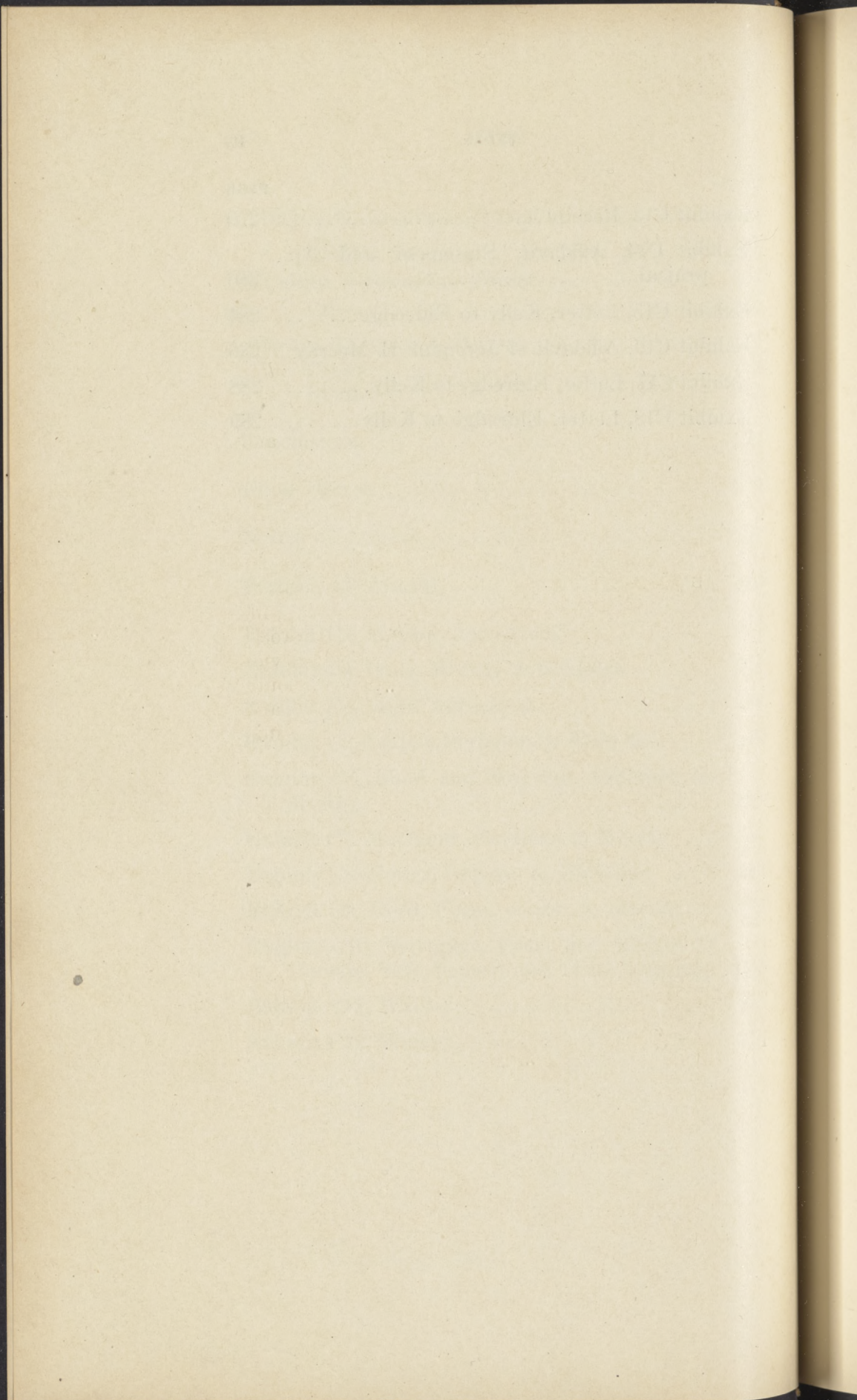


# I N D E X

	PAGE
Bill for Injunction.....	1
Answer and Counter-Claim.....	21
Replication and Answer to Counter-Claim of Isador Goldman .....	33
<b>COMPLAINANTS' TESTIMONY:</b>	
Henry H. Eldredge—Direct.....	37
Cross. ....	47
Re-direct. ....	54
Samuel F. Eldredge—Direct.....	54
Cross. ....	66
Recalled—Direct.....	158
Recalled—Cross. ....	167
Sol Needles—Direct .....	93
Cross. ....	95
Jeremiah E. Mecray—Direct .....	98
Cross. ....	105
Lewis T. Stevens—Direct.....	129
Cross. ....	131
Re-direct. ....	135
<b>DEFENDANTS' TESTIMONY:</b>	
William A. Gray—Direct.....	137
Cross. ....	141
Harry W. Perlstein—Direct.....	143
Cross. ....	151
Re-direct. ....	156

	PAGE
Sidney M. Lissman—Direct.....	184
Cross. . . . .	191
Phillip I. Schaffer—Direct.....	194
Cross. . . . .	201
Lewis T. Stevens—Direct.....	202
Cross. . . . .	212
Re-direct. . . . .	217
Conclusions. . . . .	224
Final Decree . . . . .	233
Notice of Appeal.....	238
Petition of Appeal.....	239
Exhibit C2, Escrow Agreement.....	241
Exhibit C3, Deed, Mecray to Goldman.....	242
Exhibit C4, Sales Agreement.....	246
Exhibit C5, Letter, Perlstein to Eldredge.....	248
Exhibit C6, Bond and Warrant, Goldman to Mecray.....	249
Exhibit C7, Mortgage, Goldman to Mecray....	251
Exhibit C8, Notice, Stevens to Eldredge.....	259
Exhibit C9, Deed, Focer, et als., to Mecray...	260
Exhibit C10, Mortgage, Focer and Mecray to Camden Safe Deposit and Trust Company	267
Exhibit C11, Waiver.....	275
Exhibit C12, Waiver.....	276

	PAGE
Exhibit C13, Receipt.....	279
Exhibit C14, Affidavit, Statement and Appraisal.....	280
Exhibit C15, Letter, Kelly to Eldredge.....	284
Exhibit C16, Affidavit of Jeremiah E. Meeray.....	286
Exhibit C17, Letter, Eldredge to Kelly.....	288
Exhibit C18, Letter, Eldredge to Kelly.....	289



BILL FOR INJUNCTION.

(Filed July 20, 1926.)

IN CHANCERY OF NEW JERSEY.

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

10

The complainants, Jeremiah E. Mecray and Rachel L. Mecray, his wife, of the City of Cape May, in the County of Cape May, and State of New Jersey, respectfully show that:

1. On August 28, 1925, complainant, Jeremiah E. Mecray, was seized in fee simple and possessed of all that certain lot of land and buildings thereon, including contents therein, with the exception of stock, machinery and equipment then in the Ford service show room and shop, lying and situate on the south side of Washington Street, known as 622, 624 and 626, or better known as the Focer-Mecray Building, Cape May City, New Jersey.

20

2. On the date last mentioned, complainants entered into a certain agreement in writing with Isador Goldman, wherein and whereby complainants agreed to sell and convey the said lands and premises and personal property on January 4, 1926, to the said Isador Goldman, in consideration of the payment by said Isador Goldman of the sum of \$150,000, and the said Isador Goldman agreed to pay complainants said purchase price of \$150,000, by the payment of \$5,000 on August 28, 1925, and \$5,000 on December 1, 1925, and the payment of the remainder

30

of said purchase price upon delivery by complainants of a deed to said Isador Goldman by the payment of \$15,000 in cash and the execution by said Isador Goldman to complainant, Jeremiah E. Mecray, of a purchase money mortgage on said lands and premises in the sum of \$125,000, payable as follows: \$5,000 in one year, \$5,000 in two years, \$5,000 in three years, \$5,000 in four years, and the balance of \$105,000 in five years after date, with interest at the rate of 6% per annum, payable semi-annually; the said deed and mortgage to be delivered and received, and settlement made on January 4, 1926, in the City of Cape May, New Jersey, a true copy of which written agreement is hereto annexed and referred to and made a part hereof, and marked Exhibit A.

3. On August 28, 1925, the said Isador Goldman paid to complainant, Jeremiah E. Mecray, the sum of \$5,000, and on December 1, 1926, the sum of \$5,000, and on January 2, 1926, the sum of \$5,000 on account of said purchase price.

4. On January 2, 1926, by mutual agreement, the time for performance of said contract was extended to February 6, 1926.

5. On February 6, 1926, complainants and said Isador Goldman entered into another agreement in writing, bearing date on that day, which agreement is in the form of and is evidenced by a letter addressed to The Merchants National Bank of Cape May, New Jersey, signed by or on behalf of the respective parties, copy of which is attached hereto and referred to and made a part hereof, and marked Exhibit B.

6. Said last-mentioned agreement provides that said Goldman should forthwith deposit in escrow with said bank the sum of \$6,374.09, which sum was the adjusted balance of the final cash payment of \$10,000 provided for by the contract, Exhibit A, and that complainants should deposit with said bank in escrow a duly executed deed for the property described in the original contract, Exhibit A; and said payment was made and said duly executed deed delivered in accordance with said escrow contract, Exhibit B, and said cash and deed now remain in the possession of said bank. 10

7. Said escrow agreement, Exhibit B, further provided that the purchase money mortgage for \$125,000, being for the balance of the consideration for the said property, should be delivered by said Goldman to said bank, which delivery has been since made, and said bank now has said mortgage for \$125,000 in its possession. 20

8. At the time of the making of said contracts, Exhibit A and Exhibit B, said property was encumbered by a mortgage of \$25,000, held by Camden Safe Deposit and Trust Company, and by the terms of said escrow contract, Exhibit B, it was provided that said mortgage of \$125,000 should be delivered to Camden Safe Deposit and Trust Company as collateral security for said loan of \$25,000, and while the agreement, Exhibit B, does not so state, it was the understanding between the parties that said mortgage for \$25,000 should thereupon be cancelled of record so that complainants could deliver title to said property clear of encumbrance as provided in the original contract, Exhibit A. 30

9. After delivery by complainants to said bank of

10 said duly executed deed, and after delivery to said bank by said Isador Goldman of said mortgage for \$125,000, complainants requested said bank to deliver said mortgage to said Camden Safe Deposit and Trust Company, in accordance with the terms of said escrow agreement, Exhibit B, so that the mortgage for \$25,000 could be cancelled of record, but said bank refused to make such delivery and complainants have been obliged to otherwise raise the said sum of \$25,000, which they have done, and said mortgage for \$25,000 has been cancelled of record.

20 10. Title searches which were made on said property by or on behalf of said Goldman disclosed that certain inheritance taxes due from a former owner of an interest in said property had not been paid, and complainants caused said taxes to be assessed and paid, so that prior to May 27, 1926, said property was clear of all encumbrances, and no reason existed why the said bank should not have paid over the cash and made delivery of the deed and mortgage in accordance with the terms of said escrow agreement, Exhibit B.

30 11. Said, The Merchants National Bank of Cape May, although repeatedly requested so to do, neglects and refuses to comply with the terms of said escrow agreement, Exhibit B, and still retains in its possession said sum of \$6,374.09 in cash, and said deed from complainants to said Isador Goldman for said property, and said mortgage for \$125,000 from said Isador Goldman to complainant, Jeremiah E. Mecray, and refuses to pay said money or deliver said deed and mortgage, and said bank gives as its reason for refusing to carry out the terms of said escrow agreement, Exhibit B, that the same, by the

terms thereof, is to be carried out only with the approval of Lewis T. Stevens, attorney for said Isador Goldman, the purchaser, and of Samuel F. Eldredge, attorney for complainants, the seller, and that while the said Samuel F. Eldredge, attorney for the seller, has given his consent and approval to the payment of the cash deposited, and the delivery of said deed and mortgage, in accordance with the terms of said escrow agreement, Exhibit B, the said Lewis T. Stevens, attorney for the purchaser, refuses to give his approval thereto. 10

12. Complainants are entitled to presently have and receive for their use the said sum of money and to receive the said mortgage for \$125,000, now held in escrow as aforesaid, by said The Merchants National Bank of Cape May.

13. On May 27, 1926, said Isador Goldman commenced a suit against the complainant, Jeremiah E. Mecray, in the Cape May County Circuit Court, to recover the three several payments of \$5,000 each made by said Goldman to said Mecray on August 28, 1925, December 1, 1925, and January 2, 1926, respectively, on the ground that the defendant in that suit, who is one of the complainants herein, has failed to perform said contract, Exhibit A, and said escrow agreement, Exhibit B. 20

14. Said Jeremiah E. Mecray has filed an answer in said suit at law, and the said suit will in due course be noticed for trial at the September Term, 1926, of the Cape May County Circuit Court. 30

15. Complainants are informed by counsel and, therefore, say that the said Jeremiah E. Mecray cannot safely go to trial in said cause before the

Cape May County Circuit Court for the reason that he has an equitable defense to said suit, as above set forth, which, under the rules of common law practice, he will not be permitted to present in an action at law.

16. Complainants have always been ready and willing and now tender themselves ready and willing to perform their part of said agreements, Exhibits A and B, and have repeatedly instructed Samuel F. Eldredge to give his assent to the carrying out by said The Merchants National Bank of Cape May of the terms of said escrow agreement, Exhibit B, and he has repeatedly given his assent thereto, prior to the bringing of said suit at law.

17. No limit of time was fixed for the performance of said escrow agreement, Exhibit B, and complainants aver that they performed within a reasonable time and that, having so performed, they are entitled to performance by said The Merchants National Bank of Cape May, and said Isador Goldman.

Complainants are without adequate remedy in the courts of law, and, therefore, pray:

I. That Isador Goldman and The Merchants National Bank of Cape May, who are the defendants to this suit, may answer this bill of complaint and each statement therein made.

II. That the said The Merchants National Bank of Cape May may be compelled by decree of this Court to pay over the said sum of \$6,374.09 to the persons entitled thereto, and to deliver said deed

and mortgage, and otherwise fully perform said escrow agreement, Exhibit B.

III. That the said Isador Goldman may be compelled by the decree of this Court to consent to, or to cause his attorney, Lewis T. Stevens, to consent to and approve, the performance by the said The Merchants National Bank of Cape May of the terms of said escrow agreement, Exhibit B.

IV. That the said Isador Goldman may be compelled by the decree of this Court to specifically perform the said agreement with complainants, and to pay to complainants the remainder of the said purchase money, as in and by said agreements, Exhibits A and B, provided, with interest from the time said purchase money ought to have been paid, on delivery by said The Merchants National Bank of Cape May, to said Isador Goldman of the deed now held in escrow by said bank, duly executed by complainants, as in said agreements provided. 10  
20

V. That in case the said defendant, Isador Goldman, should, within the time limited by this Court for such performance of said contract, fail and neglect to give his assent to the delivery of said deed and mortgage and the payment of the money now in the possession of The Merchants National Bank of Cape May, or otherwise to perform his said contract, that then and in that event the whole of the unpaid purchase money, being the sum of \$135,000, together with interest and costs, may be and become a lien upon the said lands and premises and personal property in favor of complainants, and that the said lands and premises and personal property may be sold under the direction of this Court for the satisfaction of such lien so impressed on 30

said property; and in case a deficiency should arise upon said sale, that the said defendant, Isador Goldman, may be ordered by this Court to pay said deficiency, together with interest and costs, to these complainants.

10 VI. That the said The Merchants National Bank of Cape May may be enjoined and restrained from paying over said money and delivering said deed and mortgage except in accordance with the terms of said escrow agreement, Exhibit B, or in accordance with the decree of this Court.

20 VII. That the said Isador Goldman, his counsel, attorneys, solicitors and agents, and each and every of them, may be restrained and enjoined from proceeding further against complainants or either of them in the said action at law commenced by the defendant, Isador Goldman, against the complainant, Jeremiah E. Mecray, in the Cape May County Circuit Court, and now pending and at issue therein, for the recovery of \$15,000 damages for the alleged breach by complainant, Jeremiah E. Mecray, of the contract for the sale and purchase of the property at Cape May City, New Jersey, referred to in the contracts, Exhibits A and B.

30 VIII. 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.

WALTER H. BACON,  
*Solicitor for and of Counsel  
with Complainants.*

EXHIBIT A.

AGREEMENT, made the twenty eighth day of August A. D., 1925 BETWEEN J. E. MECRAY and Rachel, his wife, of the City and County of Cape May, State of New Jersey of the first part and Isador Goldman or assigns of the City and County of Philadelphia, State of Pennsylvania, of the second part, as follows, to wit: The said party of the first part agrees to sell and convey to the said party of the second part, who agrees to purchase ALL that certain lot of land and buildings thereon including contents therein with the exception of stock, machinery and equipment now in the Ford Service Show Room and shop, lying and situate on the South side of Washington Street, known as 622, 624 and 626, or better known as the Focer Mecray building Cape May City, N. J. for the sum of One hundred and fifty thousand dollars, (\$150,000.00) on the following terms, twenty five thousand dollars (\$25,000.00) to be paid in cash and the balance of one hundred and twenty five thousand dollars (\$125,000.00) to remain on mortgage for five years with the interest at 6% payable semi-annually five thousand dollars to be paid in cash each and every year for five years until said mortgage matures, on the terms and conditions following, to wit; on the date hereof five thousand dollars (\$5,000.00) on the first day of December the sum of five thousand dollars (\$5,000.00) settlement to take place on January 4th, 1926 at which time the sum of Fifteen thousand dollars (\$15,000.00) is to be paid in cash. It is agreed and understood that the party of the second part can have an option on the property in the rear known as 619 Hughes Street until January 4th, 1926 for the sum of Fifteen thousand dollars (\$15,000.00) party

10

20

30

of the first part agreeing to take back a first mortgage in the sum of ten thousand dollars (\$10,000.00) for a period of five years.

The premises are to be conveyed clear of incumbrance taxes and water rent to be apportioned to date of settlement.

Possession is to be given on day of settlement by transfer of existing leases. Focer and Mecray lease to be for a term of two years at a rental of Twenty  
 10 five hundred dollars (\$2,500.00) the first year and Three thousand dollars (\$3,000.00) the second year. The title is to be good and marketable and free of all judgment.

And the said parties hereby bind themselves, their heirs, executors and administrators for the faithful performance of the above agreement.

In Witness Whereof, the said parties have hereunto set their hands and seals the day and year first above written.

20

J. E. Mecray (SEAL)

Rachel L. Mecray (SEAL)

Isador Goldman (SEAL)

SEALED AND DELIVERED

in the presence of

Received the day and of the date of the above agreement the sum of Five thousand and 00/100 Dollars on account of the purchase money names therein.

J. E. Mecray (SEAL)

30

WITNESS:

EXHIBIT B.

February 6th, 1926

Merchants National Bank  
Cape May, N. J.  
Gentlemen:—

You are handed herewith to be held in escrow the following;

Check for \$6,374.09, Deed from Jeremiah Mecray 10  
et ux to Isadore Goldman, covering Focer and Mecray Building, Cape May, New Jersey.

At final settlement for the above described property the funds so held are to be distributed as follows;—

\$4,500.00 is to be paid to Sol Needles as commissions.

\$1,874.09 is to be paid to Jeremiah Mecray as purchase money.

There will be forwarded to the said bank a mortgage in the sum of \$125,000.00, executed by the 20  
above named Goldman to Mecray. This mortgage is to be delivered to the Camden Safe Deposit and Trust Company as collateral for a loan to be made by them upon their agreement to cancel a \$25,000.00 mortgage on the said premises now held by them. Such agreement having been made by them the above named funds are to be distributed and the deed for the premises delivered to Lewis T. Stevens.

The above arrangement is to be carried out with 30  
the approval of Lewis T. Stevens, Attorney for purchaser and Samuel F. Eldredge, Attorney for seller.

Jeremiah E. Mecray  
Isador Goldman  
H. W. Perlstein, Atty.

STATE OF NEW JERSEY, }  
COUNTY OF ATLANTIC, } ss.

JEREMIAH E. MECRAY, of full age, being duly sworn according to law, upon his oath deposes and says:

10 1. I am one of the complainants in the foregoing bill of complaint mentioned. I have read the same and am familiar with the contents thereof, and the matters and things therein set forth are true.

2. Rachel L. Mecray, the other complainant, is my wife. She joined with me in executing the contract with Isador Goldman referred to in the bill of complaint, but she does not have any special knowledge of the transaction.

20 3. On August 28, 1925, I was the owner of the property mentioned in the bill of complaint, and on that day I entered into a contract for the sale thereof to Isador Goldman, for the price and on the terms particularly set forth in said contract, a true copy of which is annexed to the bill of complaint and to which I refer.

30 4. I have received a total of \$15,000 on account of the purchase money of said property as set out in paragraph 3 of the bill of complaint.

5. By the terms of said contract, the deed and mortgage therein mentioned were to be delivered, and the money paid and the contract otherwise performed, on January 4, 1926, but on January 2, 1926, by mutual agreement the time for performance was extended to February 6, 1926, and on that day the

escrow agreement, Exhibit B, copy of which is annexed to the bill of complaint, and to which I refer, was entered into at The Merchants National Bank of Cape May.

6. In accordance with the agreement of February 6, 1926, my wife and I executed a deed for said property and delivered same to the bank, and I have been informed and believe that the cash called for by said agreement was paid to the bank, and that the bond and mortgage for \$125,000, referred to in the agreement, has been executed and delivered to the bank, and that said money, deed, bond and mortgage still remain in the possession of The Merchants National Bank of Cape May. The property has been cleared of all encumbrance and I do not know of any legal reason why I should not receive the money due me and have the bond and mortgage delivered to me. 10

7. I have fully performed my part of the contract and Isador Goldman has performed his part. I have heretofore consented and now consent to the full performance by the bank of the escrow agreement. 20

8. Isador Goldman has brought suit against me in the Cape May County Circuit Court for the return to him of the \$15,000 paid to me on account of the purchase price of the property, and I have filed an answer in the suit, but I am advised by counsel that the defense which I have to the suit may not be available because of the form of the escrow agreement and the interpretation placed upon it by The Merchants National Bank of Cape May, and that my equitable defense, which I have stated herein, cannot be interposed in that suit. 30

9. There was no time limit fixed for the performance of the escrow agreement.

JEREMIAH E. MECRAY.

Subscribed and sworn to this twentieth day of July, A. D. 1926, before me.

(Seal.)

MADELINE M. NEWELL,  
Notary Public of  
New Jersey.

10 My commission expires October 31st, 1929.

---

STATE OF NEW JERSEY, CAPE MAY COUNTY, ss:

20 SAMUEL F. ELDRIDGE, of full age, being duly sworn according to law, upon his oath says: On the sixth day of February, A. D. one thousand nine hundred and twenty-six, I was present, together with Jeremiah E. Mecray, H. W. Perlstein, Lewis T. Stevens, Henry H. Eldredge, Sol Needles, and two other men, whose names I am not able to recall on account of not knowing them personally, at The Merchants National Bank of Cape May, when a certain memorandum or agreement, bearing date February 6, 1926, was signed by Jeremiah E. Mecray and Isador Goldman, H. W. Perlstein, attorney, at which time there was given over to The Merchants National Bank of Cape May a deed from Jeremiah E. Mecray, *et ux.*, to Isador Goldman, for the premises known as the Focer and Mecray Building, south-  
30 erly side of Washington Street, Cape May City, New Jersey, said deed to be held by the said Merchants National Bank of Cape May according to the terms set forth in said agreement, a copy of which is hereto attached and made a part of this affidavit; on May 18th, 1926, I paid to the Comptroller of the Treasury of the State of New Jersey the sum of one hundred sixty-six dollars and four cents (\$166.-

04), the tax due on the estate of Daniel Focer, deceased, and secured a release or waiver from said Comptroller of the Treasury on all real estate owned by the said Daniel Focer, deceased, which release included a waiver for the lands and premises known as the Focer and Mecray Building aforesaid; I showed said waiver to the said Lewis T. Stevens on or about the 19th day of May, A. D. 1926, and requested a completion of the agreement of February 6th, above set forth, and on being refused, instructed Jeremiah E. Mecray to pay off the mortgage of twenty-five thousand dollars held by the Camden Safe Deposit and Trust Company, more fully set forth in said agreement of February 6th, 1926; the aforesaid mortgage having been paid, was cancelled of record in the Cape May County Clerk's office on May 24th, A. D. 1926, as by the record of cancellation on said mortgage more fully appears; that I did, on the 25th day of May, A. D. 1926, again show to the said Lewis T. Stevens the release for said lands above referred to, dated May 18th, 1926, from the Comptroller of the Treasury, and the cancelled mortgage formerly held by the Camden Safe Deposit and Trust Company, and requested the said Lewis T. Stevens to release all papers held by The Merchants National Bank of Cape May, under the memorandum or agreement bearing date, February 6, 1926, above referred to and copy of which is hereto attached, with which request the said Lewis T. Stevens refused to comply.

10

20

SAMUEL F. ELDREDGE.

30

Sworn and subscribed to before me this 16th day of July, A. D. 1926.

EVERETT J. FERRELL,  
*Notary Public of New Jersey.*

My commission expires Aug. 11, 1928.

February 6th, 1926.

Merchants National Bank

Cape May, N. J.

Gentlemen:—

You are handed herewith to be held in escrow the following;

Check for \$6,374.09, Deed from Jeremiah Mecray et ux to Isadore Goldman, covering Focer and Mecray Building, Cape May, New Jersey.

10 At final settlement for the above described property the funds so held are to be distributed as follows;—

\$4,500.00 is to be paid to Sol Needles as commissions.

\$1,874.09 is to be paid to Jeremiah Mecray as purchase money.

20 There will be forwarded to the said bank a mortgage in the sum of \$125,000.00, executed by the above named Goldman to Mecray. This mortgage is to be delivered to the Camden Safe Deposit and Trust Company as collateral for a loan to be made by them upon their agreement to cancel a \$25,000.00 mortgage on the said premises now held by them. Such agreement having been made by them the above named funds are to be distributed and the deed for the premises delivered to Lewis T. Stevens.

The above arrangement is to be carried out with the approval of Lewis T. Stevens, Attorney for purchaser and Samuel F. Eldredge, Attorney for seller.

30

Jeremiah E. Mecray

Isador Goldman

H. W. Perlstein, Atty.

STATE OF NEW JERSEY, CAPE MAY COUNTY, ss:

HENRY H. ELDRIDGE, of full age, being duly sworn according to law, upon his oath deposes and says that: I am president of The Merchants National Bank of Cape May, New Jersey. On the sixth day of February, A. D. 1926, as such president, I received from H. W. Perlstein, attorney for Isador Goldman, the sum of six thousand three hundred 10  
seventy-four dollars and nine cents (\$6,374.09), and I received from Jeremiah E. Mecray a certain deed made by Jeremiah E. Mecray, *et ux.*, to Isador Goldman, conveying the land and premises known as the Focer and Mecray Building, Cape May City, New Jersey; that the said funds and deed were to be held in escrow under the terms and conditions of a certain memorandum made and executed by the said Jeremiah E. Mecray and H. W. Perlstein, attorney 20  
as aforesaid, and dated February 6, 1926, a copy of which memorandum is hereto attached and made a part hereof. The said memorandum, among other things, provided that a certain bond and mortgage made and executed by the said Isador Goldman to Jeremiah E. Mecray, in the sum of one hundred twenty-five thousand dollars (\$125,000.00) was to be forwarded to the said bank and held under the terms of the said memorandum above referred to. The said bond and mortgage were received by me 30  
on February 17, 1926, and is now held, along with the deed and funds above referred to. No further steps were taken in the above matter until May 25, 1926, on which date Lewis T. Stevens, attorney for Isador Goldman, demanded in writing the return of the six thousand three hundred seventy-four dollars nine cents (\$6,374.09) deposited as above stated, a copy of which demand is hereto attached and made

a part hereof. Acting for The Merchants National Bank of Cape May, I refused to return the said funds and they are still retained by the said bank; and on or about June 3rd, 1926, Samuel F. Eldredge, attorney for Jeremiah E. Mecray, demanded of the said bank the said sum of six thousand three hundred seventy-four dollars nine cents (\$6,374.09), together with the bond and mortgage in the sum of one hundred twenty-five thousand dollars (\$125,000.00), as aforesaid. Still acting for the said bank, I refused to deliver the funds or the mortgage aforesaid. The agreement under which the above-named funds and instruments were deposited with The Merchants National Bank of Cape May provides, *inter alia*:

“The above arrangement is to be carried out with the approval of Lewis T. Stevens, attorney for the purchaser, and Samuel F. Eldredge, attorney for the seller.”

20 Samuel F. Eldredge, attorney for the seller, has not agreed to the return of the funds to the purchaser, nor has Lewis T. Stevens, attorney for the purchaser, agreed to the payment of the funds and the delivery of the mortgage to the seller; that The Merchants National Bank of Cape May, therefore, holds both funds and instruments until there is an agreement on the part of the attorneys as aforesaid as to the disposition of the same. On or about June 3rd, 1926, in my presence, Samuel F. Eldredge, attorney as aforesaid, tendered to Lewis T. Stevens, attorney as aforesaid, the sum of one thousand six hundred thirty-one dollars seventy-seven cents (\$1,631.77), which he alleged were rents collected from the said property and due the purchaser thereof; that at the same time the said Samuel F. Eldredge exhibited a certain indenture of mortgage in

the sum of twenty-five thousand dollars (\$25,000.00), made and executed by Jeremiah E. Meecray, *et ux.*, to the Camden Safe Deposit and Trust Company, which said mortgage had been duly cancelled of record; and that he also exhibited an inheritance tax receipt covering the inheritance tax paid on the estate of Daniel Focer, deceased, and also a statement of the rents collected as aforesaid, and that he then and there stated to Lewis T. Stevens, attorney as aforesaid, that he was ready to make settlement for the property. No other notices or demands have been served upon The Merchants National Bank of Cape May, except as herein stated. The Merchants National Bank of Cape May is now and has been ready to carry out the terms of the agreement of February 6th, 1926, above referred to, at such time as the approval of Lewis T. Stevens and Samuel F. Eldredge can both be obtained.

10

HENRY H. ELDRIDGE.

20

Sworn and subscribed to before me this 16th day of July, A. D. 1926.

EVERETT J. FERRELL,  
*Notary Public of New Jersey.*

My commission expires Aug. 11, 1928.

---

February 6th, 1926. 30

Merchants National Bank  
Cape May, N. J.  
Gentlemen:—

You are handed herewith to be held in excrow the following;  
Check for \$6,374.09, Deed from Jeremiah Meecray

et ux to Isadore Goldman, covering Focer and Mecray Building, Cape May, New Jersey.

At final settlement for the above described property the funds so held are to be distributed as follows:—

\$4,500.00 is to be paid to Sol Needles as commissions.

\$1,874.09 is to be paid to Jeremiah Mecray as purchase money.

10 There will be forwarded to the said bank a mortgage in the sum of \$125,000.00, executed by the above named Goldman to Mecray. This mortgage is to be delivered to the Camden Safe Deposit and Trust Company as collateral for a loan to be made by them upon their agreement to cancel a \$25,000.00 mortgage on the said premises now held by them. Such agreement having been made by them the above named funds are to be distributed and the deed for the premises delivered to Lewis T. Stevens.

20 The above arrangement is to be carried out with the approval of Lewis T. Stevens, Attorney for purchaser and Samuel F. Eldredge, Attorney for seller.

Jeremiah E. Mecray

Isador Goldman

H. W. Perlstein, Atty.

---

30 To Merchants National Bank of Cape May, and Samuel F. Eldredge, Esq., Attorney for Jeremiah E. Mecray:

You are hereby requested to pay to me, and I hereby demand of you the sum of six thousand three hundred and seventy-four dollars and nine cents, deposited with you, The Merchants National Bank of Cape May, on February 6, 1926, which sum was to be paid to the said Jeremiah E. Mecray upon his

making marketable title to and delivery of a deed for the Post-Office Building, Cape May, New Jersey, or suit at law will be entered for the return of said sum.

Dated; May 25, 1926.

Isador Goldman,  
By LEWIS T. STEVENS,  
Attorney.

Notice, of which this  
is copy, served on  
Henry H. Eldredge, Esq.,  
May 25, 1926.

10

---

ANSWER AND COUNTER-CLAIM.

(Filed Aug. 3, 1926.)

IN CHANCERY OF NEW JERSEY.

20

---

Between

JEREMIAH E. MECRAY, *et*  
*ux.*,

*Complainants,*

and

ISADOR GOLDMAN, *et al.*,  
*Defendants.*

On Bill for  
Injunction, etc.  
Answer and  
Counter-claim.

30

---

The answer of the defendant, Isador Goldman and the counter-claim of Isador Goldman against the

complainants, Jeremiah E. Mecray and Racheal L., his wife, and The Merchants National Bank of Cape May.

Defendant, Isador Goldman, answering complainants' bill of complaint, says that:

- 10 1. Defendant denies that on August 28, 1925, complainant, Jeremiah E. Mecray, was seized in fee simple and possessed all of the lands described in paragraph one of the complainants' bill of complaint.
2. Defendant admits the allegations contained in paragraph two of complainants' bill of complaint.
3. Defendant admits the allegations contained in paragraph three of complainants' bill of complaint.
- 20 4. Defendant admits the allegations contained in paragraph four, of complainants' bill of complaint.
5. Defendant admits that a letter dated February 6, 1926, and marked Exhibit "B" in complainants' bill of complaint, was signed by one, H. W. Perlstein, as attorney for defendant, but denies that the said paper was an agreement or that it contained a memorandum of all of an agreement made on February 6, 1926, relating to the subject-matter of this suit.
- 30 6. Defendant denies the allegations contained in paragraph six of complainants' bill of complaint.
7. Defendant neither admits nor denies the allegations contained in paragraph seven of complainants' bill of complaint, but leaves the complainant to prove the same as the facts may appear, except that he

admits that he did make, or cause to be made and executed, a mortgage in the sum of one hundred and twenty-five thousand dollars (\$125,000.00) and did deliver the same to the said Merchants National Bank of Cape May, in conformity with the provisions of the contract or agreement of sale set out in paragraph two, of complainants' bill of complaint.

8. Defendant admits that the said property was encumbered by a mortgage in the sum of twenty-five thousand dollars (\$25,000.00) held by the Camden Safe Deposit and Trust Company, at the time of the making of the said contract, but denies all of the other allegations contained in paragraph eight of the complainants' bill of complaint. 10

9. Defendant neither admits nor denies the allegations contained in paragraph nine of complainants' bill of complaint, but leaves the complainant to prove the same as the facts may appear, but says that the said bank had no authority to deliver said mortgage in the sum of one hundred and twenty-five thousand dollars (\$125,000.00) as alleged in said paragraph nine, nor had the said complainant performed the terms of his contract as set out in paragraph two of complainants' bill of complaint, whereby he was entitled to have the said mortgage of one hundred and twenty-five thousand dollars (\$125,000.00) delivered as alleged in paragraph nine of complainants' bill of complaint. 20

10. Defendant admits that title searches which were made on said property on behalf of the said defendant disclosed that inheritance taxes and other liens against said property, had not been paid or disposed of, but denies all the other allegations contained in paragraph ten of complainants' bill of com- 30

plaint and says that said taxes and other liens were not removed until within a few days prior to May 27th, 1926.

10 11. Defendant denies the allegations contained in paragraph eleven of complainants' bill of complaint, or that requests have been made by the defendant of the complainant and The Merchants National Bank of Cape May, or of its actions thereon and leaves the complainant to his proof thereof, but  
20 says that the said Merchants National Bank of Cape May, has no authority to comply with the alleged agreement marked Exhibit "B," because the said Exhibit "B" is not the whole of the agreement entered into between the parties on February 6, 1926, and that the complainant has not complied with the terms of Exhibit "B," or of the said contract and that the said bank was without power to pay to the said complainant the sum of six thousand, three hundred  
20 seventy-four dollars and nine cents (\$6,374.09) or to deliver the said mortgage of one hundred and twenty-five thousand dollars (\$125,000.00) to complainant. Defendant admits that the said Lewis T. Stevens has refused to give his approval to the said transfer and says that the said Lewis T. Stevens has acted in good faith and because the said complainant has failed to carry out the terms of the contract of sale dated August 28, 1925, or of the agreement made on February 6, 1926, in modification thereof, or to tender an unencumbered and mar-  
30 ketable title to the lands therein agreed to be conveyed.

12. Defendant denies the allegations contained in paragraph twelve of complainants' bill of complaint.

13. Defendant admits the allegations contained in

paragraph thirteen of complainants' bill of complaint.

14. Defendant is not informed as to the truth of the allegations contained in paragraph fourteen of complainants' bill of complaint and leaves complainant to prove the same, as he may be advised.

