party of the first part; And Morris Edelman and Lena Edelman, his wife of the City of Passaic in the County of Passaic and State of New Jersey party of the second part; Whereas, the said party of the first part is justly indebted to the said party of the second part, in the sum of Seventeen Hundred Dollars, in gold coin of the present standard of weight and fineness, lawful money of the United States of America, secured to be paid by his certain bond or obligation, bearing even date with these presents, in the penal sum of Thirty-four Hundred Dollars, gold coin of the present standard of weight and fineness, lawful money as aforesaid, conditioned for the payment of the said first mentioned sum of Seventeen Hundred Dollars, gold coin of the present standard of weight and fineness, lawful money as aforesaid, to the said party of the second part, their executors, administrators, or assigns, on the Twenty-ninth day of December which will be in the year one thousand nine hundred and twenty seven and interest thereon to be computed from the date hereof at and after the rate of six per cent. per annum, and to be paid semi-annually.

And it is thereby expressly agreed, that should any default be made in the payment of the said interest or any part thereof, on any day whereon the same is made payable, as above expressed, or should any tax, assessment, water rent or other municipal or governmental rate, charge, imposi-

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*Exhibit C-1.*

tion, or lien be hereafter imposed or acquired upon the premises described in this mortgage, and become due and payable, and should the said interest or any part thereof remain unpaid and in arrears for the space of ten days, or said tax, assessment, water rent or other municipal or governmental rate, charge, imposition or lien, or any  
10 or either of them remain unpaid and in arrears for the space of thirty days, then and from thenceforth, that is to say, after the lapse or expiration of either of the said periods as the case may be, the aforesaid principal sum of Seventeen Hundred Dollars in gold coin of the present standard of weight and fineness with all arrearage of interest  
20 thereon, shall at the option of the said party of the second part, or their legal representatives, become and be due and payable immediately thereafter, although the period above limited for the payment thereof may not then have expired, anything therein before contained to the contrary thereof in anywise notwithstanding; as by the said bond or obligation, and the condition thereof, reference being thereunto had, may more fully appear. Now This Indenture Witnesseth, that the  
30 said party of the first part, for the better securing the payment of the said sum of money mentioned in the condition of the said bond or obligation, with interest thereon, according to the true intent and meaning thereof, and also for and in consideration of the sum of One dollar to him in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, released, conveyed and confirmed, and by these presents do grant,  
40

*Exhibit C-1.*

bargain, sell, alien, release, convey and confirm, unto the said party of the second part, and to their heirs and assigns forever, All that certain tract of land and premises, situate, in the City of Garfield in the County of Bergen and State of New Jersey.

Beginning at a point on the southerly side of Passaic Street distant one hundred and one feet and twenty-four hundredths of a (101.24) foot westerly from the southwesterly corner of Passaic Street and Spencer Place; and running thence (1) southerly and parallel with Spencer Place two hundred and four feet and nineteen hundredths of a (204.19) foot more or less to lands of James Hanlon; thence (2) westerly and along Hanlons line to the right of way of the Bergen County Railroad; thence (3) northerly and along said right of way to the intersection of the easterly side of said right of way with the southerly side of Passaic Street; and thence (4) easterly and along the southerly side of Passaic Street fifty-six feet and thirty-one hundredths (56.31) of a foot to the point or place of Beginning.

Being lots one and two and parts of lots seven, eight and ten on Block "Q" on Map entitled "Map No. 2 of the Property of Gilbert D. Bogart, situate at Garfield, Bergen County, N. J."

This mortgage is given as part of the purchase price of the said conveyance.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

And also, all the estate, right, title, interest, property, possession, claim and demand whatso-

*Exhibit C-1.*

ever, as well in law as in equity, of the said party of the first part, of, in and to the same, and every part and parcel thereof, with the appurtenances, To Have and to Hold the above granted and described premises, with the appurtenances unto the said party of the second part, their heirs, and assigns, to them their own proper use, benefit and behoof forever. And the said party of the first part and his heirs the above described and granted premises and every part thereof with the appurtenances in the quiet and peaceable possession of the said party of the second part, their heirs and assigns, against every person and persons whomsoever will warrant and forever defend. Provided always, and these presents are upon this express condition, that if the said party of the first part, his heirs, executors or administrators shall well and truly pay unto the said party of the second part, their executors, administrators or assigns, the said sum of money mentioned in the condition of said bond or obligation, and the interest thereon, at the time and times and in the manner mentioned in the said condition, according to the true intent and meaning thereof, that then these presents, and the estate hereby granted, shall cease, determine and be void.

And the said party of the first part for himself, his heirs, executors and administrators, do covenant and agree that the said party of the second part, their executors, administrators and assigns shall be at liberty immediately after any default in any of the conditions of said bond and mortgage, upon bill filed, or any other proper legal proceedings commenced for the foreclosure of this mortgage, to apply for, and shall be entitled as a

*Exhibit C-1.*

matter of right, and without regard to the value of the premises above described, or the solvency or insolvency of the party of the first part, or of any owner of said premises, and without notice to the party of the first part, his heirs, or assigns, to the appointment by any competent court or tribunal of a receiver of the rents, issues and profits of said premises, with the power to lease said premises, with power to pay taxes, assessments, and water rents, which are or may become liens on said premises, and keep the same insured, and with power to take proceedings to dispossess tenants, and remove owners, and make all necessary repairs, and with such other powers as may be deemed necessary, who, after deducting all charges and expenses attending the execution of the said trust as receiver, shall apply the residue of the said rents and profits to the payment and satisfaction of this mortgage, and the bond accompanying the same, or to any deficiency which may arise after applying the proceeds of the sale of said premises to the amount due, including interest, and cost and expenses of the foreclosure sale.

And the said party of the first part for himself, his heirs, and assigns, do covenant and grant to and with the said party of the second part, their heirs and assigns, that the said party of the second, part, their heirs and assigns, shall and may from time to time, and at all times after default shall be made in performance of the proviso or condition herein contained, peaceably and quietly enter into, have, hold, use, occupy, possess and enjoy all and singular the above granted and bargained premises with the appurtenances without the let, suit, trouble, hindrance or denial of the said

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*Exhibit C-1.*

party of the first part, his heirs or assigns, or of any other person or persons whatsoever.