15. Defendant denies the allegations contained in paragraph fifteen of complainants' bill of complaint. 10

16. Defendant denies the allegations contained in paragraph sixteen of complainants' bill of complaint, but says that the said complainant, although often requested so to do, refused to perform the said contract as set out in paragraph two of complainants' bill of complaint at great loss and damage to the defendant.

17. Defendant denies the allegations contained in paragraph seventeen. 20

Defendant, Isador Goldman, by way of counterclaim against the complainants, Jeremiah E. Meecray and Racheal L., his wife, and The Merchants National Bank of Cape May, says that:

1. On or about the 28th day of August, 1925, a contract was made and entered into by the said defendant, Isador Goldman, with the complainants in this suit, Jeremiah E. Meecray and Racheal L., his wife, wherein it was agreed that for and in consideration of the sum of twenty-five thousand dollars (\$25,000.00) to be paid as therein stated and the execution of a mortgage in the sum of one hundred twenty-five thousand dollars (\$125,000.00) upon the terms therein stated, the said Isador Goldman 30

agreed to purchase and the said Mecrays agreed to sell certain lands therein described, lying on the south side of Washington Street, in the City of Cape May, State of New Jersey, a copy of which agreement has heretofore been attached to and made a part of complainants' bill of complaint and marked Exhibit "A."

10 2. That pursuant to the terms of said agreement, said Isador Goldman paid or caused to be paid, the sum of five thousand dollars (\$5,000.00) on the said 28th day of August, A. D. 1925, and the further sum of five thousand dollars (\$5,000.00) on the 1st day of December, A. D. 1925, and the further sum of five thousand dollars (\$5,000.00) on the 4th day of January, 1926.

20 3. That on the 2nd day of January, 1926, an extension postponing the settlement day from the 4th day of January, 1926, to the 6th day of February, 1926, was entered into in writing, signed by Jeremiah E. Mecray, a copy of which agreement is annexed hereto and marked Exhibit "C."

30 4. That on the 6th day of February, 1926, said defendant, Isador Goldman, appeared at the place of settlement by his attorney, H. W. Perlstein, who was duly authorized to act for him in making the settlement provided in the agreement of sale heretofore referred to in paragraph one, of this counter-claim, prepared to complete the said settlement and at that time tendered to the said Mecray, his agents and attorney, a mortgage duly executed in the sum of one hundred and twenty-five thousand dollars (\$125,000.00) and in conformity with the said purchase agreement hereinbefore mentioned and likewise the sum of six thousand three hundred seventy-

four dollars and nine cents (\$6,374.09) which was the sum then and there agreed to between the said parties to be the moneys then due and owing by the said Isador Goldman to the said Mecray as and for the balance of the purchase money under the terms of the said contract hereinbefore mentioned.

5. That at the time of said settlement, which was attended by the said Goldman and the said Mecray, in the office of Lewis T. Stevens, in the City of Cape May, County of Cape May, in this State, the said Mecray then and there declared he was unable to perform the said agreement and to deliver to the said Goldman, his attorney and agents, a marketable title to the said property, clear of encumbrance, as provided in the agreement of sale hereinbefore mentioned. 10

6. Defendant, Isador Goldman, says that at that time and for a long time subsequent thereto, the said complainant, Mecray, did not have an unencumbered title to the said property and was not, in fact, the owner of an unencumbered title thereto, but says the fact to be that the said premises was then and still are encumbered by the rights of the Cape May, Delaware & Sewell's Point Railroad Company in and along Washington Street, which right very materially effected and did encumber the said property so agreed to be conveyed; also by a mortgage in the sum of twenty-five thousand dollars (\$25,000.00) given by one, Daniel Focer, to the Camden Safe Deposit and Trust Company, dated December 13, 1923, to secure the sum of twenty-five thousand dollars (\$25,000.00) at the expiration of one year from the date thereof; and by a lease between Daniel Focer and the United States of America, dated December 8, 1923, and recorded January 20 30

- 12, 1924, Deed Book 384, page 395, in the clerk's office of Cape May County, State of New Jersey, wherein the said premises were demised to the said United States Government for post office purposes, for a term of ten (10) years, beginning January 20, 1923, notwithstanding that the said agreement of sale hereinbefore recited provides that possession to the said described property is to be given on the day of settlement and that it further provides that the said premises is to be conveyed free of encumbrance and a good and marketable title; that the said premises were further encumbered by the debts of one, Daniel Focer, deceased; that the said premises were further encumbered by liability for inheritance tax due the State of New Jersey, under the last will and testament of one, Daniel Focer, deceased; that the said premises were further encumbered by liability of inheritance tax due the United States of America under the last will and testament of one, Daniel Focer, deceased; that the said Mecray had no good and marketable title to the said premises so agreed to be conveyed by him as aforesaid, but that the title to all or a part of the said premises was in one, Lillian M. Focer, widow, devisee under the last will and testament of Daniel Focer, deceased, and that the said premises and title thereof was encumbered by the interest of the said Lillian M. Focer in and to the premises agreed to be conveyed.
- 30 7. That thereupon the said Goldman, by his attorney and agents, agreed to and with the said Mecray, his attorney and agents, that if the said Mecray would diligently and speedily within a short day, remove all of the said encumbrances against said title of the land so agreed to be conveyed as aforesaid and to deliver speedily and within a short

day, a good and marketable title to the said lands, the said Goldman would perform the said agreement, dated August 28, 1925, as hereinbefore recited, otherwise the said contract was to be at an end; and that in pursuance thereof, the said parties did deposit with The Merchants National Bank of Cape May, the sum of six thousand, three hundred seventy-four dollars and nine cents (\$6,374.09), and likewise an executed mortgage in the sum of one hundred and twenty-five thousand dollars (\$125,000.00) in conformity with the terms of the said agreement. 10

8. That notwithstanding the promises and undertakings of the said Mecray, his attorney and agents, so made on the 6th day of February, 1926, he, the said Mecray, failed and refused to remove any of the said encumbrances or to convey a marketable title to the said property free and clear of said encumbrances within a short day to the said Goldman, and that though often applied therefor by the attorneys and agents of the said Goldman, said Mecray refused to convey the said property as aforesaid. 20

9. That on the 22nd day of March, 1926, the said Goldman, by his attorney, Lewis T. Stevens, duly authorized for the said purpose, did, in writing, demand delivery of the aforesaid premises within five (5) days from the said 22nd day of March, 1926, or return of the moneys paid on the purchase price, as provided in the agreement of August 28, 1925, as extended by the agreement of February 6, 1926, but the said Mecray failed utterly to convey the said marketable title free and clear of encumbrances as aforesaid, or to make any tender whatsoever of the title or perform any of the agreements, covenants or undertakings agreed to be performed by him, or 30

to return to the said Goldman, the moneys theretofore paid by the said Goldman to the said Mecray.

10. That thereafter on the 17th day of April, 1926, the said Goldman, by his attorney, Lewis T. Stevens, again demanded in writing, the return of the moneys heretofore paid to the said Mecray together with interest thereon and then and there rescinded and declared at an end, the said contract of  
10 August 28, 1925, in so far as he agreed to purchase the said lands therein described, by reason of the failure of the said Mecray to convey or cause to be conveyed, a good and marketable title free of all encumbrances, as provided therein, and then and there demanded the return of the purchase price therefor.

11. That the said Mecray, having refused to return the purchase price or any part thereof heretofore paid to him as aforesaid, the said defendant,  
20 Isador Goldman, did, on the 27th day of May, 1926, institute a suit in the Cape May County Circuit Court, wherein he demanded the sum of five thousand dollars (\$5,000.00) with interest thereon from August 31, 1925, and five thousand dollars (\$5,000.00) with interest thereon from November 30th, 1925, and five thousand dollars (\$5,000.00) with interest thereon from January 2nd, 1926, to the date of judgment, which sums had heretofore been paid  
30 to the said Mecray as hereinbefore recited; that on or about the said date, the said Goldman, his attorney and agents, did demand of the said Merchants National Bank of Cape May, the return of the sum of six thousand three hundred seventy-four dollars and nine cents (\$6,374.09) theretofore deposited with it on February 6, 1926, which demands were refused.

12. That in the 25th day of May, 1926, the said Goldman, by his attorneys, did likewise demand of The Merchants National Bank of Cape May, the return of the one hundred and twenty-five thousand dollars (\$125,000.00) mortgage, heretofore executed by the said Goldman and deposited with the said bank as heretofore recited, which demand was refused.

Defendant, Isador Goldman, therefore, prays that the said complainants, Jeremiah E. Mecray and Racheal L., his wife, and the said Merchants National Bank of Cape May, may answer this counter-claim without oath and each statement herein made. Defendant, Isador Goldman, further prays: 10

1. That the said contract, dated August 28, 1925, between the said Isador Goldman and Jeremiah E. Mecray and Racheal L. Mecray, his wife, be declared to be of no further force and effect and that the said contract be delivered up for cancellation and rescission and that all of the terms and conditions thereof shall be decreed to be no longer in force and effect, and the said Isador Goldman be relieved from performing any of the agreements, covenants or undertakings therein required to be done or performed by him. 20

2. That there be decreed to be due to the said Goldman, the sum of five thousand dollars (\$5,000.00) together with interest thereon from August 31, 1925, to the date of decree; that there shall also be decreed to be due to the said Goldman, the sum of five thousand dollars (\$5,000.00) together with interest thereon from November 30, 1925, to the date of the decree; and there shall likewise also be decreed to be due to Isador Goldman, the sum of 30

five thousand dollars (\$5,000.00) together with interest thereon from January 2, 1926, to the date of the decree, altogether in the total sum of fifteen thousand dollars (\$15,000.00), and the said Jeremiah E. Mecray be ordered and decreed to pay unto the said Isador Goldman the said sum of fifteen thousand dollars (\$15,000.00) together with interest as aforesaid.

10 3. That until the said decree shall be wholly performed and the said three (3) sums of five thousand dollars (\$5,000.00) each with interest thereon as aforesaid shall have been paid to the defendant, Isador Goldman, the said total sum of fifteen thousand dollars (\$15,000.00) and interest shall be declared to be a lien upon the lands heretofore agreed to be conveyed by virtue of the agreement dated August 28, 1925.

20 4. That the said Merchants National Bank of Cape May be restrained from delivering to the said Mecray, his agents or attorney, or to any other person other than the defendant, Isador Goldman, the said mortgage of one hundred and twenty-five thousand dollars (\$125,000.00) heretofore deposited with the said bank and likewise the said sum of six thousand three hundred seventy-four dollars and nine cents (\$6,374.09), and that the said bank be ordered and decreed to return to the said Isador Goldman and deliver to him cancelled, the said mortgage of  
30 one hundred and twenty-five thousand dollars (\$125,000.00) as aforesaid and that the said bank be ordered and decreed to pay to the said Goldman, the said sum of six thousand three hundred seventy-four dollars and nine cents (\$6,374.09).

5. That the bill of the complainants, Jeremiah E.

Mecray, and Racheal L. Mecray, his wife, be dismissed with costs to the said defendant.

Defendant, Isador Goldman, prays for such further and general relief as may to this Honorable Court seem just.

EMERSON L. RICHARDS,  
*Counsel of Defendant.*

10

---

REPLICATION AND ANSWER TO COUNTER-CLAIM OF ISADOR GOLDMAN.

(Filed Aug. 23, 1926.)

IN CHANCERY OF NEW JERSEY.

20

Between

JEREMIAH E. MECRAY, *et*

*ux.*,

*Complainants,*

and

ISADOR GOLDMAN, *et al.*,

*Defendants.*)

On Bill for  
Injunction, etc.  
Replication and  
Answer to Counter-  
Claim of Isador  
Goldman.

30

---

The complainants join issue on the answer of the defendant, Isador Goldman.

As to the counter-claim contained in said answer, complainants say:

34 *Replication and Answer to Counter-Claim  
of Isador Goldman*

1. They admit the making of the agreement mentioned in the first paragraph, but for the details thereof refer to copy attached to bill of complaint, marked "Exhibit A."
2. They admit the allegations contained in the second paragraph.
3. They admit that time for performance of said  
10 agreement was extended by mutual consent.
4. They deny the allegations contained in the fourth paragraph.
5. They deny the allegations contained in the fifth paragraph, and say that neither party was ready for settlement on February 6, 1926, and it was for this reason that they entered into the escrow agreement, "Exhibit B," attached to the bill of complaint.
- 20 6. They deny that said property is encumbered by the rights of way of the Cape May, Delaware & Sewell's Point Railroad Company; they admit that at the time of making the original agreement said property was encumbered by a mortgage for \$25,000, and aver that such encumbrance was one of the reasons for entering into the said escrow agreement, and further aver that said mortgage was cancelled of record on May 24, 1926; they admit the  
30 lease to the United States of America mentioned in the sixth paragraph and say that the agreement of sale, "Exhibit A," expressly provides for the delivery of possession by transfer of existing leases and that said lease was duly transferred and the rent thereunder is being collected and held for the benefit of said Isador Goldman; they admit that at the time of the making of the contract for sale, an interest in said premises was technically liable to a

transfer inheritance tax due the State of New Jersey, and aver that one of the reasons for the making of the escrow agreement, "Exhibit B," was to give opportunity to have said tax assessed and paid and that it was assessed in due course by the Comptroller of the Treasury of the State of New Jersey, and was paid as soon as assessed and the release tendered to the attorney of said Isador Goldman on May 19, 1926; they deny all the other allegations of paragraph six. 10

7. They deny the allegations contained in the seventh paragraph, and aver that the reason for the making of the said escrow agreement was to enable said Goldman to have his mortgage executed and to enable complainants to have the encumbrances removed as hereinabove stated and that both parties have performed said contract in due course and according to agreement and that nothing remains to be done except for The Merchants National Bank of Cape May to perform the terms and conditions of the escrow agreement. 20

8. They deny the allegations of the eighth paragraph.

9. They deny the allegations of the ninth paragraph.

10. They deny the allegations of the tenth paragraph. 30

11. They admit the allegations of the eleventh paragraph.

12. They admit the allegations of the twelfth paragraph.

WALTER H. BACON,  
*Solicitor for Complainants.*



Mr. Bacon: I assume that it will be admitted that this suit was instituted by Isador Goldman against Jeremiah E. Mecray on May 27th, 1926?

Mr. Richards: Whatever the record shows.

Mr. Bacon: In the Cape May County Circuit Court, and that that may be put on the record as an admission instead of bringing the file here?

Mr. Richards: Yes.

10

Mr. Bacon: The suit was brought by Isador Goldman against Jeremiah E. Mecray on May 27th, 1926, to recover fifteen thousand dollars, being the three several payments of five thousand dollars each which had heretofore been made by the plaintiff to the defendant on account of the contract.

(I offer in evidence contract dated August 28th, 1925, between Jeremiah E. Mecray and wife and Isador Goldman, Exhibit A of the bill of complaint.)

(Paper marked Exhibit C1.)

---

HENRY. H. ELDRIDGE, sworn for the complainants.

Direct examination.

30

By Mr. Bacon:

Q. Where do you live, sir?

A. West Cape May, New Jersey.

Q. Are you an officer of the Merchants' Bank of Cape May City?

A. I am its president.

Q. How long have you been president of the bank?

A. I should say five to seven years. Perhaps longer.

Q. Do you recall having a conference on the sixth of February, 1926, at the bank with Senator Stevens and Mr. Samuel F. Eldredge and some other people —

10 A. I do.

Q. — regarding a transfer of property in Cape May?

A. I do.

Q. Were you requested to have the bank act as depository of certain deeds and mortgages and certain other papers in connection with this transaction?

A. I was.

20 Mr. Richards: I object to that question on the ground that it calls for a conclusion. I think he may say what was said and done.

Q. When was the substance of the conversation that you had? Who was there and what was the conversation?

A. Well, there was present Samuel F. Eldredge, Senator Stevens, Mr. Perlstein and one or two other gentlemen whose names I don't recall at the present time. At least one other, if not two.

30 Q. Was there any talk about any contract having been entered into for the purchase of the Focer-Mecray building in Cape May?

A. Yes.

Q. I assume you are familiar with that property, are you not?

A. I am.

Q. Then you knew what they were talking about?

A. I did.

Q. What, if anything, did they ask you to do as president of the bank?

A. They asked me as president of the bank to receive and hold a deed from Meecray and wife to Isador Goldman, and to receive the sum of \$6374.09 to be held by the bank.

Q. What else were you to hold?

A. I was to hold a bond and mortgage which was to be given by Goldman to Meecray. That mortgage, however, was not delivered at that time. The arrangement was that that was to be forwarded to me later.

Q. For what purpose and during what period of time were you to hold these papers?

A. We were to hold those papers until certain

Mr. Richards: I object to that. I think the pleadings show there is a memorandum in writing, and if that is in writing we are entitled to the writing and not to the witness' recollections or conclusions.

Mr. Bacon: I am trying to lead up to that.

Q. Did you reduce any part of this conversation or agreement to writing?

A. I did.

Q. Have you that paper writing in your possession?

A. I have.

Q. Will you please produce it?

(Paper produced by the witness.)

Mr. Bacon: This paper bears date February 6th, 1926, and purports to be signed by Jeremiah E. Meecray and Isador Goldman by H. Perlstein, attorney.

Q. Were those signatures affixed in your presence?

A. They were.

10 Mr. Bacon: I offer this in evidence.

(Paper marked Exhibit C2.)

Q. Who prepared that paper?

A. I did.

Q. Is there any date for performance fixed in that paper?

Mr. Richards: I object.

20 The Court: I will answer that. There is none.

Q. Why did you not fix a date for the performance?

Mr. Richards: I object to why he did not do what he did not do. The agreement contains all of the facts up to this time. He can give evidence of conversations with reference to the date, but he cannot say why he did not fix it.

30 The Court: Yes.

Q. Was there any conversation between the gentlemen who were present there with respect to the time of performance, and if so, what was it? Were any statements made to you about it?

A. The conversation upon which the agreement was drawn developed the fact that there were certain encumbrances upon the property. There was a twenty-five thousand dollar mortgage in the Camden State Deposit and Trust Company, and there was the inheritance tax on the estate of Focer, and the agreement was to be performed when the encumbrances were cleared off. No time was mentioned in the contract, by reason of the fact that I didn't know how long that would take and there was no one who suggested how long it would take, so far as my recollection of the conversation goes. 10

Q. What was delivered to you on that occasion after this paper had been drawn and signed?

A. The deed from Mecray to Goldman.

Q. Have you that paper with you?

A. I have.

(Paper produced by witness.)

Mr. Bacon: Witness produces a deed dated February 4th, 1926, from Jeremiah E. Mecray and Rachel L. Mecray, his wife, to Isador Goldman, consideration, one hundred and fifty thousand dollars, purporting to convey a lot of land at the southeasterly side of Washington Street, in the City of Cape May, and more particularly described in the deed, and recites a deed from the American Ice Company to Daniel Focer and Jeremiah E. Mecray, and also recites a deed from Lillian M. Focer and others to Jeremiah E. Mecray for all their undivided interest in the property, dated August 30th, 1924, and to be forthwith recorded, acknowledged on February 6th, 1926, before Samuel F. Eldredge, Master in Chancery. It is offered in evidence. 20 30

(The paper referred to was marked Exhibit C3.)

Q. Has that been in your possession ever since the 6th of February?

A. It has.

Q. Was there at the same time delivered to you a bill of sale for certain personal property, signed by Jeremiah E. Mccray in the presence of Lewis T. Stevens as witness?

A. There was.

10 Q. Did that relate to some personal property that was in one of the rooms or apartments of this building that was on the land described in the deed?

A. I can't answer that, Mr. Bacon. I am not familiar.

Q. But it was handed to you in connection with the transaction?

A. It was.

Mr. Bacon: I offer it.

20 Mr. Richards: That is objected to.

The Court: What does it cover?

Mr. Bacon: It seems to be for two hundred and seventy-five folding chairs. It was attached to the deed, and that is the only reason I offer it.

Q. It was delivered to you, as I understand, Judge?

A. At the same time.

30 Q. With the deed?

A. With the deed.

Q. And when you handed me the deed just now, it was attached to the deed, wasn't it?

A. Still attached to the deed.

The Court: I will admit it.

(The paper referred to was thereupon marked Exhibit C4.)

Q. What else was turned over to you on February 6th, 1926, in connection with this transaction?

A. That is all, Mr. Bacon, on that day.

Q. Was there no money?

A. Excuse me. I thought I had testified as to that.

Q. You did, I think, but I want to specify it. 10

A. There was. There was turned over to me on that occasion \$6,374.09.

Q. You have still got that money?

A. I have.

Q. Holding it for the purpose of this escrow agreement?

A. Yes.

Q. Were you on that day shown a mortgage purporting to be a purchase money mortgage in conformity with the agreement? I don't mean was it delivered to you, but did you see it? 20

A. I don't recall that I did, Mr. Bacon.

Q. When, if at any time, was a mortgage for one hundred and twenty-five thousand dollars delivered to you?

A. A mortgage for one hundred and twenty-five thousand dollars was sent me by mail in a letter dated February 16th, 1926, received by me the following day.

Q. From whom is the letter? 30

A. From Mr. Perlstein.

Mr. Bacon: I offer the letter.

(The paper referred to was marked Exhibit C5.)

Q. Enclosed with that letter, was there a bond and mortgage?

A. There was.

Q. Have you that bond and mortgage in your possession?

A. I have.

(The papers were produced by the witness.)

- 10 Mr. Bacon: Bond dated February 4th, 1926, in the penal sum of two hundred and fifty thousand dollars, conditioned for the payment of one hundred and twenty-five thousand dollars on certain specified terms of deferred payments, and appearing to be executed by Isador Goldman, is offered in evidence.

(The paper referred to was marked Exhibit C6.)

- 20 Mr. Bacon: I also offer in evidence mortgage dated February 4th, 1926, Isador Goldman to Jeremiah E. Mecray, given to secure the bond, Exhibit C6, purporting to be signed by Isador Goldman and acknowledged on February 16th, 1926, in Philadelphia, before a notary public, Ray P. Cohen, prothonotary's certificate attached dated February 16th, 1926.

(The paper referred to was marked Exhibit C7.)

- 30 Q. Judge, have you at any time been notified by anybody not to carry out the terms of this escrow agreement, and if so, when, how and by whom?

A. On May 25th, I was served with a notice by Senator Stevens.

Q. Was that notice in writing?

A. That notice was in writing.

Q. Will you produce it?

A. I have it.

(A paper was produced by the witness.)

Mr. Bacon: I offer it in evidence.

(The paper referred to was marked Exhibit C8.)

Q. At any time after service of that notice, or before the service of the notice, had you been requested by anyone to deliver the deed, bond and mortgage and pay over the money, and if so, state when and under what circumstances? 10

A. Yes, I was requested by Samuel F. Eldredge, attorney for Mr. Mecray. That was under date of June 3d.

Q. What did he ask you to do?

A. He asked me to deliver to them the six thousand odd dollars that we had, and the bond and mortgage of Goldman. 20

Q. Was Senator Stevens with him at the time?

A. Yes.

Q. Did Senator Stevens join in requesting that the papers be then and there delivered?

A. He did not.

Q. Did you make delivery?

A. I did not.

Q. At that time did you see the cancelled twenty-five thousand dollar mortgage? 30

A. I did.

Q. At that time did you see the receipt for the taxes?

A. I did. The inheritance taxes, you mean, Mr. Bacon?

Q. Yes.

A. Yes.

Mr. Richards: It seems to me we ought to have those receipts.

Mr. Bacon: I will produce them. I cannot produce them by this witness, because he does not have them.

Q. Why did you not deliver the papers and pay over the money on the third of June?

10 A. Because prior to that time I had been served with a notice by Senator Stevens, and I felt as representative of the bank our safe policy was to hold all that we had and let the Court tell us to whom to deliver them.

Q. Has the bank any interest whatever in this matter?

A. None whatever.

Q. Is the bank ready and willing to deliver the deed, bond and mortgage and pay the money at  
20 any time that you feel satisfied that you are safe in so doing?

A. At any time, Mr. Bacon.

Q. On this occasion, on the third of June, was there any tender made of any money to Senator Stevens?

A. There was.

Q. By whom?

A. By Samuel F. Eldredge.

Q. Do you recall how much it was?

30 A. Yes, I can tell you if I may refer to my memorandum. \$1,631.77.

Q. Was there any statement made by Mr. Eldredge to Senator Stevens as to what that was for?

A. There was.

Q. What was it?

A. That that represented the rents collected from the property.

Q. What reply did Senator Stevens make?

A. I can't give you his reply in words, but he refused to accept anything.

Cross-examination.

By Mr. Richards:

Q. Judge, in addition to being president of the bank, you are also a counsellor-at-law, are you not? 10

A. I am.

Q. And on the sixth of February, 1926, did you represent any of the parties who had an interest in this sale?

A. Did I represent them?

Q. Yes.

A. No.

Q. Did you represent the Focer estate?

A. I did not.

Q. What time of the day was it that the paper or agreement, marked Exhibit C2, was drawn up by you? 20

A. Is that the escrow agreement?

Q. Yes.

A. I think it was about four o'clock in the afternoon, if I am not mistaken.

Q. On a Saturday, wasn't it?

A. On a Saturday. My recollection is, Senator, that they made the appointment with me in the morning to meet them at the bank. Of course, the bank was closed. 30

Q. They had had a previous meeting that day, had they not?

A. Well, I only know what I am told about that. I have no knowledge of it.

Q. Well, something was said in Mecray's pres-

ence while you were present about their previous negotiations of that day, was there not?

A. Yes.

Q. So that you knew they had been discussing the settlement prior to their entry into your office?

A. From their conversation, yes.

Q. You say that there were present Sam Eldredge, Senator Stevens and Mr. Perlstein. Who else besides them?

10 A. There was Mr. Mecray and two other gentlemen. I think they are sitting in front of me.

Q. Mr. Schaefer was one, perhaps.

Mr. Richards: Stand up, Mr. Schaefer.

A. I think so

Q. And Mr. Listman?

A. I assume so, Senator. Those gentlemen I am not acquainted with. I do know Mr. Perlstein, or,  
20 at least, I have met him oftener.

Q. Even after looking at them you could hardly be certain you met them that afternoon; is that right?

A. I remember Mr. Schaefer.

Q. This was a sort of routine thing with you and you paid no very great attention to the conversation, I presume, did you?

A. Well, I paid attention enough to it to prepare the memorandum that I did, yes. It is not a routine  
30 thing. We have very few escrows.

Q. Was the bank to receive anything for its services for acting in this capacity?

A. Nothing but the use of the money while the settlement was pending.

Q. Now, at that time did Mr. Perlstein or anybody suggest to you that you ought to pay interest on the use of the money?

A. If so, I don't recall it.

Q. You probably would object to that as the bank president?

A. Very likely.

Q. And you don't recall whether or not anything was said in your presence about when these various papers were to be delivered?

A. I recall nothing definite said about fixing a time, Senator.

Q. Do you recall whether or not you said to Senator Stevens or in Senator Stevens' presence that this would all be cleaned up within ten days? 10

A. I do not.

Q. Do you remember whether or not Mr. Samuel Eldredge made such a remark?

A. I do not.

Q. Will you say that Mr. Samuel Eldredge didn't say that?

A. I can only say that I have no recollection of anything being said about a week or ten days' time in order to clean it up. 20

Q. You yourself knew nothing about the details of this matter?

A. Nothing at all.

Q. You didn't know how long it would take to clean it up, did you?

A. I did not.

Q. Well, the encumbrances, as far as you knew, consisted of a twenty-five thousand dollar mortgage that was still of record, which had not been paid; that is correct, is it not? 30

A. Yes.

Q. That could have been removed within a day, could it not? All that would have to be done was to pay the money and file a cancellation of the mortgage?

A. Correct.

Q. Then there was something said about inheritance taxes. Do you know whether or not they had been assessed?

A. I do not.

Q. Do you know whether they were State inheritance taxes or Federal inheritance taxes?

A. State inheritance taxes.

Q. Had any assessment been made regarding Federal inheritance taxes at all?

10 A. I can't answer that.

Q. Do you know whether any effort had been made to have them assessed?

A. I do not.

Q. This property that Mr. Focer had an undivided half interest in had just been sold for one hundred and fifty thousand dollars?

A. Yes.

Q. He did have an undivided one-half interest, didn't he?

20 A. Well, Senator, you are asking me questions that I can only answer from common knowledge. I don't know.

Q. You don't know?

A. No. I have made no inquiry into the condition of the title.

Q. Do you know anything about Mr. Focer, outside of this deal?

30 Mr. Bacon: That is objected to as not proper cross-examination.

Mr. Richards: I merely want to find out whether or not his estate was over fifty thousand dollars and liable for Federal inheritance taxes.

The Court: I will sustain the objection.

Q. Do you know whether Mr. Focer's estate exceeded fifty thousand dollars?

A. I do not.

Q. Now, on this day was anything said by Mr. Mecray or Mr. Samuel Eldredge or anybody else relative to having assessed and paid the inheritance taxes?

A. Well, the inheritance taxes were discussed, Senator. As to just what was said—that was the reason, as I gathered from the conversation, that we were given possession of this money and these papers, in order that the inheritance tax and the mortgage transaction might be cleaned up. In fact, under the agreement you will notice that we were to see to it that the mortgage was taken care of by pledging that with the Camden Safe Deposit and Trust Company when they cancelled the twenty-five thousand dollar mortgage. 10

Q. You say this agreement says that?

A. That is my recollection. If I am wrong, correct me on that. That is my recollection of it. I have a copy of it here, if you don't mind my referring to it. 20

Q. This is what the agreement says, Judge, "There will be forwarded to said bank a mortgage in the sum of one hundred and twenty-five thousand dollars, executed by the above-named Goldman to Mecray. This mortgage is to be delivered to the Camden Safe Deposit and Trust Company as collateral for a loan to be made by them upon their agreement to cancel a twenty-five thousand dollar mortgage on the said premises now held by them. Such agreement having been made by them, the above-named funds are to be distributed, and the deed for the premises delivered to Lewis T. Stevens." 30

A. Yes.

Q. Did you have in your possession at any time an agreement with the Camden Safe, whereby they agreed to make the loan and take this mortgage as collateral?

A. We did not.

Q. Isn't that the reason why you didn't deliver the one hundred and twenty-five thousand dollar mortgage to the Camden Safe, because you didn't get such an agreement?

10 A. No. We didn't do anything, Senator, with the mortgage, by reason of the fact that the payment of the inheritance tax was, as I understood it, the thing that was causing the delay, and when that was paid, then the question of the delivery of the mortgage, of course, was a matter, as you have already stated, of only twenty-four hours, so that we did nothing with the mortgage.

Q. But you never did get any agreement of that kind from the Camden Safe?

20 A. No.

Q. At any time?

A. No.

Q. And no intimation from them that they would take the one hundred and twenty-five thousand dollars and cancel the twenty-five thousand dollars?

A. No.

Q. Or anything of that kind?

A. No.

30 Q. Or that they would loan twenty-five thousand dollars?

A. No.

Q. At the time that you had delivered to you the deed from Meecray and his wife to Goldman and the bill of sale and the \$6,374.09 in money, were any of the papers delivered to you?

A. No.

Q. And specifically was a deed dated August 30th,

1924, from certain of the heirs of Focer to Meecray delivered to you?

A. No.

Q. Did you examine the deed at all as to its contents?

A. No.

Q. Did anybody else in your presence examine it?

A. I don't recall that they did.

Q. It simply laid there folded up and was turned over by Mr. Samuel Eldredge or Mr. Meecray to you? 10

A. Correct.

Q. After you got these papers, that is, after you got the mortgage, the one hundred and twenty-five thousand dollar mortgage, you already had in your possession the deed and the money. Why didn't you make any disposition of them?

A. Waiting to be instructed that the matter was ready, that they were ready for delivery.

Q. Who was to instruct you as to that?

A. The two attorneys.

20

Q. Did you inquire from Senator Stevens, as mentioned in this agreement, about making the transfer?

A. I did not.

Q. As far as you were concerned, you just let the matter drift?

A. We did, yes.

Q. And made no effort as far as the bank was concerned to perform its duty as the escrow at all?

A. No, we made no move.

Q. You simply waited until the 26th of May, when 30

A. Twenty-fifth.

Q. — the twenty-fifth of May, when you were served with this notice not to perform?

A. That is right.

Q. And after that, of course, you simply sat down

and waited until litigation had commenced, waiting for it to finish?

A. That is right.

Q. During that time did Mr. Mecray ever apply to you or anybody representing him, for the mortgage?

A. I don't recall that they did, no.

10 Re-direct examination.

By Mr. Bacon:

Q. Did Senator Stevens have an opportunity on February sixth, 1926, to examine this deed from Mecray to Goldman, if he had so desired?

A. Yes.

Q. Did he ever ask you to let him look at the deed?

20 A. No.

Q. Did you ever refuse to let him see the deed or mortgage or any other papers which you had?

A. I did not.

---

SAMUEL F. ELDRIDGE, sworn for the complainants.

Direct examination.

30 By Mr. Bacon:

Q. Where do you live?

A. Cape May City.

Q. Are you a member of the bar of this State?

A. I am.

Q. How long have you been practising?

A. Since 1898.

Q. Where?

A. Cape May City, New Jersey.

Q. Did you represent Mr. Mecray in this transaction which is now the subject-matter of inquiry here?

A. Yes, commencing sometime after the agreement was signed. I had nothing to do with the original agreement.

Q. You had nothing to do with making the sale or drawing the contract? 10

A. No.

Q. Do you recall when you first became associated with the transaction?

A. At least two weeks prior to February sixth, 1926.

Q. Were you present at the Merchants' Bank on February sixth, 1926, when this agreement was prepared?

A. I was.

Q. The escrow agreement, I mean. Had there been any conference between the parties with respect to the contract before you went to the bank? 20

A. There had.

Q. Where did it take place and who was present?

A. Lewis T. Stevens' office, Washington Street, Cape May. Those present were Lewis T. Stevens, H. H. Perlstein, those two gentlemen there—I can't think of their names —

Mr. Richards: Schaefer and Listman. 30

A. Yes, and a tall, slender man with a black moustache, whose name I do not know. Mr. Sol Needles was in but didn't stay, and Mr. Jeremiah E. Mecray and myself.

Q. What was the purpose and object of this meeting at Senator Stevens' office?

A. The primary purpose, as I thought, was to make settlement —

Mr. Richards: I object to what he thought. The purpose of the meeting might be stated, if he knows.

10 A. The purpose of the meeting so far as Mecray was concerned was to fulfill his contract with Isador Goldman.

Q. Why was it not fulfilled at that time?

A. The deed from Jeremiah E. Mecray and his wife to Isador Goldman had been prepared and signed and I had it with me. There was no mortgage signed by Goldman so as to make settlement. The inheritance tax due from the estate of Daniel Focer had not been assessed so payment could be made. There was a mortgage of twenty-five thousand dollars on the property, held by the Camden  
20 Safe Deposit and Trust Company.

Q. Were or were not those matters discussed by you and the other gentlemen present on that occasion?

A. Mr. Perlstein and I talked about those matters, and I told him the facts so far as the Focer estate was concerned; I asked him, also, if he had a mortgage from Isador Goldman to Jeremiah E. Mecray for the one hundred and twenty-five thousand dollars, and he had not, didn't even have one prepared, he said. I told him that I had one prepared and  
30 handed it over to him. He said, "I can sign that," and I said, "By what authority?" He said, "Power of attorney," and I said, "Is it recorded? There isn't any acknowledgment," and he said, "I don't think so." Then he said, "We will have to get Mr. Isador Goldman to sign the bond and mortgage."

Q. Did you deliver the bond and mortgage?

A. I delivered the bond and mortgage to Mr. H. H. Perlstein for the signature of Isador Goldman to be placed on it and to be acknowledged, and if acknowledged before a notary of Pennsylvania, to have attached thereto a certificate of the prothonotary.

Q. Was that mortgage afterwards executed and is that the bond and mortgage which has been offered in evidence here?

10

A. The bond and mortgage has been offered in evidence.

Q. I say is that the one you drew and gave to Perlstein that day?

A. That is the one.

Q. Was there any discussion as to how long it would take to have these inheritance taxes assessed and paid?

A. There was not, because I could not tell and neither could they.

20

Q. Well, was there any discussion about it, any talk about it, as to what would be done, and if so what was said?

A. The discussion was that the matter—after going over the matter, that we made an appointment for Judge Eldredge to meet us sometime after the bank closed, at the bank.

Q. Whose suggestion was it that these papers should be left at the bank?

A. That I am not absolutely sure on, but my memory is Mr. Perlstein.

30

Q. Was there any definite time fixed within which settlement was to be made?

A. The time fixed when settlement was to be made was when the mortgage of twenty-five thousand dollars held by the Camden Safe Deposit and Trust

Company was cancelled of record and the New Jersey State inheritance tax was paid.

Q. Was there any question raised at that time about the recording of the deed from the Focer heirs to Mecray?

A. There was not. I had it in my possession, had it there at the time and showed it to them.

Q. Have you got it now?

A. I have.

10

Mr. Bacon: The witness produces a deed dated August thirtieth, 1924, from Lillian M. Focer and others to Jeremiah E. Mecray, acknowledged by three of the parties before Samuel F. Eldredge on September fourteenth, 1924, and by two of the parties on October thirtieth, 1924, before a notary public of the State of Illinois, County of Cook, and a certificate attached dated October thirtieth, 1924, by the clerk of Cook County, Illinois, recorded May  
20 twenty-fourth, 1926, in the clerk's office of Cape May County, in Book 428, page 349. I do not think that is any part of the complainant's case, but Senator Richards asked me to produce the deed and I told him I would, and there it is. If you call for it, I offer it.

Mr. Richards: We have no objection.

The Court: Let it be offered.

30

(The paper referred to was marked Exhibit C9.)

Q. Mr. Eldredge, the escrow agreement, Exhibit C2, provides among other things, that a loan shall be procured from the Camden Safe Deposit and Trust Company by the pledging of the one hundred and twenty-five thousand dollar mortgage. Was

the one hundred and twenty-five thousand dollar mortgage ever turned over to you or put in your possession in any way so that that loan might be negotiated?

Mr. Richards: I object to that because it puts an interpretation of counsel upon that agreement which the agreement does not warrant.

Q. Was the one hundred and twenty-five thousand dollar mortgage ever delivered to you or to Mecray, to your knowledge, or to the Camden Safe Deposit and Trust Company as collateral for a loan? 10

A. It was not.

Q. Did Mr. Mecray raise the twenty-five thousand dollars from some other source?

Mr. Richards: I object to that. I do not think it is important.

The Court: I will permit it. 20

A. Mr. Mecray produced to me the cancelled mortgage.

Q. You don't know where he got the money?

A. I have been told, but I wasn't there.

Q. You had nothing to do with it?

A. No.

Q. Have you got the cancelled mortgage?

A. I have.

Q. Please produce it. 30

(Paper produced by the witness.)

Mr. Bacon: The witness produces a mortgage for twenty-five thousand dollars dated December eighth, 1923, from Daniel Focer and wife and Jeremiah E.

Mecray and wife to the Camden Safe Deposit and Trust Company.

Q. As you understand it, is that the twenty-five thousand dollar mortgage that is referred to in the escrow agreement?

Mr. Richards: I object to what he understands. I think we ought to have the facts.

10

The Court: I will permit the question.

A. That is the twenty-five thousand dollar mortgage that was talked about before the escrow agreement was drawn, and which is referred to in the escrow agreement.

20 The Court: Then, as I understand, you mean unequivocally that that is the mortgage? Not that that is your understanding of it, but that that is the mortgage?

A. It is the only mortgage that I have any knowledge of as between Mecray and the Camden Safe Deposit and Trust Company which was paid off and showed me before cancellation and brought to me after cancellation.

30 Mr. Bacon: This mortgage bears the usual recording certificate of the county clerk, indicating that it was recorded in Book 210 of mortgages, page 86, on December thirteenth, 1923, and it also has on it a stamp, "Cancelled of record May twenty-fourth, 1926, A. C. Hildreth, Clerk." I offer it. That is one of the things you asked me to produce, Senator Richards.

Mr. Richards: I have no objection.

(The paper referred to was marked Exhibit C10.)

Q. When did that mortgage come into your possession? I mean when did you have it cancelled, or did you get it after it was cancelled?

A. That mortgage was shown me either the night before May twenty-fourth or the morning of May twenty-fourth, and it was brought to me immediately after the certificate of cancellation was on there. Whether it was the evening of the twenty-fifth of May I couldn't say, so I couldn't tell you. 10

Q. When, if at any time, did you show it to Senator Stevens?

A. Immediately upon its being turned over to me. I went out and saw Senator Stevens and showed him the mortgage, cancelled.

Q. And that, you say, was —

A. Either that day or the next morning. I am not sure which. 20

Q. Either the twenty-fourth or the twenty-fifth of May? What, if anything, did you have to do with the payment of the inheritance tax to the State of New Jersey from the estate of Daniel Focer?

A. I paid the inheritance tax.

Q. Did you have anything to do with the assessment of it, that is, preparing the papers for the assessment?

A. Yes, I represented the estate of Daniel Focer. 30

Q. Had the report been made to the State comptroller for this tax assessment prior to February sixth, 1926?

A. I can't tell you what time the report was made to the city comptroller. Whenever I am making up a report to the State comptroller I send it to Mr. Charles A. Bonnell at Cape May Court House, who

is the State representative in the assessing for the State.

Q. Well, had the assessment of this tax actually been made at the time of this escrow agreement?

A. That I don't know, what time that was done. I couldn't answer that question.

Q. Well, had you received the tax bill?

A. Oh, no.

10 Q. What I am trying to find out is, did you know on February sixth, 1926, how much these taxes were?

A. Didn't know on February sixth, 1926, what the taxes were; didn't know until the eighteenth of May, 1926, when I went to Trenton to find out through the comptroller's office when was being done and when we could get the tax bill. I was told by the clerk in charge, who had —

20 Mr. Richards: Wait a minute. I object.

Q. Did you get the tax bill from the clerk when you asked for it?

A. I asked for a copy —

Q. Well, did you get the tax bill?

A. — and they gave me a tax bill and I paid it then and there on the eighteenth day of May, with my own check.

Q. Did you get a receipt?

30 A. I got a release. No. Yes, I got a release.

Q. Did you get it then and there, that day?

A. I got the release then and there, that day. What was shown Mr. Stevens was the release, not the tax receipt, because the —

Q. Wait a minute, I am coming to that. Why did you go to Trenton to get this tax bill?

A. Because I wanted to get —

Mr. Richards: Wait a minute.

Mr. Bacon: The question is withdrawn, if it is objected to.

Mr. Richards: It is not objected to.

Q. When you got the tax bill, did you at any time show it to Senator Stevens?

A. Not the tax bill, but the release from the State Department for this property. 10

Q. When did you show that to him?

A. The next day after I came home. On the nineteenth of May.

Q. Have you that release with you?

A. I have that release with me.

Q. Please produce it.

(Paper produced by the witness.)

20

Q. You have examined this release, have you?

A. Yes.

Q. Does that release cover the property described in the contract for sale now in suit?

A. That release covers the property situate on the south —

Q. Just say yes or no to that. You know. You have read it.

A. Yes, but there is a clause attached at the end of that which refers to another property, and I sent and got another release from them later, and here is the other release, describing the property absolutely, as well as others. 30

Q. Now, the release that you got on the eighteenth of May you didn't have recorded?

A. No.

Q. Because of some question about the description?

A. Not on this property.

The Court: Do you mean there isn't any question in that release on this property, or that the release wasn't on the property?

10 A. The release of May eighteenth has this property, it has a property six blocks in block 96, Ocean City —

The Court: Does it have this property?

A. It has this property in it.

Q. Now because of some other error in it, you got another release, did you?

A. Yes.

Q. When did you get that other release?

20 A. That other release is dated May twenty-eighth, 1926.

Q. When you received that, did you have that recorded?

A. I had that recorded.

The Court: The other question is not answered. He is asked when did he receive that other release, and he says it is dated a certain day.

30 Q. When did you get it?

A. Approximately the next day. I can't say positively.

Q. What did you do after you got it?

A. Immediately upon getting it I sent it to the court house and had it recorded.

Q. What day is it stamped as being recorded?

A. June third, 1926.

Q. Did you show that release to Senator Stevens?

A. Showed both of those releases to Senator Stevens, that and the one of May eighteenth.

Mr. Bacon: I offer the one dated May eighteenth.

(The paper referred to was marked Exhibit C11.)

Mr. Bacon: I also offer the one dated May twenty-eighth, 1926.

10

(The paper referred to was marked Exhibit C12.)

Q. Now, Mr. Eldredge, you say that when you went to Trenton, they gave you a tax bill and that you paid it?

A. I paid it on May eighteenth, the date of the tax bill, and gave my personal check for it, and left that bill with them there.

Q. Is that the tax bill for the entire tax on this estate? 20

A. That is the tax bill for the entire tax on this estate.

Q. How much is the amount of it?

A. One hundred and sixty-six dollars and four cents.

Q. And is that what you paid?

A. That is what I paid.

Mr. Bacon: I offer it.

30

(The paper referred to was marked Exhibit C13.)

Cross-examination.

By Mr. Richards:

Q. Have you got either the original or copy of the assessment of the inheritance taxes?

A. I presume this is the original that was mailed to me or came to me through the mail.

Q. Does that show the value of the estate?

10 A. It does not.

Q. It merely shows the amount assessed?

A. That shows the amount assessed.

Q. When you were in the office of the comptroller, did you look at the assessment to see how much the value of the estate was on which you were paying the tax?

A. You mean as an entirety?

Q. Yes.

A. Approximately thirty thousand dollars.

20 Q. Entire estate?

A. Yes.

Q. Without any deduction for the widow and so forth?

A. Without any deduction. It was the least bit over thirty thousand dollars, but it wasn't thirty-one.

Q. Did that include the return filed of Mr. Focer's property?

A. Yes.

30 Q. Was that a true return?

A. That was a true return, in accordance with the return as made that Mrs. Focer and the children sold all of their right, title and interest in everything to Jeremiah E. Meeray in consideration of the sum of twenty-two thousand five hundred dollars.

Q. Twenty-two thousand dollars? When was that sale made?

A. Prior to the execution of that deed from Mrs. Focer and her two daughters and their husbands to Jeremiah E. Mecray.

Q. Then it was sometime prior to the thirtieth of August, 1924?

A. Yes.

Q. How long had Mr. Focer been dead at that time?

A. I think he died on Decoration Day, 1924.

Q. So that the assessment of this tax was not made until approximately two years after the death of Mr. Focer? 10

A. I can't tell you the date that the assessment of the tax was made. Oh, you mean at Trenton?

Q. Yes.

A. Yes. Approximately that. Yes.

Q. It was made in the latter part of May, 1926, and Mr. Focer died in the latter part of May, 1924?

A. Yes.

Q. Were you the attorney for the estate during 20 all of that period?

A. Yes.

Q. And as early as the latter part of August, you had in your hands the money from this particular property that Mr. Mecray had purchased; is that right?

Mr. Bacon: I object to that on the ground that I cannot see how any inquiry into Mr. Eldredge's relations with his clients, the Focers, has anything to do whatever with this situation, and I doubt if he ought to testify to it. 30

The Court: I sustain the objection.

Q. Now, did you prior to the time that you entered into this transaction, this sale transaction, make any

effort of your own to have the taxes assessed upon the Focer property?

A. Yes.

Mr. Bacon: That is objected to for the same reasons.

The Court: I will permit that.

10 Q. What effort did you make?

Mr. Bacon: I make the same objection.

The Court: I will permit that.

A. When?

20 Q. You said, I think, in answer to almost the very first question of Mr. Bacon, that you entered into this negotiation for the sale of this post-office building about two weeks prior to the sixth of February, 1926?

Mr. Bacon: I do not so understand the testimony at all. He said distinctly he had nothing to do with the negotiations and nothing to do with the sale.

Mr. Richards: That is exactly what I state. I think the testimony will bear me out in this.

30

(Question repeated.)

The Court: He said that after the agreement was signed he represented Mecray two weeks before the escrow agreement, which was February sixth. I will sustain the objection.

Mr. Richards: I am talking about those negotiations of February sixth.

Q. Well, I want to know now, Mr. Eldredge, what efforts you had made toward having these taxes assessed prior to the time that you entered into this present sale?

A. For the Focer estate or for Jeremiah Mecray?

Q. For the Focer estate.

A. I had prepared schedules on which I had to get a lot of values. 10

Q. When had you done that?

A. I commenced early upon taking over the matters of the estate.

Q. When did you complete it?

A. I can't tell you that. I don't know.

Q. When did you file these schedules with the State inheritance tax assessors?

A. I don't recall, as I testified before, whether it was before or after. 20

Q. Can't you give us your best recollection about it?

A. I don't know.

Q. Well, if it was after, how soon after was it?

A. I can't tell you.

Q. What?

A. I don't know. The records will show that, when it was done.

Q. So that you can't tell us whether or not on the sixth of February, 1926, you had filed the information with the assessor upon which to base the assessment? 30

A. I don't recall whether it was or wasn't. I could have found out by getting the records from Trenton.

Q. How much was the full value of the Focer estate at the time you did file it?

A. Thirty thousand four hundred and forty-nine dollars and seventy cents.

Q. Now, on the sixth of February, did you represent Mr. Mecray as well as the Focer estate?

A. Sure. Got some stocks and bonds in the Focer estate that hasn't been transferred yet.

Q. That wasn't the question I asked you. I asked you whom you represented that day. You represented both Mecray and the Focer estate. That is correct, isn't it?

10 A. Not in the deal on the Washington Street Focer-Mecray property.

Q. Whom did you represent there?

A. Jeremiah Mecray.

Q. And not the estate?

A. Not the estate.

Q. On that day did Mr. Perlstein, representing Goldman, make any suggestion in your presence to Mr. Mecray about a further postponement of settlement?

20 A. He made a suggestion as to a postponement and turning over the papers that were turned over to Judge Eldredge as president of the Merchants' National Bank of Cape May.

Q. Did he ask for any further extension of time for the settlement?

A. He surely did.

Q. He did that day?

A. Yes, sir.

30 Q. And to that what did Mr. Mecray reply, or you for him?

A. I don't know what the reply was. I can tell you what the conclusion was.

Q. You mean you can tell us the substance of the reply, can't you?

A. After talking the matter over, we all agreed

to turn the papers over to Judge Eldredge as president of the Merchants' National Bank.

Q. Let me ask you the question this way: Didn't Mr. Perlstein suggest or ask for a further extension of the time for the performance of the contract —

A. He did.

Q. — and didn't Mr. Meecray or yourself for Mr. Meecray refuse that extension?

A. I didn't know it. I didn't.

Q. Did either of you?

A. I don't know. I didn't, and I didn't know that Meecray did. 10

Q. Didn't Mr. Perlstein suggest that inasmuch as you were not ready to remove the encumbrances at that time, and didn't have them removed, that they extend the time for settlement to another day?

A. Yes, but that wasn't all of it.

Q. I am not asking you all of it. I am asking you what Mr. Perlstein suggested. That is true, he did suggest that in view of the fact that the mortgage and the inheritance taxes were not paid, that they extend the time of settlement? 20

A. Yes.

Q. To that, what did Mr. Meecray reply?

A. I don't know. At the time that —

Q. Didn't he refuse?

A. No. At the time that Perlstein was talking with me about that, and the only time I know of, he and I were talking together about it.

Q. What did you say about it?

A. Why, it was the only thing that could be done, was to extend the time, because Perlstein himself didn't have his mortgage there and have it signed to complete his own agreement. 30

Q. Why didn't you make an extension agreement, then, like you did prior to the sixth of February?

A. Why didn't we?

Q. Yes.

A. We did.

Q. You think you did?

A. No, we did.

Q. You did make an extension agreement?

A. Yes.

Q. Where is it? Will you produce it?

A. Judge Eldredge referred to the agreement for the extension.

10 Q. You are referring to Exhibit C2?

A. The escrow agreement of February sixth.

Q. When did that extend the time to for performance?

A. Until such time as the mortgage could be paid and the inheritance tax could be paid.

Q. Does it say that in the agreement?

A. Why, I am not absolutely sure about saying it in the agreement.

20 Q. The agreement is quite silent about that, isn't it? Would you like to see it and read it?

A. Yes, I would like to see it and read it. That is what was said at the time.

(Exhibit C2 was handed to the witness.)

A. Yes.

Q. So it is silent on that subject, isn't it?

A. Yes, silent.

30 Q. Didn't Mr. Perlstein suggest that they extend the time of settlement another thirty days, similar to the last extension?

A. I don't remember any such suggestion.

Q. Will you say that he didn't say that?

A. I don't ever remember hearing any such suggestion.

Q. Do you mean to say by that that Mr. Perlstein didn't suggest it, or that you don't remember?

A. He didn't say it in my hearing.

Q. Your statement is that he didn't say it in your hearing?

A. Yes.

Q. You were present and heard all the conversation, weren't you?

A. No. I was present, but there were times when we were all talking there.

Q. Were you out of the room at any time, or where you couldn't hear at any time the conversation? 10

A. I was in the room all the time.

Q. Were you paying attention to the conversation?

A. So far as I could. I was paying attention to those, to whoever was talking to me.

Q. Well then, your statement now is that Mr. Perlstein didn't make the suggestion that the performance of the agreement be extended thirty days?

A. Not in my presence. 20

Q. Your version of that extension is that it was to extend until such time as the mortgage could be cancelled and the inheritance tax be paid?

A. That was what was said there at the time. Mr. Perlstein —

Q. What did you do toward having the inheritance tax paid?

A. Got busy.

Q. Well, what did that consist of?

A. Well, I know I wrote Trenton two or three times, and I know I got back from Trenton some letters or data relative to certain points which they thought might be assessable, one of which was the goodwill of Focer and Mecray. 30

Q. When did you write the first letter?

A. I can't tell you that. I don't know.

Q. You don't remember?

A. No.

Q. Have you got the letter with you, Mr. Eldredge?

A. I don't know. I haven't got all of the Focer letters here.

Q. Will you look and see if you have that letter here, or a copy of it?

A. I mean I haven't got all of the Focer papers here.

10

Mr. Bacon: I object on two grounds: First, that the Focer correspondence is not admissible in this controversy; and, secondly, that when the witness says that he has not all of the papers here, I do not think we ought to have part of the file.

The Court: The query is now, if he has these particular letters. If he has them, they may be produced. If he has not, they will not be here.

20

(Recess taken until 1.30 P. M.)

(Afternoon session, 1.30 P. M.)

---

SAMUEL ELDREDGE, resumed.

Cross-examination, continued.

30

By Mr. Richards:

Q. Did you find the letter, Mr. Eldredge?

A. No, I did not. I have only part of them.

Q. Your recollection isn't clear when you wrote that letter?

A. To the State Department?

Q. Yes.

A. I wrote four or five different letters to the State Department.

Q. I mean you can't tell us when it was, what date it was, or about what time it was when you wrote the first letter?

A. No, I can't tell you the date. The last letter I wrote them was just a short time before the tax was assessed.

Q. You went up there on the eighteenth of May? 10

A. Yes.

Q. You personally saw somebody in the department and found at that time that the tax had been assessed?

A. The day before.

Q. How do you know it had been assessed the day before?

A. That is what they told me and what the bill showed. The bill showed that date when I got it home the next day. 20

Q. That was the date of the bill?

A. Yes.

Q. Why was it that you went up there on the eighteenth of May personally?

A. Because they had asked me for data relative to the interest of Focer in the estate; they had asked me for affidavits relative to the goodwill and some other information, I don't recall now what it was.

Q. When did they ask you for that? 30

A. Between the first of January and the time the tax was assessed.

Q. Did you immediately supply the information that they asked, or did you delay the matter?

A. I supplied the data just as soon as I could get the data. I didn't have it in my possession.

Q. Who had it?

A. I had to get one affidavit from Mr. Meecray and I had to get an affidavit from Mrs. Focer.

Q. Mr. Meecray lived in Cape May?

A. I got his immediately upon request.

Q. Mrs. Focer lived where?

A. Mrs. Focer lives part of the year outside of Philadelphia.

Q. And part of the year in Cape May?

10 A. She lived during this past summer in Cape May, but I don't recall her living there the summer before, although she may have.

Q. At least, it was only a matter of two or three days to get her to take an affidavit, wasn't it?

A. I have never gotten letters that quickly from her in reply.

Q. Did you send anybody to her to get the affidavits taken?

A. Sent them to her by mail.

20 Q. What did you do immediately after the sixth of February looking to the speedy clearing up of this inheritance tax?

A. Took up —

Mr. Bacon: I object to that on the ground that whether Mr. Eldredge was or was not diligent is not binding upon Mr. Meecray in the matter of this inheritance tax, because it already appears that in the matter of having the inheritance tax assessed he was acting as the attorney for the Focer estate and not  
30 for Mr. Meecray.

The Court: I will permit it. He was acting at that time as the attorney of Mr. Meecray, after the time of the escrow.

Mr. Bacon: He was acting in a dual capacity.

(Question repeated.)

A. I can't tell you the details, because I didn't have any idea that the question would ever be asked or I would have brought all of the Focer papers along with me.

Q. You were acquainted, were you not, with the details of this controversy, of this suit?

A. Yes, I knew that the suit had been brought.

Q. Had you ever read any of the pleadings in the Chancery suit? 10

A. I read the bill.

Q. Did you ever read the answer?

A. Not as an entirety.

Q. Did you ever read the reply?

A. Not as an entirety.

Q. Well, do you know whether or not there was any information there that would lead you to believe that the defense or part of the defense was going to be that you hadn't cleaned these things up promptly? 20

A. No.

Q. You never saw that defense in the pleadings?

A. I don't remember having seen it.

Q. What did you think the trouble was between these parties?

A. The only thing that I was called on was the matter of the payment of the tax, the release, the deed, or the mortgage, rather, which was cancelled, which I had in my possession.

Q. Didn't you know that the answer, paragraph 7, set up that the agreement of the sixth of February was that said Goldman saw his attorney and then agreed to and with the said Meeray and his attorney and agent that if he, the said Meeray, would diligently and speedily, within a short day, remove all of said encumbrances against the said 30

title, and so forth? Didn't you know that that was in the answer?

A. Well, I just knew it in a general way.

Q. Well, in view of that, didn't you think that it was important to bring the letters here that would have shown how, within a short day —

A. All of the papers in the Focer estate? No, I didn't think so.

Q. So that all you can tell us about your efforts  
10 to remove the inheritance tax was that you wrote two letters to Trenton —

A. I didn't say two.

Q. — at some time, got some replies to them, and that on the eighteenth of May you personally went up there and cleaned the thing up? That is the real situation, isn't it?

A. I know I had to write to the State Department for reasons why, and when I wrote the State Department for reasons why, I got letters stating as  
20 to what data they wanted proved by affidavit or otherwise.

Q. At the time you started on the sixth of February, Mr. Focer had been dead some eighteen months, hadn't he?

A. Been dead since 1924.

Q. The tax had been due for a year, hadn't it?

A. Yes.

Q. So that it was subject to a penalty at this time?

A. Yes.

Q. And you had not proceeded, even under those  
30 conditions to remove the lien on the property?

A. I had the report all ready to file once and I know some of the data that was given me was not correct and I had to look that up and had to change the report.

Q. That was before the sixth of February, wasn't it?

A. Before the sixth of February.

Q. Why didn't you go to Trenton before the eighteenth of May in an endeavor to straighten out the inheritance tax?

A. Before the eighteenth of May? I don't know why I didn't go before the eighteenth of May.

Q. You knew that the defendant, Goldman, was insisting that something be done about this property long before the eighteenth of May, didn't you?

A. That who? 10

Q. I say you know that the defendant Goldman was insisting that something be done about clearing up these exceptions before the eighteenth of May?

A. Yes.

Q. Do you remember whether or not Mr. Stevens came to your office and asked you about these exceptions, what you were doing to clean them up, prior to that time?

A. He never asked me what I was doing.

Q. Well, did he ask you if you were doing anything? 20

A. He asked me how the matter stood and I told him that I hadn't gotten the tax assessed as yet. That wasn't at my office, as I remember it. It was on the street.

Q. You had more than one conversation with him, didn't you?

A. I had several conversations with him.

Q. And during all of those conversations, wasn't he urging you to remove these exceptions? 30

A. No.

Q. He was not?

A. No.

Q. What was he doing?

A. Just asked me if I had heard anything from the inheritance tax.

Q. Well, what did you tell him?

A. I told him in one instance, if not two, what I had heard and what they had asked me to procure in the line of data by affidavits.

Q. Do you know whether or not about the twenty-second of March Mr. Stevens made a formal demand on Mr. Mecray for either delivery of this property or the return of the bond and mortgage and money?

A. No.

10 Q. You don't know about that?

A. No.

Q. Did Mr. Mecray tell you that?

A. No.

Q. Did Mr. Mecray ever come to you and ask you why you were not getting the inheritance tax matter cleared up?

A. No, Mr. Mecray came to me and made an affidavit, which was necessary to be filed in the matter.

20 Q. Do you know whether or not on or about the seventeenth of April another demand was made on Mecray, this time for a return of the money and declaring the contract was at an end?

A. No.

Q. Did Mr. Mecray ever tell you about that?

A. No.

Q. Didn't you know about that?

A. No.

Q. Didn't Mr. Mecray ever consult you about the rescission of the contract?

30 A. He didn't tell me anything about any notice being served on him or any demands being made.

Q. When did he tell you that the contract had been rescinded, or, at least, that notice of rescission of the contract had been served on him?

A. Sometime in May or June. I have a copy of the notice somewhere he had. The latter part of May or first of June. I can't find it.

Q. Have you got the original —

A. That was the notice that was served on me.

Q. Which notice?

A. The one that I was trying to find. That is the only one that I have knowledge of.

Mr. Richards: Mr. Bacon, have you got the original notices of March twenty-second and April seventeenth served on Mr. Mccray?

10

Mr. Bacon: I have not.

Mr. Richards: Has Mr. Mccray got them?

Mr. Bacon: He has not. Don't know anything about them. Never saw any such notices.

Q. Well now, Mr. Eldredge, think a minute. Weren't you present in Senator Stevens' office about the seventeenth of April, when Senator Stevens served a notice upon Mr. Mccray in writing, in which he demanded the return of the money paid for the post office building? 20

A. When was that?

Q. About the seventeenth of April.

A. No, I don't recall any such notice.

Q. You don't recall being present when it was served upon Mr. Mccray?

A. No, I do not.

Q. Will you say that no such thing occurred? 30

A. No such thing occurred so far as my knowledge goes.

Q. You mean by that that it did not occur? You don't mean that you have forgotten?

A. I don't remember ever having such notice—such notice having ever been served, and if it had

been served in my presence I surely would have remembered it.

Q. So that, as far as you are concerned, no such incident ever took place?

A. Excepting a demand for the return that was served either the last of May or first of June, which was directed either to Judge Eldredge or to the Merchants' National Bank and myself.

10 Q. Wasn't a notice of some kind or a further demand made upon you by someone around the fifteenth of May, 1926, for the return of the money?

A. I couldn't tell you the exact date. My memory is that it was the last of May.

Q. I didn't mean another notice in writing. I mean another notice of any kind?

A. A notice that was served on me?

Q. I asked you if a demand—I don't mean a notice—if a demand was made for the return of the money in this case around the fifteenth of May?

20 A. I don't remember any demand being made for the return of the money, except the notice that I tell you about. If it were, I have forgotten that entirely.

Q. On about the fifteenth of May, which was a Saturday, were you present in Senator Stevens' office at a time when Mr. Gray here was present, when Mr. Perlstein was present, in which a demand was made upon you for the return of the money, or upon Mecray?

30 A. I was present in Mr. Stevens' office one Saturday, but I can't tell you the date of it.

Q. Well, we will tell you the date. It was about the fifteenth of May. Do you remember that? Does that jibe with your recollection?

A. I think it was later than that. I think it was the last of May when we were there talking about it.

Q. You are not positive about the date, are you?

A. No, I am not positive about the date. We talked over the situation.

Q. You talked over the situation, and the demand was made at that time, was it not?

A. Well, I can't tell you that. I don't recall it.

Q. You don't recall that a demand was made by Mr. Gray to return the money?

A. I know we talked about the whole proposition.

Q. What was the conversation? What did you talk about?

10

A. They asked if the New Jersey State inheritance tax had been paid yet, and I told them no.

Q. Then this conversation did take place before the eighteenth of May, didn't it?

A. Yes.

Q. Then it wasn't the last part of May, was it?

A. That conversation was before.

Q. Then after Mr. Gray told you that they were going to insist on the return of the money, and that they were going to bring a suit for the return of the money, wasn't it then that you went to Trenton for the first time for the purpose of getting this inheritance tax cleaned up?

20

A. That wasn't what moved me to go to Trenton at all.

Q. The eighteenth was Tuesday, wasn't it, following?

A. I can't tell you that now.

Q. But you went to Trenton within two or three days after this conference in Senator Stevens' office?

30

A. I couldn't tell you that.

Q. And you didn't go to Trenton before that time on this matter?

A. I don't remember—I was in Trenton, but I don't remember having taken it up before that time.

Q. Between the sixth of February and the eigh-

teenth of May you were in Trenton on a number of occasions, weren't you?

A. No.

Q. Well, you were there more than twice or three times, weren't you?

A. No, I don't recall that I was.

Q. How many times do you think you were in Trenton?

A. I think I was only there once.

10 Q. When was that?

A. I couldn't tell you the date. Before the eighteenth of May.

Q. Why on that occasion didn't you go to the comptroller's office and inquire?

A. Because I had just written and obtained information just before that one time.

Q. I want to go into another subject with you, Mr. Eldredge. I note that this deed from the Focer heirs to Mecray was dated August thirtieth, 1924.

20 That is right, isn't it?

A. Yes.

Q. I think you testified that it was executed and that you took the acknowledgments as to some of those heirs —

Mr. Bacon: He did not testify to that. I made the statement, reading from the paper.

30 Q. — about the fourteenth of September, 1924. That is right, isn't it?

A. Whatever date it is on that certificate.

Q. And the balance of the acknowledgments were taken on the thirtieth of October, 1924. Now, after this deed was acknowledged—who drew the deed, by the way?

A. I did.

Q. After it was acknowledged, was it returned to you?

A. From the heirs in Chicago.

Q. And it has remained in your possession ever since, hasn't it?

A. No, sir.

Q. Who has had it since then?

A. Mr. Mecray.

Q. When did he get it?

A. Sometime prior to Christmas of that year. 10

Q. Which year?

A. The date of the deed, 1924, and he gave me a note for twenty-two thousand five hundred dollars for Mrs. Focer. He afterwards paid twenty-five hundred dollars on the note and he gave me a new one, he and his wife, for twenty thousand dollars. He afterwards gave a mortgage on some properties that he had for fifteen thousand dollars and took up the note.

Q. He did?

20

A. Yes.

Q. Then how came it that on the sixth of February you had this deed in your possession?

A. Because he gave it back to me.

Q. When did he give it back to you?

A. A short time before. I can't tell you exactly when.

Q. Why did he give it back to you?

A. I had it when I drew a deed from Mecray and his wife to Perlstein, and I had it when I drew a mortgage from—not Perlstein, but Isador Goldman, and when I drew a mortgage from Isador Goldman to Mecray. 30

Q. Is that the only reason you had the deed, to draw the mortgage?

A. I may have had it in my safe for keeping for him. I don't recall that.

Q. You didn't represent him at that time, did you, professionally?

A. You mean before the sixth?

Q. Yes.

A. No, but I have had for a long time some of his papers in my safe that came to me in connection with the —

Q. When was the last of the note paid?

A. I can't answer your question, but he gave a  
10 mortgage for it.

Q. When?

A. Since January first, 1926.

Q. It is almost January again now.

A. I think it is since January.

Q. In March or April or May?

A. I couldn't tell you that. I don't know. The mortgage is recorded and it will show for itself.

Q. Isn't it a fact, Mr. Eldredge, that at the time  
20 of this proposed settlement on the sixth of February, Mecray still owed ten thousand dollars on the purchase of this property, or about ten thousand dollars?

Mr. Bacon: That is objected to on the ground it could make no difference in this transaction. This deed was dated in 1924.

The Court: As the testimony now stands, it had previously been delivered.

30

Mr. Richards: Yes, but I want to test that very proposition.

The Court: You may go into it for that purpose, to test whether the deed had been delivered to Mr. Mecray at that time.

Mr. Bacon: I submit that will not make any difference whether it had or not.

The Court: I will permit it for the sole purpose of showing that the deed had not been delivered at that time.

(Question repeated.)

A. No. He owed twenty.

Q. On the sixth of February?

10

A. Well, I don't say when the mortgage was given. I won't tell you what date that is, because I don't recall. I want to correct myself on that. Not on the purchase of this property only, but on the purchase of the whole of Daniel Focer's interest in Focer and Mecray, which included this property, their business that they ran there, the property at Cape May Court House, and the business that they conducted there.

Q. Now, Mr. Eldredge, when you went there for the settlement on the sixth of February, you didn't go there as Mr. Mecray's counsel, did you? You went there representing the Focer estate, didn't you?

20

A. I did not.

Q. You represented Mecray that day and went there to represent him?

A. Went there to represent him.

Q. Didn't you tell some of the gentlemen who were there to assume the purchase of the property with Mr. Goldman that you came there to get ten thousand dollars out of the settlement that Mecray owed for the purchase price of the property?

30

A. I didn't go there to get ten thousand dollars.

Q. Didn't you tell them that?

A. No, I did not.

Q. Did you tell them anything like that?

A. I might have said that Mecray was going to give us ten thousand dollars.

Q. That you were going to get ten thousand dollars out of the settlement? Wasn't that right?

A. Yes, sir, that might have been. I don't say

Q. And that Mecray hadn't yet paid for the property? Wasn't that right?

10 A. Then?

Q. Yes.

A. Well, I don't consider and never did consider that the sale of this property depended on Mecray's settling with the Focer people.

Q. It isn't what you considered. Didn't you have this —

A. He made settlement for this property and the rest of the property with Mrs. Focer.

20 Q. Didn't you have this deed in your possession for the Focer heirs for the express purpose of not delivering it until Mecray paid you the balance of the money due on it?

A. I did not.

Q. You are quite sure of it?

A. Sure.

Q. And you are quite sure that you didn't tell the gentlemen at that time that you were there to get the ten thousand dollars?

A. I did not.

30 Q. And wasn't this the fact, Mr. Eldredge, that after you got there at the meeting, Mr. Mecray then asked you to represent him in the matter?

A. He did not. Mr. Mecray had been to see me before; Mr. Mecray had gotten me to prepare the deed for it, and I made the suggestion to him that Goldman, when he came down, might not have a bond and mortgage prepared, and at his instigation

I prepared the bond and mortgage for Goldman to sign, and I had them all there that day.

Q. That wasn't at the instigation of Mr. Perlstein, was it, that you did that? You are sure you didn't do that for Perlstein?

A. What?

Q. Prepare the deed and the bond and mortgage?

A. At the instigation of Mr. Perlstein?

Q. Yes.

A. I did not.

10

Q. But the fact does remain that on February sixth, at the time this settlement took place, this deed was in your hands, and it was also the fact that Meecray owed the Focer heirs some twenty thousand dollars?

A. Yes, for which he had given his obligation.

Q. For which he had given them a note, you say?

A. Yes.

Q. And that sometime afterwards he gave a mortgage to replace the note for twenty thousand dollars? Can you remember when it was he gave the mortgage? 20

A. No, I can't tell you. It was when he paid on the note. He took up the note and gave the mortgage that was originally contemplated. The original agreement was that he was to give a mortgage for twenty thousand dollars on some of this property.

Q. Didn't he give the mortgage about the time that suit was threatened on this thing?

A. I don't think so.

30

Q. Isn't it a fact, Mr. Eldredge, that, acting for the Focer heirs, you didn't give this deed up so that it could be recorded until he did give the mortgage, and that was in the latter part of May, 1926?

A. That is not so.

Q. I think you said in some part of your cross-

examination, Mr. Eldredge, that you did mention the fact that you were to get ten thousand dollars?

A. I didn't say that.

Q. Well then, tell us what you did say?

A. That Meecray, when he made settlement, was going to make a payment on the note to the Focer heirs.

Q. For how much?

A. I don't recall what the amount was.

10 Q. You don't know whether you mentioned ten thousand dollars?

A. I wouldn't say whether I did or did not.

Q. Do you remember where the discussion took place?

A. It took place up in Mr. Stevens' office.

Q. When did it take place?

A. The morning before that escrow agreement was signed.

Q. On the sixth of February?

20 A. Yes.

Q. You did draw the one hundred and twenty-five thousand dollar mortgage, didn't you?

A. Yes.

Q. Mr. Perlstein offered to execute that mortgage, didn't he, that day?

A. Himself, yes.

Q. And he had a power of attorney for that purpose, didn't he?

A. Not suitable to execute papers.

30 Q. What was wrong with it?

A. In the first place, it wasn't acknowledged, and in the second place it wasn't recorded.

Q. Did you see it?

A. I did. He showed it to me.

Q. Why did it have to be recorded?

A. To pass title.

Q. Do you have to record a power of attorney before you can pass title or execute a mortgage?

A. Well, I wouldn't pass on the mortgage signed under a power of attorney that was neither acknowledged or recorded.

Q. Well now, wait a minute. Did you know at that time that Mr. Perlstein had signed the original agreement of sale?

A. Did I know?

Q. Yes.

10

A. No.

Q. Well, if I tell you that is the fact, you will accept that as the fact, won't you?

A. If you say so, I will take it. I don't know.

Q. That was the fact of the situation, that when the agreement of sale was signed, it was Mr. Perlstein who signed it on that same power of attorney. Now, that day that he came down there and you had the mortgage there, he offered to execute the mortgage, and gave as his authority the power of attorney which he showed you, didn't he?