10 And It is further mutually covenanted and agreed that the said party of the first part, his heirs executors, administrators or assigns shall until payment of the whole principal and interest aforesaid, keep the buildings on the above described premises insured to their fair, insurable value against loss or damage by fire, in companies to be selected by the party of the second part, and assign the policies of insurance therefor to the said party of the second part, their heirs, executors, administrators or assigns, as collateral security for the payment of said moneys, with power to apply all payments on said policies at their option to the repair or rebuilding of the premises injured by fire, or to the principal or interest moneys secured by said bond, and in default of such insurance and assignment of policies, said party of the second part, their heirs, executors, administrators and assigns may insure the same as aforesaid, and recover all premiums paid by them, with interest as part of the moneys secured by these presents; and may also, at their election forthwith demand all principal and interest moneys secured by said bond with interest and premiums aforesaid as immediately due and payable, without further notice.

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And the said party of the first part, for himself, his heirs and assigns do further covenant and agree to and with the said party of the second part, their heirs, executors, administrators and assigns, that they shall not be entitled to any credit on the interest payable on this mortgage for the taxes which may be levied on the mortgaged premises or for any part of such taxes.

40 In witness whereof, the said party of the first

*Exhibit C-1.*

part has hereunto set his hand and seal, the day and year first above written.

WILLIAM LAMPING, L.S.

Signed, sealed and de-

livered in presence of

John Miskovsky

State of New Jersey, }  
County of Passaic, }<sub>ss.:</sub>

10

Be it Remembered, that on this thirtieth day of December in the year of our Lord, One thousand Nine Hundred and twenty-five before me, the subscriber, a Notary Public of New Jersey, personally appeared William Lamping who, I am satisfied is the mortgagor mentioned in the within mortgage, to whom I first made known the contents thereof, and thereupon he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed for the uses and purposes therein expressed.

20

JOHN MISKOVSKY,  
Notary Public of New Jersey.

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**Exhibit C-3.**

AGREEMENT, made this twenty-sixth day of December 1925 between Wilhelm Lamping of the City of Paterson in the County of Passaic and State of New Jersey, hereinafter described as the seller and Morris Edelman of the City of Passaic in the County of Passaic and State of N. J. hereinafter described as the purchaser,

30

WITNESSETH, that the seller agrees to sell and convey, and the purchaser agrees to purchase all that lot of land, with the buildings and improve-

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*Exhibit C-3.*

ments thereon, situate in the ———

10 The party of the first part agrees to convey by Warranty deed a parcel of land and building to the party of the second part in the City of Paterson corner of Montgomery Street and River St consisting of three story and dwelling rooms, subject to leases. Party of the first part guarantees that the rent amounts to \$199.00 a month.

For this consideration above the party of the second part agrees to convey by warranty deed the premises in Garfield which he purchased from Joseph Garber and wife subject to mortgage (\$9776.00) dollars and a purchase money mortgage for (\$624.00) with 6% interest payable every six months for two years and privilege of paying off before expiration.

20 Party of the second part is not responsible for any padlock of the premises. Party of the second part guarantees that the second mortgage on the premises will not be called in until Jan. 1, 1927 and if called party of second agrees to secure new mortgage at his own expense.

30 All Board of Health and tenement house violations or complaints must be rectified or removed by the seller before closing title. All fixtures and personal property appurtenant to or used in connection with said premises, including gas and electric light fixtures and chandeliers, bulbs, gas stove, ranges, all plumbing fixtures and appurtenances, hot water heaters, heating apparatus and other personal property appurtenant to or used in connection and operation of said premises is represented to be owned by the seller and included in this sale.

40 The deed shall be delivered upon the receipt of

*Exhibit C-3.*

said payments at the office of Herman C. Rust on or before Dec. 30, 1925 at 10 o'clock noon.

The deed shall be a full covenant warranty deed in proper form, and shall be duly executed and acknowledged by the seller, at the seller's expense, to convey to the purchaser, or the purchaser's assigns, the absolute fee of the above premises, free of all incumbrances, except as above stated. 10

All instruments to be given hereunder are to be in the statutory short form.

Rents, water rents, taxes and interest on mortgages, insurance, if any are to be apportioned to delivery of possession.

The risk of loss or damage to said premises by fire, until the delivery of the deed, is assumed by the seller.

It is understood and agreed that the buildings upon said premises are all within the boundary lines in the property as described in the deed therefore, and that there are no encroachments whatever. 20

The stipulations aforesaid are to apply to and bind the heirs, executors, administrators and assigns of the respective parties.

The purchaser binds himself to pay the consideration in the manner aforesaid. 30

The purchaser is to pay all taxes and assessments levied and imposed after the date hereof.

WITNESS, the hands and seals of the above parties:

PETER FLEUCHAUS, L.S.  
MORRIS EDELMAN, L.S.

In presence of  
HERMAN C. RUST

**Exhibit D-1.**

CERTIFIED COPY  
OF A  
DEED

8617

142517

10 MORRIS EDELMAN and  
LENA his wife  
to Deed dated December 29 1925  
WILLIAM LAMPING

20 This deed made the twenty-ninth day of Decem-  
ber nineteen hundred and twenty-five Between  
Morris Edelman and Lena Edelman his wife of the  
City of Passaic in the County of Passaic and State  
of New Jersey (hereinafter known as the grantors)  
And William Lamping of the City of Paterson in  
the County of Passaic and State of New Jersey  
(hereinafter known as the grantees) Witnesseth  
that in consideration of one dollar the said grant-  
ors do grant bargain sell and convey unto the  
grantees their heirs and assigns

30 All that certain tract of land and premises situ-  
ate in the City of Garfield in the County of Ber-  
gen and State of New Jersey Beginning at a point  
on the southerly side of Passaic Street distant  
one hundred and one feet and twenty-four  
hundredths of a (101.24) foot westerly from the  
southwesterly corner of Passaic Street and Spen-  
cer Place and running thence (1) southerly and  
parallel with Spencer Place two hundred and four  
feet and nineteen hundredths of a (204.19) foot  
more or less to lands of James Hanlon thence (2)  
westerly and along Hanlons line to the right of  
way of the Bergen County Railroad thence (3)

40

*Exhibit D-1.*

northerly and along said right of way to the intersection of the easterly side of said right of way with the southerly side of Passaic Street and thence (4) easterly and along the southerly side of Passaic Street fifty-six feet and thirty-one hundredths (56.31) of a foot to the point or place of beginning Being lots one and two and parts of lots seven eight and ten on Block "Q" on map 10  
entitled "Map No. 2 of the property of Gilbert D. Bogart situate at Garfield Bergen County N J" Being the same premises conveyed to the party of the first part by Joseph Garber and Lillian Garber his wife by deed bearing date the first day of October nineteen hundred and twenty-four which is duly recorded in the Clerk's Office of the County of Bergen in Book 1292 of Deeds pages 320 & 20  
Subject to mortgages now on the premises aggregating the sum of ninety-seven hundred seventy-two dollars and fifty cents (\$9772.50)

And the said grantors covenant with the said grantee as follows:

- (1) That they are lawfully seized of the said lands
- (2) That they have the right to convey the said lands to the grantee
- (3) That the grantee shall have quiet possession of the said lands and that the same are free from all incumbrances 30
- (4) That they will execute such further assurances of the said lands as may be requisite
- (5) That they have done no act to incumber the said lands
- (6) That they will warrant generally the property hereby conveyed In witness whereof the said

*Exhibit D-1.*

grantors have hereunto set their hands and seals  
the day and year first above written

MORRIS EDELMAN (LS)

LENA EDELMAN (LS)

Signed sealed and delivered

10 in the presence of  
Carolina A. Balik

State of New Jersey, }  
County of Passaic. } ss.:

20 Be it remembered that on this thirtieth day of  
December in the year of our Lord nineteen hun-  
dred and twenty five before me the subscriber No-  
tary Public of New Jersey personally appeared  
Morris Edelman and Lena Edelman his wife who  
I am satisfied are the grantors in the within deed  
of conveyance named and I having first made  
known to them the contents thereof they did each  
acknowledge that they signed sealed and delivered  
the same as their voluntary act and deed for the  
uses and purposes therein expressed.

CAROLINA A. BALIK,  
Notary Public of New Jersey.

(\$2.00 Revenue stamps cancelled)

30 Received in the office and recorded January 11  
1926 at 1:23 PM

Jack L. Fox Clerk

State of New Jersey, }  
County of Bergen, } ss.:

40 I, James W. Mercer, Clerk of the County of Ber-  
gen, in the State of New Jersey, and also Clerk  
of the Circuit and Common Pleas Courts, in and  
for said County (Courts of Record), do hereby

*Exhibit D-1.*

certify that I have compared the copy of the Deed hereto annexed, with the original record thereof in Liber 1381 of Deeds at pages 580, &c., in my office at Hackensack in said County, and that the same is a true copy thereof, and of the whole of such original record.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the said Court and County, at Hackensack, aforesaid, this first day of October, A. D., one thousand nine hundred and Twenty-eight.

(Seal)

JAMES W. MERCER,  
Clerk.

10

20

**Exhibit D-2.**

Equity 1595

Certified Copy  
Subpoena and Services  
DISTRICT COURT OF THE UNITED STATES  
OF AMERICA  
District of New Jersey.

To Frank Menikatto, Morris Eddellman and Lena Eddellman

30

*Greeting:*

We Command You, that you appear in manner and form required by law in our District Court of the United States for the District of New Jersey, as a Court of Chancery, within twenty days from date of service hereof upon you, to answer to a bill of complaint exhibited against you in our

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*Exhibit D-2.*

said Court by United States of America,

and to do further and receive what our said Court shall have considered in that behalf; and this you are not to omit, under the penalty that may fall thereon.

10

(Seal)

WITNESS the Honorable JOHN RELL-STAB, Judge of said Court, this 28th day of November, 1925.

GEORGE T. CRANMER,  
Clerk.

By R. S. CHEVRIER,  
Deputy.

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Memorandum

20

The defendant is to file his Answer or other Pleading in the suit, in the Clerk's Office, Trenton, N. J., on or before the twentieth day after service, excluding the day thereof, otherwise the bill may be taken pro confesso.

Filed

Dec. 14, 1925

at 9 o'clock A. M.

George T. Cranmer,  
Clerk.

30

Affidavit of Service.

*Marshal's Return on Subpoena Ad Respond*, Filed  
Dec. 14, 1925.

Served the within Subpoena ad Respond by delivering to and leaving with Lena Edelman personally a copy thereof at Passaic, and on Morris Edelman by delivering to and leaving with an adult member of his family personally a copy thereof  
40 at Passaic, in the Dist. of New Jersey on the 10th

*Exhibit D-2.*

day of Dec. 1925, and at the same showing said person this original with the seal of the Court attached and informing her of its contents.

F. C. SCHNEIDER,  
U. S. Marshal

By Chas. Kilmurray,  
Deputy.

10

Served the within Subpoena ad Respond on Frank Manikatto by delivering to and leaving with an adult member of his family personally a copy thereof at Garfield in the Dist. of New Jersey on the 10th day of Dec. 1925, and at the same time showing said this original with the seal of the Court attached and informing him of its contents.

F. C. SCHNEIDER,  
U. S. Marshal.

By Chas. Kilmurray,  
Deputy.

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**Exhibit D-3.**

Certified Copy

Bill for Injunction

DISTRICT COURT OF THE UNITED STATES

District of New Jersey

10

UNITED STATES OF AMERICA,  
Complainant,

vs.

FRANK MENIKATTO, MORRIS ED-  
DELLMAN, LENA EDDelman,  
Defendants.

In Equity  
Docket Number

20

*To the Honorable the Judges of the District Court  
of the United States for the District of New Jer-  
sey, Sitting in Equity:*

30

1. The complainant, the United States of America, is a corporation sovereign, and this suit is prosecuted in its name and on its behalf by Walter G. Winne, United States Attorney for the District of New Jersey, pursuant to authority thereto granted by Section 22, Title II, "National Prohibition Act," and for the purpose of enjoining and abating a certain public and common nuisance as defined in Section 21, Title II, of said Act of Congress, and now existing upon certain premises situate within the State and District of New Jersey, more particularly described in that paragraph of this bill marked and numbered "III."

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II. This is a suit of a civil nature arising under the Constitution and laws of the United States and jurisdiction thereof is given to this Honorable

*Exhibit D-3.*

Court by Section 22 of Title II of said Act of Congress, and by Section 24 of the Judicial Code of the United States.

III. The complainant is informed and verily believes and therefore alleges on information and belief that the following is a description of the premises (hereinafter referred to as "said premises") upon which said public and common nuisance exists: No. 94 Passaic Street, in the Town of Garfield, County of Bergen, in the State of New Jersey. 10

2.

IV. The complainant is informed and verily believes and therefore alleges on information and belief that the defendant Frank Menikatto, is the owner and proprietor of the business conducted on said premises: 20

That the defendants, Morris Eddelman and Lena Eddelman, are the owners of the premises herein described.

V. The complainant is informed and verily believes and therefore alleges on information and belief that the said premises are used and maintained as a place where intoxicating liquor, as defined by Section 1 of Title II of said "National Prohibition Act," is manufactured, sold, kept, and bartered in violation of the provision of said title by defendant above named, and said premises and all intoxicating liquor and property kept and used in maintaining the same as a public and common nuisance as defined and declared by Section 21 of Title II of said "National Prohibition Act," and that said nuisance is a continuing nuisance. That the defendant first above named on or about June 12, 1925 sold whisky, which is intoxicating liquor 30 40

*Exhibit D-3.*

as defined by Title II of the "National Prohibition Act," on the premises described in Paragraph III of this bill in equity, said sale being made to Antoine Seymour on the same premises described in Paragraph III of this bill in equity.