20

A. Yes.

Q. That is correct?

A. Yes.

Q. And you say that you didn't want that because it was not acknowledged?

A. Well, my memory also is that the power of attorney he showed me didn't give him full authority for the acknowledgment of mortgages or conveying. I won't be sure about it, but that is my memory, but it was not acknowledged nor recorded.

30

Q. Do you remember the paper? Would you remember it if you saw it?

A. Hardly. I don't imagine I would, because I just glanced at it.

Q. Would you remember whether or not this was it, Mr. Eldredge?

A. I couldn't tell you.

Q. You couldn't tell me?

A. No.

Q. You wouldn't say it wasn't?

A. I would not.

Q. And there was nothing to prevent it from being acknowledged that day, was there, or being recorded that day?

A. It wasn't acknowledged, and I asked him where  
10 Goldman was, and he said he was in Philadelphia.

Q. Well, really what the situation was, Mr. Perlstein offered to execute the one hundred and twenty-five thousand dollar mortgage, but you wanted Mr. Goldman to execute it? Wasn't that right?

A. Oh, if Perlstein had a proper power of attorney, duly witnessed and acknowledged, and gave it to us for record with the mortgage, I would have accepted his signature on it as attorney, but not in the way it was presented to me.

20 Q. Then the argument is, whether or not the power of attorney was a proper power of attorney. You proceeded to sit in judgment on that, in other words, and you concluded that it wasn't a proper power of attorney. Is that correct?

A. I did for that purpose, the signing of a mortgage.

Q. And that is why the mortgage was not tendered on that day? Is that right?

A. I don't recall that we said anything more  
30 about it. He said, "I will take it to Philadelphia and get it signed."

Q. He was willing to satisfy whatever requirements you wanted? Wasn't that so?

A. Well, I don't know that he was willing or wasn't willing. He told me he had a power of attorney and I didn't approve of the power of attorney

and then he says, "I will take it to Philadelphia and get it signed by Goldman himself."

Q. But, Mr. Eldredge, you looked at that power of attorney so little that you couldn't even identify it in court here today? Is that right?

A. I couldn't identify the power of attorney. It may be the same one and it may not. I don't know.

---

10

SOL NEEDLES, sworn for the complainants.

Direct examination.

By Mr. Bacon:

Q. Where do you live?

A. Cape May.

Q. What is your occupation?

A. Real estate broker.

20

Q. Were you the real estate broker that negotiated this sale?

A. Yes, sir.

Q. Were you present in the office of Senator Stevens on February sixth, 1926, before they went down to the bank?

A. I was there a while before they went down.

Q. Did you hear any conversation between the parties about postponing the delivery of the deed?

30

Mr. Richards: I object unless he was there and heard all of the conversation.

The Court: I will permit it.

(Question repeated.)

A. Delivery of the deed? No.

Q. And making settlement?

A. Settlement? The matter was referred over to the Merchants' National Bank for escrow.

Q. You did hear some talk about that?

A. Yes. That was understood.

Q. Was there any time set when the deed was to be delivered?

A. No specified time.

10 Q. What was said about it?

Mr. Richards: I object and ask that the answer be stricken out as not responsive.

The Court: I will permit the answer to remain.

(Question repeated.)

20 A. The matter was to be placed in escrow until the title to the property could be cleared up, and then the deed was to be delivered.

Q. Did you go down to the bank?

A. I was there in the bank when the settlement was taking place at that time.

Q. Were you there when Judge Eldredge drew this escrow agreement?

A. Yes, sir, I was there.

Q. Was there any talk there in the presence of Judge Eldredge —

30 A. Everything was agreeable to everybody.

(Objected to.)

Q. Was there any talk there in the presence of Judge Eldredge about when the final settlement was to take place, and if so, what was it?

A. Yes. When the matter was straightened up in regards to the title.

Q. When what was straightened up?

A. Why, these taxes, I imagine, and some other little differences, whatever they may be. They was to remain in escrow until those things were to be settled, and no specified time set for that settlement.

Q. Do you know how they arrived at this sum of sixty-one hundred odd dollars that was paid to Judge Eldredge?

10

A. Well, I don't know. Mr. Listman and Mr. Eldredge was up there doing a whole lot of figuring. I don't know what their figures were, but they all settled on a certain amount and then went in the bank and talked the matter over.

Cross-examination.

By Mr. Richards:

Q. How much of the time were you present during the conversation in Senator Stevens' office?

20

A. Well, I imagine I was there the whole time with the exception of about an hour around noon-time.

Q. There was an hour during the conference that you were not present? Is that right?

A. About an hour of that time, yes.

Q. In the afternoon, when was it you went over to the bank?

A. When they all went in the bank.

30

Q. When was it, Mr. Needles?

A. Oh, I guess in the neighborhood of pretty close to three o'clock.

Q. Pretty close to three o'clock? Close which way? Toward two o'clock or toward four o'clock?

A. Well, it was pretty close to three o'clock.

Q. Before three o'clock?

A. Yes, before three o'clock.

Q. Before three o'clock when you went over there?

A. Yes.

Q. And the talk lasted some time there, did it?

A. Yes. Back in the side room. Back in the main office.

Q. Back in Judge Eldredge's office, wasn't it?

10 A. No. In the bank's office.

Q. I mean in his office in the bank?

A. No, not in his office in the bank. The office in the rear of the bank. His office is in the front.

Q. I mean when Judge Eldredge is acting as president of the bank, this was his office as president of the bank where this took place, wasn't it?

A. In the back office, in the rear of the bank.

Q. Were you in the office at that time or were you outside?

20 A. No, sir, I was in the office at that time.

Q. Were you there all during the time that the conversation went on?

A. Yes, sir.

Q. You were not out at any time?

A. Only when we came out to go out.

Q. So you now say, you want to testify, that from the time that you entered the bank with the other three gentlemen, you heard all of the conversation that took place until you all left together? Is that right?

30 A. In the rear office, yes, sir.

Q. And you were not out of the room at any time?

A. No, sir.

Q. And you want to say that during all of that time there never was any remark made by Mr. Mecray or anybody else that the encumbrances were to be cleaned up within a week or ten days?

- A. I didn't hear that conversation at all.  
Q. Never heard such a conversation?  
A. No.  
Q. And you want to say that no such conversation took place? Is that right?  
A. I say that I did not hear it.  
Q. Well, you would have heard it, wouldn't you, if it had taken place?  
A. If it had taken place I would have heard it.  
Q. Therefore, you want to say that it didn't take place? Isn't that right? 10  
A. I say I didn't hear it.  
Q. Have you any interest in this suit at all?  
A. A matter of commission is all.  
Q. If the defendant has to take this property, you get several thousand dollars in commissions, don't you?  
A. Naturally. Certainly I do.

By Mr. Bacon:

20

- Q. You get paid your commission whether they take the property or not, don't you?  
A. Well, I think I am entitled to it.

By Mr. Richards:

- Q. Do you think you will get it?  
A. Well, I will tell you after I try to get it.

30

JEREMIAH E. MECRAY, sworn for the complainants.

Direct examination.

By Mr. Bacon:

Q. Where do you live, Mr. Mecray?

A. Cape May.

10 Q. Are you the owner of this property in question?

A. I am.

Q. From whom was it purchased in the first place by you?

A. From the Focer estate, the heirs.

Q. No. When you first bought it, when you and Focer first bought it, whom did you buy it from?

A. We bought it from the Knickerbocker or the American Ice Company, the combined company.

20 Q. Do you remember about when that was?

A. It was five to six years ago.

Q. When did Mr. Focer die?

A. He died on Decoration Day, 1924.

Q. As far as you know, did he leave a will?

A. Yes.

Q. Did the title to this property go to his widow and his two children?

A. It did.

30 Q. Did he leave any other heirs except the widow and two children?

A. No, sir.

Q. Was each one of these children married?

A. Yes, sir.

Q. Were you and Mr. Focer engaged in business together?

A. Yes, sir.

Q. What kind of business?

A. Automobile business, both at Cape May and Cape May Court House.

Q. Did you own property at Cape May Court House?

A. Yes, sir.

Q. Did you own property in Cape May besides this building called the Focer-Mecray Building?

A. No, sir. Well, we did on Hughes Street, the property adjoining it on the back street.

10

Q. Sometime in 1924, did you buy out the interest of Mrs. Focer and her two daughters in this property?

A. Yes, sir.

Q. Did you get a deed for it?

A. I did. I did after a month or two. The papers were lost or delayed in transit.

Q. They had to send them out to Chicago to have them signed, didn't they?

A. Yes, sir. I think they went there twice.

20

Q. When the papers got back, was the deed delivered to you?

A. Yes, sir.

Q. Did Mr. Eldredge give it to you?

A. No, sir, I think I got them in the mail direct from Chicago.

Q. What did you do with the deed?

A. I put them in my safe. I had a lot of other papers there.

Q. How did Mr. Eldredge get this deed back when he wanted to draw this new deed to Goldman?

30

A. I gave them to him.

Q. Had they been in your possession the rest of the time?

A. Yes, they had. I had them a considerable time.

Q. You were paid five thousand dollars down, were you, when this contract was signed?

A. This contract for the sale of the property?

Q. Yes.

A. Yes, sir.

Q. That is, when this contract for the sale of this Focer-Mecray building was signed, you got five thousand dollars, didn't you?

A. Yes, sir.

Q. And the time for settlement was set for some time in January, wasn't it?

10 A. Well, I don't know just the day for settlement, but they asked for extensions two or three different times, and I granted them. Each time they paid me five thousand dollars. Once they paid me five thousand dollars and the check went to protest.

Q. But you did get for these extensions additional payments of five thousand dollars on two occasions

—  
A. Yes, sir.

Q. — besides the first five thousand you got?

20

A. Yes, sir.

Q. Do you remember this day when you met in Senator Stevens' office on the sixth of February, 1926?

A. Well, I met several times in Mr. Stevens' office. Most every Saturday they were buying and selling and quite a lot of speculating, and every once in a while they would 'phone to me and tell me to come over there.

30 Q. Did you go there on this day, which was the same day that you afterwards went down to the bank and saw Judge Eldredge?

A. Yes, sir.

Q. Was there any talk that day about a further extension of time? If there was, what was it?

A. If there was, I offered them any further extensions they wanted, but I demanded a suitable payment, and then they gave the whole thing in

escrow. They suggested they put it in the Merchants' National Bank.

Q. And you agreed to that, did you?

A. Yes, sir.

Q. What encumbrance was on this property in the way of a mortgage?

A. There was a mortgage of twenty-five thousand dollars against it.

Q. Were there any taxes against the property, municipal taxes?

A. Only the inheritance tax. I didn't know anything about that.

Q. Well, that tax wasn't due from you, was it?

A. No, sir, it was not.

Q. That was nothing that you owed yourself?

A. Nothing in any way, shape or form.

Q. I mean you had some sort of an adjustment that day, didn't you, on the sixth of February, of taxes, that is, municipal taxes, rents and insurance and one thing and another?

A. Yes, sir.

Q. And as a result of that adjustment you reached this figure of sixty-one hundred dollars, didn't you?

A. Mr. Perlstein had a representative from Philadelphia with him, and he took his portion of his interest out at that time, what was due him.

Q. I say you did have an apportionment of the taxes and other charges up to that time, didn't you?

A. Yes, sir.

Q. That is how you reached this sum?

A. Yes, sir.

Q. In other words, they owed you twenty-five thousand dollars cash, and you got fifteen; they deposited sixty-one hundred, and that left about four thousand dollars that they didn't pay you. What did that represent?

A. That represented the difference of adjustment in taxes and the commission that was due to Mr. Perlstein's attorney or real estate agent in Philadelphia. I forget his name.

Q. Anyhow, you agreed to it?

A. Yes, sir.

10 Q. What time was fixed within which the deed and the mortgage were to be delivered and this money paid over by Judge Eldredge to Mr. Needles and then to you?

A. There wasn't any set time, except that the agreement said that both lawyers must be satisfied, Mr. Stevens and Mr. Eldredge, and just as soon as we got the papers back from Trenton. As far as the mortgage was concerned, I had been to the Camden Safe Deposit and Trust Company and asked for twenty-five thousand, which they granted, and I got it within twenty-four hours after they got the inheritance tax.

20 Q. Did you go up there and make your arrangements and borrow twenty-five thousand dollars?

A. Yes, sir.

Q. How much delay was there after Mr. Eldredge got the inheritance tax paid for the Focer estate, how much delay was there in your getting the twenty-five thousand dollars?

A. There wasn't a minute. Just as soon as I could get the next train out, the next day, I got it.

30 Q. Did you go and borrow twenty-five thousand dollars?

A. I did.

Q. Did you cancel this twenty-five thousand dollar mortgage?

A. I did, yes, sir.

Q. When you brought it back, to whom did you give it?

A. I think I gave it to Mr. Eldredge, because I gave most all the papers that I had to Mr. Eldredge.

Q. There was a lease on that building, wasn't there, to the United States Government on a portion of the property?

A. Well, the whole building was practically leased, the offices and the third story and the first floor.

Q. What became of those leases?

A. I signed them all over and gave them to Mr. 10  
Perlstein and Mr. Stevens.

Q. What do you mean, you signed them all over?

A. I mean they asked for endorsements of them. They were the owners of the property at that time, they were taking it over, and they wanted the leases all in their names.

Q. Did you do this after you and your wife executed this deed?

A. What do you mean, the first deed?

Q. Yes. I show you Exhibit C3. Is that your 20  
signature on that deed?

A. It is.

Q. Is that other signature there your wife's signature?

A. It is.

Q. Did you deliver that deed to Judge Eldredge in accordance with the terms of this escrow agreement?

Mr. Richards: I object. The question calls for a 30  
conclusion. In accordance with the agreement. He delivered it is all right, but to bind up his answer that he did it in accordance with the agreement is a legal conclusion.

The Court: I will permit it.

(Question repeated.)

A. I did.

Q. When was it that you assigned all these leases to Goldman?

A. The day that they accepted the building and we had the meeting in Mr. Eldredge's office when all these gentlemen were present that was mentioned.

Q. What was the agreement about the rents?

10 A. The agreement about the rent was that we adjusted them up to the fourth or sixth of February, and that was the reason that it showed the difference.

Q. To whom did you deliver it, that is, to what person did you deliver the government lease and the other leases?

A. To Mr. Perlstein and Mr. Stevens. He took them and turned them over to him.

20 Q. What arrangement, if any, was made between you and Perlstein as to who should collect the rents after that date?

A. They appointed Mr. Stevens their agent and told me to collect the rents and turn them over to him.

Q. Have you collected the rents?

A. I started—the rents came through right shortly afterwards.

Q. Have you tendered the rents to Senator Stevens?

30 A. I tendered the rents to Senator Stevens and he would not receive them.

Q. What have you done with that money?

A. I deposited it in bank.

Q. Is the money that you tendered to Senator Stevens in the bank on June third, the net rents that you had collected up to that time?

A. Yes, sir.

Q. Have you or have you not been acting as the agent for Goldman in collecting these rents ever since?

Mr. Richards: I object to that.

The Court: I sustain the objection.

Q. Well, have you ever since the sixth of February been doing in the matter of the rents what you and Perlstein agreed on that day? 10

A. Yes, sir.

Cross-examination.

By Mr. Richards:

Q. Mr. Mecray, you say that you got that Focer deed either through the mail or from Mr. Samuel Eldredge shortly after it was executed in 1924. Is that right? 20

A. Yes, sir. I got it in the late 1924 or the first of 1925. I don't know the day.

Q. Well, in all events, you think you got it before the beginning of 1925, is that right?

A. Yes.

Q. And can you be sure where you got it from?

A. No, I don't remember, because I had some other papers pertaining to Focer's —

Q. At that time you hadn't paid the amount of 30 cash that that deed calls for, had you?

A. Well, I did when I took the deeds in the late 1924. I gave her a note for twenty-two thousand five hundred dollars.

Q. That wasn't cash, was it?

A. No, but it was as good as paid.

Q. Was the note endorsed by anybody?

A. It was endorsed by me and I think my wife's endorsement.

Q. It had no other endorsements on it? It wasn't guaranteed by anybody except yourself?

A. It was guaranteed by my wife and myself, which was worth it.

Q. That note was some considerable time after you got the deed, wasn't it?

10 A. No. The note was given when it was first started in 1924. I paid her her interest every month or so.

Q. You mean that at the time this deed was executed, you first gave her a note; is that right? You didn't give her any cash at all?

A. I might have given her two or three thousand dollars in cash or a check.

Q. And the balance you gave a note for?

A. Yes, sir.

20 Q. Did you give her the note before you got this deed back or after you got the deed back?

A. I think it was on the same day.

Q. On the same day?

A. Yes, on the same day we came to an agreement.

Q. Well, you didn't get the deed that day, did you?

A. Oh, no.

Q. You didn't get the deed for weeks after that, or, according to your idea, perhaps months after that?

30 A. Well, yes.

Q. Then when did you give the note? Before or after you got this deed?

A. I gave her the note the day we came to a settlement at Cape May Court House.

Q. And that was long before you got this deed?

A. Yes, sir.

Q. Now, after a while you gave Mrs. Focer a mortgage instead of the note, didn't you?

A. Well, I paid her some money. I sold two or three properties. I sold one of my properties on Stockton Avenue for sixty-five hundred dollars.

Q. We are not particularly interested in that, Mr. Mecray.

A. I wanted to show you where I got the money to pay her.

Q. But you gave her a mortgage in place of the notes, didn't you? Got the notes back and gave her a mortgage? 10

A. Yes.

Q. When did you give her the mortgage?

A. I don't know when I drew the mortgage, but I know I agreed to give her a mortgage on anything that I owned at the time, in 1924.

Q. In 1924, when you came to an agreement over at Cape May Court House, you agreed to give her a mortgage; is that right? 20

A. Yes, sir.

Q. But you didn't give her a mortgage? You gave her a note?

A. I gave her a note and she was satisfied with it.

Q. What did she do? Did she become dissatisfied later and ask for the mortgage?

A. No, sir.

Q. How did you come to give her the mortgage?

A. I suggested it to her.

Q. When did you give it to her? 30

A. I don't remember the date.

Q. Was it in 1926?

A. Yes.

Q. Was it in February of 1926?

A. I don't remember.

Q. Was it in March of 1926?

A. It might have been February.

Q. Are you sure?

A. No, sir.

Q. Are you sure whether it was in March, 1926?

A. No, sir.

Q. Are you sure whether it was in April, 1926?

A. I am not sure.

Q. Was it as late as May, 1926?

A. I don't know when the mortgage was given.

10 Q. Isn't it a matter of fact, Mr. Mecray, that this deed never left Sam Eldredge's possession until after he got that mortgage?

A. No, sir, because if it was, it would have been all right, because Sam Eldredge holds now a tremendous lot of papers of mine.

Q. Didn't he hold this deed for Mrs. Focer and her children until you paid the full amount of this purchase price?

A. No, sir.

Q. Wasn't that the understanding?

20 A. No, sir, because I ——

Q. Didn't you get possession of the deed until you gave him the mortgage?

A. No, sir; never asked for it.

Q. Then why was it you didn't record this deed?

A. I didn't think anything about it.

Q. That is the best explanation you can give why you left the deed to a property worth one hundred and fifty thousand dollars unrecorded for two years; is that right?

30 A. Never thought anything about it.

Q. Why didn't you think of it?

A. Why, I don't know.

Q. Why did it occur to you to record it on the twenty-fourth of May, 1926?

A. Mr. Eldredge wanted to get some descriptions and things, and he said, "This has never been recorded."

Q. So that in 1926, a day or two before suit was started against you for fifteen thousand dollars for the return of this money, is the first time that you thought to record that deed; is that right?

A. I don't know that it was the first time I thought of it.

Q. You said a minute ago in answer to my question that Mr. Eldredge suggested to you to record it at the time that he wanted to record some deeds from it; is that right?

10

A. He had to get the description from it.

Q. But he got that description prior to the sixth of February, 1926?

A. He got those descriptions in February to draw up this deed.

Q. You heard him on the stand a minute ago say that he used this deed to draw the deed to Goldman and the mortgage to you. Then it was in February that he called your attention to the fact that this deed wasn't recorded, wasn't it?

20

A. I don't remember about the date or the month.

Q. And you still didn't record it until the twenty-fourth or the twenty-sixth of May, did you?

A. Well, it shows on there when it was recorded.

Q. That is when it was recorded. Why didn't you do it?

A. I don't know. There wasn't any particular reason for not doing it. Just neglect.

Q. You recall a minute ago when you said that he called your attention to it and that you then had it recorded, don't you?

30

A. I know that I turned the papers over to him, and he said that it wasn't recorded.

Q. And that is the best explanation that you can give of why you didn't record this deed until the twenty-fourth of May?

A. Yes, sir.

Q. And on the twenty-fourth of May the suit was started, wasn't it?

A. Suit was started?

Q. Yes, against you for fifteen thousand dollars by Goldman?

A. I don't know just the date.

Q. You say that Goldman, or Perlstein representing Goldman, or somebody asked you for several extensions on this contract of sale?

10 A. Yes, sir.

Q. Did you mean more than one extension, Mr. Mecray?

A. Yes, sir; two or three.

Q. Two or three?

A. Yes.

Q. When was the first extension?

A. I don't know the date.

Q. You don't remember the date?

A. No, sir, I do not. I am poor on dates.

20 Q. What occasion was there for an extension?

A. Money.

Q. Well now, wait a minute. You want to be entirely frank with us about this transaction, don't you?

A. You go ahead.

Q. If you do, you see, there is some importance attached to this fact, that there was more than one extension. I am now asking you to try to give us your best recollection of when the first extension

30 was asked for and granted by you.

A. It was in January, I think.

Q. That was the first one, in January?

A. Yes, sir.

Q. When was the second one asked for?

A. February.

Q. When was the third one asked for?

A. March.

Q. The third one in March?

A. Yes, sir.

Q. Was there any other after the third one?

A. No others, because it was about March sixth when they decided to put it in escrow, and just as soon as the papers came through —

Q. It was on the sixth of February that it was put in escrow?

A. Well, it was the sixth of February then. I probably made a mistake on March. 10

Q. All right, we have got that mistake out of the way. You now say that they asked you for an extension in February?

A. They asked me for two extensions, which I granted. I won't say what months.

Q. Was the first one prior to January?

A. I don't remember. I do not remember the dates.

Q. Was there any extension asked for, we will say in November? 20

A. I don't remember.

Q. In December?

A. I don't remember the dates.

Q. Or before the sixth of January was an extension ever asked for?

A. I granted every extension that they asked me for and tried to go along with them as a good fellow.

Q. I am not asking you that. You have made a statement here and we want to see how correct your recollection is. Was there ever an extension asked for before the sixth of January, 1926? 30

A. I don't remember what dates or months they were. I know I granted them anything they wanted.

Q. Then you can't remember any extensions before that date, but will you tell us whether or not they asked for such an extension?

A. They asked for two extensions and I granted them.

Q. Your contract provided for settlement on the fourth of January, 1926. Obviously, they couldn't have asked for any extensions before that, could they?

A. Surely, because they paid five thousand dollars—a credit each time of five thousand dollars, and their first deposit money was to have been  
10 twenty-five thousand.

Q. Twenty-five thousand?

A. Yes, sir.

Q. Where is that in the agreement? Your agreement was that they were to pay you five thousand dollars on the signing of the agreement, the date hereof, five thousand dollars on the first day of December and settlement to take place on January fourth, 1926, at which time the sum of fifteen thousand dollars was to be paid in cash. They paid you  
20 and you got five thousand dollars when you signed this agreement, didn't you?

A. Yes, sir.

Q. And on the first of December you got five thousand dollars?

A. Yes, sir.

Q. So there wasn't any money due until the fourth of January, was there, so you couldn't have granted them any extension before the fourth of January, could you?

30 A. I thought I did.

Q. You didn't, did you?

A. I don't know.

Q. And then on the fourth of January you signed an agreement extending the time of settlement to the sixth of February upon their paying you five thousand dollars, didn't you?

A. I remember they paid me five thousand dol-

lars. I don't remember whether I signed that agreement or not.

Q. As a matter of fact, your memory is very keen when they paid you money, isn't it?

A. I probably know the day or date.

Q. Not so keen on the other sides of this subject, is it? Let us get back to the sixth of February. The sixth of February rolled around and that was the time for the settlement again, wasn't it?

A. Yes, sir.

10

Q. At that time did you grant them an extension, on the sixth of February?

A. Came to an agreement that —

Q. Did you grant them an extension?

A. Yes.

Q. You did?

A. Sure.

Q. Where is the evidence of it?

A. Your escrow paper shows that extension, because they was perfectly satisfied to it, and it was 20 their suggestion.

Q. Is there anything in that escrow agreement about an extension of time?

Mr. Bacon: It seems to me that this witness is entitled to answer one question before another one is put.

The Court: That is true.

(The previous answer was repeated.)

30

A. It was their suggestion that these papers be taken to the Merchants' National Bank and when the inheritance tax and papers that were fixed up, they were to be turned over.

Q. Why did they want an extension as to that?

It was up to you. You had agreed in this agreement to give them a clear title to this property, and on this day there was a lien on it.

A. What kind of a lien?

Q. The State inheritance tax.

A. That wasn't my fault.

Q. It was a lien against the property you had agreed to convey.

A. We had been trying and working to get it.

10 Q. It was for you to clean that up. You hadn't cleaned it up on that day. They didn't want an extension because you hadn't done your part, did they?

A. They certainly did. They asked for it and suggested they would put it at escrow.

Q. I don't want you to get mixed up in any legal language, but do you want the Vice-Chancellor to understand that they asked for an extension because you couldn't clean up those taxes on that day?

20 A. They absolutely suggested that they take this money to the Merchants' National Bank and leave it in escrow until the payments came through, and at which time both lawyers must be satisfied.

Q. And you now want to say that they asked for that extension?

A. It was their suggestion. It was. I didn't know what the word escrow meant, the exact word of it.

Q. It didn't mean extension, did it?

30 A. It did when they put it at escrow, in keeping.

Q. Look here. You also hadn't cleaned up the twenty-five thousand dollars, had you?

A. Hadn't what?

Q. The twenty-five thousand dollar mortgage, you hadn't cleaned that up, had you?

A. I had arranged for it once before and I could have gotten it in twenty-four hours, but it was use-

less to do it for the simple reason the papers hadn't come back from Trenton, but the minute the papers came back from Trenton—for instance, they came back on Friday; the next day I went to Camden and got the money and paid that off.

Q. That was all ancient history. That was all back in the latter part of May. We are talking about February now. Please confine ourselves to one thing at a time. On the sixth of February you had the mortgage there, and it wasn't cancelled, was it? 10

A. No, sir.

Q. And you say that on the sixth of February you could have gotten the money to pay off the mortgage from the Camden Safe, is that right?

A. Yes, sir, I got the mortgage from the Camden Safe.

Q. Why didn't you have it cancelled that day?

A. Because the papers hadn't come back from Trenton, and if I had had it cancelled six months before, I wouldn't have been any better off. 20

Q. You couldn't have given title that day because you hadn't got the inheritance cleaned up?

A. That wasn't my inheritance tax.

Q. But you did have the money on tap at the Camden Safe so that all you had to do was to call upon them and they would have given you the money; you could have walked over to the clerk's office and cancelled the mortgage; that is right, is it?

A. Yes, sir.

Q. That is your statement? 30

A. Yes, sir.

Q. You want to stand by that, do you?

A. I do.

Q. Why did you put in the escrow agreement, then, the statement that they were to take the one hundred and twenty-five thousand dollars and upon agreement with the Camden Safe they were to loan

you the twenty-five thousand dollars? Why did you put that in there?

Mr. Bacon: I object to that question, because there is no testimony in this case that indicates that Mr. Mecray drew that paper, and Judge Eldredge has already stated that he drew it and is responsible for it, and therefore to ask this man why he put it in there is to misstate the facts.

10

The Court: This witness signed it.

A. Well, that money I would have gotten if I couldn't have gotten the cash and used this as collateral, but I had gotten the cash and it wasn't necessary.

Q. But you told us a minute ago that you were going to get the money without any other condition except go up there and get it. Then why on that day did you put that clause in that paper?

20

A. Well, I don't know just—I didn't word this. I know that I could have gotten it either way, either on a mortgage or got it on endorsement.

Q. Isn't it the truth of the matter that the situation was that you hadn't any agreement whatever with the Camden Safe, that you only hoped to be able to take that one hundred and twenty-five thousand mortgage when you got it up there, and that then they would consider whether or not they would loan you twenty-five thousand dollars on that mortgage?

30

A. It was not necessary. I had been to the Camden Safe Deposit Company two or three months before this and went to Mr. Tomlinson.

Q. Didn't you tell Perlstein, Stevens and the rest of them that you were going to take that mortgage

up there and hypothecate it for a loan of twenty-five thousand dollars?

A. I might have told them that once before that.

Q. Didn't you tell them that around the sixth of February?

A. No, sir, I did not.

Q. Wasn't that the reason why you put that in the agreement there?

A. No. When the agreement was first made in the fall, the Camden Title and Trust Company told me they would loan me the money. 10

Q. Why did you put that in there on the sixth of February?

A. Well, I don't know. It was all right, either one of them.

Q. You don't know why you put it in? That is your answer to that?

A. I didn't put it in.

Q. Who did put it in?

A. Well, it was written. I signed it.

Q. Well, did Eldredge put it in? 20

A. He wrote the escrow agreement.

Q. Judge Eldredge?

A. Yes.

Q. Where did he get the idea?

A. Well, he and Senator Stevens and Perlstein had made up the agreement and they read it over.

Q. You were there?

A. Absolutely.

Q. Judge Eldredge knew nothing about the matter before this day, did he? 30

A. No, sir.

Q. He didn't draw this thing out of the atmosphere or what happened to you several months before? He got it from what you said that day, didn't he?

A. He drew it out of the atmosphere of the knowledge of a lawyer, the same as you would draw.

Q. He probably knew there was money at the Camden Trust, but he had no knowledge you were going to get twenty-five thousand dollars there, did he?

A. We talked it over for half or three-quarters of an hour.

10 Q. And it was during that conversation that you had you wanted to take this one hundred and twenty-five thousand dollar mortgage up there and hypothecate it for a loan of twenty-five thousand dollars to pay this mortgage off, didn't you?

A. I might have said it, but it wasn't necessary, because I had the money before then, had the agreement to it.

Q. That is your statement about it now?

A. Absolutely, and it was then.

20 Q. And the situation is that on the sixth of February you didn't have the mortgage cancelled, the twenty-five thousand dollar mortgage, although you could have had the money to have cancelled it, and you didn't have the inheritance tax off of there, although you had made this agreement to deliver a perfect title on the twenty-eighth of August preceding this settlement?

A. The twenty-eighth of August? The agreement was for February sixth for settlement.

30 Q. That was six months you had in which to get those taxes off?

A. They didn't want any quicker settlement, because they asked extensions two or three times.

Q. But they did want it on the sixth of February, didn't they?

A. Yes, sir.

Q. And you wanted it on the sixth, didn't you?

A. Not particularly.

Q. Look here, Mr. Mecray. Didn't Mr. Perlstein suggest that inasmuch as you were not ready to give them the title, that they extend the date of settlement for another month, and didn't you refuse?

A. There was no specified time —

Q. And didn't you say that you wanted a settlement that day, and wasn't it after that they suggested the escrow proposition?

A. No, sir. I never demanded settlement. I was going along with them any way they wanted, and it was extension after extension. Anything they wanted. 10

Q. Then why didn't you give them an extension that day?

A. They didn't have the money two or three times to pay the full amount.

Q. They put it up that day.

A. It was one of the months before that they gave me a check that wasn't any good. How could they give me twenty-five thousand when they couldn't give me five? 20

Q. The check was paid, wasn't it?

A. It was paid afterwards.

Q. Five thousand dollars?

A. Yes.

Q. On this day that you say they didn't have the money, they put up with the bank sixty-two hundred dollars, didn't they?

A. That was a month or two afterwards.

Q. No, it wasn't.

A. I know better. 30

Q. Your own witness, Judge Eldredge, says it was paid that day, given to him, and he has got it yet.

A. The check before that was a month before that.

Q. We are talking about the sixty-two hundred dollars. You say that —

A. That was paid on February sixth.

Q. That is just the time we are talking about, the settlement, and on that day you say they didn't have the money. I point out that they paid sixty-two hundred dollars, all the money that was coming.

A. Absolutely, on February sixth.

Q. Then they did have the money, didn't they?

A. On February sixth they had sixty-two hundred and some dollars.

10 Q. What did you do about cleaning up those inheritance taxes after the sixth of February?

A. It wasn't up to me to clean up Mr. Focer's inheritance taxes.

The Court: That is not the question. Strike it out. It is not responsive to the question.

Q. Did you think it was up to you to clean up those taxes, or didn't you?

A. No, sir.

20 Q. You didn't think it was up to you?

A. I didn't see where it was. They was working on them, doing everything they could. You know how things were tied up with real estate deals and taxes last year.

Q. I don't monkey with that kind of thing, so I don't know much about it. Nevertheless, you didn't think that you were under any obligation to clean these taxes up, did you?

A. Why, absolutely I was.

30 Q. A minute ago you said you didn't think so.

A. I said I wasn't responsible for Mr. Focer's inheritance tax.

Q. Well, did you think you were responsible for having it cleaned up?

A. Not personally, no. That was turned over to Mr. Eldredge and he was working on it day and night.

Q. He was?

A. Yes, sir.

Q. Day and night?

A. Yes, sir.

Q. Did you ever go to him and ask him to hurry it up?

A. I went to Trenton with him. We got home at night, so he was surely working on it.

Q. When was that? When did you go to Trenton with him?

10

A. The day he got it and the day he wrote out that check.

Q. That was on the eighteenth of May I think he said?

A. Yes, sir.

Q. Did you ever do anything during the month of February, after the sixth of February on the subject?

A. I didn't personally, but he had written several letters to Trenton and they couldn't get an adjustment or couldn't get a ———

20

Q. You never went to Trenton during that month?

A. No, sir.

Q. You never went to Trenton during March?

A. Only once.

Q. You didn't go in April and you didn't go in May until the eighteenth of May?

A. No, sir.

Q. Why was it you went to Trenton on the eighteenth of May?

30

A. We thought they were slow in returning the papers.

Q. Wasn't it because on the Saturday before you had a conference with Mr. Gray in Senator Stevens' office and Mr. Gray had told you that they were going to bring a suit against you for the return of this fifteen thousand dollars?

A. I don't know as that is just exactly the reason we went there, but it might have been.

Q. That might have been the reason? You say nothing was ever said about any time being set when these encumbrances were to be cleaned off; that is right, is it?

A. Yes, sir.

Q. And you want to say that you never said at any time during this conference in Senator Stevens' office on the sixth of February that you would have  
10 these things cleaned off within a week?

A. I don't remember of it. I did not, no.

Q. You didn't say that?

A. No, sir.

Q. And you didn't say over in Judge Eldredge's office in the bank that you would have them cleaned off in ten days?

A. No, sir.

Q. And nothing was said about them wanting im-  
20 mediate possession of this property?

A. No, sir.

Q. When was it that you first knew that Goldman and Perlstein and the rest of them were insisting on the immediate consummation of this contract?

A. I don't know.

Q. During February, did they ever come to you and say that they wanted you to do something about this property?

A. Not as I remember.

Q. Did they come to you during March?  
30

A. I don't remember the months or dates.

Q. Do you remember whether they came to you during April and insisted that you do something about cleaning up these exceptions or giving them title?

A. No. I remember they telephoned to me and asked me to come up to Mr. Stevens' office.

Q. Did you go?

A. I certainly did.

Q. What happened up there?

A. They just talked things over and wanted to know how I was getting along.

Q. That was all that happened?

A. As far as I remember.

Q. Do you remember whether or not in March they served a written notice on you to either give them the title to the property or their money back? 10

A. No, sir.

Q. Do you deny that?

A. I deny it.

Mr. Richards: I call upon you to produce a notice of March twenty-second, 1926, addressed to Mecray and signed by Lewis T. Stevens for Isador Goldman.

Mr. Bacon: Mr. Mecray tells me that he has never received any such notice. 20

Q. Mr. Mecray, I show you a carbon copy of a notice dated March twenty-second, 1926, addressed to you and signed by Lewis T. Stevens, and ask you if on that date Mr. Stevens didn't hand you that notice?

A. No, sir.

Q. And it wasn't read to you at that time?

A. No, sir, it was not.

Q. I ask you whether or not on April seventeenth, 1926, another notice, whether or not another notice was served upon you, signed by Lewis T. Stevens, attorney for Isador Goldman? 30

A. Let me see it, please.

Q. I am asking you whether or not such a notice was served on you?

A. No, sir; I haven't any recollection.

Mr. Richards: I call for the original of this.

Mr. Bacon: I make the same answer.

Q. I show you a carbon copy of notice sent to you of April seventeenth, 1926, signed by Lewis T. Stevens, and ask you if that notice wasn't served personally upon you by Senator Stevens?

10 A. No, sir. He called us up in his office for a conference, but I never had any notices served on me of either character.

Mr. Richards: I ask that those two notices be marked for identification.

(The papers referred to were marked D1 and D2 for identification.)

20 Q. So that on or about March twenty-second, no demand for the delivery of the post-office building in Cape May, New Jersey, within five days from that date, together with the deed and other papers belonging to the ownership of the same, was ever made upon you?

A. Not to my recollection.

Q. And no demand was made that in lieu thereof, that mortgage and bond and moneys paid for the purchase be returned?

A. No, sir.

30 Q. And this is the first time you ever heard of such a notice?

A. No, sir, they talked that over in their office a couple of months after that, just a few days before we had the papers.

Q. They did? Is that the first time you ever heard of this notice?

A. Yes, sir.

Q. Did you deny that you received such notice at that time?

A. Nothing was ever said about it. There was no occasion to deny it.

Q. Did you ever talk to Mr. Gray about that notice?

A. Mr. Gray was up in the office when the whole thing was discussed, but I don't know whether that particular notice was discussed or not.

Q. Didn't you admit to Mr. Gray that you had 10 received that notice?

A. No, sir, I did not.

Q. On or about the seventeenth of April was a notice ever served upon you in which demand—was any demand, either verbal or written, made upon you around that date, whereby you were requested to return to Goldman the money paid on account of the purchase of the post-office building, to wit, twenty-five thousand dollars, together with interest?

20

A. I couldn't, because they never paid me twenty-five thousand dollars with interest.

Q. Hadn't they paid you twenty-five thousand dollars?

A. They paid me fifteen thousand dollars.

Q. They had only paid you fifteen thousand?

A. That is all they have paid me up to today. The other is in escrow. It is no more mine than anybody else's. That wasn't twenty-five thousand, because they took out their broker's commission 30 from Philadelphia.

Q. You admitted that that was the balance of fifteen thousand dollars, which was in escrow, was all the money that was remaining to be paid in cash, wasn't it?

A. I was to get seventeen thousand five hundred.

Q. And that you would have gotten if you had performed your agreement, wouldn't you?

A. Yes, sir.

Q. I don't think you answered my question, though. You started in about the twenty-five thousand. You say that such demand was never made on you?

A. No, sir.

10 Q. And you didn't admit to Mr. Gray when he was there on the fifteenth of May that this demand had been made on you?

A. I absolutely did not.

Q. You never knew that Goldman was insisting on the immediate delivery to him of this property within a week or ten days after the —

A. There was no time set.

Q. Wait a minute.

20 (Question repeated.)

Q. — sixth of February, 1926?

A. I did not. There was no set time made.

Q. Did they ever at any time ask you for the delivery of the property?

A. A few days before we made delivery, I think it was Mr. Gray, the first time he was over to Cape May he was up in Mr. Lew Stevens' office and talked the whole thing over.

30 Q. And that was the first time?

A. The first time I had ever seen Mr. Gray.

Q. Then was the first time you got busy, wasn't it?

A. No more so than I had always been busy.

Q. But when Gray got after you on the fifteenth, you went to Trenton on the eighteenth, you recorded your deed on the twenty-fourth and you recorded

your cancelled mortgage on the twenty-fourth, didn't you?

A. Whatever dates are on the papers are right.

Q. Well, they are the dates that they bear.

Mr. Bacon: You don't mean that, do you; ask him if he recorded the cancelled mortgage and then ask him to stand by it?

Mr. Richards: I did not mean to ask him that. I 10  
meant to ask him whether or not he had cancelled the mortgage on that date.

Q. You said that you turned these leases over to Mr. Perlstein. Is that correct?

A. The leases?

Q. Yes.

A. Yes, sir.

Q. You did?

A. Yes, sir.

Q. Now, as a matter of fact, didn't you turn them 20  
over to Senator Stevens?

A. Perlstein and Stevens was together. He handed in a blank envelope over to him and told him to take care of them.

Q. And Stevens has them at the present time as far as you know?

A. I couldn't say that.

Q. You say that you collected the money?

A. Sure.

Q. Why?

A. Because I was told to. 30

Q. By whom?

A. Perlstein and Stevens, and when Stevens came to take it, he said he hadn't anything in writing and he wasn't going to take it until he had the proper papers.

Q. Then what did you do with the money?

- A. I deposited it in bank.
- Q. In a separate account?
- A. Yes, sir, special account, marked it "Jeremiah E. Mecray, Special."
- Q. Is it still there?
- A. Most of it. I paid the taxes, half of the taxes, and the water rent out of it.
- Q. How much was that?
- A. Why, about between eleven and twelve hundred dollars.
- 10 Q. What bank was it deposited in?
- A. Merchants' National Bank.
- Q. Have you got the book there?
- A. Yes, sir. I only paid two checks out. The rest—one was for the taxes. The water rent was sixty-four dollars and five cents, and the —
- Q. What rent did you put in there, Mr. Mecray?
- A. I put in everything.
- Q. What is everything?
- 20 A. Well, I can show you.
- Q. Post-office rent?
- A. Everything except mine.
- Q. Yours isn't in there?
- A. No, I didn't put it in.
- Q. How much was your rent?
- A. It was twenty-five hundred dollars a year.
- Q. That isn't in the special account?
- A. No, sir.
- Q. That you didn't pay?
- 30 A. What say?
- Q. That you haven't paid?
- A. No.
- Q. So really the rents you have put in this account are the post-office rent and the other rents for the other parts of the building?
- A. Yes, sir.

Q. Just the same as though it was your own building?

A. Yes, sir.

---

LEWIS T. STEVENS, sworn for the complainants.

Direct examination.

10

By Mr. Bacon:

Q. Senator, you are a lawyer practicing your profession in Cape May?

A. Yes, sir.

Q. On or about February sixth, 1926, did Mr. Me-cray turn over some leases to you?

A. He did.

Q. What leases did he turn over?

A. I can't answer what he turned over, except that this is the packet and these are the leases in the packet which he turned over to me.

20

Q. Who was present when he turned them over?

A. Mr. Samuel F. Eldredge, Mr. Perlstein, Mr. Schaeffer, Mr. Listman, two or three others whom I do not now recall.

Q. State the circumstances under which the leases were turned over to Mr. Perlstein and by Perlstein to you, or however they were turned over.

A. They were handed to me to keep the same length of time as it took to settle the matter of title under the escrow agreement. In other words, I had these while the bank had the rest of it and Mr. Eldredge and I under the agreement, when I was satisfied that title was good, was to take the deed, and of course then I would take these and turn them

30

over, so that I am a sort of an escrow holder of these as attorney for Mr. Goldman.

Q. What do you understand that there is in that package that you hold in your hand?

A. These leases are each enclosed in an envelope, and on the outside of one envelope is, "United States Post Office Department." The next one is "Standard Oil Company." The next one is "Masonic Lodge." The next one is "Women's Community Club." The next one is "Women's Odd  
10 Fellows." The next one is "Women's Community Club." The next one to that is "P. O. S. of A. Lodge." The next envelope is "T. Millet Hand." The next one is marked "Standard Oil Company." The next one is "Christian Science Room." The next one is "P. O. S. of A." The next one is "Rutherford and Miller." And the next one is marked "Odd Fellows' Lease." There  
20 are thirteen envelopes containing leases that are either in force or have expired.

Q. Is it your understanding that those leases that are in that package cover portions of the Foccr-Mecray building referred to in the escrow agreement that you and Mr. Eldredge signed in the bank on February sixth, 1926?

A. I don't recall that the word leases is in the escrow agreement.

Q. I didn't ask you that.

30 (Question repeated.)

A. Yes. I didn't sign the escrow agreement. Mr. Mecray and Mr. Perlstein signed that.

Q. That is right, Senator. I was thinking you signed that. Well, you know what I mean. You know the escrow agreement I refer to.

A. Yes.

Q. When these leases were turned over to you to be held for the purposes you have stated, was it or was it not the understanding that you were to collect the rents?

A. No, sir.

Q. What was the understanding as to who was to collect the rents?

A. No agreement made with me with regard to the collecting of the rents.

Q. Not at all?

10

A. None.

Q. Is that the reason you declined to take the rents from Mr. Mecray?

A. Yes, sir. I had no authority from anybody to take rents.

Q. He did tender you the rents, did he?

A. Yes, he tendered me the rents around the time—about the twentieth or twenty-fourth or twenty-fifth of May.

Q. And you wouldn't take them because you didn't think your holding those leases authorized you to collect the rents?

20

A. No, and for the reason that I knew the title to the property wasn't yet cleared.

Cross-examination.

By Mr. Richards:

Q. Now, Senator, you say that you were to hold these leases the same length of time that it took to complete the escrow agreement. Is that my understanding of your testimony?

30

A. My understanding was that they were part and parcel of the settlement, and I had them pending the completion of the settlement, exchange of the deed for the mortgage.

Q. You were asked by Mr. Bacon how long you were to hold them, and you said to him that you were to hold them as long as it took to consummate the escrow agreement. Is that right?

A. That was my understanding.

Q. Now, was anything said about how long it was to take to complete the escrow agreement?

Mr. Bacon: Of course, that is objected as not  
10 proper cross-examination, but if Senator Richards wants to examine Senator Stevens, as a matter of accommodation, I will not interpose any objection.

Mr. Richards: No, I do not want to do it as a matter of accommodation. I want to do it because I think he opened the door to it, and I think I have a right to do it.

The Court: I will permit it.

20 A. On the morning of the sixth of February, when the settlement was about to start, someone said, "Are we ready for settlement?" and Mr. Mecray said, "Well, we will settle now," and at the time it was determined to put the money in bank in escrow, Mr. Mecray made the statement that this matter ought to be settled up in ten days. No, I am mistaken. That this matter ought to be settled up in a week.

30 Q. Was anything else said at any time that day relative to when the escrow agreement was to be performed?

A. I do not recall any other statement. Not in my office. This was in my office.

Q. Was anything said later in the day about the time of performance? Was anything said over in the bank?

A. Well, I have a recollection that somebody said something ought to be done in ten days in the bank, but I don't recall who said it.

Q. You don't recall who said that?

A. No.

Q. But Mr. Meecray said the settlement should be completed in a week?

Mr. Bacon: I object to that on the ground that it permits leading questions of his own witness, and I object to it. 10

The Court: I will sustain the objection upon a different ground: On the ground that he has already testified to the fact and this is simply a repetition.

Q. Then these leases were to be turned over to Mr. Goldman about a week after you received them; that is right, is it? 20

Mr. Bacon: I object to that as leading.

The Court: I will permit that.

A. These leases were to be turned over when I was satisfied the title was good.

Q. Yes, but that was to be done, you said, when the escrow agreement was performed, and you have just fixed the time for the completion of that agreement as about a week after it was executed? 30

(Question objected to.)

(Objection sustained.)

Q. Have you ever examined the leases which are in that folder, Senator?

A. Yes, because I —

Q. Are they all assigned to Mr. Goldman?

A. On each one I wrote at the time a brief assignment and Mr. Mecray signed them, except the post-office lease, which was explained to me that the post-office lease couldn't be assigned without the consent of the post-office department. Therefore, I didn't  
10 put any—I don't remember of having any signature made to that, in order not to —

Q. Has that consent ever been had?

A. I don't know.

Q. Was there any lease in there from Mecray?

A. I do not recall any.

Q. There is none there now?

A. No.

Q. Well, was there any there at that time?

A. This is all that I received.

20 Q. He is also a tenant there, isn't he? He is also there?

Mr. Bacon: We will admit it, that he is a tenant.

Q. He is also there in the premises at the present time, isn't he?

A. Yes.

Q. And in that agreement of sale down there he would still have remained a tenant, wouldn't he?

30 A. I couldn't tell you without reading the agreement.

Re-direct examination.

By Mr. Bacon:

Q. Well now, Senator, you say that at the time of this conversation that somebody said that this title ought to be cleaned up in a week. Did anybody promise that it would be cleaned up in a week?

A. No, I didn't understand anything.

Q. You approved this escrow agreement, didn't 10  
you, that Judge Eldredge drew?

A. Well, I don't—the agreement was approved by Mr. Perlstein and Mr. Listman and Mr. Schaefer and Mr. Mecray.

Q. You were their attorney in this transaction, weren't you?

A. I was acting as sort of an attorney, yes.

Q. You didn't insist on having that put in the agreement, did you, at that time?

A. I didn't have anything to say about what ap- 20  
peared in the agreement.

Q. Did you suggest that Judge Eldredge should put in this escrow agreement a limitation of time?

A. I wasn't even asked to make any suggestion.

Q. Was there any discussion as to what these encumbrances were on the property?

A. Just a general discussion that there was a mortgage for twenty-five thousand dollars and the unpaid inheritance taxes.

Q. You have had some experience in getting in- 30  
heritance taxes assessed by the comptroller's department at Trenton?

A. Yes.

Q. Do you find sometimes that it takes a little longer than a week to get them through?

A. Yes.

Q. You have found sometimes that it takes a great many weeks to get them through?

A. Yes, about a month or two months, usually.  
By Mr. Richards:

Q. Did you ever hear of it taking two years, Senator, to get one through?

A. Well, I have never heard, no.

Q. Until you heard of this case?

10

Mr. Bacon: I object to that. There is no testimony here that it took two years to get it through.

The Court: I sustain the objection.

Mr. Bacon: I offer those leases only for the purpose—I do not care to leave them here or anything of that sort. I make a formal offer of the leases in evidence for the particular purpose of showing that  
20 they were actually assigned in so far as it appeared lawful to assign them. I will not make any point of the leases themselves.

Mr. Richards: My colleague suggests that we have no right to make that concession. We are willing to have them stand as they are, such as are assigned and such as are not assigned.

Mr. Bacon: All right. I will withdraw the characterization. I guess you are right about that.  
30

The Court: They will be admitted.

Mr. Bacon: I do not want to ask Senator Stevens to leave them here.

The Court: It is not necessary at all.

Mr. Richards: I think it appears on the record already that they were assigned with the exception of the post-office lease and that that was not assigned?

The Court: Yes.

Mr. Richards: And that there was no lease from Meecray?

Mr. Bacon: All right.

10

COMPLAINANTS REST.

---

DEFENDANTS' TESTIMONY.

WILLIAM A. GRAY, sworn for the defendants.

20

Direct examination.

By Mr. Richards:

Q. Mr. Gray, you are a practicing attorney, member of the bar of the State of Pennsylvania?

A. I am.

Q. In May of 1926, did you become interested in this agreement as counsel for Mr. Goldman?

A. I became interested as counsel in May of 1926, 30 though I had a personal interest also in the matter, Senator, prior to that time, and had been spoken to about the matter by the other parties in interest that have been named here today. I became active in it in May of 1926.

Q. Will you describe to the Court just exactly

what your activities were in connection with it in May?

- A. I had knowledge—without stating what was told me, I had knowledge of what my clients had advised me with reference to the events that had been transpiring during the spring. I believe that it was on the fifteenth of May—I know it was a Saturday, and I came to Atlantic City on Saturday, the first day of May, to stay for the summer, so that it
- 10 was either the eighth or the fifteenth, but I believe it was the fifteenth of May that I went down to Cape May with Mr. Schaefer, Mr. Listman and Mr. Perlstein. We went to Mr. Stevens' office. I had never met Mr. Mecray. Mr. Mecray came to Stevens' office, whether by a telephone message or whether he was sent for I do not remember, but he came to the office there and I told him that I was representing these gentlemen, along with Mr. Stevens, and wanted to know what he was going to do. I
- 20 called his attention to the fact that on the twenty-second day of March there had been served on him a notice that they wanted this contract complied with. I called his attention to the fact that on the seventeenth of April the money was demanded. Those notices, or rather, the carbon copies which you have here produced, were in front of me at that time. I don't say that Mr. Mecray either said he received them or he didn't receive them. I don't recall. I don't recall what his answer was as to
- 30 that, but I told him that I was down there to take up with Mr. Stevens the question of instituting suit, and if he didn't pay us back the money we were going to institute proceedings immediately, because he could not, evidently, give us a clear title. Mr. Eldredge came in, that is, Mr. Samuel Eldredge, I believe it is, during the course of the talk, just at what stage I don't recall. The only thing I remem-

ber Mr. Mecray telling us definitely when I spoke to him about paying back the money, he said, "If I do, who has got to pay the commissions and costs in this case?" My recollection is that Mr. Eldredge was there at the time, and he turned to Eldredge and asked him about the matter, and he said that if the money was paid back he would have to stand it. At least, I told him that, I know, myself, but we left without any promise of having anything done at all, but left with the understanding we were going to institute suit, and certain information Mr. Stevens wanted was sent to him from Philadelphia on Monday so that he could institute suit immediately. That is the only time I came in contact with Mr. Mecray. 10

Q. On the fifteenth of May you told Mecray —

Mr. Bacon: I object to that as leading.

(Objection sustained.)

20

Q. On the fifteenth of May, did you or did you not make a specific demand for the return of the money that had been paid to Mecray or was still in the Merchants' Bank and which had been paid there as a result of this contract of sale?

A. I did in this manner; I called Mr. Mecray's attention to the fact that a demand was made on him on, I believe it was the seventeenth of April. I told him we wanted our money and asked him what he was going to do about it. 30

Q. What did he say to that?

A. My only recollection, Senator, of any definite language was that if he paid it back who was going to pay the commissions and what did he have to do with it, but he certainly did not say that he would pay it back.

Q. Did he admit or deny that he had received the demand for the return of the money or the conveyance of the property on the twenty-second of March?

Mr. Bacon: I object to that. Mr. Gray has very fully and frankly stated what happened. We have had all that.

10 The Court: I think we have had the answer. He says he is unable to tell the words of the reply.

Mr. Richards: This is a different question. My question now is addressed to whether or not he denied having received the notice.

The Court: I will permit that.

20 A. The question is whether he denied it? He did not deny it.

Q. Did he deny having received a notice on April seventeenth, 1926?

A. He did not deny it.

Q. As you understood it, you had at that time that you made this statement to him these two papers in front of you marked for identification D1 and D2?

A. I did.

Q. And did you read them to him?

30 A. I did not.

Q. Did you tell him that they were demands or copies of demands?

A. I did not.

Q. Did he see them?

A. That, Senator, I would not like to say. I was sitting there at the end of the table. The papers were in front of me, and as I was talking to him I

was handling them and referring to them, saying, "You got a notice on such and such a date and you got a notice on such and such a date and I am down here today for the purpose of having this suit instituted and I want to know what you are going to do about it." He didn't deny it, but for me to say that he looked at them, saw them, recognized what they were, I can't say.

Cross-examination.

10

By Mr. Bacon:

Q. You knew, I suppose, Mr. Gray, at that time, did you not, that the deed and the bond and mortgage and the six thousand dollars were in the hands of Judge Eldredge?

A. I did.

Q. Did you go up to the bank and make any demand on Judge Eldredge? 20

A. I believe we did. We went to the bank, but whether or not I made a formal demand or whether or not—I met Judge Eldredge there that day, or whether we just talked the matter over and told him Stevens was going to make a formal demand on him I do not remember. I was there, you will remember, Mr. Bacon, at the time, in the capacity of counsel and rather didn't anticipate the necessity of being a witness. I mean by that, that I didn't make any memorandum such as I might have prepared in the trial of a case. 30

Q. You let Senator Stevens do the talking?

A. No, I won't say that. I am not in the habit of letting anybody else do it while I am around if I can help it.

Q. About all that you did up at the bank was,

wasn't it, Mr. Gray, that you asked Mr. Eldredge to let you see the escrow agreement?

A. I did that. I remember that very distinctly, and he very kindly showed it to us.

Q. He got the escrow agreement out and showed it to you?

A. Yes. I wouldn't say I made a demand on Judge Eldredge to return the money. We went in there, saw the agreement, discussed the thing for a moment or two. Of course, I understood what his position was, that he was simply a stakeholder.

(Recess taken until Friday, October fifteenth, 1926, at 10 A. M.)

20

30

Atlantic City, N. J., October 15, 1926.

(Trial of the cause resumed at 10.00 A. M.)

---

HARRY W. PERLSTEIN, SWORN.

Direct examination.

10

By Mr. Richards:

Q. Mr. Perlstein, what is your profession?

A. Manufacturer of ladies' wear, Philadelphia.

Q. Did you have some business dealings with Mr. Mecray with relation to purchase of the property that is now in dispute, the post-office property?

A. I did.

Q. When did you do that and were you acting for yourself or for some one else? 20

A. I was acting with a power of attorney for one Isador Goldman and I believe that the first transaction was sometime in August, 1925.

Q. Now did that negotiation result in an agreement of sale for the post-office property?

A. For the post-office property.

Q. And that is the agreement that has been offered in evidence here?

A. That is right.

Q. Who signed that agreement? 30

A. That was drawn up by Sol Needles, in Sol Needles' office. I executed the agreement.

Q. You executed it for Goldman?

A. For Goldman.

Q. Under your power of attorney?

A. That is right.

Q. Did you pay the five thousand dollars at the time the agreement was signed?

A. At the time the agreement was signed I gave him a check for the amount of five thousand dollars.

Q. There was another five thousand dollars due about the first of December; did you pay that?

A. That is right.

Q. Settlement was due on the fourth of January. When it came to the fourth of January what did  
10 you do?

A. On the fourth of January the settlement was to take place and he had granted us an extension until the sixth of February on the consideration of an additional five thousand dollar deposit, which I gave him.

Q. You paid him the five thousand?

A. That is right.

Q. And you got something in writing, did you?

A. I had a letter from Mr. Mecray granting the  
20 extension.

Q. Is this the power of attorney?

A. That is, yes, sir.

(Power of attorney offered, received in evidence and marked Exhibit D3.)

Q. Now, on the sixth of February, did you attend to make settlement for the property?

A. We did.

50 Q. And where did you go?

A. Went to Senator Stevens' office.

Q. In Cape May, New Jersey?

A. In Cape May, New Jersey.

Q. Who was there?

A. There was Senator Stevens, a Mr. Lissman, Mr. Schafer, Mr. Mecray, Sam Eldredge and there was a man by the name of Lieberman from Phila-

delphia and Sol Needles; they weren't directly in the room, but the rest of us were right in Senator Stevens' room.

Q. Who wasn't directly in the room?

A. Lieberman or Needles; they were in the hallway or door that leads to the hallway.

Q. Was Mr. Needles in the room at any time?

A. No, sir.

Q. Was Mr. Lieberman in the room at any time?

A. No.

Q. Now, did Mr. Mecray tender you a deed at that time?

A. He did not.

Q. Did he tell you whether or not he was in a position to make settlement that day?

A. They were not in position to make settlement that day.

Mr. Bacon: Answer objected to as irresponsible.

The Court: Yes, not responsive to the question.

Q. Did he tell you, Mr. Perlstein, the question was, not whether he did; did he tell you whether they were able to make settlement that day?

A. He wasn't able to make settlement.

Q. No, no, no; did he tell you? What did he tell you? Let's put it that way—strike it out—what did Mr. Mecray say to you relative to making settlement that day?

A. He insisted upon settlement being made that day.

Q. Can you give us the conversation, please?

A. Well, now, there was several things that weren't cleared up on the title. The title papers were not there and he insisted upon us making settlement that day. I then asked him for an extension

10

20

30

from that time for an additional thirty days and he insisted upon the money being put up, and that led to, I believe, Mr. Eldredge calling Judge Eldredge up on the telephone then, asking him to act in escrow for this fund, saying that they would clear this matter up within a week or ten days from that time.

Q. Now, what I want to know is this: When you got there you had some talk with Mr. Mecray, 10 didn't you, or was there talk with Mr. Eldredge?

A. Well, my talk was with Mr. Mecray, because I at the time asked Mr. Eldredge what he was doing here. He said, "The only interest I have here is the Focer Estate; I want some money out of this." Mr. Mecray then asked him to look after the settlement that day for him.

Q. That is what he told you, did he?

A. Yes.

Q. What did Mr. Mecray say? Give us his con- 20 versation, if you can?

A. Well, as far as I can recollect, Mr. Mecray insisted upon the settlement being made that day.

Q. Not what he insisted on; what he said, please?

A. And then he —

Q. Did he tell you—I don't want to lead you—but what I want to do is to give the correct conversation—did he tell you that he couldn't make settlement?

30 Mr. Bacon: Objected to as leading.

The Court: Yes, it is leading.

Q. That is what I want. I want what he said. Mr. Perlstein, give us the conversation that you had with Mr. Mecray in the language that Mr. Me-

cray used to you; what he said to you and what you said to him?

A. Well, he said that the encumbrances were on the property would be cleared up within a week to ten days and he insisted that the money —

Q. What did you say to that?

A. I asked for an extension of the settlement until all these matters were cleared up, asked for an additional thirty days, which he refused.

Q. What did he say by way of refusal?

10

A. Refusal was that he would clear the matter up within a week to ten days and for us to put the money in escrow at the Merchants' National Bank.

Q. Did you agree to do that?

A. We agreed to do that.

Q. Now, what did he say he hadn't cleaned up?

A. Well, I knew of the inheritance tax.

Q. Not what you knew but what he told you.

A. He told me the inheritance taxes weren't cleared up with no settlement made with the Focer Estate; the twenty-five thousand dollar mortgage had not been cleared up. 20

Q. Then you went over to Judge Eldredge's office, did you, in the bank?

A. We went over to the Merchants' National Bank.

Q. Who went over there?

A. I don't know, was Mr. Lissman, Mr. Schaffer, Sam Eldredge, Mr. Mecray, myself, Senator Stevens, and I believe that Sol Needles trailed us. 30

Q. Now, speaking of Mr. Needles, was Mr. Needles in the office during the ensuing conversation or where was he?

A. Mr. Needles was in the outside lobby of the bank.

Q. With whom was he talking during the time you had the conversation in the office?

A. I don't recall him talking to anyone particularly.

Q. Now, when you got there, was anything further said by Mr. Mecray concerning the settlement?

A. Mr. Mecray told Judge Eldredge that we were on the mission of leaving money in escrow with him for a matter of a week to ten days until he cleared up the encumbrances were on the property.

10 Q. What did Judge Eldredge say or do after that?

A. Judge Eldredge agreed to take charge of the funds and distribute them in accordance with an agreement that he drew up.

Q. Did he personally draw up the agreement?

A. He did.

Q. That is the so-called escrow agreement that has been offered here in evidence?

A. That is right.

20 Q. Now, on this day you were to give or Mr. Goldman was to give, a \$125,000 mortgage. Was such a mortgage prepared?

A. Mortgage was prepared.

Q. Who had prepared that, do you know?

A. I believe Sam Eldredge had prepared it.

Q. Did you offer to execute the mortgage?

A. I did.

Q. Under your power of attorney?

A. That is right.

30 Q. And what did Mr. Eldredge say to that?

A. He wouldn't take the signature. He said I had no right to do it and I then showed him the power of attorney that I had brought down with me for settlement.

Q. Did he still insist you would have no right to do it?

A. He still insisted it be signed by Goldman.

Q. You offered to do it and offered to tender the mortgage?

A. I did.

Q. Then what did you agree to do?

A. Then I told him I would take the mortgage up to Philadelphia and have Goldman sign it.

Q. Did you do that?

A. I did.

Q. Then did you deposit the mortgage with the bank? 10

A. I believe I mailed that mortgage down to the bank.

Q. Where is the mortgage now?

A. Ought to be in the possession of the bank.

Q. When did you mail it to the bank?

A. I don't just recall the exact date, possibly a week after the date of settlement.

Q. Now, when did you next see Mr. Mecray in relation to this matter? 20

A. I next saw Mr. Mecray in May.

Q. What occurred at that interview in May?

A. That day we went to Senator Stevens' office, Mr. Gray, Mr. Schaffer and myself, and we sent for Mr. Mecray, and Mr. Gray then told him his mission or visit at that time, making demand on him for the return of the moneys and advising that he was going to institute suit. He was there on the mission of avoiding litigation if he wanted to pay this money back. Mecray's answer to that was that he really 30 didn't have the money to pay back. At the same time Mr. Sam Eldredge, I believe, came in the office and he asked, Mr. Gray, I believe, directed his conversation also to Mr. Eldredge, stating he will have to pay the commission on this deal, and Mr. Gray's answer to him was, "I suppose you will."

Q. Now, at that time, did he tell you that he was ready to perform his contract?

A. He did not.

Mr. Bacon: Objected to as leading.

The Court: Yes, it is leading.

10 Q. Did he tell you anything else relative to the contract?

A. Well, he said that he was going to clear these things up and they had not been cleared up until that time.

Q. You mean he said that they had not been cleared up up to that time?

Mr. Bacon: Objected to as leading.

The Court: No, that is a repetition of the answer.

20 Mr. Richards: It wasn't clear to my mind.

Q. Is that what you mean by that?

A. They had not been cleared up to that time.

Q. He told you that, did he?

A. Yes.

30 Q. Now, was there anything said, Mr. Perlstein, at the bank on the sixth of February, any conversation between Judge Eldredge and yourself that impressed upon your mind the fact that Mr. Mecray had said that he would clean up these exceptions within a week or ten days?

Mr. Bacon: That is objected to on the ground that is leading. No objection to what was said.

The Court: No, the question is, was there any-

thing by which it was impressed upon this witness' mind Mr. Mecray said that. He has already testified Mr. Mecray said that. I will permit the question.

(Question repeated.)

A. We were originally in the back room of the bank and in the conversation where we told Judge Eldredge that he was going to take this money in escrow; we were then led behind the counter of the bank, right by the vault, where Judge Eldredge then typed the escrow agreement, and I then recall distinctly saying to Judge Eldredge, "You pay us interest for this money for the amount of ten days' delay here," and Judge Eldredge's answer was, "Well, we will charge you for keeping the money."

Q. That was the conversation, was it?

A. It was.

20

Cross-examination.

By Mr. Bacon:

Q. What time did you go to Senator Stevens' office on the sixth of February?

A. My recollection, around eleven o'clock in the morning.

Q. How long did you remain there?

A. Well, we were there for quite a few hours. I don't just recall how long.

Q. Did you see the deed that had been prepared by Mr. Eldredge and had been signed by Mr. Mecray and his wife for this property?

A. I did not.

Q. Nobody showed you that deed?

A. No.

Q. You thought the contract was closed on that day, did you not, except the actual delivery of the papers?

A. It wasn't closed; the matter had not been settled, completely settled.

Q. Well, you made settlement, didn't you, as to the amount that was due?

A. I tendered the money.

10 Q. No, but didn't you go over all the details of taxes, commissions and other deductions to be made from the ten thousand dollar payment and did you not agree upon the sum of six thousand odd dollars that was to be paid in final settlement?

A. The figures showed a little bit over nine thousand dollars, which money we put up.

Q. You put up nine thousand dollars?

A. Over nine thousand dollars.

20 Q. That is what you deposited with Judge Eldredge?

A. No, there was six thousand some odd hundred dollars deposited with Judge Eldredge; three thousand dollars was paid out as commission and paid commission.

Q. Well, did you pay it that day?

A. Mr. Mecray agreed to pay it. We had nothing to do with the commission.

Q. Nothing to do with that, but it was paid in addition to the six thousand dollars?

30 A. That is right.

Q. So that the matter was closed, wasn't it, except the actual delivery of the papers?

A. The property had not been cleared up and the matter was not closed; we just put the money up

---

Q. What else was there for you or Mr. Goldman

to do except pay the money to the bank and execute the mortgage?

A. Get a clear title to the property which they were not able to give us.

Q. That would be for them to do. What else was there for you to do, acting for Goldman, or for Goldman to do if you had paid the money and delivered the executed mortgage?

A. I don't believe there was anything else.

Q. At whose suggestion was it that these leases were assigned? 10

A. That I can't tell you.

Q. Well, you know that they were assigned, do you not?

A. I don't know that they were assigned; never saw the leases.

Q. Was there any talk about Mr. Mecray executing a lease to be made by Goldman to him for certain portions of the building?

A. Not to my recollection.

20

Q. Did you see Senator Stevens typewrite these leases?

A. I did not.

Q. You mean to say that Senator Stevens did not give you those leases to have them signed by Goldman?

A. I don't recall that he did; no, sir.

Q. Well, do you say that he did not?

A. What?

Q. Well, do you say that he did not?

30

A. I say that he did not. I don't have those papers.

Q. Also, that you didn't take those leases away with you to have them executed by Goldman?

A. No, sir.

Q. Who gave you the mortgage?

A. Sam Eldredge.

Q. Was the power of attorney that you tendered to Mr. Eldredge as your authority to execute this mortgage the same document that you identified a few minutes ago?

A. It was.

Q. Is it in the same condition now that it was then?

A. Possibly a little more worn from carrying.

10 Q. Was there anything—has any part of it been taken away or is it now in the same condition with respect to writing and typewriting as it was then?

A. It is in the same condition as it was then.

Q. You knew, did you not, that these inheritance taxes had not been paid on that property?

A. I didn't know it until that day.

Q. You did know it on that day?

A. That is right.

20 Q. And you knew that Mr. Meecray wanted to use this \$125,000 mortgage for the purpose of raising \$25,000 to pay the mortgage that was on the property? You knew that, didn't you?

A. I didn't get the question.

(Question repeated.)

A. That was Mr. Meecray's idea.

Mr. Bacon: Answer objected to as irresponsible.  
30 Repeat the question.

(Question repeated.)

A. I did not.

Q. When did you first learn that?

A. I haven't learned that yet that Mr. Meecray

wanted to use that mortgage to pay off the twenty-five thousand dollar mortgage.

Q. Did you see any of the leases on the property on February sixth?

A. I did not.

Q. You were here day before yesterday, were you not?

A. I was.

Q. You were here when Senator Stevens was on the stand?

10

A. I was.

Q. Did you see him produce a package, black package that had in it a lot of leases?

A. I did.

Q. Did you ever see that before?

A. I saw that package before.

Q. When?

A. Some time in February; I believe on the sixth of February.

Q. Did you know what was in it?

20

A. I did not.

Q. No conversation at all with you about these leases?

A. Not with me; no, sir.

Q. Who else was there present representing Goldman besides yourself?

A. There was Mr. Schaffer was there and Mr. Lissman was there.

Q. Were they both representing Goldman?

A. No, I was representing Goldman.

30

Q. I asked you who was there besides yourself representing Goldman?

A. No one.

Q. Who did Senator Stevens represent?

A. Represented Goldman.

Q. That is two of you then was there?

A. Yes.

Q. Who else was there representing Goldman?

A. Lieberman was there.

Q. Was he representing Goldman?

A. He was representing the interest of Goldman.

Q. Who else?

A. That is all.

By Mr. Richards:

10 Q. Who was Mr. Lieberman in the transaction?

A. Mr. Lieberman is a Philadelphia real estate broker.

Q. Who did he represent in the deal in addition to Goldman, anybody?

A. Well, he was representing Sol Needles.

Q. Was it Needles or Lieberman who brought Goldman and the owner of the property together?

A. I believe the property was originally offered by Needles to Lieberman and Lieberman then  
20 offered it to me for Goldman.

Mr. Richards: There was one matter I overlooked, if your Honor please, from this witness.

Q. Was the real estate market in Cape May active in February of 1926?

Mr. Bacon: Objected to as immaterial.

30 The Court: I will permit it.

A. Very active.

Q. Had you purchased this property or agreed to purchase it for the purpose of investment or as a speculation?

Mr. Bacon: Objected to as irrelevant.

The Court: Permitted. You may answer.

A. Purely speculative.

Q. Now, were you able to put the property on the market after the sixth of February for sale?

A. I was not.

Q. Did you ever have any conversation with Mr. Mecray relative to a re-sale of the property?

A. I had a conversation with Mr. Mecray, I should judge, back in December or January.

Q. Before the settlement?

10

A. Yes.

Q. Will you state what that conversation was?

A. The conversation to me was to the effect that he had somebody had been in and offered him —

Q. Give his language or talk between you and Mecray?

A. His talk was that he had an offer on the property or some one interested in the property at the rate of \$165,000, price of \$165,000 and his suggestion to me not to offer the property for sale for the reason he was then working on something in Cape May trying to get together ten or twelve men to interest them in the bank to put in that building.