10 The complainant is further informed and verily believes and therefore alleges on information and belief that the said premises are equipped with furniture and glassware, which is appropriate only for use in the handling and sale of intoxicating liquor, and that the defendant first above named, sold whisky, an intoxicating liquor defined by the "National Prohibition Act," to divers other persons on divers other days before and subsequent to the sale of intoxicating liquor to as herein before alleged.

20 VI. The complainant is informed and verily believes and therefore alleges on information and belief that unless restrained and forbidden by the injunction of this Honorable Court, the said defendant will continue in the future to keep, maintain, and use said premises, and assist in maintaining and using the same as a place where intoxicating liquor is manufactured, sold, kept, and bartered, in violation of Title II, of said "National Prohibition Act," and as a common and public nuisance  
30 as defined in Section 21 of said title.

## 3.

VII. The complainant is informed and believes and charges the fact to be that the defendant first above named, who is the owner and proprietor of the business conducted on said premises, threatens to and is about to create a common and public nuisance, similar to the nuisance described in this  
40

*Exhibit D-3.*

bill, in another place and places in the District of New Jersey, and complainant verily believes he will carry out his said threat, unless restrained by an injunction of this Court.

VIII. For as much, therefore, as your complainant has no remedy in the premises, except in a Court of Equity, and to the end that it may obtain from this Honorable Court the relief to which it is entitled by right in equity, and pursuant to the provisions of Section 22 of Title II of said "National Prohibition Act," it respectfully prays that the above-named defendants,——— and each of them be directed full, true, and perfect answer to make to this bill of complaint, but not under oath, the answer under oath of each of them being hereby expressly waived, and that the said defendants,——— and each of them, their agents, servants, subordinates, and employees, and each and every one of them, be enjoined and restrained from using, maintaining, and assisting in using and maintaining said premises as a place where intoxicating liquor is manufactured, sold, kept, and bartered, in violation of Title II of said "National Prohibition Act."

The complainant further prays that this Honorable Court shall issue its process directed to the United States Marshal for the District of New Jersey, commanding him forthwith summarily to abate said public and common nuisance now existing upon said premises and for that purpose to take possession of said premises and to close the same and to take possession of all liquor, fixtures, and other property now used on said premises in connection with the violation constituting said nuisance, and to remove the same to a place of safe-keeping to abide further order of this Court.

*Exhibit D-3.*

10 The complainant further prays that this Honorable Court shall enter a decree directing that all the intoxicating liquor now in said premises shall be destroyed, or, upon the application of any United States Attorney, shall be delivered to such Department or agency of the United States Govern-  
ment as he shall designate, for medicinal, mechanical, or scientific uses, or that the same shall be sold at private sale for such purposes to any person having a permit to purchase liquor, and that the proceeds thereof be covered into the Treasury of the United States, as provided in Section 27 of Title II of said "National Prohibition Act."

## 4.

20 The complainant further prays that this Honorable Court shall forthwith issue a temporary writ of injunction restraining all the defendants herein named from conducting or permitting the continuance of said nuisance, and shall order that no liquor shall be sold, manufactured, bartered, or stored in said premises or any part thereof until the conclusion of the trial in this case; and that  
30 said temporary injunction restrain the defendants, and each of them, their agents, servants, subordinates, and employees, and all other persons from removing or in any way interfering with the liquor or fixtures or other things used in connection with the violation of the "National Prohibition Act."

40 The complainant further prays that this Honorable Court shall enter a decree directing that no intoxicating liquor as defined in Title II of said "National Prohibition Act" shall be manufactured, sold, bartered, or stored in said premises, or any part thereof, and that said premises shall not

*Exhibit D-3.*

be occupied or used for one year after the date of said decree, and in the event that it appears that the owner of said premises had knowledge or reason to believe that the same were occupied or used in violation of the provisions of Section 21 of Title II of said "National Prohibition Act," and suffered the same to be so occupied or used, that this Honorable Court shall enter a decree impressing a lien upon said premises, directing that the same be sold to pay all costs and fines that may be assessed or imposed against the person or persons found guilty of maintaining such nuisances. 10

The complainant further prays that an injunction in personam be issued and granted by this Honorable Court against the defendant first above named, being the person who is the owner and proprietor of the business conducted on said premises, enjoining and restraining him from manufacturing, selling, bartering, or storing any intoxicating liquor contrary to the provisions of the "National Prohibition Act," at any place within the District of New Jersey. 20

UNITED STATES OF AMERICA,  
Complainant.

By Walter G. Winne,  
United States Attorney for the 30  
District of New Jersey.

United States of America, }  
For the District of New Jersey } ss.:

I, George T. Cranmer, Clerk of the United States District Court in and for the District of New Jersey, do hereby certify that the annexed

*Exhibit D-3.*

and foregoing is a true and full copy of the original Bill for Injunction.

now remaining among the records of the said Court in my office.

10

In Testimony Whereof, I have here-  
unto subscribed my name and af-  
(Seal) fixed the seal of the aforesaid  
Court at Trenton this 9th day of  
July, A. D. 1928.

GEORGE T. CRANMER,  
Clerk.

By Charles S. Chevrier,  
Deputy Clerk.

20

Filed  
Nov. 28, 1925  
at 9 o'clock A. M.  
George T. Cranmer,  
Clerk.

30

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*Exhibit D-4.*

10 creed that an injunction issue forthwith under seal of this Court, enjoining the defendants, Frank Menikatto, Morris Eddellman, and Lena Eddellman their agents, servants, subordinates, employees, coadjutors, and any person or persons claiming by, through, or under said defendant, and each and every one of them, from manufacturing, selling, bartering or storing in said premises, or any part thereof, any liquor containing one-half of one per cent or more of alcohol by volume, and that said real estate and premises herein above described shall not be occupied or used for one year subsequent to the date of this decree.

20 III. It is further Ordered, Adjudged, and Decreed that said common nuisance be abated, and that the United States Marshal for the District of New Jersey is directed to summarily abate said public and common nuisance and to close the same and keep the same closed for a period of one year from the date of this decree, and remove from the windows of said premises all obstructions so that at all times the interior thereof is plainly visible, and for the cost of so doing the same Marshal shall be allowed a reasonable sum upon application to this Court, which sum will be taxed in the costs.

30 It is further Ordered, Adjudged, and Decreed that the said Frank Menikatto, Morris Eddellman and Lena Eddellman, under the supervision of the United States Marshal for the District of New Jersey, remove from the said premises all bar fixtures and all furnishings and equipment now contained in the said premises used in the maintenance of the said common nuisance, with the exception of any intoxicating liquor now on said premi-

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*Exhibit D-4.*

ses, which shall be dealt with as hereinafter provided.

IV. It is further Ordered, Adjudged, and Decreed that all intoxicating liquor seized on said premises be destroyed.

It is further Ordered, Adjudged, and Decreed that the United States of America, complainant herein, recover of the defendant, Frank Menikatto all the costs taxed in this cause, and that execution issue therefor.

It is further Ordered, Adjudged, and Decreed that the United States Marshal for the District of New Jersey shall post in four conspicuous places on the said premises cardboard signs upon which shall be printed in conspicuous type, "Closed for violation of the National Prohibition Act by order of the United States District Court," and the costs thereof shall be included in the cost to be taxed in the cause.

WM. N. RUNYON,  
United States District Judge.

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*Exhibit D-4.*

United States of America, }  
 District of New Jersey, } *ss. :*

I, George T. Cranmer, Clerk of the United States District Court in and for the ———— District of New Jersey, do hereby certify that the annexed and foregoing is a true and full copy of the original Final Decree.

10

now remaining among the records of the said Court in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Trenton, this 2nd day of October, A. D. 1928.

(Seal)

20

GEORGE T. CRANMER,  
 Clerk.

By Charles S. Chevrier,  
 Deputy Clerk.

Filed

Jun. 2, 1926

at 4 o'clock P. M.

George T. Cranmer,  
 Clerk.

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### Memorandum of Opinion.

December 10, 1928.

BENTLEY, V. C.:

*On bill to foreclose.*

The only question requiring consideration is whether or not a covenant in a contract to exchange real estate was merged in the deed subsequently given to the defendants. According to the way that question is resolved, will depend whether or not this mortgage, which was given to secure a part of the purchase price, is enforceable or not. 10

The premises upon which the mortgage is a lien was proceeded against under the National Prohibition Act and an injunction was issued out of the United States District Court. In the contract for the exchange there was the following language: 20  
 "The party of the second part is not responsible for any padlock of the premises". There is no dispute that this was intended to relieve the defendants of any consequences arising from a violation of the above-mentioned act of Congress.

A further consideration of the subject under discussion leads me to the belief that there was no merger. Vice-Chancellor Ingersoll has pointed out, in *Ireland v. Penn Motor*, 134 Atl. 835, that there is no merger of acts required by a contract, other than the conveyance of the premises, by the subsequent delivery of a deed that is silent upon the point. In the later case of *Kessler v. Troast*, 138 Atl. 371, I pointed out the well recognized rule to be found in 5 *Wigmore on Evidence*, section 2430 (2nd ed.) which briefly, is that where something collateral to the conveyance is required by the contract, and it is subsequently incorporated 30  
 40

*Memorandum of Opinion.*

in the deed in a modified form, everything with regard hereto is lost except as it is incorporated in the later and final document. But where the deed is silent upon such collateral matter, the presumption is that it is to remain in force as it appeared in the contract. In other words, the doctrine of merger, as I understand the rule, relates only to the main transaction between the parties. Consequently, when Mr. Rust's stenographer drew the deed, in the absence of her employer, her failure to include the provision about a padlock was not intended to relieve the purchaser of the risk he assumed at the time the bargain was made, but such provision in favor of the vendor was to remain intact. If the experienced conveyancer, steeped in the rules of his profession, had been present there is no question in my mind that the provision in question would have been transferred verbatim into the deed.

There should be a decree in accordance with the prayer of the bill.

30

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Case 36

### New Jersey Court of Errors and Appeals

Between MORRIS EDELMAN and LENA EDELMAN, Complainants-Respondents, and WILLIAM LAMPING, ROSE LAMP- ING (first name being unknown and fictitious) PETER FLEU- CHAUS and LEOPOLD BAUER, Defendants-Appellants.	}	On Bill, &c.  On Appeal from Court of Chancery.
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#### BRIEF OF DEFENDANT-APPELLANT.

##### Statement of Facts.

The only defendant on appeal is William Lamp-  
 ing.

This appeal does not concern any of the other  
 defendants.

On December 26, 1925 a written contract was  
 entered into between complainants and defendant  
 (Exhibit C-3, page 100a) whereby complainants  
 agreed to exchange the premises sought to be fore-  
 closed herein for a parcel of land and premises  
 belonging to defendant. The mortgage sought to  
 be foreclosed herein was a purchase money mort-  
 gage given by defendant to complainants and rep-  
 resented the difference between the prices of the  
 exchanged parcels. Said contract amongst other  
 things contained the following: "Party of the sec-  
 ond part is not responsible for any padlock of the  
 premises." The record at page 87 discloses that

upon redirect examination the witness, Fleuchaus, testified that on the day after the said contract was executed he met the complainant Edelman, and told him that he didn't like the clause concerning the padlock in the contract, and stated that a new contract ought to be made, otherwise he wouldn't permit the deed to go through. This witness further testified that he asked Edelman, the complainant, why he put that clause in the contract, and that the complainant explained said clause by saying that he didn't wish to be responsible for a padlock proceeding if the tenant would sell liquor and there would be trouble. The witness, Fleuchaus, then asked the complainant whether there was anything affecting the place at that time and complainant stated, "No, maybe when I sell that property maybe the man do something with whiskey and so I don't want to be responsible for that." (See page 88.) Again (at page 88) the witness, Fleuchaus, testified as follows: "Q. And the next day you talked to him like that and you didn't like the clause in there?" A. I said: "Listen, if we are going to make a different agreement that thing has got to be out of the contract", and so we go up to Rust's office and I pay for that agreement. Well, he said, "Fleuchaus, as I told you before, when we make the deed, that takes only two or three days, and that wouldn't be in the deed. What is the use of going to the trouble of making a new agreement when that will be delivered in a couple of days?" Then I says, "you will attend to it?" He says, "*I will see to it that it will not go into the deed.*"

Three days after execution of said contract of exchange a warranty deed containing the warranties of quiet possession, freedom from all encumbrances, covenanting further assurances and cov-

enacting that no act had been done to encumber said land, was executed and delivered to the defendant-appellant. (Exhibit D-1, page 101.) The proofs further show that the complainants had been served with a subpoena ad respond out of the United States District Court of the District of New Jersey in padlock proceedings wherein the complainants herein were defendants in said suit on December 10th, 1925, which was sixteen days before the execution of the above mentioned written contract for exchange. (Exhibit D-2, page 104, 105.) Said suit was commenced for a violation of the National Prohibition Act and by a decree of said Court it was adjudged that the premises sought to be foreclosed herein were on the 12th day of June 1925 (about six months before complainants and defendants herein entered into the written contract for exchange) a common nuisance. (Exhibit D-4, page 113.) Said decree dated May 14, 1926, further ordered and decreed *that said real estate and premises herein above described shall not be occupied or used for one year subsequent to the date of this decree.* (See Exhibit D-4, page 114.) Thereafter in pursuance of said decree the said premises were padlocked and so remained for a period of one year and defendant-appellant thereby lost the rental value of said premises, which according to the proofs amounted to One Hundred Thirty (\$130.00) Dollars per month. Defendant was also obliged to engage counsel to petition for the removal of the padlock at the end of one year and expended One Hundred Fifty (\$150.00) Dollars in counsel fees.