20

Q. Now, did the market continue active in March and even in April, real estate market in Cape May?

A. The market was fairly active in March and then it started to go off.

Q. Did it go off after March?

A. Went off considerably after March.

30

Mr. Richards: At this time I think Mr. Samuel Eldredge was going to give us the date, if your Honor please, when this Focer mortgage was given and recorded. Have you got those dates?

Mr. Bacon: I would like Mr. Eldredge, if you want that now, to give it to you, but I would like

Mr. Eldredge to go back on the stand to answer the question that he was asked about the records in connection with the taxes.

The Court: You are entitled to that.

Mr. Bacon: I will put him back whenever you say, now, or when you are through.

10

SAMUEL F. ELDREDGE, recalled.

Direct examination.

By Mr. Bacon:

Q. Mr. Eldredge, after the adjournment on Wednesday, you were asked to produce some information relative to the date of the mortgage given by  
20 Mr. Mecray to Mrs. Focer. Have you the original bond and mortgage there?

A. I have the original bond and mortgage here.

Q. What is the date?

A. The date is June tenth, 1926.

Q. And is for how much money?

A. And is for eighteen thousand dollars, eight  
thousand dollars payable within one month from the  
date thereof, ten thousand dollars to be paid three  
30 years from the date. The mortgage was recorded  
in Cape May County clerk's office July first, 1926,  
three o'clock in the afternoon, Book 246 of Mort-  
gages, pages 316, as by the certificate of the clerk  
of the County of Cape May endorsed thereon.

Mr. Bacon: I don't want to offer it in evidence for obvious reasons. I have no objection to the

Court inspecting it, but I don't think it ought to go in evidence.

Mr. Richards: I don't think there is anything else we ought to read into the record. I think we ought to see it a few minutes.

Q. You represented Mrs. Focer in the transaction, did you?

A. Yes.

10

Q. Was the eight thousand dollars to come out of this transaction?

A. None of the moneys in this settlement was to come out of this transaction.

Q. Have you a copy of a letter there that you wrote to Mrs. Focer about it?

A. I have a copy of the letter that I wrote to Mrs. Focer on March twenty-third, 1926, relative to it.

Q. Does that refer to this mortgage?

A. That refers to —

20

Mr. Richards: Wait a minute. If your Honor please, can he testify from a paper without it being offered in evidence or without inspection?

The Court: No, the only question now, so far as the questions have been as to the identity of the paper, that is all. He says here is a letter he has written to Mrs. Focer on such and such a date.

30

Q. Was that letter written in contemplation of the taking of this mortgage?

A. That letter was written in contemplation of taking a mortgage for the balance that was due.

Mr. Richards: If your Honor please, I do think

we should have the letter. We want to see the letter first.

Mr. Bacon: I don't care anything about putting the letter in. I want to give the date of this transaction about this mortgage and it has nothing to do with this transaction.

The Court: It has already been given, June 10 tenth, 1926.

Q. Do you know the source from which the eight thousand dollars was to come that was to be paid on this mortgage within one month after its date?

Mr. Richards: I object to that on the ground that it is not material here, what the source was. He has already testified day before yesterday that this mortgage was given for the purpose of securing from the party-defendant then twenty thousand dollars, part of which was the balance of consideration for the purchase of the Mecray Building.

The Court: How is this admissible, Mr. Bacon?

Mr. Bacon: Only question about it is that there was an insinuation yesterday—while it doesn't seem to me to amount to anything, yet was an insinuation yesterday that there never was any delivery of this deed dated in 1924 from the Focer heirs to Mecray until some time in May, 1926, and that it was held for the purpose of security or for some undisclosed purpose. Assuming that that is of any importance, I am now trying to negative that by this testimony.

The Court: How can you take advantage of a

letter written by this attorney to his client, neither of whom were parties in this transaction at the time?

Mr. Bacon: I am not trying to use the letter. I am asking about it. I am only using the letter for the purpose of putting in my mind what the facts are so I can ask the questions. I haven't the slightest objection to the letter going in evidence, only I don't think it is admissible. 10

The Court: I don't see how it is admissible.

Mr. Bacon: I am not referring to the letter. I am asking him if he knew the source as to where the eight thousand dollars was to be paid. He drew the mortgage thirty days from date. I am asking him whether it was his understanding at the time the eight thousand dollars was to come out of the Focer-Mecray property or some other property. 20

Mr. Richards: If we had the whole letter. It is all right for Mr. Bacon to examine out of the letter what he wants, but, letter not being offered in evidence, we couldn't obviously cross-examine on it. We might admit the letter if we had seen the letter, but it is obviously unfair to permit Mr. Bacon, who knows the contents of the letter —

The Court: You gentlemen are arguing entirely upon different points. Mr. Bacon says he is not using the letter. The question as asked eliminates the letter entirely from it. Your argument is that the question used the letter, which Mr. Bacon says he is not doing. 30

Mr. Richards: He is obviously doing it because

the letter is in front of the witness and the witness is reading from the letter and the question is predicated on what is in the letter. Of course, the question is objectionable.

The Court: Sustain the objection to the question.

10 Q. Irrespective of any letter, do you know the source from which the eight thousand dollars was to be obtained?

Mr. Richards: That is objected to.

The Court: Sustain the objection.

Q. Was the eight thousand dollars to be obtained from the sale of the Focer-Mecray Building?

A. It was not.

20 Mr. Richards: Only thing, I can't listen to two people at once. I didn't get the objection in in time. I ask the answer be stricken out.

The Court: I think I will permit the answer to remain. Overrule the objection.

30 Q. Have you examined the file that you have in connection with the Focer Estate pursuant to the request that was made by Senator Richards on Wednesday and, if so, have you found any papers in connection with the tax assessment?

A. I have found some copies of papers as well as a letter from the State Department, Comptroller's Office.

Q. Can you say definitely the date when you filed the amended tax return? If I recall your tes-

timony the other day, you said you prepared one which you did not use?

A. Yes.

Q. Because you found it was wrong. Now, have you any definite recollection or record which shows precisely when you did file the return that was filed?

A. I cannot. I have not.

Q. Can you say whether it was before or after February sixth, 1926?

A. I am not sure about that. I wouldn't say positively because I can't tell you. It was just before or just after, I am not sure which. 10

Q. After you did file this return, did you receive some requests from the inheritance tax bureau for additional information?

A. I did.

Q. From whom did you get that information?

A. Jeremiah E. Mecray.

Q. Did or did not the questions that were asked you involve an examination into the partnership records and accounts of the firm of Focer and Mecray? 20

A. It did.

Q. As the result of the information obtained from Mr. Mecray and from other sources, did you prepare an affidavit to be made by him?

A. I did some time in March, but I can't tell you the date of the taking of the affidavit because my copy the date is blank, but I have a copy of the affidavit itself together with the facts.

Q. Have you that copy there in your hand? 30

A. I have.

Q. What was it necessary for you and Mr. Mecray to do in order to prepare that affidavit and what did you do?

A. Get a statement of the whole account of Focer and Mecray.

Q. Was that an easy job or hard job?

A. Well, I don't know what some people call an easy job. I know it took considerable time to get facts and figures together and go over them and corroborate them so when you file them you can know that they are correct.

Q. Did you spend any time on this job?

A. Sure I did, quite a little time on it.

Q. Were you able to get this information from Mrs. Focer?

10 A. No. Most of the information that I got relative to the estate that I had to dig out myself. I had to write her for some things, most of the things; some things she could tell me and some things she couldn't tell me.

Q. Is this paper which you produce a carbon copy, complete except as to the date and signature, of the document which you filed with the inheritance tax bureau?

A. It is.

20 Q. Can you say when it was filed?

A. Immediately upon its being signed.

Q. And that was some time in the month of March?

A. Signed some time in the month of March.

Mr. Bacon: I offer that carbon copy.

Mr. Richards: We have no objection to it.

30 (Paper admitted and marked Exhibit C14.)

Q. When, if at any time, did you hear from the department in response to that affidavit as near as you can tell from your records?

A. I got a letter from them on April twentieth relative to some additional information that they required relative to the return of the estate. I can't

tell you the date that I heard as to that particular affidavit.

Q. But you did get a letter from them on the date of the twentieth of April, did you?

A. Yes.

Q. Requiring some additional information?

A. Yes.

Mr. Bacon: Offered.

(Letter admitted in evidence and marked Exhibit C15.)

10

Q. What was it necessary for you to do in order to comply with the requirements of the department as set out in that letter of April twentieth?

A. To procure additional data.

Q. Did you do it?

A. I did.

Q. Did it take any time to do it?

A. It did.

20

Q. Much time or little time?

A. Well, it took quite a little time because I had to get the memorandum of the profits for the years 1921, 1922, 1923 and 1924 from the Focer Estate. I had to corroborate some evidence as to the request in the letter about the partnership agreement, Mr. Mecray making the affidavit of all of these things and the basis of the partnership as well as the basis for sale.

Q. Did you have the assistance of Mr. Mecray in doing this work?

30

A. Right away.

Q. Was it necessary for you to prepare another affidavit by him?

A. It was.

Q. Why didn't you get Mrs. Focer's affidavit?

A. Because Mrs. Focer didn't have the knowledge with which to make the affidavit.

Q. Did you prepare an additional affidavit to be made by Mr. Mecray?

A. I did.

Q. Did you or did you not do that as soon as you could get the information together?

A. As soon as I could get the information together.

10 Q. Was there any time that Mr. Mecray refused to furnish the information?

A. No. Mr. Mecray was always ready and willing to furnish any information that was required as soon as it could be procured.

Q. Did you prepare an additional affidavit to be made by Mr. Mecray?

A. I did.

Q. Have you got a carbon copy of that?

A. I have.

20 Q. Please produce it.

(Produced.)

Q. Is that a complete copy except the signatures?

A. Except signatures and date of the month.

Q. What is the month?

A. May, 1926.

Q. Did you send that with a letter to the department?

30 A. No, I sent this to the department. I don't have any copy of any letter that I sent to them at that time; at least I don't recall.

Mr. Bacon: I offer that supplemental affidavit.

(Affidavit admitted and marked Exhibit C16.)

Q. Was or was not the affidavit, C16, being the last affidavit that I showed you, sent by you to Trenton before May seventeenth, 1926?

A. Yes.

Q. And after the receipt of that affidavit the tax was assessed?

A. Yes.

Q. And was paid by you on the day after it was assessed?

A. Eighteenth of May.

Q. Now, in order to get this statement of profits for the years 1921, 1922, 1923 and 1924, what was necessary to be done in order to get those figures and what did you do? 10

A. Go over the books of the firm as well as hunt up the income tax reports and verify them by them and do considerable figuring.

Q. Now, did somebody have to go to Camden to the office of the Collector of Internal Revenue to get some of this information?

A. No. Mr. Mecray had some copies. Mrs. Focer had some copies and I don't remember whether I had any figures or whether I didn't. I never figured any of their income tax reports but we had to go through Mr. Focer's papers. 20

Cross-examination.

By Mr. Richards:

Q. Now, I asked you, Mr. Eldredge, the other day for the letters that you had written to the Comptroller relative to this matter. Have you got them here today? 30

A. I have what I can find of them.

Q. Will you let me see them, please?

(Letters produced.)

Q. You show me a copy of a letter dated May thirteenth, 1926, addressed to William D. Kelly, State Superintendent; is that the first letter that you can find on the subject of this income tax?

10 A. The first letter that I can find in my files. I had sent some of the letters that I had to Mrs. Focer and I don't find that they were ever returned to me. I remember once or twice taking the matter up in person with Mrs. Focer and giving her some data. Now, whether I gave her any letters at that time or not I don't know.

Q. Do you remember any letter prior to this date that you wrote to the department?

A. There must have been a letter prior to that date from the department and by me to the department to have sent that letter, that affidavit in March, but I don't find either one.

20 Q. But you find no letters at all that would even indicate a letter earlier than prior to that affidavit of March, do you?

A. No.

Q. Of 1926?

A. No.

Q. And the only other letter you have is a letter of May 26, 1926, is that correct?

A. Only other letter of what?

Q. Relating to this matter?

A. And that of May thirteenth?

30

Q. Yes.

A. Yes. That is all I was able to find.

Mr. Richards: Now, I would like to offer both of these copies.

Mr. Bacon: You called for them; they are produced and I offer them.

(Copies admitted and marked Exhibits C17 and C18.)

Q. Relating to these affidavits, do you know whether or not you ever prepared any paper prior to this affidavit of March, 1926, in this matter?

A. Relative to the inheritance tax you mean?

Q. Yes.

A. Yes.

Q. And what was that paper?

A. I prepared a schedule for the tax for Mrs. Focer at one time and found that she had given me the wrong information, after checking it up, found that she had given me the wrong information and had to start all over again and couldn't use it.

Q. That one you didn't file, did you?

A. No.

Q. This one was the first schedule that you ever filed in the Focer Estate, isn't it?

A. No.

Q. When did you file the other one?

A. There was a whole schedule of the Focer Estate filed, which I haven't here; that is in Trenton.

Q. Have you got a copy of that here?

A. No; that is in Trenton.

Q. When did you file that?

A. I can't answer that question, I told you before.

Q. You don't know now whether it was before or after the sixth of February, do you?

A. No.

Q. Why, if you filed another schedule, was it necessary for you to again file a full schedule such as is appended to this affidavit?

Mr. Bacon: I object to that on the ground that

it definitely appears that is not a full schedule, therefore, it is an inadvertent misstatement by counsel of the facts in the case.

Mr. Richards: Why isn't it a full statement? Seems to be.

The Court: That is a schedule of the business of Focer and Mecray and not of the estate of Focer.  
10 Sustain the objection.

(Question withdrawn.)

Q. Did the other schedule contain what purported to be the value of the Focer and Mecray properties?

A. If my memory serves me correctly, the original schedule contained a schedule of the properties in full, that is, all of the real estate and all of the personal property, setting forth that the undivided  
20 interest of Dan Focer being a forty per cent interest was valued at twenty-two thousand five hundred dollars and they sent back for a detailed statement, as I understood it, of these assets. That is my memory of it and you have the letter there from the State Department relative to it.

Q. Now, the total assets—this appraisal that you have handed to me shows that the total assets of the Focer and Mecray properties was \$114,000.

A. Whatever that reads.

30 Q. Less liabilities of \$28,000?

A. Yes.

Q. Making a total net assets of \$86,000; right? Want to see these?

A. No. I don't understand it that way.

Q. What do you understand?

A. Doesn't read that way.

Q. You figure that the equity is twenty-eight thousand dollars, is that right?

A. \$28,283.65 in the Cape May property.

Q. And in the Cape May Court House properties?

A. \$27,999.10.

Q. Making a total of \$56,000?

A. \$56,282.75.

Q. And in addition to that?

A. Of which Focer owned forty per cent.

Q. And in addition to that Focer owned other 10  
properties, is that right?

Mr. Bacon: I object to that, if the Court please, on the ground that this shows on the face of it that it is a mere statement of the partnership affairs between Focer and Mecray and does not purport to be a statement of the taxable assets of the Focer Estate. We don't have here the return itself or a copy of the return. These affidavits are solely produced for the purpose of showing diligence on the part of Mr. Eldredge in getting this tax assessed and for no other purpose. Of course, I know what the Senator is trying to do and it is a most unfair way to attempt to prove that this estate is liable for government tax, Federal tax. Mr. Eldredge testified yesterday as to what was the net taxable amount of this estate, which was approximately twenty thousand dollars, and this is not any fair method of trying to show what the Focer Estate was worth. 20

The Court: Isn't this cross-examination of the statement of Mr. Eldredge that the amount of the estate was thirty thousand dollars? 30

Mr. Richards: That is what it was intended to be, if your Honor please.

The Court: Upon that ground I will admit it.

Q. The question is, isn't it a fact that Focer owned other properties outside of this partnership property?

A. Real estate?

Q. Yes.

A. Some lots in—interest in some lots in Ocean City which had been, which were found, deeds were found in the box which had been sold, my memory is that he owned only one lot was all, a nominal sum. Now, I am not sure of that, in the real estate line, that is, I am not sure whether he did own it or whether he didn't.

Q. As far as you found out, that is all he owned?

A. In real estate.

Q. What other did he own in the personal line?

A. He owned a few shares in Standard Oil, a few shares in D. and A. Tire Company, I think it was. I think some Tonapaugh Mines Company.

Q. Can you give us the total value of those? Do you remember them?

A. Of each one?

Q. No, the total value of the whole personal estate?

A. I gave it to you the other day. I had the whole thing, I thought, added up approximately, I mean, \$30,449.17.

Q. That included the forty per cent interest in the company?

A. Yes. That included \$22,500 representing the forty per cent interest sold to Mecray for that price.

Q. Now, Mr. Eldredge, I want to ask you this question: These returns were due on or before the thirtieth of May, 1925; what did you do during the year 1924, after Mr. Focer's death, up until the thirtieth of May, 1925, which was the end of the year,

towards making a return of this tax to the State of New Jersey?

Mr. Bacon: Objected to, on the ground that any failure to make this return during that period of time can't have any bearing upon this issue.

Mr. Richards: I think it has, for this reason, your Honor, please—I am going to bring it right down to date with a view of showing that, of course, Me-  
cray did nothing towards clearing up his title from  
the time he made the contract in August up until  
January or even February when he had to tender  
the title. 10

The Court: I will permit you to show anything after the date of the original contract concerning the clearing up of this title.

(Question withdrawn.)

20

Q. The income tax return was due by the thirtieth of May, 1925, wasn't it, Mr. Eldredge?

A. Yes.

Q. Now, at that time, you hadn't made the return?

A. No.

Q. You hadn't made the return up until the latter part of August, 1925, had you?

A. The return had not been made to the State Department. 30

Q. Now, did you make a return at any time between the date of the agreement of sale, which was the twenty-eighth of August, 1925, to the fourth of January, 1926?

Mr. Bacon: That is objected to for the same rea-

son that any failure on the part of Mrs. Focer or her counsel, assuming that Mr. Eldredge was her counsel at that time, cannot bind this complainant.

The Court: I will permit it. It became Mr. Mecray's duty to see that the title to his property was clear and this is one of the exceptions. I will permit it.

10 A. I didn't represent Mr. Mecray at that time.

Q. Did you do anything?

A. I tried my best to get the necessary information with which to file the return.

Q. What did you do toward doing that, Mr. Eldredge? Not what you tried to do, but what did you actually do during that time?

20 A. Well, that is pretty hard to trust to memory during a particular period of time because I got at one time information relative to the estate which I found was incorrect and could not file the report and had to destroy it and had to get the actual information as it was. As to some lots in Ocean City, which he didn't own, as to some lots which we thought he owned in—I don't know whether Wildwood or Anglesea—and the values of different things, some of them which were easy to procure and some of them which I never did procure.

30 Q. You could have gotten all of the information that is contained in this affidavit, C14, at that time, couldn't you? That was available between August twenty-eighth and January fourth?

A. Yes.

Q. And you didn't file that with the comptroller, did you?

A. I wasn't asked to file that until later. I didn't file that with the original.

Q. Mr. Eldredge, as a lawyer, you knew this in-

formation was necessary before you could clear that inheritance tax, didn't you?

A. No, I did not.

Q. Did you think it wasn't necessary?

A. My idea relative to that was that when I make a bona fide sale for the best price that can be procured on a going concern, including the real estate and personal property, as well as outstanding—as well as bills receivable and bills payable, that that—and made a full statement in that way that that would be accepted. 10

Q. Mr. Eldredge, haven't you ever made a return on a partnership property before to the State Department?

A. I don't recall that I ever did.

Q. Have you ever made any returns at all?

A. I have made several.

Q. Didn't the department always require that you give them an itemized list of the properties owned, both real and personal, and, also, of course, the liabilities, in detail? Didn't they always request that from you? 20

A. From the individual?

Q. Yes.

A. Yes.

Q. Then you knew that you would have to have the same kind of information in order to clear this tax, didn't you?

A. Not necessarily so.

Q. You didn't think so?

A. No. 30

Q. And you didn't try to obtain it, did you?

A. When I was asked for it, yes, immediately.

Q. Now, during that time between the twenty-eighth of August and the fourth of January, did Mr. Meecray ever ask you to obtain this information?

A. That is in that affidavit?

Q. Yes.

A. For the State Department?

Q. Yes. Did he ever ask you to do anything about clearing the inheritance tax?

A. Mr. Mecray mentioned about the inheritance tax to me several times.

Q. When did he do that?

A. Both before and after February the sixth.

10 What the times were I couldn't tell you.

Q. What did he request you to do about it?

A. Get the tax paid.

Q. He knew then that there was a tax to be paid, didn't he?

A. I presume he did or he wouldn't have asked it.

Q. Now, having asked you, what did you then do towards getting them paid?

A. I told him just as soon as I could get the information I would file the schedule.

20 Q. But you didn't get this information until some date in March, did you?

A. No, because I didn't think it was necessary.

Q. Did you go over it —

A. The information as contained in that affidavit.

Q. But you can't remember now when you did file that return or whether that was even before the sixth of February, can you?

50 A. No, because, as I told you, I prepared two schedules; the first one wasn't right as to some of the things that were given me as being owned by the estate and the records showed it. I had to cut them out. I had to make a new schedule all the way through.

Q. You didn't even forward or hadn't forwarded up to the twentieth of April, 1926, an inventory of the safe deposit box, did you?

A. I hadn't?

- Q. Yes.
- A. Why, the inventory of the deposit—what date was that you said?
- Q. April twentieth.
- A. April twentieth?
- Q. 1926.
- A. Sure I had.
- Q. Mr. Kelly says you didn't.
- A. Does that letter say so?
- Q. Yes. 10
- A. I don't understand it so.
- Q. It says, "before the transfer inheritance tax proceedings in re estate of Daniel Focer, deceased, late of Cape May County, New Jersey, it will be necessary to forward reference to the following facts, inventory of the safe deposit box includes item deed dated September 24, 1894, &c. Did the decedent sell the property mentioned in this deed during his lifetime?" Had you given them a complete list of what was in the box at that time? 20
- A. Surely had.
- Q. When did you do that?
- A. I don't know the date I did it but I know the representative of the State Department was there when the box was opened and a complete inventory was taken of it at that time.
- Q. When was that?
- A. I couldn't tell you.
- Q. Wasn't that after the sixth of February, 1926?
- A. Oh, no.
- Q. Was it before that? 30
- A. Before that.
- Q. When was it before that?
- A. I can't tell you. I don't recall whether the will was in the safe and we went there then or whether we went there six months afterwards or a year afterwards; I don't know.

Q. Can't tell anything about that?

A. No; I have no data to show that.

Q. Now, Mr. Eldredge, you presented the other day a release of this particular property dated, I think, May 18, 1926?

A. Yes.

Q. That is right, isn't it?

A. Yes, sir.

10 Q. Was it necessary for you to have filed a complete inventory of this estate and was it necessary for you to have paid the tax in full in order to have affected a release of the post office building?

A. My understanding that is optional with the State Department.

Q. Did you ever apply to the comptroller for the purpose of obtaining a release specifically of the post office property prior to the sixth of February, 1926?

A. I don't remember that I ever did.

20 Q. Did you do it after the sixth of February?

A. I don't remember ever having done it.

Q. At any time, did you endeavor to obtain a release from the lien of the State taxes on the post office property?

A. Took the schedules altogether is when if my memory is correct.

Q. You could have done that, couldn't you?

A. That would have been optional with the State Department.

30 Q. Yes, but did you apply to have them do it?

A. I don't remember ever having done it.

Q. You would remember it, if you did it?

A. I think so.

Q. So the answer is, you didn't do it, isn't that right?

A. Not as far as my knowledge goes.

Q. There was other properties against which the

lien of these taxes could have remained sufficient to have paid the taxes, was there not?

A. Real estate?

Q. Yes.

A. No, not in his name.

Q. There was in the Focer-Mecray partnership, wasn't there?

A. In real estate?

Q. Yes.

A. No.

Q. What was the Cape May properties?

10

A. You mean the Hughes Street property?

Q. Yes.

A. I correct myself in this way, there was a Hughes Street property on which there was quite a large mortgage. Now, if the tax goes in ahead of the mortgage, there was; if not, there wasn't.

Q. There was more than an equity of \$166 in it, wasn't there?

A. Sure, if I had known what the taxes was before that time. 20

Q. The lien could have remained against the Cape May Court House properties, couldn't it?

A. The what?

Q. I say, the lien could have remained against the Cape May Court House properties, couldn't it, the lien of the State taxes?

A. I doubt it.

Q. Why?

A. Because the property was in the name of Jeremiah E. Mecray, individually, never was in the name of Focer and Mecray nor Daniel Focer. 30

Q. But, in fact, they did have a half-interest into it?

A. It was a partnership matter, and was reported as such.

Q. And that report in March even, was in the hands of the State Department, wasn't it?

A. Yes.

Q. And it was by reason of an affidavit made by Mecray, himself, wasn't it?

A. No.

Q. Wasn't it?

A. It was there primarily in accordance with the report that went into the State Department, signed  
10 by the executor.

Q. Hadn't you gotten the information and didn't Mecray admit that it was partnership property?

A. By that affidavit, yes.

The Court: There is one of the letters which speak of that, that Mecray was endeavoring to obtain a mortgage on the Cape May property in a building association there and he was unable to get it because they knew that it was partnership prop-  
20 erty, although the title was in Mecray alone. I noticed that among the exhibits.

Q. So that you neither undertook before the sixth of February to clear up the taxes or to have this particular property released from the lien, did you, Mr. Eldredge?

A. My purpose was ——

Q. No, what did you do? Not what your purpose was; did you?

A. My purpose was by what I did to have the tax  
30 assessed against the estate of Daniel Focer paid because this was not the only property affected. The Court House property was equally affected, had been sold and was waiting settlement just as this one was.

Mr. Richards: I ask, if your Honor please, the witness answer the question.

The Court: Yes, it is not responsive to the question.

(Question repeated.)

Mr. Bacon: I submit, if your Honor please, that is responsive. He says he never undertook to do it. All the things he did he was undertaking to do it, he was trying to get the tax cleared up.

The Court: He can answer that yes or no. He either did or did not. The question is, not what did he do, if he did anything, but, did he do anything? 10

(Question repeated.)

A. Well, I undertook ——

Q. No ——

The Court: He says, "I undertook ——"

20

A. I undertook to, because in making up the schedules and finding out what the estate was worth to accumulate the data to be able to file, just as soon as I possibly could, the schedules relative to the whole estate.

Q. Did you do any one act officially with the department, comptroller's department ——

A. No—before the sixth?

Q. ——to clear up or release the lien of the tax in so far as the post office building was concerned? 30

A. If I could tell you the date of the filing of the schedules I could answer that question. If the schedules were filed before, I did. If they were not filed until afterwards, I did not.

Q. That date you can't even tell us now?

A. I can't tell you now; I don't know.

Q. After two days of reflection?

A. I don't know. The schedules were first sent

Q. There is no question pending.

A. What?

Q. There is no question pending.

A. All right.

By Mr. Bacon:

10

Q. Where did you first send the schedules?

A. The schedules were first sent to Charles A. Bonnell at Cape May Court House, State representative, who had to check it up as to values before sending it in to the comptroller's office. I always send my schedules indirectly to the department through their appraisers at Cape May Court House, Mr. Bonnell and Mr. Jonathan Hand, now.

20 Q. Have you any knowledge at all as to when Mr. Bonnell made his report to the department at Trenton?

A. I have not.

By Mr. Richards:

Q. But you can't tell us when you filed with Bonnell, can you?

A. No.

30 Q. About this eighteen thousand dollar mortgage, was the eight thousand dollars paid within a month?

A. I don't know. The eight thousand dollars was paid and was paid out of the settlement from the Cape May Court House property, whenever that settlement took place. I can't tell you the date.

Q. That left ten thousand dollars balance?

A. Yes, sir.

Q. Now, isn't that the same ten thousand dollars

that you was to collect out of the settlement of the post office property?

A. No.

Q. It was not?

A. No, the original mortgages say that the mortgage was to run for either three or five years.

Q. But this is dated after the settlement fell through, isn't it, this mortgage?

Mr. Bacon: Objected to.

10

A. After the settlement of the Court House property.

Mr. Bacon: I object to that because there is no evidence here that the settlement did fall through.

(Question withdrawn.)

Mr. Richards: Before I forget it, I would like to offer this book in evidence (bank book) and perhaps we might just read the items in there: "Bank book of The Merchants National Bank, Cape May, New Jersey, in account with Jeremiah E. Mecray, special. On the first entry page, Merchants National Bank, Cape May, N. J., Dr. in account with Jeremiah E. Mecray, Cr., Special.

20

1926

June 3	C	1631.77	
30	C	815.50	
July 2, 1926	C	122.50	30
30	C	180.	
August 9	C	391.	
Sept. 29.	C	191.	
October 1	C	850.50."	

SIDNEY M. LISSMAN, SWORN.

Direct examination.

By Mr. Richards:

10 Q. Mr. Lissman, were you present at the time of the purchase of the post office property by Mr. Perlstein for Mr. Goldman?

A. I was not.

Q. You were not present? When was the first time that you were present?

A. About a week later, early part of September.

Q. Who did you talk with about the property at that time, anybody?

20 A. Well, we stopped into Mr. Needles' office and we went in the Mecray Building because we had some other properties down there that we were interested with.

Q. And were you present on the sixth of February at the meeting in Senator Stevens' office?

A. I was.

Q. And were those present in detail here?

A. Yes, sir.

Q. Where do you live?

A. Atlantic City.

Q. And where does Mr. Perlstein live, do you know?

A. Atlantic City.

30 Q. On the occasion of your visit on the sixth of February, was there a conversation with relation to the settlement of the post office property?

A. There was.

Q. Now, who carried on the conversation?

A. As far as I recollect when—I made the figures up, I used the papers and Senator Stevens said,

when the question came up about the postponement because they were not ready, not having a clear title —

Q. Don't say what the effect of it was. Please give us now the conversation, what Mr. Mecray said, what Mr. Eldredge said, what Mr. Perlstein said, what you said, or what anybody else said in as nearly their language as you can give it, at least, the substance of what they said.

A. We sat down to make the figures. Mr. Eldredge came in. Mr. Perlstein said, "What are you doing here?" He said, "I want to collect ten thousand dollars from the Focer Estate." Mr. Perlstein said, "There won't be ten thousand dollars left here for the Focer Estate after the various deductions." Mr. Needles came upstairs and stood out at the entrance to the stairway with Mr. Lieberman. They weren't in the room at any length of time. A package of leases was handed to Senator Stevens. When we came to the adjustment, Mr. Mecray called to me the date of the leases and the amount of payment per year. After we had the figures about completed, Senator Stevens said, "You can't settle today because you fellows are not ready."

Q. Who did he mean by "you fellows?"

A. Mr. Mecray and he addressed it to Mr. Eldredge. Mr. Mecray said to Mr. Eldredge, "Well, Sam, as long as you are here look after my end of it." It came then to the preparation of the mortgage and there was a difference in the payments per year, in the reduction of the mortgage, in other words, the agreement was very vague as to the exact amount repayable to reduce the first mortgage and we finally agreed upon other terms than those stated in the agreement. Mr. Perlstein offered to sign the mortgage under his power of attorney, which he

produced. Mr. Eldredge wouldn't accept it, and he said, "The best thing that you can do is to take it back and have Goldman sign it." It is my recollection that Mr. Eldredge suggested putting the money in escrow, the balance of the money due. Senator Stevens said, "What is the sense of doing that? You are not ready to settle. You might as well postpone it," and Mecray says, "Why, we will have this thing all cleaned up in a week." We then went to

10

the bank.  
 Q. Pardon me, before you get there. Did Stevens or Mecray or Eldredge or anybody else say why it was that they, that is, the sellers, were not able to settle?

20

A. Senator Stevens knew because he told us there was a twenty-five thousand dollar mortgage there and he says, "You fellows can't settle because it has not been satisfied, therefore, wouldn't be first, there will be two mortgages on it. Now, the best thing you can do is to satisfy that first mortgage, twenty-five thousand dollars," and Senator said, "Also clear up the other objections."

Q. Did he say what the other objections were?

A. The question of inheritance tax.

Q. Now, what, if anything, did Mecray say about clearing up the mortgage?

A. He said the whole thing would be a matter of a week to ten days.

30

Q. Did he explain why he had not cleared it up before?

A. No, he did not. I didn't hear him say that.

Q. Did he say why he hadn't cleared up the inheritance tax before?

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

Q. Just admitted that they had not been cleared up, is that it?

A. Yes, sir.

Q. Then said that they would be cleared up —

Mr. Bacon: I certainly think the witness is competent to testify, if the Court please. If he isn't, it can have —

Mr. Richards: Please, Mr. Bacon, address your objection to the Court and not to me.

Mr. Bacon: I did address my objection to the Court. 10

The Court: Objection sustained.

Mr. Bacon: It seems to me, if the Court wants to reprove me I would be very glad to have the Court reprove me, but I don't want anybody else to reprove me.

Q. You then went to the bank? 20

A. Well, we had lunch in the meanwhile, and then we went to the bank.

Q. Who was there at the bank?

A. Mr. Eldredge, the president of the bank, Samuel Eldredge, Senator Stevens, Mr. Perlstein, Mr. Schaffer, myself, and Sol Needles.

Q. Now, was Needles present at the conversation at the bank?

A. He stood outside in the corridor between the window and the cage and we were in the back room for a portion of the time and then we went behind the cage to the paying teller's desk on the inside where the escrow agreement was drawn. 30

Q. What was said in the back room relative to this settlement?

A. That wasn't said in the back room. When we came to the drawing up of the agreement, the paper

was on the desk of the paying teller there inside of the cage, and Mr. Perlstein said to Mr. Eldredge, the president of the bank, he said, "You ought to pay us interest for the time it would be here," and Mecray says, "Why, we will have this thing all cleared up, there won't be a question of any interest," and then Mr. Eldredge said, "Why," he said, "you ought to pay me for holding the money."

10 Q. And was it understood or agreed that the exceptions would be cleaned up within a week or ten days?

Mr. Bacon: I object to that, if the Court please.

The Court: Sustain the objection.

Q. Now, Mr. Lissman, after that was said, was the money then deposited in the hands of Mr. Eldredge?

20 A. Yes, sir.

Q. Did you see at any time a deed to this property?

A. I never saw any deed to the property.

Q. Was it produced there? Was it handed around, anything of the kind?

A. It was not.

Q. What else was said, if anything, on that day?

A. There was nothing else said except that they were going to expedite the matter and get the thing  
30 cleaned up within a week or ten days.

Q. Now, then, when were you next present at an interview on this subject?

A. We went to Cape May some time in March, Mr. Schaffer and myself, on another matter, and we stopped in to see Senator Stevens. The Senator said, "They have done nothing" —

Mr. Bacon: I object to that.

The Court: Yes.

Q. You can't tell what Senator Stevens said, but, as the result of what he said, did you do anything relative to making a demand on anybody?

A. The Senator wrote them a letter —

Mr. Bacon: I object to that, if the Court please. That is not the way to prove it. Senator Stevens is here. 10

Q. What did you see Senator Stevens do?

A. He wrote a letter demanding that they complete —

Q. Not what was in the letter; what did he do with the letter after he wrote it?

A. It was delivered to Mr. Meecray.

Q. Did you see it delivered?

A. Not that letter. 20

Q. You didn't?

A. Not that letter.

Mr. Bacon: I move it be stricken out.

The Court: Yes, it will be stricken.

Mr. Richards: No objection.

Q. Did you go down again in March? 30

A. No, we went down in April.

Q. On that occasion, did you have any other conversation with Senator Stevens?

A. When we went there in April I went across the street from Senator Stevens' office and happened to meet Mr. Meecray, told him we wanted a conference

this morning, went back to Senator Stevens' office, and Mr. Eldredge came in with Mr. Mecray. The Senator said to them, "You have done nothing to complete this contract," and he handed Mr. Mecray a letter demanding the return of the money.

Mr. Bacon: I object to what was in the letter.

Q. Did you see the letter?

10 A. I did.

Mr. Richards: I think you have already said, Mr. Bacon, you can't produce the original.

Q. Is this a copy of the letter? (Showing witness D2 for identification.)

A. This is a copy of the letter.

Q. Now, did you see the letter, of which this is a copy, handed to Mr. Mecray?

20 A. That letter, a copy of that letter was handed to Mr. Mecray. He turned around to Mr. Eldredge, and he said, "Sam, shall I take it?" And he said, "Yes. There is no harm in taking it." He said to him then, Mr. Mecray said to Mr. Eldredge, "Sam, why didn't you get this matter cleared up? Can't you go to Trenton on Monday?" And he said, "No, I can't go Monday, but I will go some day next week," and Mr. Mecray then said he couldn't get Mr. Eldredge to clean this matter up. That was in  
30 April when this letter was delivered.