Complainant on January 21, 1928 filed a bill to foreclose the premises herein and defendant filed an answer and counter-claim. By the first count of the counter-claim the defendant seeks to

recover the rental value for one year of the premises sought to be foreclosed, alleging that complainants had represented that said premises were not involved in any legal proceedings and that title and possessions of same were in no wise affected, whereas at the time of the execution of said deed, there was a suit pending in the United States District Court for New Jersey affecting the title and possession of said property, namely, the padlock proceeding. The defendant in addition demanded in said first count of the counter-claim the sum of \$150.00 for fees paid to counsel to petition the Court to reopen the premises and remove the padlock. The second count of the counter-claim seeks to recover the rental value of said premises for a period of one year that the same was padlocked and also the sum of \$150.00 paid to counsel for fees to reopen said premises and the theory of the second count is that the complainants had executed to defendant a warranty deed to said premises containing the warranties of quiet possession; freedom from all encumbrances; that no act had been done to encumber said lands; and a general warranty; and defendant says that said covenants and warranties were breached at the time of the execution of said warranty deed, and that complainants knew that the same were breached by reason of the fact that a suit was then pending and the complainants had been served with subpoenas in the United States District Court of New Jersey involving the title and possession of said premises as the result of the sale of whiskey upon said premises in June 1924, a long time prior to any negotiations for the sale of the premises sought to be foreclosed herein (See Answer and Counter-claim, page 10.) So much for the first and second count of the counter-claim.

The answer of the defendant contained two separate defenses, the first defense set forth that complainants had procured the execution of the mortgage herein by fraud and deceit, it being the theory of the defendant that the mortgage sought to be foreclosed herein was a purchase money mortgage delivered at the time of the exchange of deeds between complainants and defendant and that the defendant would not have executed said purchase money mortgage had he known that the premises he was buying were affected by any suit pending in the United States District Court of New Jersey involving the possession or enjoyment of said premises. In other words, defendant contended that when he took a warranty deed from complainant and executed a purchase money mortgage on the same premises he was relying upon the warranties in the deed he was accepting and that he would not have executed said purchase money mortgage had he known that any of said warranties or covenants were breached. The defense was that the complainants were not entitled to any relief under said mortgage, since the same had been procured through fraud and deceit as aforesaid.

The most important question to be determined upon this appeal is, did the contract dated December 26, 1925 (Exhibit C-3, page 100a) and especially that part of the contract which states, "Party of the second part is not responsible for any padlock of the premises." (Exhibit C-3, page 100b) merge in the warranty deed dated December 29, 1925, (Exhibit D-1, page 100d) especially in view of the fact that said deed covenanted that the grantee (defendant herein) shall have quiet possession of the said lands and that the same are free from all encumbrances (See Exhibit D-1, page 101). It is defendant's contention that *the contract merged in the deed* and that the deed was

the last word between the parties concerning the sale of the premises sought to be foreclosed herein and *since said deed dealt directly with quiet possession and freedom from encumbrances of said land*, that therefor *the statement in the contract that complainants are not responsible for any padlock of the premises was merged and extinguished*. Defendant contends that since it has been proven that after receiving said warranty deed, (Exhibit D-1, page 100d) the premises were padlocked for a violation that occurred while complainants were the owners of said premises and that therefor when the warranty deed was executed, the covenant of quiet possession was breached and that the covenant of freedom from all encumbrances was breached because the padlock proceeding, which was pending in the United States District Court when the deed (Exhibit D-1, page 100d) was delivered, was an encumbrance affecting the title to said premises. Defendant claims that he is entitled to recover against complainants for loss of the rental value of said premises for a period of one year and the expense he was put to to reopen said premises in the sum of \$150.00.

### **The General Statement of Law.**

The general rule is that acceptance of a deed for land is to be deemed full execution of an executory contract to convey. Covenants collateral to the deed are exception to this rule. Also, where the stipulation is to do a series of acts at successive periods or distinct and separable acts to be performed simultaneously, the executory contract becomes extinct only as to such of its parts as are covered by the conveyance. (Long vs. Hartwell, &c., 34 N. J. L. 116.)

### POINT ONE.

**The Court erred in its decree that the Defendant-Appellant has no just defense to the payment of the Complainant's mortgage.**

The purchase money mortgage upon which this foreclosure action is based was obtained at the same time as the deeds were exchanged between the complainants and defendants and said mortgage represented the difference between the agreed valuation of the real estate exchanged. Defendant contends that when complainants executed and delivered to him a warranty deed with the covenants of quiet possession and freedom from encumbrances, he relied upon said warranties and executed and delivered the purchase money mortgage, relying upon said warranties. Defendant contends that the complainants obtained said mortgage through fraud and deceit, because, the padlock proceeding, which was pending at the time that the deeds were exchanged and the purchase money mortgage was given, was an encumbrance. The case of *Godstein vs. Ehrlich* (96 N. J. Equity, page 52) is authority for the proposition that a padlock proceeding is a cloud upon the title.

The fraud and deceit which defendant charged complainants with, need not be legal fraud and deceit, it is sufficient for the purpose of defendant's defense that the fraud be of the nature cognizable in a Court of Equity. In this connection the case of *Eibel, et al vs. Augustie Van Fell, et al* (55 N. J. Equity, page 671) is authority and therein the Court stated the rule to be as follows, "There is this distinction between the rule of equity and the rule of law; at law material fraud must be shown to have been present in the misrepresentation; in

equity the complainant may succeed although the misrepresentation was innocent."