Q. Were you present in May?

A. I was not.

Q. Were you present at any time when any other demands were made on Mecray for either the performance of this contract or the return of the money?

A. No, sir; that is the last time.

Cross-examination.

By Mr. Bacon :

Q. The day you were in the bank, what did you see given to Judge Eldredge?

A. I didn't see anything given to Judge Eldredge except our money.

Q. Then you weren't there when the deed was given?

A. I didn't see the deed given. 10

Q. Who dictated the agreement that Judge Eldredge wrote on the typewriter?

A. Judge Eldredge wrote it; nobody dictated it.

Q. Did you have anything to say about what was to go in it?

A. No, sir.

Q. Did you hear Perlstein tell him what to put in it?

A. No, I didn't hear Perlstein tell him what to put in it. 20

Q. Did you hear Senator Stevens tell Judge Eldredge what to put in it?

A. No, sir.

Q. Did you hear anybody else tell him what to put in it?

A. No, sir.

Q. Was it read over?

A. We all looked at it; yes, sir.

Q. You looked at it?

A. Yes, I looked at it. 30

Q. Did Judge Eldredge read it?

A. He read it; yes.

Q. Did he read it out loud?

A. No, just laid the letter down there and we looked at it, all stood there looking at it over each other's shoulders.

Q. Anybody find any fault with it?

A. Not particularly, no.

Q. Did anybody find any fault with it?

A. No.

Q. Did all of you approve it?

A. Yes, long as Senator Stevens approved it we were satisfied.

10 Q. Now, you and Mr. Eldredge and Senator Stevens made some figures up, didn't you, in Senator Stevens' office, on the sixth of February before you went to the bank?

A. We did.

Q. Did you see that package of leases that Senator Stevens had here day before yesterday?

A. Only in the package.

Q. But you used those leases, the information from the leases, for the purpose of making up these figures, did you not?

20 A. No, sir; Mr. Mecray called off to me the date of the leases and the amount per year or per meeting.

Q. Did he do that from memory or from the leases themselves?

A. I think he had a book, a small memorandum book of some kind.

Q. Was there anything said about a lease being drawn between Goldman and Mecray for the part of the building that Mecray was to occupy?

A. Yes, sir.

30 Q. What was said about that?

A. According to the terms of the agreement there was a lease to be executed by Mecray for, I think, two years at twenty-five hundred a year, if my recollection is right.

Q. Was there any talk about that that day?

A. Yes.

Q. Was there a lease drawn?

- A. I believe there was a lease drawn.
- Q. Senator Stevens drew it on the typewriter?
- A. I think he did.
- Q. While you were there?
- A. While I was busy with the figures, the Senator went over to the typewriter.
- Q. But you understood what he was doing?
- A. Yes, surely.
- Q. That he was drawing a lease? Did you see Mr. Meecray sign it? 10
- A. I didn't see Mr. Meecray sign it.
- Q. Do you know what became of the lease?
- A. I really don't know.
- Q. Did you see the \$125,000 mortgage on February sixth?
- A. The original paper, I saw a paper, I don't know what it was. It wasn't handed to me.
- Q. Well, you heard Mr. Perlstein offer to execute some paper, didn't you?
- A. I did, yes, sir. 20
- Q. Do you know who had the paper, who brought it in there?
- A. No, I don't know.
- Q. So far as you know, was it prepared by any of your folks, that is, anybody interested on your side?
- A. No, sir.
- Q. Do you know or did you hear anybody say that Mr. Eldredge had prepared the mortgage?
- A. No, sir; I didn't.
- Q. And you didn't hear all that was said that day, 30 did you?
- A. Well, I heard most of the conversation.
- Q. Most of it? Now, did you hear some talk about a mortgage, didn't you?
- A. I told you that there was a question of a change as to the reduction of the amount of the

mortgage principal per year which differed from the terms of the agreement, the agreement was very vague.

Q. Then you had some mortgage there to talk about, didn't you?

A. In a general way, yes, sir.

Q. Did you know that Mr. Eldredge had drawn that mortgage?

A. No, I didn't know.

10 Q. Did you know that Mr. Eldredge had drawn the deed?

A. Which deed?

Q. The deed from Mecray to Goldman?

A. I didn't see the deed.

Q. Nothing was said about the deed being ready, was there?

A. Those things, when you have a counsel, you leave it to your counsel and we presumed that Senator Stevens had attended to that.

20 Q. You thought that Senator Stevens had drawn the deed and bond and mortgage?

A. Not necessarily; no, sir.

---

PHILLIP I. SCHAFFER, SWORN.

Direct examination.

30 By Mr. Richards:

Q. Mr. Schaffer, where do you live?

A. Atlantic City.

Q. Were you also interested or concerned in some manner with the sale of this property?

A. I was.

Q. Were you present on the sixth of February?

A. I was.

Q. In Mr. Stevens', in Senator Stevens' office?

A. Yes, sir.

Q. Now, did you hear the conversation in the conference there relative to the settlement?

A. Yes, I overheard the conversation.

Q. Now, will you tell us what the conversation was relative to the settlement between Mr. Mecray or his counsel and Senator Stevens, Mr. Perlstein or anybody else. 10

Mr. Bacon: I object to that, if the Court please, "or anybody else."

Mr. Richards: Strike that part out then.

(Question repeated, leaving out "or anybody else.")

A. Why, when Mr. Mecray came in I greeted him and said to him, "You are going to get a lot of money today," something to that effect, and he said to me, asked if they were ready, everything was—he was ready for the settlement—he said, "No," he had some matters to still clean up, but to go ahead with the settlement just the same. I told him I didn't think, I didn't see why it was necessary, if he wasn't ready. "Oh," he said, "We will settle today." Well, then, they all got together, Mr. Lissman, Mr. Mecray, Mr. Eldredge, and started to figure. I didn't take any part in that, and got the figures ready which showed the amount for the settlement, and Mr. Stevens, Senator Stevens, stated at the time he didn't see why there was any money to be put up if they weren't ready, and Mr. Mecray said, "We will have everything fixed up in about a 20 30

week," and the suggestion was then made about putting the money in escrow, everything would be cleared up in about a week.

Q. Then you went over to the bank after that?

A. To the bank after that.

Q. That was later in the afternoon?

A. That was later in the afternoon.

Q. And there you had another conversation in which Judge Eldredge was present?

10 A. I wasn't in that conversation. I stood out in the corridor with Mr. Needles but when Judge Eldredge was making up the escrow agreement I stood at the wicket there of the paying teller, just stood there and the conversation between —

Q. Now, then, did Mr. Needles hear any of the conversation that took place in the office?

A. He couldn't.

Mr. Bacon: I object, if the Court please, on the  
20 ground he can't tell what Mr. Needles did or did not hear.

The Court: Oh, yes, if Mr. Needles wasn't there he could say he didn't hear it. I will permit it.

(Question repeated.)

A. He couldn't have heard it.

30 Q. Did he hear any of the conversation that took place when Judge Eldredge came out to the typewriter?

A. He wasn't there. I stood alone at the wicket window.

Q. Where was he at that time?

A. I believe he was just right near to the door of the bank.

Q. Of the bank?

A. Of the bank, just about the entrance.

Q. What did you hear said at the time Judge Eldredge was typing or about the time he was typing this escrow agreement?

A. I heard Mr. Perlstein say to him, "It is a question of a matter of ten days, a week or ten days that we are to be paid interest for this money that we are putting up here," and Judge Eldredge, in sort of a jocular way, said, "I ought to charge you for keeping it, putting me to the, bringing me down here on a Saturday afternoon and putting me to this trouble." 10

Q. Was that all that was said about the length of the settlement it would be when the settlement was to take place? I mean that was all that was said at that time?

A. At that time, yes, sir.

Q. Were you present at any time, any other conversation, after that relative to this property? 20

A. I was present in March.

Q. Where was that conference?

A. That conference was in Senator Stevens' office.

Q. Who was present at that conference?

A. Mr. Lissman, Senator Stevens, Mr. Mecray, myself, and, I believe, Mr. Eldredge came in later.

Q. Were you present at an interview in April, where any of these same parties were present?

A. I was.

Q. Who was present at the April interview? 30

A. Senator Stevens, Mr. Lissman, Mr. Eldredge, Mr. Mecray and myself.

Q. Now, in the interview in March, are you sure that Mr. Mecray was there?

A. I believe I am sure of it. I just don't recollect because I had a conversation with Mr. Mecray.

Now, whether it was on the outside or in the office, I had a talk with him.

Q. What time in March was that you had a conversation with him?

A. I just can't recollect the date.

Q. Was it the early or latter part of March?

A. Was the latter part, I believe.

Q. What was your conversation with him at that time?

10 A. I met Mr. Mecray and I was very much put out that they hadn't done anything, and I told him that it was very poor business as a business man, having us tied up the way he did, having our money tied up and something had to be done, that it was unfair to be going along this way without coming, for them absolutely neglecting the thing and not doing anything.

Q. Did you make any statement regarding the rescission of the contract at that time to Mecray?

20 A. I told Mr. Mecray that I was thoroughly disgusted with the way they were carrying on, that we were there, and Mr. Mecray said to me, "I have been after Sam Eldredge to do something in this matter and I can't get him to do a thing," just what he said to me, "and I am going to see him again and see what can be done."

Q. Now, after you met Mr. Mecray, what did you do then?

30 A. Why, I told Senator Stevens that as far as we were concerned we were through —

Mr. Bacon: I object to what he told Senator Stevens.

The Court: Sustain the objection.

- Q. You went to Senator Stevens' office?  
A. Yes, sir.
- Q. You talked to Senator Stevens?  
A. Senator Stevens about it.
- Q. Did you direct Senator Stevens to do any particular thing?  
A. I did.
- Q. Then, getting down to the interview in April, you remember when that interview was?  
A. I believe was about the fifteenth; I don't know 10  
the exact date.
- Q. Around the fifteenth?  
A. Yes.
- Q. Now, at that time?  
A. I believe it was Saturday.
- Q. Was any demand made on Mr. Mecray relative to this property or the return of the money?  
A. There was.
- Q. What was that demand?  
A. It was a demand made by Senator Stevens by 20  
letter.
- Q. What was the nature of the demand?  
A. Nature of the demand for the return of the money or the interest.
- Q. Was that demand made in writing?  
A. In writing.
- Q. Did you see the paper?  
A. I did.
- Q. Is this a copy of it, witness being shown Exhibit D2 for identification?  
A. Yes, sir. 30
- Q. What did Mr. Mecray say?  
A. Mr. Mecray looked at the paper when it was handed to him and he looked up to Mr. Eldredge and said, "What will I do with this?" He said, "Take it; there is no harm in that."
- Q. Did he return the money?

A. He did not.

Q. Did he tender a deed to the property?

A. Don't know anything about any deed.

Q. Did he say he was able to give an unencumbered title that day?

A. He did not.

Q. Did you have another interview later on in May?

A. Yes, sir.

10 Q. Who was present at that interview?

A. Was Mr. Gray, Mr. Perlstein, Senator Stevens, myself, Mr. Mecray and Mr. Eldredge.

Q. Was there any further demand made upon Mr. Mecray on that day?

A. There was.

Q. What was that?

A. Mr. Gray requested the return of the money, of the return of the money to avoid any litigation.

20 Q. Did Mr. Gray say anything about what he would do if the money wasn't returned?

A. That he would institute a suit for the return of it.

Q. What answer did Mr. Mecray make to that?

A. Mr. Mecray said he didn't have the money if he wanted to return it.

Q. Anything else said?

30 A. There was a question there, Mr. Mecray, I believe asked Mr. Gray at the time how about the commission, who will have to pay that, and I don't recall whether Mr. Gray advised him on that matter or Mr. Eldredge, but he was told that he would have to pay it.

Cross-examination.

By Mr. Bacon:

Q. What is your connection with this matter? I didn't get that, if you testified about it. What interest have you in this?

A. I have a one-sixth interest.

Q. What was the date of this March interview?

A. I can't just recall the exact date.

Q. About when was it? 10

A. I believe it was the latter part of March.

Q. At that time, had you made up your mind you wouldn't take the property?

A. After I had the talk with Mr. Mecray.

Q. So that you made up your mind some time in March that you wouldn't take it?

A. Didn't make up my mind, after I had a conversation with Mr. Mecray, and he told me there was nothing done about him clearing the thing up, I told him it was pretty poor business to be tied up in this way. 20

Q. From that time on you have never had any intention of carrying out this contract, have you?

A. I haven't had anything to do with the contract. I just have an interest.

Q. I thought you said you were one-sixth owner?

A. I am one-sixth interest, but Mr. Perlstein had charge.

Q. But, so far as you are concerned, you never had any intention of carrying this contract out since some time in March, have you? 30

A. After I had talked with Mr. Mecray personally, I was very much disgusted.

Q. You were all through, weren't you?

A. I didn't think it was fair to be held up that length of time.

Q. But you have never made any effort since that time to carry out the contract, have you?

Mr. Richards: I object to that, your Honor, please.

The Court: What is the objection?

10 Mr. Richards: He only has—in the first place it is a conclusion, no effort to carry it out; in addition to that, it couldn't bind the other five-sixths what he didn't do.

The Court: Only so far as he himself is concerned, of course; I will permit it.

(Question repeated.)

20 A. I don't understand just the question, what part of the contract was I to carry out?

(Question repeated.)

A. No.

---

LEWIS T. STEVENS, SWORN.

30 Direct examination.

By Mr. Richards:

Q. Senator, when was your first connection with the sale of this property?

A. I think in December of 1925.

Q. You had nothing to do with the original agreement?

A. No.

Q. Did you attend on the fourth of January at the time settlement was to be made?

A. On the fourth of January, I think, I handed over the check for five thousand dollars and got the letter from Mr. Mecray for the extension to the sixth of February.

Q. On the sixth of February, of course, you were 10 present?

A. Yes.

Q. Now, at that time will you give us the conversation that took place between Mecray, his counsel, Perlstein, yourself, or the others who were present?

A. Well, Mr. Perlstein, Mr. Lissman and Mr. Schaffer came in my office about ten-thirty in the morning and shortly after Mr. Mecray came in, and then Mr. Eldredge. My best recollection is that they said, "We have come to settle." I don't mean to say, "they," Mr. Perlstein and I think Mr. Lissman said, "We have come to settle," and asked the question whether Mr. Mecray was ready. Mr. Mecray said he was ready. I asked the question then whether the mortgage had been paid off and whether the inheritance tax had been taken care of, and I don't recall the answer I got, but I remember then Mr. Perlstein said, "Well, hadn't we better extend this time for a month?" and Mr. Mecray said, "No." He says, "We will settle today." No, I am wrong. Mr. Mecray said, "We will settle now." So then a general conversation with regard to the mortgages and various questions relating to the settlement continued practically until about four o'clock in the afternoon. Mr. Mecray handed me the package of leases and then I handed back the package of leases to Mr. Mecray and Mr. Mecray then gave the 20 30.

information to Mr. Lissman and Mr. Eldredge as to the apportioning of the rents and Mr. Eldredge, at the request of Mr. Mecray, took down the figures for him and Mr. Lissman took down the figures for the other gentlemen, and they arrived at the amount of cash which was to be paid over, deducting taxes, water rents, and so forth. A discussion arose as to the amount to be paid at each paying period on the mortgage and Mr. Eldredge produced a bond and  
10 mortgage and there was in the bond and mortgage, or either it wasn't written in the mortgage at all, the amount of money which was to be paid yearly. They started in with the proposition five thousand a year was to be paid on the mortgage and ended up twenty-five hundred dollars a year was to be paid. Now, whether Mr. Eldredge had that in the mortgage or whether he had to take it back to the office and fill it out I don't recall. At the conclusion of the conversation, about four o'clock, they had agreed to  
20 put the money in escrow and deliver the deed to Judge Eldredge with the money and Mr. Perlstein was to take back to Philadelphia the bond and mortgage to be executed by Mr. Goldman and they in turn were to be forwarded to Judge Eldredge to be kept there until Mr. Eldredge, representing Mr. Mecray, and myself, representing the other gentlemen, should let the papers be exchanged and the money passed.

30 Q. Was anything said about when this was to be done in point of time?

A. In the morning when Mr. Mecray says, "We will settle now," he says, "This matter can be all cleared up within a week." He didn't say, "This matter can be all cleared up." He said, "This matter ought to be all cleared up within a week."

Q. Was anything said further over at the bank about when the matter was to be cleaned up?

A. My recollection is that somebody said something. I don't know who it was, but somebody said something about ten days, but I am not certain as to whether it was a reference to clean the matter up in ten days. My inference was that it was.

Q. Was there a general understanding between all the parties as the result of this conversation that the twenty-five thousand dollar mortgage would be cancelled of record and the inheritance tax would be paid within a week or ten days? 10

Mr. Bacon: I object to that, if the Court please. That is the very question at issue.

The Court: Sustain the objection.

Q. Did you draw a lease that day for Mecray?

A. I drew a lease from Goldman to Mecray for a room in the lower part of the post-office building for which the rent was to be twenty-five hundred dollars for the first year and three thousand dollars for the second year. 20

Q. What did you do with the lease?

A. Handed it, the original and carbon copy, and I think a second carbon copy was there, over to Mr. Mecray.

Q. Did you ever get it back?

A. No.

Q. Was it executed as far as he was concerned, to your knowledge? 30

A. I think Mr. Mecray signed two copies; two of the copies.

Q. What did he do with them?

A. I don't know.

Q. He didn't return them to you?

A. No.

Q. Did he give them to Mr. Perlstein?

A. I don't know.

Q. Now did Mr. Perlstein offer to execute the \$125,000 mortgage that day?

A. He did.

Q. To that Mr. Eldredge demurred?

A. Yes.

Q. What reason did he give?

A. Some defect of the power of attorney was his  
10 excuse.

Q. Was there a defect in the power of attorney?

A. I couldn't tell you.

Q. Didn't you see the power of attorney?

A. I didn't look at it.

Q. It was there?

A. It was there, yes.

Q. Was the deed to the property tendered by Mr. Mecray at that time?

A. The deed was there and delivered to Judge  
20 Eldredge.

Q. Was it tendered to Mr. Perlstein at any time?

A. It was to pass to them on my approval, to them or —

Q. Was it opened and read or anything of that kind?

A. I don't recall that it was read. It was looked at.

Q. Now, at that time, was there anything said about the fact that the title to the property wasn't  
30 in Mr. Mecray?

A. I think I said so because I knew—well, no, I will withdraw that answer.

(Question repeated.)

A. I don't recall that.

Q. Was anything said relative to the fact of the title?

A. Except that I said there was a twenty-five thousand dollar mortgage and that the inheritance tax had not been paid. I hadn't then received the settlement certificate from the Ocean City Title and Trust Company who had been ordered to make the search.

Q. Well, at that time did you know, or was it disclosed to you, that the deed had not yet been recorded from the Focer heirs to Mr. Meecray? 10

A. No.

Q. You found that out subsequent to that time?

A. When I received the settlement certificate around the eleventh of February.

Q. And what did you do about that, Senator Stevens, anything?

A. No, because I didn't think there was anything for me to do until they notified me that everything was clear and then I was to see that it met my approval, then I was going to say let the money pass to Mr. Meecray. 20

Q. Did they ever notify you that everything was clear?

A. Not yet.

Q. Did you ever have any talks yourself with either Meecray or Mr. Eldredge about this matter prior to the latter part of March?

A. I think when I would meet Mr. Eldredge I would ask him how they were getting along toward clearing up these exceptions set forth by the title company. 30

Q. What did he say to that, anything?

A. He would generally say, "We are going ahead."

Q. Now, on the twenty-second of March, did you have a talk with Mr. Schaffer?

A. I think was Mr. Schaffer and Mr. Perlstein.

Q. As the result of that talk—did you talk to anybody else about the property that day?

A. I don't recall.

Q. As the result of that talk, did you address a letter to Mr. Mccray?

A. As a result of some talks, I addressed a letter to Mr. Mccray.

10 Q. Witness is shown D1 for identification, and I ask you, is that the letter that you addressed to Mr. Mccray?

A. On March twenty-second, yes; this is a copy of it.

Q. How did you deliver that letter?

A. Personally in his store building, in the post-office building, Cape May, at his desk.

Q. Handed it to him?

A. Handed it to him personally, yes.

Q. Tell him what the contents of it was?

20 A. No, except I said, "Here is a notice for you," or "a letter," I don't know which.

Q. Make any reply?

A. I don't recollect what reply he made. I think he did make a reply, but I don't recollect what he said.

(Copy of letter offered, received in evidence, and marked Exhibit D1.)

30 Q. Now, as the result of that letter, did Mr. Mccray either deliver an unencumbered title to the property or return the money?

A. Not to me.

Q. Now, did you have another conference with him around the seventeenth of April, 1926?

A. With Mr.—who?

Q. Mr. Meecray?

A. Yes.

Q. At that time, did you make a further demand on him?

A. He was then in my office and I handed him another letter which I had been instructed to write by my clients.

Q. Is this the letter?

A. Yes.

Q. And you handed that to him personally?

10

A. Yes.

Q. Who was present at that time?

A. I think Mr.—there were at least two out of the three gentlemen there present; I don't just recall which.

Q. Was Mr. Samuel Eldredge there?

A. Yes.

Q. What did Mr. Meecray say at that time?

A. I think Mr. Meecray said, "What will I do with it?" addressing his conversation to Mr. Samuel Eldredge. 20

Q. And what was the reply?

A. The best of my recollection is Mr. Eldredge says, "Take it."

(Copy of letter offered, received in evidence, and marked Exhibit D2.)

Q. This letter of the seventeenth, was it folded up in an envelope or was it handed this way?

30

A. Just handed open.

Q. He knew what the contents of it was, did he?

A. I presume he did after he read it.

Q. And did he read it?

A. I don't recall that who read it.

Q. As the result of that letter, did he return the money?

A. Not to me.

Q. On around the fifteenth of May, did you have another conference with Mr. Mecray?

A. In my office.

Q. Who was present at that time?

A. Mr. Gray I remember distinctly was present, and I think Mr. Perlstein, and I think Mr. Schaffer.

Q. And Mr. Eldredge was there?

A. Yes.

10 Q. And Mr. Mecray?

A. Yes. They came in after I had telephoned to Mr. Mecray to come.

Q. What was said at that interview relative to the return of the money?

A. I remember Mr. Gray said, "We are down here to have this matter settled up. We either want our title or we want the money," and I think he said, my recollection he said also, "If it isn't, we shall immediately bring a suit for the recovery of it."

20 Q. What did Mr. Mecray reply to that?

A. I don't recall his reply, except that he made the statement with regard to the inheritance tax that he would see if he couldn't get that straightened right up.

Q. Did he offer any explanation of why he had not cleared the title before this?

A. I don't recall that.

Q. Did he say anything about whether or not he had the money to pay back?

30 A. I didn't hear him say anything about that.

Q. Did he return the money that day?

A. He didn't to me.

Q. Or in your presence?

A. No.

Q. And shortly thereafter, did you institute a suit for the return of the money?

A. Yes, on that day I had then in front of me the lead pencil draft of my complaint.

Q. And did you reduce that to due form and commence your suit?

A. Yes.

Q. When did you commence the suit?

A. A very few days afterwards I prepared my summons and complaint and sent it to the sheriff.

Q. Well, within a few days after that, is that right?

A. Yes.

10

Q. Now, did you ——

A. I don't recall the date.

Q. —— yourself make any examination of the record title prior to the time of commencing the suit?

A. No.

Q. Have you made such examination since?

A. Yes, hurriedly.

Q. At the time that you commenced the suit, was there still the lien of the twenty-five thousand dollar mortgage there?

20

A. I think my summons and complaint is dated about a day after or two days after the mortgage was cancelled of record.

Q. But after you had actually drawn the papers, is that right?

A. My papers were drawn before the twenty-fourth, yes.

Q. Did Mr. Mecray or Mr. Eldredge or anybody else for Mr. Mecray ever tender to you, prior to the time when you commenced this suit in the Cape May Circuit, an unencumbered title to the post-office property?

30

A. No.

Cross-examination.

By Mr. Bacon :

Q. Senator, I show you what purports to be the summons and complaint issued in this matter in the matter of the suit brought in the Cape May County Circuit and ask you if that is your signature?

A. Yes.

10 Q. Is that your signature to the summons?

A. Yes.

Q. When is the summons dated?

A. The summons were dated the twenty-seventh day of May, 1926.

Q. Do you remember that Mr. Eldredge showed you the release from the lien of the inheritance tax on this property?

20 A. Mr. Eldredge called me. I went into the Merchants' National Bank and was called—just casually went in and was called to the back room by, I think, Mr. Samuel Eldredge and Judge Henry Eldredge, and I think Mr. Mecray was there, and Mr. Eldredge said, "I have a release from the State for the inheritance tax," and said, "This is it."

Q. And showed you the paper?

A. He showed me a paper. I had no reason to dispute his word.

Q. Did he also show you the cancelled mortgage, the cancelled \$25,000 mortgage?

30 A. Yes, he showed me a mortgage which he said was cancelled.

Q. Did it have the cancellation stamped on it?

A. I don't recall. He just simply said, "This is a cancelled mortgage."

Q. Do you know when that was?

A. Well, it was before the sheriff had served the summons and after I had mailed him the summons.

Q. Did you mail the summons before the date of it?

A. I might have mailed it the day before the date of it, knowing he wouldn't get it in the mail until the morning of the date.

Q. I call your attention to the cancellation mark on there, that is May twenty-fourth, isn't it?

A. I know that from the records.

Q. And the deed to Mecray was put on record on the twenty-fourth, wasn't it?

A. I know that.

10

Q. You know that from the record?

A. Yes, I learned that afterwards.

Q. You know from the record at the time the summons was actually dated that the property had been entirely cleared of encumbrances?

A. No, I don't, because the inheritance tax receipt wasn't recorded until the third of June.

Q. But that is correct when you saw this —

A. Well, I looked at the records of the court house and found it was recorded on the third day of June; this is the only record I saw. 20

Q. But you saw that in the bank before the suit was brought, didn't you?

A. Samuel F. Eldredge said that was what it was. I have no doubt but what it was.

Q. And that was before the suit was brought?

A. Before the suit was dated, yes.

Q. Where was this conference with Mr. Gray?

A. On the—it was on a Saturday around the fifteenth of May, the best — 30

Q. The Saturday before the tax was paid, was it?

A. I believe so, yes.

Q. What was that talk about?

A. That was when Mr. Gray said, "We want the title or the money back and we are going to bring a suit for the recovery of it."

Q. And did Mr. Eldredge then say that he would go to Trenton and see if he couldn't get this tax paid or assessed?

A. I don't know; I think he said something about he would go to Trenton, yes; I don't recall his words.

Q. Was there any refusal on his part or on the part of Mr. Meccray to do anything on that day?

A. I don't know as there was any refusal.

10 Q. Well, did they say that they wouldn't get the title cleared up?

A. No.

Q. Were you present in the bank when this escrow agreement was drawn?

A. Yes.

Q. Senator, I show you Exhibit C2; were you present when that was drawn?

A. Yes.

20 Q. Did you hear it read or did you read it yourself?

A. Yes; I heard it read.

Q. Was it read before it was signed?

A. Wait a minute; strike that answer out. I didn't hear it read.

Q. Did you read it?

A. Yes.

Q. Did you read it before it was signed by your client?

A. Yes.

30 Q. Did you find any fault with it?

A. No.

Q. Did you ask Judge Eldredge to make any change in it?

A. I don't recall that I did.

Q. There then or by then, I mean either in the bank or in your office, do you recall any statement having been made by Mr. Samuel Eldredge as to

what had been done by him up to that time toward getting these taxes assessed?

A. I do not.

Q. You have had some experience, haven't you, in getting taxes assessed by the department in Trenton?

A. Yes.

Q. Did you ever know one of them to be gotten through in five days?

A. No.

Q. Did you ever know one to be gotten through in ten days?

A. No.

Q. Now, when you finished up in your office on the sixth of February and went down to the bank, what was there that remained to be done to fully perform this contract? You had an executed deed, didn't you?

A. Yes.

Q. Were you satisfied with it, with the form of it? 20

A. Well, I haven't really read the deed yet.

Q. You mean to say you have never examined this deed and don't know whether it was satisfactory or not?

A. No, because the taxes had not yet been taken off and when they were taken off then I was going to look over everything and pass title for my clients.

Q. Don't that paper require you to pass on the legal sufficiency of these papers?

A. Certainly does.

Q. Have you ever done it? 30

A. No, because this had not been completed to do it.

Q. Wasn't the deed turned over to Judge Eldredge in your presence at the same time that paper was executed?

A. Up to the time that I brought the suit there

had not been presented to me the whole matter with the records clear to comply with the exceptions set forth of the Ocean City Title Company so that I could even take it up to pass and after I brought the suit, of course, or after I was ordered to bring the suit, of course I felt that I couldn't, for my client said, "We will accept it anyhow."

Q. Senator, I show you Exhibit C8, is that signed by you?

10 A. Yes.

Q. What is the date of it?

A. May twenty-fifth.

Q. Well, now, as a matter of fact—it is a matter of fact which you now know, isn't it, that on that day the twenty-five thousand dollar mortgage had been cancelled of record?

A. Yes.

Q. The taxes had been paid?

A. Yes.

20 Q. And the deed to Mecray had been put on record; you know that now, don't you?

A. I know that now, but when I served that notice I didn't know it.

Q. But on the day that you served that notice you now know that the title was perfectly good, don't you?

30 A. Yes, this was made apparently on the twenty-fifth of May. Of course the mortgage was cancelled on the twenty-fourth of May and the deed from Focer Estate to Mecray was recorded on the twenty-fourth of May, but I had no knowledge at that particular time that they had been, so I say —

Q. But it was a matter of public record, wasn't it?

A. Oh, yes.

Q. And you now know that the title was perfectly good on the twenty-fifth of May?

A. Oh, no, because the inheritance had not yet been recorded.

Q. But you knew it had been paid because you had seen the paper?

A. Well, Mr. Eldredge said, "This is the receipt."

Q. Now, when you—to go back to this question, I first asked and I switched myself off—what was there still remained to be done about this matter when you went down to the bank?

A. What date?

10

Q. On the sixth of February.

A. Why from a later examination of the records there was the twenty-five thousand dollar mortgage was to be cancelled, the deed from the Focer Estate to Mecray was to be recorded, the State inheritance tax waiver was to be recorded from the State inheritance tax covering this property and an executed bond and mortgage was to come. Of course that had to be satisfactory, however, to Mr. Eldredge and not me.

20

By Mr. Richards:

Q. Senator, was it possible to have obtained a waiver of the lien upon the post-office property without the payment of the inheritance tax in full?

A. I presume it would be.

Q. Do you know whether or not any effort was made to ever obtain a release of the lien of the inheritance taxes on this property?

30

A. I do not.

Q. Was any such effort ever called to your attention?

A. No.

Q. Now, Mr. Bacon asked you whether you had ever seen any of these inheritance settlements put

through in five or ten days; have you ever gone to Trenton and hurried the thing through yourself?

A. Yes.

Q. Many times, haven't you?

A. Yes.

Q. And gotten very prompt action up there, haven't you?

A. Well, reasonably prompt, yes.

10 Q. Do you think that between the twenty-eighth of August, 1924, and the sixth of February, 1926, you could have cleaned up the taxes on this property sufficient to have gotten the release from this property?

Mr. Bacon: That is objected to.

The Court: Sustain the objection.

20 Mr. Richards: I think he hadn't any right to ask the other question, but having asked it, I think I have the right to the answer.

The Court: I will sustain the objection.

Q. Did you examine at all into the payment of these inheritance taxes on the Focer Estate, Senator?

A. No, except to see whether a waiver had been recorded.

30 Q. Now, on the day that Mr. Gray came down to your office, you already had a pencil sketch of your summons and complaint in this suit on your desk, is that correct?

A. Yes.

Q. You said something in your direct examination about being ordered to bring the suit. Now, when had you been ordered to bring the suit?

A. After —

Mr. Bacon: If your Honor please, I object to that on the ground make no difference when he was ordered to bring the suit; question is, when he did bring the suit.

The Court: I will permit it. I don't think it will have any probative force.

A. At the conclusion of the conference that day I was ordered to bring the suit. 10

Q. How did it come about that you had made this pencilled sketch of your proceedings in that suit prior to that time?

A. I presume one of the gentlemen had said to me, "You might as well get ready for suit."

Q. You don't remember who that was?

A. No, I don't.

Q. Now, at the time that Mr. Gray came there, did he say anything about the title or did he simply ask for the money back? 20

Mr. Bacon: I object to that, if the Court please, on the ground that this is re-direct examination of matters that were gone over by Senator Richards

---

The Court: I think this witness testified to what was said at the time on direct examination.

Mr. Bacon: He testified to it fully. 30

Mr. Richards: Came out on cross-examination, and I think I have a right to probe into his memory about it.

The Court: What came out on cross-examination on this point?

Mr. Richards: It was on cross-examination, if your Honor please, that he spoke about what Gray said, and I want to get definitely from him the exact words of that conversation, if possible, or his demand.

Mr. Bacon: He stated on direct examination, if your Honor please, what Mr. Gray said.

10 The Court: That was my recollection. I think that is true. Sustain the objection.

Q. Are you sure, Mr. Stevens, that Mr. Gray said anything about taking the property at that time?

A. I think he said, "Your title isn't good and you can't give title," something like that. I don't recall the exact words.

Q. Did he say anything about taking the title as it was at that time?

20 Mr. Bacon: Your Honor, please, I still object.

The Court: Sustain the objection.

Q. Did Mr. Gray talk to you at that time about the institution of the suit?

A. Yes.

Q. Did he go over with you the pencil sketch you had made of the summons and complaint?

30 A. Yes, and a few days afterward.

Q. Well, did he approve of what you had done at that time?

A. Not that day, no.

Q. Before he left, did he say anything to you about the institution of the suit?

Mr. Bacon: I object to that, if the Court please.

The Court: Sustain the objection.

Mr. Richards: If your Honor please, on what theory may I ask?

The Court: Instruction of one counsel to another in the matter isn't admissible.

Mr. Richards: I presume this was still during the time Mecray was present. 10

A. No.

Q. He wasn't present?

The Court: That was the point I took.

Mr. Richards: I was thinking they were still all there.

Q. You talked to Mr. Gray, of course, before Mr. Mecray was sent for, didn't you? 20

A. Over the 'phone, yes. You mean that morning?

Q. Yes.

A. Over the 'phone.

Q. Was Mr. Mecray there when Mr. Gray arrived?

A. No.

Q. Then did you talk with Mr. Gray before Mecray came in?

A. Yes. 30

Q. That was in regard to this matter —

Mr. Bacon: I object, if your Honor please, to conversation. Your Honor has already ruled on that conversation between counsel not in the presence of the parties.

Mr. Richards: I am asking whether it was in regard to this matter. Haven't the question finished yet.

The Court: I will permit it so far.

Q. — was it, Senator?

A. Yes.

10 Q. Did Mr. Gray see your pencil memorandas at the time regarding your institution of the suit?

Mr. Bacon: I object, makes no difference what he saw or heard at a conversation prior to the time Mr. Meecray came in.

The Court: Sustain the objection.

20 Q. Do you know whether or not you showed the actual memorandas you had to either Meecray or to his counsel at that time as further evidence of your intention to bring the suit?

Mr. Bacon: That is objected to. The latter part of the question is objected to.

The Court: Yes, strike the latter part.

(Question withdrawn.)

30 Q. Do you know whether you showed them or whether they seen your memorandas concerning the suit?

A. The memorandas laid in such shape that they could have seen.

Q. On your desk?

A. Yes.

Mr. Bacon: I object to that and ask the answer be stricken out as not responsive.

The Court: I will permit it to remain for what it may be worth.

DEFENDANTS REST.

TESTIMONY CLOSED.

10

The Court: I take it that there is but one primary question in this case: First, was an actual settlement made between these parties upon February the sixth and with the different papers and the money placed in escrow without any limit as to time? Secondly, if there was no limit as to time, was the escrow such as could be terminated upon a notice given? And, if so, was it terminated by a notice? Isn't that the entire case in a nutshell? 20

Mr. Bacon: That is it as I see it.

Mr. Richards: I think that is the situation.

The Court: Do you want to file memorandas on that or do you want to argue?

Mr. Richards: Might add to that this question, whether or not not having the title — 30

The Court: That is all incidental to the main question. Of course that is a part of the res, but not a part of the question. It is one of the elements entering into the determination of the question.

ARGUMENTS.

## CONCLUSIONS.

(Filed May 14, 1928.)

## IN CHANCERY OF NEW JERSEY.

10

Between

JEREMIAH E. MECRAY, *et*  
*ux.*,*Complainants,*

and

ISADOR GOLDMAN, *et al.*,  
*Defendants.*

On Bill for Injunction.

On Final Hearing.  
Conclusions.