The defendant charges that the act of complainants in the execution and delivery to him of the warranty deed containing the covenants of quiet possession and freedom from encumbrances, was a representation that was fraudulent and deceitful, if not of the character that is recognized at law, certainly of the character that is cognizable in equity. Because the affidavit of service of the subpoena ad respond (See Exhibit D-2, bottom of page 104) shows conclusively that the complainants had been served with said subpoenas on December 10, 1925, nineteen days before the execution and delivery of the said warranty deed, and therefore, defendant relying upon said deed and the warranties therein contained was fraudulently and deceitfully induced to execute and deliver the purchase money mortgage, which is the basis of this foreclosure action, the complainants having failed to inform defendant of the service of the subpoena ad respond and having suppressed the fact that a suit was pending affecting the title and possession of said premises. This was the fraud and deceit that the defendant sets up as his defense and that defendant urges that he relied upon the representations in the deed (namely the warranties of quiet possession and freedom from encumbrances) that said representation were untrue (namely, that said warranties represented freedom from encumbrances and quiet possession, whereas said premises were at that very time affected by the pending padlock proceeding); that defendant relied upon said representations believing them to be true and acted upon the same by executing the purchase money mortgage; the damage suffered by the defendant was the loss of the

rental value at the rate of \$130.00 per month for a period of one year during which time the premises were padlocked.

### POINT TWO.

**The Court erred in its decree that the counter-claim of Defendant-Appellant is without merit and the Court's dismissal of the counter-claim was error.**

The counter-claim of defendant is for damages suffered as a result of the padlocking of the premises conveyed by complainants to him which said premises were padlocked for a period of one year as the result of a violation of the National Prohibition Act which occurred on the premises sought to be foreclosed, which said violation took place when complainants were the owners of said premises, and the United States District Court in its decree dated May 14, 1926 adjudged and decreed that the real estate and premises which were conveyed by complainants to defendant were on June 12, 1925, a common nuisance (See Exhibit D-4, page 113). The complainants did not attempt to introduce any evidence of any kind to off-set any of the proofs offered by defendant, either in connection with the padlock proceeding or in connection with the decree of the United States District Court that the premises conveyed by them to defendant or at least part thereof were a nuisance, by reason of and due to the sale of intoxicating liquor on June 12, 1925. On the contrary the complainants offered in evidence the contract of exchange (Exhibit C-3, page 100a) and the Court over objection permitted the same to be introduced in evidence (page 69). The complainants offered the contract of exchange in evidence for the pur-

pose of defeating the counter-claim of defendant on the theory that the defendant was not entitled to recover on the counter-claim because the contract expressly provided against liability for a padlock proceeding. But the Court erred in decreeing that the counter-claim of defendant is without merit and in dismissing same because it certainly must be clear that the contract for exchange and especially the clause relieving complainants of liability for a padlock proceeding, merged in the deed that was the final expression relating to the transfer of title and possession of the premises conveyed, especially in view of the fact that the deed executed in pursuance of said contract of exchange contained the warranties that the complainant warrants quiet possession and freedom from encumbrances. The following cases are all authority for the proposition that a deed is to be deemed full execution of an executory contract to convey and that the executory contract becomes extinct as to such of its parts as are covered by the conveyance and that the contract merges in the deed: (1) (5 Wigmore on Evidence, Par. 2430 (2nd Edition) ; (2) (8 Amer. & Eng. Enc. L. 56) ; (3) (15 Corpus Juris, 1230, paragraphs 39 and 40) ; (4) (Long vs. Hartwell, 34 N. J. L. 116) ; (5) (Davis vs. Clark, 47 N. J. L. 338 & 339) ; (6) (Merchants & Traders Development, Inc. vs. Mercer Realty Co., 99 N. J. L. 446, opinion of Justice Campbell).

### POINT THREE.

**It was error for the Court to permit Complainants to offer the contract (Exhibit C-3, page 100a) over the objection of Defendant.**

Since the contract for exchange (See Exhibit C-3, page 100a) merged in the deed (Exhibit D-1, page 100d) the deed being the final expression of intention between the parties, the contract had therefore lost its identity and was merged in the deed that was subsequently executed. In other words, the entire contract to exchange was swallowed up by the subsequent deed executing completely the agreement to exchange and because the said contract contained no covenant that can be deemed collateral and independent the said contract was destroyed by the execution of said deed. In those cases where covenants in a contract for sale are deemed collateral and independent so as not to be destroyed by the execution of the deed, the said covenants in the contract must not look to or be connected with the title, possession, quantity, or emblements of the land which is the subject of the contract. *Bull vs. Willard*, 9 Barb. 641; (*Long vs. Hartwell*, 34 N. J. L. 123). For the foregoing reasons it was error to permit the contract (Exhibit C-3, 100a) in evidence.

### Summary.

Defendant-appellant relies principally in this appeal upon his contention that the contract (Exhibit C-3, page 100a) and especially that portion which states that "Party of the second part is not responsible for any padlock of the premises," was merged and completely swallowed up in the warranty deed (Exhibit D-1, page 100d) which said

deed contained the warranties of quiet possession and freedom of encumbrances. In order for a covenant in an executory contract to be deemed collateral and independent it must meet with the rule laid down in Bull vs. Willard (9 Barb. 641) where the rule is stated in these terms, "That the covenant in order to be deemed collateral and independent, so as not to be destroyed by the execution of the deed must not look to or be connected with the title, possession, quantity, or emblements of the land which is the subject of the contract."

**H**ere the statement in the contract that the party of the second part is not responsible for any padlock of the premises looks to and is connected with the *title* and *possession* of the land which is the subject of the contract and the deed subsequently executed pursuant to the terms of said contract containing the warranties of quiet possession and freedom from encumbrances deals directly with the title and possession of the land which is the subject of both the contract and the deed. It is respectfully submitted that the contract merged in the deed; that the statement in the contract that complainants would not be responsible for a padlock proceeding was completely extinguished by the subsequent execution of the warranty deed which covenanted quiet possession and freedom from encumbrances. Defendant-appellant respectfully submits that the decree of the Court of Chancery should be set aside and for nothing holden, or be altered to allow the damage of defendant-appellant, or that the said decree be moulded in accordance with the decision of this Honorable Court.

Respectfully submitted,

SAMUEL ROSENFELD,  
Solicitor and of counsel with  
Defendant-Appellant.

## New Jersey Court of Errors and Appeals

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Between  
 MORRIS EDELMAN and LENA EDELMAN,  
 Complainants-Respondents,  
 and  
 WILLIAM LAMPING, ROSE LAMPING (first name being unknown and fictitious) PETER FLEUCHAUS and LEOPOLD BAUER,  
 Defendants-Appellants.

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On Bill, &c.

On Appeal from Court of Chancery.

### BRIEF OF COMPLAINANTS-RESPONDENTS.

#### Statement of Facts.

This was a suit by the complainants against the defendants, the purpose of which was to foreclose a certain purchase money mortgage which was made by the defendant, William Lamping to the complainants on December 29, 1925, and given to secure the sum of Seventeen hundred (\$1700.00) Dollars.

The defendant, Rose Lamping, (first name being unknown and fictitious) was made a party defendant because she is the wife of the defendant, William Lamping, and for the purpose of cutting off any rights which she may have in the premises.

Peter Fleuchaus and Leopold Bauer were made party defendants because they guaranteed the pay-

ment of the bond, which is the subject matter of this suit.

On December 26, 1925, a written contract was entered into between the complainants and Peter Fleuchaus, as agent for William Lamping (Exhibit C-3, page 100a) whereby the complainants agreed to exchange certain property owned by them with the said defendant. There was a clause in the contract with respect to the property which was being sold by the complainants which read as follows: "The party of the second part is not responsible for any padlock of the premises".

The contract was drawn in longhand by one Herman C. Rust (State of Case, page 69, lines 8-9) a reputable member of the bar of this State. Three days later, the deed was delivered and the bond and mortgage which is the subject matter of this suit, was executed. When the deed was delivered, Mr. Herman C. Rust, the attorney representing both parties in the transaction, was not present, he having started on a trip to Europe the day before; as a result, the settlement figures and drawing of the papers for the closing of the actual transaction was handled by Mr. Rust's stenographer. The deed, as delivered was a warranty deed. The deed omitted to recite the clause which is the real issue of this case, that is, "that the party of the second part is not responsible for any padlock of the premises."

Subsequent to the closing of the transaction, the defendant entered into possession of the premises and sometime in June, 1926, part of the premises were padlocked by an order issuing out of the United States District Court for the District of New Jersey.

The complainants aver that the stenographer in drawing the deed inadvertantly left out the clause

which stated that the complainants were not to be responsible for any padlock proceedings, and in answer to this, the defendants aver that the contract merged into the deed and consequently that the complainants were responsible for the padlock.

It is undisputed that the defendant or his duly authorized agent, paid the interest on the mortgage continuously from the first interest period to the last interest period, and that the only time payment was refused was some two years later after the mortgage became due.

It is also undisputed that the interest was paid during the time the premises were padlocked. The parties also agree that the contract at the time it was executed, set forth the true agreement between the parties.

The defendant, Rose Lamping, (first name being unknown and fictitious) failed to file an answer. The defendants Peter Fleuchaus and Leopold Bauer have also failed to file an answer. The defendant, William Lamping, has filed an answer, setting up that the contract merged into the deed; that the deed is a Warranty Deed with covenants of quiet enjoyment and seeks to counter-claim against the bond and mortgage by reason of the padlock.

The sole question presented therefore is in the instant case "Did the contract merge in the deed?"

Under this state of facts the Court of Chancery by Vice-Chancellor Bentley ruled that the contract did not merge into the deed and rendered a decree in favor of the complainants. We have carefully examined the brief of the defendant and conclude therefrom that the sole question is as previously stated. Because of this, we shall answer the defendant's brief under one heading.

### POINT ONE.

We urge that the court properly decided that the contract did not merge in the deed, and that consequently the complainants are entitled to a decree of foreclosure. In support of our contention let us first state that we agree with the law as cited by our adversary in his brief.

Supplementing thereto, we cite the case of Kessler et ux vs. Trost et ux, 138 Atl. 371 at page 373 (101 N. S. ¶. 536), Vice Chancellor Bentley speaking for the Court of Chancery, says:

“The sixth ground amounts, in effect, to a charge that the contract merged in the deed subsequently delivered by the defendants. This is not so. Ordinarily, when negotiations between the parties are finally summed up in a written instrument it is considered that the instrument discloses, by its terms, all that the parties have agreed to. But, like all rules, this one is subject to exceptions. The most satisfactory method of determining whether or not any preceding collateral element of negotiation has been abandoned is to observe whether or not it has been completely excluded from the final document. Even if it is collateral to the main subject, but is dealt with in the final writing, then presumably the writing was intended to express everything to which the parties had agreed as to that element of the transaction. *But if the written instrument fails to make any mention of the extrinsic negotiation of a subject, then the presumption does not exist and parol proof thereof may be given, for the very reason that there was no merger.* 5 Wig. on Ev. S 2430 (2d Ed.) To

the same effect are Long vs. Hartwell, 34 N. J. L. 116; Merchants' & Traders' Development Co. vs. Mercer Realty Co., 99 N. J. Law, 442, 123 A. 875; Ireland vs. Penn Motors Corp. (N. J. Ch.) 134 A. 835 (not yet officially reported)."

We submit that the Kessler case is at all fours with the situation at bar and is in line with the well settled rule that a contract only merges in the deed where the deed incorporates the matters as contained in the contract; however, where the deed is silent upon such collateral matter, the presumption is that it is to remain in force as it appeared in the contract.

The defendants were well aware of the provision pertaining to padlock as will be noted by the testimony of the witness, Fleuchaus, who was the sole agent and representative of the defendant, Lamping. (Testimony, page 87, lines 12-20).

Q. Did you see this when you signed your name; "Party of the second part is not responsible for any padlock of the premises"?

A. Yes.

Q. You had made quite a number of contracts before this one was signed, had you not? A. Yes.

Q. And you were familiar with that clause, weren't you, when it was put in there? A. Yes.

This seems to us to be a case where because of the absence of the solicitor representing both parties, an important clause was left out of the deed, which otherwise would have been inserted. It is undisputed that the contract was drawn in long-hand by Mr. Rust and that the deal was closed in his absence and handled by his stenographer. Can

it now be said that the failure of the stenographer to transfer the particular clause in the deed was intended to relieve the purchaser of the risk he assumed at the time the bargain was made? We sincerely urge that this was certainly not the intention of the parties and certainly not the letter of a court of conscience. It is purely a mistake and an inadvertence on the part of a person not experienced in conveyancing. And it seems to us is a situation where the defendant, a person of varied experience in real estate is trying to take advantage of a mistake. In this connection, we desire to call the court's attention to the fact, that the defendant is a person well experienced in the real estate business, having transacted over 408 property deals (State of Case, page 85, lines 10-12) and a person who at the time of the trial was the owner of at least three properties where saloons were located (State of Case, page 85, lines 33-38).

In view of the fact that the defendant is such an experienced real estate operator and in view of the fact that he agreed under the contract to purchase the property subject to padlock proceedings, can it now be said that fraud was practiced upon the defendant? Quite to the contrary, we respectfully urge that the defendant should be bound by his contract and not be permitted to take advantage of a mistake which would not have occurred had Mr. Rust, the attorney, an experienced conveyancer, been present at the closing of the transaction.

We respectfully urge therefore that the decision  
of the Court of Chancery be confirmed and the  
appeal be dismissed, with costs to be taxed.

Respectfully submitted,

HELLER & BOSS,  
Solicitors for Complainants-Respondents.

AARON HELLER,  
Of Counsel.