20

MR. WALTER H. BACON, for the complainants.  
MR. EMERSON RICHARDS, for the defendants.

## INGERSOLL, V. C.

On the 28th day of August, 1925, the complainants entered into an agreement with the defendant, Isador Goldman, wherein they agreed to sell and convey to him certain premises in Cape May City for the sum of \$150,000, which sum the said Goldman agreed to pay: "The sum of \$25,000 cash as follows: Five thousand dollars on the date thereof; five thousand dollars on December 1st, 1925; and fifteen thousand dollars on January 4th, 1926, at

the time of settlement, and the balance of \$125,000 to remain on mortgage for five years with interest at 6% per annum payable semi-annually; \$5,000 to be paid in cash each and every year for five years, until said mortgage matures."

The premises to be conveyed clear of incumbrance. The title to be good and marketable and free of all judgments; taxes and water rents to be apportioned to date of settlement, and possession to be given on day of settlement by transfer of existing leases. The Focer-Mecray lease to be for two years, at rental of \$2,500 the first year and \$3,000 for the second." 10

By mutual agreement the time of settlement was extended to February 6th, 1926. On February 6th, 1926, the parties met for the purpose of making settlement. It developed that the complainants were not in position to make settlement because: (1) The inheritance tax due the State of New Jersey from the estate of one Focer, who at his death held title to an undivided one-half part of the premises in question, had not been paid; (2) that a mortgage of \$25,000 of record had not been cancelled; and (3) the deed from the heirs of said Focer to Mecray had not been delivered or recorded. It was testified, that no question was raised at any time that the Focer heirs still had title, and Mr. Eldredge testified that on said February 6th, 1926, he was in possession of a deed duly executed by them. 20

The mortgage of \$125,000 had not been executed by Goldman and wife, although it was claimed that the same could be executed by one Perlstein, by authority of an alleged power of attorney. This the attorney of Mecray properly refused to accept. 30

Apparently, as a result of considerable negotiation, the parties entered into an agreement as expressed by the following:

“Merchants National Bank,  
Cape May, N. J.  
Gentlemen:

You are handed herewith to be held in escrow the following:

Check for \$6,374.09. Deed from Jeremiah Mecray et ux to Isadore Goldman, covering Focer and Mecray Building, Cape May, New Jersey.

10 At final settlement for the above described property the funds so held are to be distributed as follows;—

\$4,500.00 is to be paid to Sol Needles as commissions.

\$1,874.09 is to be paid to Jeremiah Mecray as purchase money.

20 There will be forwarded to the said bank a mortgage in the sum of \$125,000.00, executed by the above named Goldman to Mecray. This mortgage is to be delivered to the Camden Safe Deposit and Trust Company as collateral for a loan to be made by them upon their agreement to cancel a \$25,000.00 mortgage on the said premises now held by them. Such agreement having been made by them the above named funds are to be distributed and the deed for the premises delivered to Lewis T. Stevens.

The above arrangement is to be carried out with the approval of Lewis T. Stevens, attorney for purchaser, and Samuel F. Eldredge, attorney for seller.”

30 Mecray turned over to Perlstein or Stevens, each of whom were representing Goldman, the then existing leases—he, Mecray, continuing to collect the rents accruing thereunder, and keeping the amount so collected in a “special” bank account, where the same remains, excepting for payment of taxes and water rents, which were paid therefrom.

It will be noted that no deposit was made by Mecray for the rent accruing for the part of the premises occupied by him by virtue of the agreement.

No time was specified in the letter to the bank (called the escrow agreement) for delivery of the deed, or the distribution of the money. There is considerable testimony that it was stated that it would take about a week or ten days from that date to have the inheritance tax matter adjusted and paid, and the \$25,000 mortgage cancelled. 10

On the 17th day of February, 1926, the bank received the mortgage of \$125,000, duly executed by Goldman and wife to Mecray, as called for by the agreement. The mortgage was dated February 4th, 1926, and duly acknowledged February 16th, 1926, and is the one referred to in the agreement to be delivered to the Camden Safe Deposit and Trust Company, as collateral for a loan to be made by them upon their agreement to cancel a \$25,000 mortgage on the said premises. 20

No action was taken by the bank toward the delivery of this mortgage and the cancellation of the one held by the Camden Safe Deposit and Trust Company, for the reason as stated by the bank: "We didn't do anything with the mortgage by reason of the fact that the payment of the inheritance tax was, as I understood it, the thing that was causing the delay, and when that was paid, then the question of the delivery of the mortgage was a matter of only twenty-four hours, so that we did nothing with the mortgage." 30

No other action was taken by the bank prior to the 25th day of May, when Senator Stevens served upon it the following notice:

"To Merchants National Bank of Cape May, and Samuel F. Eldredge, Esq., Attorney for Jeremiah E. Mecray:

You are hereby requested to pay to me, and I hereby demand of you the sum of six thousand three hundred and seventy-four dollars and nine cents, deposited with you, The Merchants National Bank of Cape May, on February 6, 1926, which sum was to be paid to the said Jeremiah E. Mecray upon his making marketable title to and delivery of a deed for the Post-Office Building, Cape May, New Jersey, or suit at law will be entered for the return of said  
10 sum. Dated; May 25, 1926.

Isador Goldman  
By LEWIS T. STEVENS,  
Attorney."

On March 23rd, Stevens served upon Mecray, by delivering the same to him, the following notice:

"March 22nd, 1926.

To Jeremiah E. Mecray,  
Cape May, N. J.

20 Please take notice:

That I demand delivery of the post office building, Cape May, New Jersey, into my possession within five days from date, together with deed and other papers belonging to the ownership of the same, or else a return of my mortgage and bond, and a return of all monies paid on the purchase of the same.

Yours very truly,

Isadore Goldman,  
By Lewis T. Stevens  
His Attorney"

30

On April 17th, 1926, Stevens served upon Mecray, by handing the same to him, the following demand:

"April 17, 1926.

To Jeremiah E. Mecray,  
Cape May, N. J.

Dear Sir:

Demand is hereby made upon you to return us the

amounts of money paid on account of the purchase of the Post Office Building, Cape May, New Jersey, to wit: Twenty-five Thousand Dollars, together with interest on the whole amount from the dates on which each payment was made, which do not in any way include any damages which might accrue to us.

Yours very truly,

Lewis T. Stevens

Attorney for Isadore Goldman''

10

On May 27th, 1926, said Isador Goldman commenced a suit against the complainant, Jeremiah E. Mecray, in the Cape May County Circuit Court, to recover the three several payments of \$5,000 each made by said Goldman to said Mecray on August 28, 1925, December 1, 1925, and January 2, 1926, respectively, on the ground that the defendant in that suit, who is one of the complainants herein, has failed to perform said contract, Exhibit A, and said escrow agreement, Exhibit B.

20

On June 3rd, 1926, demand was made by the complainant, of the bank for the distribution of the money and the delivery of the bond and mortgage, and a tender was made of the moneys so collected for rents. Proof was also presented that the liens in question had been cancelled and that the title was marketable. The bank refused to comply with his demand, having theretofore been notified not to carry out the terms of the agreement.

A résumé of parts of the testimony may be of advantage. 30

On or about May 15th, 1926, William A. Gray, an attorney-at-law of Philadelphia, met Mr. Mecray in Stevens' office and stated to him that he represented the purchaser, and called his attention to the fact that the above notice had been served upon him

(Mecray) on March 22nd, and that the money was demanded on April 17th, and that he (Gray) was in Cape May to take up with Mr. Stevens the question of instituting suit, and if "he didn't pay us back the money we were going to institute proceedings immediately." Mr. Eldredge was present during a part of this interview.

Mecray replied: "If I do (pay the money back), who has got to pay the commissions and costs in this case?"

Mr. Gray testified that Mecray did not deny that he received the demand on the 23rd day of March.

Mr. Mecray's testimony was: "There wasn't any set time, except that the agreement said that both lawyers must be satisfied, Mr. Eldredge and Mr. Stevens, and just as soon as we get the papers back from Trenton. As far as the mortgage was concerned, I had been to the Camden Safe Deposit and Trust Company, and asked for \$25,000, which they granted, and I got it within twenty-four hours after they got the inheritance tax. The escrow agreement was an extension and that it was the defendant's suggestion."

He also testified that he went to Trenton with Mr. Eldredge on May 18th, and in response to the question: "Wasn't it (why he went to Trenton) because on the Saturday before you had a conference with Mr. Gray in Senator Stevens' office and Mr. Gray had told you that they were going to bring a suit against you for the return of this \$15,000?" he said, "I don't know as that is just exactly the reason we went there, but it might have been."

Lissman testified that Mecray said: "The whole thing would be a matter of a week to ten days."

Schaffer testified that Mecray said: "We will have everything fixed up in about a week," and also

affirmed the delivery of the demand by Stevens in April.

Stevens testified that Mecray said: "The matter ought to be all cleared up within a week." On March 23rd, Stevens delivered Exhibit D1 to Mecray personally. On April 17th, 1926, Stevens handed Mecray Exhibit D2.

On May 15th, 1926, Gray said: "We are down here to have this matter settled up. If it isn't, we shall immediately bring a suit for the recovery of it." 10

Mecray or Eldredge, or no one else for Mecray ever tendered, prior to the time of the commencement of the suit, an unencumbered title to the property in question.

Stevens testified that at the time of the escrow agreement, Mecray stated: "That this matter ought to be settled in a week."

Perlstein testified that Mecray said: "That the encumbrances were on the property would be cleared up within a week," that Mecray refused an extension of 30 days; that he would clear the matter up within a week to ten days and for us to put the money in escrow at the Merchants' National Bank." 20

Mr. Samuel F. Eldredge testified that the letter dated May 13th, 1926, was the first letter he could find on his files concerning the Focer inheritance tax. There was an affidavit of March, 1926.

The \$25,000 mortgage referred to was cancelled on the 24th day of May, 1926. The inheritance tax was paid on May 18th, 1926, and a release obtained; because of some error another release dated May 28th, 1926, was obtained, and recorded on June 3rd, 1926. 30

Mr. Eldredge testified that the purpose of the escrow agreement "was to extend the time for the performance of the agreement until such time as the

mortgage could be paid and the inheritance tax could be paid. Apparently no attempt beyond writing some letters and filing an affidavit was made by Mr. Eldredge who represented both Mecray and the Focer heirs, between February 6th, 1926, and May 18th, 1926, to remove the inheritance tax exception, although he knew Goldman was insisting on clearing up the matter and that Stevens had asked about it. On May 18th, 1926, as above stated, he went to  
10 Trenton, paid the tax, and obtained the release."

The condition of a deposit in escrow may be in writing or in parol, or partly in writing and partly in parol, and the rule that a written contract between the parties will be deemed to contain the entire agreement is inapplicable. *Fred v. Fred*, 50 Atl. Rep. 776.

The general rules as to escrow are well settled  
"upon the deposit in escrow a contract between the parties as to the delivery of the writing by the de-  
20 pository is created, which neither party can alone rescind (11 Am. & Eng. Enc. Law (2nd Ed.) 344), and the depository, as the agent of both parties, is bound to deliver on the performance of the conditions (Id. 345)." *Fred v. Fred, supra*, at page 778.

We have ascertained that time was not of the essence of the contract in the case at bar, again using the language of Vice-Chancellor Emery in the same case of *Fred v. Fred, supra*, at page 780: "Time  
30 not being of the essence of the contract by the agreement itself, the defendant Fred or Lewis had it in their power to notify complainant to complete the contract within a reasonable time, and thus make the time essential." This was done in the present case.

The prayer of the bill was for a specific performance of the agreement, and for an order restraining

the defendant from further proceeding in the suit at law.

The counter-claim prays for a decree declaring the contract between the parties to be declared to be of no further force and effect, and that the Merchants' National Bank of Cape May be restrained from paying over the money deposited with it.

I will advise a decree dismissing the bill and for relief of the defendant. The form of the decree to be fixed upon notice.

10

---

FINAL DECREE.

(Filed December 5, 1928.)

IN CHANCERY OF NEW JERSEY.

---

20

Between

JEREMIAH E. MECRAY, *et ux.*,

*Complainants,*

and

ISADOR GOLDMAN, *et al.*,  
*Defendants.*

On Bill for Injunction.  
Final Decree.

---

30

This cause coming on to be heard in the presence of Walter H. Bacon, solicitor of the complainants, Jeremiah E. Mecray and Rachel L. Mecray, and Emerson Richards, solicitor of the defendant, Isador Goldman, and Henry H. Eldridge, Esq., so

licitor of the defendant, Merchants' National Bank of Cape May, and the Court having examined the pleadings and taken proof orally in open court and having heard and considered the arguments of counsel, and being satisfied that the complainants did not perform or tender performance of the contract dated August 28, 1925, between the complainants and the defendant, Isador Goldman, prior to the time that the defendant had a legal right to rescind the same for the non-performance of its terms and did so rescind the contract, and that the complainants did not perform or tender performance of the so-called escrow agreement with the Merchants' National Bank of Cape May within a reasonable time or before the defendant had a legal right to rescind the same because of its non-performance and did so rescind, and that by reason of the failure of the complainants to perform either of the contracts according to the terms thereof and being

10

20

30

satisfied that the defendant, Isador Goldman, did lawfully rescind the said contracts by reason of the non-performance thereof by complainants, and being further satisfied that the said defendant, Goldman, was lawfully entitled to maintain his suit in the Cape May County Circuit Court in the cause therein pending wherein Isador Goldman was complainant and Jeremiah E. Meecray was defendant, and the Court being of the opinion that complainants' bill for specific performance of the agreement of August 28, 1925, and the subsequent escrow agreement with the Merchants' National Bank of Cape May should be dismissed, and that the order of this Court, dated August 6, 1926, restraining the Merchants' National Bank of Cape May from paying over the money deposited with said bank under the terms of the escrow agreement dated February 6, 1926, and likewise restraining defendant, Isador

Goldman, from prosecuting his suit in the Cape May County Circuit Court against Jeremiah E. Mecray should be dismissed, and the Court being further of the opinion that the defendant should be relieved of the said agreement and that there should be decreed to be due him the sum of fifteen thousand dollars (\$15,000) with interest, and that the defendant, Merchants' National Bank of Cape May, should be decreed to pay to the defendant, Isador Goldman, the sum of six thousand three hundred seventy-four dollars and nine cents (\$6,374.09), and that they should surrender up and deliver for cancellation to the said Isador Goldman the mortgage of \$125,000 executed by him and now in their hands: 10

It is, on this fifth day of December, nineteen hundred and twenty-eight, ordered, adjudged and decreed that complainants' bill of complaint be dismissed and the relief therein prayed for be denied; and that an order dated August 6, 1926, restraining the Merchants' National Bank of Cape May from paying over the money and delivering the mortgage deposited with said bank under the terms of the escrow agreement dated February 6, 1926, be vacated; and the further order restraining defendant, Isador Goldman, from proceeding further in an action at law pending in the Cape May County Circuit Court wherein Isador Goldman is complainant and Jeremiah E. Mecray is defendant be vacated; and that the contract dated August 28, 1925, between Isador Goldman and Jeremiah E. Mecray and Rachel L. Mecray be declared of no further force and effect; and that the said complainants, Jeremiah E. Mecray and Rachel L. Mecray, deliver the said agreement up for cancellation; and that the said Isador Goldman be, and he is hereby relieved, from performing any of the agreements, covenants 20 30

or undertakings therein required to be done or performed by him.

And it is further ordered, adjudged and decreed that the said complainants, Jeremiah E. Mccray and Rachel L. Mccray, his wife, shall within fifteen days pay to Isador Goldman the sum of five thousand dollars (\$5,000) with interest thereon from August 31, 1925, and the further sum of five thousand dollars (\$5,000) with interest thereon from November 30, 1925, and the further sum of five thousand dollars (\$5,000), together with interest thereon, from January 2, 1926, to the date of this decree, and in default thereof execution issue against the goods and chattels, lands, tenements and hereditaments and real estate of the said complainants, Jeremiah E. Mccray and Rachel L. Mccray, to make said fifteen thousand dollars (\$15,000) with interest thereon as above ordered, according to the practice of this Court.

20 And it is further ordered, adjudged and decreed that until the said sum of fifteen thousand dollars (\$15,000) shall be well and truly paid by the said complainants to the said Isador Goldman, that the said sum of fifteen thousand dollars (\$15,000) and the interest thereon shall be a lien upon the following described lands and premises:

30 ALL that certain lot of land and buildings situate in the City of Cape May, in the County of Cape May and State of New Jersey, lying and situated on the south side of Washington Street, known as 622, 624, and 626, or better known as the Focier-Mccray Building.

It is further ordered, adjudged and decreed that the defendant, Merchants' National Bank of Cape May, be restrained from delivering to the complain-

ants, Jeremiah E. Meecray and Rachel L. Meecray, their agents or attorneys, or to any other person than the defendant, Isador Goldman, a certain mortgage in the sum of \$125,000 and the sum of six thousand three hundred seventy-four dollars and nine cents (\$6,374.09) now held by them; and that the said defendant, Merchants' National Bank of Cape May, do deliver up for cancellation the said mortgage of \$125,000 to the said Isador Goldman, and that the said mortgage be cancelled and of no further force and effect; and that the said defendant, Merchants' National Bank of Cape May, do pay to the said Isador Goldman the sum of six thousand three hundred seventy-four dollars and nine cents (\$6,374.09), together with any interest which may have accumulated thereon. 10

And it is further ordered that the said complainants, Jeremiah E. Meecray and Rachel L. Meecray, pay to the defendant, Isador Goldman, the costs of this suit to be taxed, including a counsel fee of fifteen hundred dollars, which is hereby allowed to the said defendant, and that in default of the payment of the said taxed costs within twenty days after the service upon said defendant of true but uncertified copies of this decree and of said taxed costs, execution issue against the goods and chattels, lands, tenements and hereditaments and real estate of the said Jeremiah E. Meecray to make said costs according to the practice of this Court. 20

E. R. WALKER, 30  
C.

Respectfully advised,  
R. H. INGERSOLL,  
V. C.

## NOTICE OF APPEAL.

(Filed January 26, 1929.)

IN CHANCERY OF NEW JERSEY.

---

10 Between  
 JEREMIAH E. MECRAY, *et*  
*ux.*,  
 Complainants,  
 and  
 ISADOR GOLDMAN, *et al.*,  
 Defendants. } On Bill, &c.  
 Notice of Appeal.

---

20 *To Emerson L. Richards, Esq., solicitor for defen-*  
*dant, Isador Goldman:*

The complainants hereby appeal from the final decree made in the above-entitled cause on the day of December, nineteen hundred and twenty-eight, by the Chancellor on the advice of Robert H. Ingersoll, one of the Vice-Chancellors of this Court, and from the whole and every part thereof, to the Court of Errors and Appeals in the last resort in all causes.

30 Dated, January 25, 1929.

COLE & COLE,  
*Solicitors for and of Counsel*  
*with Complainants.*

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

C. L. COLE,  
*Of Counsel.*

[ENDORSED.]

Service acknowledged this 25th day  
of Jan., 1929.

Emerson L. Richards,  
Sol'r for Defendant, Isador  
Goldman.

10

PETITION OF APPEAL.

(Filed Jan. 26, 1929.)

NEW JERSEY COURT OF ERRORS  
AND APPEALS.

Between

JEREMIAH E. MECRAY, *et*

*ux.*,

Complainants-  
Appellants,

and

ISADOR GOLDMAN, *et al.*,

Defendants-  
Respondents.)

20

On Appeal from the  
Court of Chancery.  
Petition of Appeal.

30

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

The petition of Jeremiah E. Mecray and Rachel  
Mecray, his wife, the appellants in the above-entitled  
cause, respectfully shows that:

1. Petitioners find themselves aggrieved by a final decree made in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, on the advice of Hon. Robert H. Ingersoll, one of the Vice-Chancellors of this Court, bearing date December, 1928, in a certain cause in said Court of Chancery wherein the said petitioners were complainants and Isador Goldman and The Merchants National Bank of Cape May, were defendants, 10 in this respect, to wit, that the said decree is against the complainants and in favor of defendants on their counter-claim and that the counsel fees allowed counsel for defendants were without warrant and grossly excessive.

And petitioners appeal from the decree of the Chancellor which decrees as aforesaid, upon the ground that the same is erroneous in that it should have decreed in favor of complainant and dismissed the counter-claim of the defendants, and should have 20 disallowed counsel fees.

Petitioners therefore pray that the said decree of the said Chancellor may be wholly reversed, set aside and for nothing holden, and that petitioners may have such other relief in the premises as to this Court shall seem proper.

COLE & COLE,  
*Solicitors for and of Counsel  
with Appellants.*

30

---

[ENDORSED]

Service acknowledged this 25th day  
of Jan., 1929.

Emerson L. Richards,  
Sol'r for Respondent,  
Isador Goldman.

EXHIBIT C2.  
10/13/26 m

February 6th, 1926

Merchants National Bank,  
Cape May, N. J.

Gentlemen:—

You are handed herewith to be held in excrow the 10  
following:

Check for \$6374.09. Deed from Jeremiah Me-  
cra y et ux to Isadore Goldman, covering Focer  
and Mecray Building, Cape May, New Jersey.

At final settlement for the above described prop-  
erty the funds so held are to be distributed as fol-  
lows:—

\$4500.00 is to be paid to Sol Needles as com-  
missions

\$1874.09 is to be paid to Jeremiah Mecray as 20  
purchase money.

There will be forwarded to the said bank a mort-  
gage in the sum of \$125,000.00, executed by the above  
named Goldman to Mecray. This mortgage is to be  
delivered to the Camden Safe Deposit and Trust  
Company as collateral for a loan to be made by  
them upon their agreement to cancel a \$25,000.00  
mortgage on the said premises now held by them.  
Such agreement having been made by them the above  
named funds are to be distributed and the deed for 30  
the premises delivered to Lewis T. Stevens.

The above arrangement is to be carried out with  
the approval of Lewis T. Stevens, Attorney for pur-  
chaser and Samuel F. Eldredge, Attorney for seller.

(SIGNED) JEREMIAH E. MECRAY.

(SIGNED) ISADOR GOLDMAN

H. W. Perlstein, Atty.

## EXHIBIT C3.

10/13/26 M

THIS INDENTURE, MADE THE Fourth day of February, in the year of our Lord one thousand nine hundred and twenty-six, BETWEEN JEREMIAH E. MECRAY AND RACHEL L. MECRAY, his wife, of the City and County of Cape May, in the State of New Jersey, parties of the first part, and ISADOR GOLDMAN, of the City and County of Philadelphia, in the State of Pennsylvania, party of the second part:

10 WITNESSETH, That the said party of the first part, for and in consideration of the sum of ONE HUNDRED AND FIFTY THOUSAND DOLLARS (\$150,000.00), lawful money of the United States of America, well and truly paid by the said party of the second part to the said party of the first part, at and before the ensealing and delivery of these presents the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, enfeoffed, released, conveyed and confirmed, and by these presents do grant, bargain, sell, alien, enfeoff, release, convey and confirm, unto the said party of the second part, his heirs and assigns, ALL that certain lot of land and premises situate on the Southeasterly side of Washington Street, adjoining lands heretofore conveyed by Levi Wickersham to Teresa Townsend and lands of Barbara Shloss, Judith McCollum and others, and being known as the "Washington House" property, in the City and County of Cape May, State of New Jersey, bounded and described as follows:

30 BEGINNING at a stone near the curb on the Southeasterly side of said Washington Street, which

stone is the Westwardly corner of the lot recently conveyed by said Wickersham to Teresa Townsend; thence binding by said Townsend's land, South forty-five degrees thirty minutes East, two hundred feet three inches to the rear line of lots fronting on Hughes Street; thence along said rear line of lots Southwestwardly one hundred thirty-five and one-half feet to land of said Shloss; thence thereby North twenty-four degrees thirty minutes West ninety-five and five-tenths feet to the land of said McCollum; thence thereby North forty-five degrees twenty minutes East, twenty-two and one-half feet to the East corner of said McCollum's land; thence still thereby Northwestwardly one hundred and twenty-two feet to a stake in the sidewalk near the curb on the aforesaid side of street; thence Northeastwardly along said sidewalk eighty-one feet, more or less, to the place of beginning.

BEING the same lot of land and premises which the American Ice Company, by deed dated February 1, 1921, and recorded in the Cape May County Clerk's Office in Deed Book No. 350, pages 361 &c., granted and conveyed unto Daniel Focer and Jeremiah E. Meecray, in fee. And Lillian M. Focer (Widow of the said Daniel Focer, who departed this life leaving a Last Will and Testament duly probated in the Cape May County Surrogate's Office), Mabel F. MacAdams, et vir, and Caroline H. Hines, et vir, by deed dated August 30, 1924, and to be forthwith recorded in the Cape May County Clerk's Office, granted and conveyed all of their right, title and interest in the above described premises unto the said Jeremiah E. Meecray; the said Lillian M. Focer (Widow), Mabel F. MacAdams and Caroline H. Hines being the heirs and devisees of the said Daniel Focer.

TOGETHER with all and singular, the buildings,

improvements, woods, ways, rights, liberties, privileges, hereditaments and appurtenances, to the same belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and the profits thereof, and of every part and parcel thereof:

AND ALSO, all the estate, right, title, interest, property, possession, claim, and demand whatsoever, both in law and equity, of the said party of the first part,  
 10 of, in and to the said premises, with the appurtenances:

TO HAVE AND TO HOLD the said premises, with all and singular the appurtenances, unto the said party of the second part, his heirs and assigns, to the only proper use, benefit and behoof of the said party of the second part, heirs and assigns forever. AND the said parties of the first part, for themselves, their heirs, executors and administrators, DO  
 20 by these presents covenant, grant and agree to and with the said party of the second part, his heirs and assigns, that they, the said parties of the first part, their heirs, all and singular the hereditaments and premises herein above described and granted, or mentioned and intended to be so, with the appurtenances, unto the said party of the second part, his heirs and assigns, against them, the said parties of the first part, their heirs, and against all and every other person or persons whomsoever lawfully claiming or to claim the same, or any part thereof,  
 30 SHALL and WILL WARRANT and forever DEFEND.

IN WITNESS WHEREOF, the said parties of the first part to these presents have hereunto set their hands and seals dated the day and year first above written.

Jeremiah E. Mecray (L. S.)  
 Rachel L. Mecray (L. S.)

Signed, sealed and delivered  
in the presence of  
Samuel F. Eldredge

STATE OF NEW JERSEY }  
CAPE MAY COUNTY, }ss.

10

BE IT REMEMBERED, that on this Sixth day  
of February in the year of our Lord one thousand  
nine hundred and before me,  
the subscriber, a Master in Chancery of New Jersey,  
personally appeared JEREMIAH E. MECRAY and  
RACHEL L. MECRAY, his wife, who, I am satisfied  
are the grantors mentioned in the above deed or con-  
veyance and I having first made known to them the  
contents thereof they acknowledged that they signed, 20  
sealed and delivered the same as their voluntary act  
and deed. All of which is hereby certified.

Samuel F. Eldredge  
Master in Chancery of  
New Jersey.

30



the County of Cape May and State of New Jersey,  
as follows:

Two hundred and seventy-five folding chairs, or more; Four large chairs; One desk, one piano, carpets, dishes, glassware, stoves and heaters, all furniture and fixtures in the United States Post Office, including the electric fixtures, tables and racks.

TO Have and to hold the same unto the said party of the second part, his heirs executors and administrators, forever.

In Witness Whereof the party of the first part has hereunto set his hand and seal this sixth day of February, in the year of our Lord one thousand nine hundred and twenty-six.

Jeremiah E. Mccray

Signed, sealed and delivered  
in the presence of  
Lewis T. Stevens

10

20

30

## EXHIBIT C5.

10/13/26 M

H. W. Perlstein,  
President

M. L. Schneider,  
Vice President

L. Wiesen, Secy. Treas.

L. WIESEN & CO.

10

Manufacturers of  
Ladies DRESSES Misses  
N. E. Cor. 11th & Arch Sts.

New York Office  
and Stock Room  
552 SEVENTH AVE.

Philadelphia,  
Feb. 16th 1926

Hon. Judge Eldridge  
c/o Merchants National Bank

20 Cape May, N. J.

Dear Sir:

I am herewith enclosing Bond and Mortgage properly executed by Isador Goldman, on Folker McCray Bldg., Cape May, N. J.

Delivery on all of these papers are to be made in accordance with letter I signed under date of Feb. 6th, which you have in your possession.

Thanking you very kindly, I am

Very truly yours

30

H. W. Perlstein

HWP/RC

“PHILADELPHIA'S LARGEST STOCK  
HOUSE”

EXHIBIT C6.

10/13/26 M

KNOW ALL MEN BY THESE PRESENTS,  
THAT I, ISADOR GOLDMAN, of the City and  
County of Philadelphia, in the State of Pennsyl-  
vania, (hereinafter called the Obligor) am held and  
firmly bound unto JEREMIAH E. MECRAY, of the 10  
City and County of Cape May, in the State of New  
Jersey, (hereinafter called the Obligee), in the sum  
of TWO HUNDRED AND FIFTY THOUSAND  
DOLLARS, lawful money of the United States of  
America, to be paid to the said Obligee his certain  
Attorney, Executors, Administrators or Assigns; to  
which payment well and truly to be made do bind  
and oblige myself, my Heirs, Executors and Admin-  
istrators, firmly by these presents.

Sealed with my Seal Dated the Fourth day of 20  
February in the year of our Lord one thousand nine  
hundred and twenty-six.

THE CONDITION OF THIS OBLIGATION IS  
SUCH That if the above bounden Obligor, his Heirs,  
Executors or Administrators, or any of them, shall  
and do well and truly pay, or cause to be paid, unto  
the above-named Obligee, his certain Attorney, Ex-  
ecutors, Administrators or Assigns, the just sum of  
ONE HUNDRED AND TWENTY-FIVE THOU- 30  
SAND DOLLARS, lawful money aforesaid Payable  
twenty five hundred February 4'' 1927; Twenty Five  
Hundred February 4'' 1928; Five Thousand Dol-  
lars February 4'' 1929; Five Thousand Dollars  
February 4'' 1930; and the balance of One Hundred  
Ten Thousand Dollars, February 4'' 1931, together  
with interest thereon, payable semi-annually, at the  
rate of six per cent. per annum, on all unpaid bal-

ances without any fraud or further delay; and shall pay the taxes assessed upon the premises described in an accompanying indenture of mortgage for the first half of every year on or before the twentieth day of May therein, and for the second half of every year on or before the twentieth day of November therein, and shall produce receipts for the taxes for each half of every year on or before the first day of June and the first day of December respectively

10 therein, and shall also pay all other taxes, municipal assessments or charges in the nature thereof which may be laid or assessed upon the said premises immediately upon their assessment; then the above obligation to be void, or else to be and remain in full force and virtue; PROVIDED, however, and it is hereby expressly agreed, that no credit shall be claimed or allowed on the interest above provided because of any taxes paid upon said premises, and that if at any time default shall be made in the pay-

20 ment of interest as aforesaid, for the space of \_\_\_\_\_ days after any semi-annual payment thereof shall fall due, or in the payment of any tax or charge as aforesaid, as hereinbefore provided, or in such production of tax receipts as aforesaid on or before the day aforesaid, then and in either such case the whole principal debt aforesaid shall, at the option of the Obligee therein named, his Executors, Administrators or Assigns, become due and payable

30 immediately, and payment of said principal debt, and all interest thereon, shall be enforced and recovered at once, anything herein contained to the contrary notwithstanding.

Isador Goldman (L. S.)

Sealed and delivered  
in the presence of  
Ray P Cohan

To any Attorney of any Court of Law in  
New Jersey or Elsewhere:

This is to authorize you to appear for me, ISA-  
DOR GOLDMAN, in any Court of competent juris-  
diction, in case of the breach of the condition of the  
above Bond, and confess judgment for the penalty  
therein contained, as of the last or any subsequent  
term, with costs of suit and release of errors; and  
this shall be your sufficient warrant.

Witness my hand and seal this Fourth day of 10  
February, Anno Domini one thousand nine hundred  
and twenty-six.

Isador Goldman (L. S.)

Sealed and delivered  
in the presence of  
Ray P. Cohan

---

BOND AND WARRANT.

ISADOR GOLDMAN

To

JEREMIAH E. MECRAY

Dated February 4, 1926

Mortgage on  
for \$125,000.00

20

---

EXHIBIT C7.

10/13/26 M

30

THIS INDENTURE, MADE THE Fourth day of  
February, in the year of our Lord one thousand  
nine hundred and twenty-six, BETWEEN ISADOR

and JEREMIAH E. MECRAY, of the City and County of Cape May, in the State of New Jersey, party of the second part:

WHEREAS, the said Isador Goldman, in and by his certain obligation or writing obligatory, under his hand and seal duly executed, and bearing even date herewith, stand bound unto the said party of the second part in the sum of TWO HUNDRED AND FIFTY THOUSAND DOLLARS (\$250,000.00), lawful money of the United States of America, conditioned for the payment, in lawful money as aforesaid, of the just sum of ONE HUNDRED AND TWENTY-FIVE THOUSAND DOLLARS (\$125,000.00), payable twenty five hundred February 4" 1927; Twenty five hundred Dollars February 4" 1928; Five Thousand Dollars February 4" 1929; Five Thousand Dollars February 4" 1930; and the balance of One Hundred Ten Thousand Dollars February 4" 1931 together with interest thereon payable semi-annually, at the rate of six per cent. per annum on all unpaid balances, and shall pay the taxes assessed upon the premises hereinafter described for the first half of every year on or before the twentieth day of May therein, and for the second half of every year on or before the twentieth day of November therein, and shall produce receipts for taxes for each half of every year on or before the first day of June and the first day of December respectively therein; and shall also pay all other taxes, municipal assessments and charges in the nature thereof which may be laid or assessed upon the said premises immediately upon their assessment:

PROVIDED, however, and it was thereby expressly agreed, that no credit should be claimed or allowed on the interest above provided because of any taxes paid upon said premises, and that if at any time

default should be made in payment of interest as aforesaid for the space of \_\_\_\_\_ days after any semi-annual payment thereof, should fall due, or in the payment of any tax or charges as aforesaid, or in such production of tax receipts as aforesaid, on or before the days aforesaid, then and in either such case the whole principal debt as aforesaid should, at the option of the obligee therein named, his Executors, Administrators or Assigns, become due and payable immediately, and payment of said principal debt, and all interest thereon, should be enforced and recovered at once, anything therein contained to the contrary notwithstanding, as in and by the said recited obligation, and the condition thereof, relation to the same being had, may more fully and at large appear. 10

NOW THIS INDENTURE WITNESSETH, that the said party of the first part, as well for and in consideration of the aforesaid debt or sum of ONE HUNDRED AND TWENTY-FIVE THOUSAND DOLLARS (\$125,000.00), and for the better securing the payment thereof unto the said party of the second part, his Executors, Administrators and Assigns, in discharge of the said obligation above recited, as for and in consideration of the further sum of one dollar, in specie, well and truly paid to the said party of the first part by the said party of the second part, at and before the ensealing and delivery hereof, the receipt of which one dollar is hereby acknowledged, has granted, bargained, sold, released and confirmed, and by these presents does grant, bargain, sell, release and confirm, unto the said party of the second part, his Heirs and Assigns, ALL that certain lot of land and premises situate on the South-easterly side of Washington Street, adjoining lands heretofore conveyed by Levi Wickersham to Teresa Townsend and lands of Barbara Shloss, Judith Me- 20 30

GOLDMAN, of the City and County of Philadelphia, in the State of Pennsylvania, party of the first part, Collum and others, and being known as the "Washington House" property, in the City and County of Cape May, State of New Jersey, bounded and described as follows:

10 BEGINNING at a stone near the curb on the Southeasterly side of said Washington Street, which stone is the Westwardly corner of the lot recently conveyed by said Wickersham to Teresa Townsend; thence binding by said Townsend's land, South forty-five degrees thirty minutes East, two hundred feet three inches to the rear line of lots fronting on Hughes Street; thence along said rear line of lots Southwestwardly one hundred thirty-five and one-half feet to land of said Shloss; thence thereby North twenty-four degrees thirty minutes West ninety-five and five-tenths feet to the land of said McCollum; thence thereby North forty-five degrees  
20 twenty minutes East twenty-two and one-half feet to the East corner of said McCollum's land; thence still thereby Northwestwardly one hundred and twenty-two feet to a stake in the sidewalk near the curb on the aforesaid side of street; thence Northeastwardly along said sidewalk eighty-one feet, more or less, to the place of beginning.

30 BEING the same lot of land and premises which Jeremiah E. Mecray, et ux, by deed bearing even date herewith and to be forthwith recorded in the Cape May County Clerk's Office, granted and conveyed unto the said Isador Goldman, in fee; this mortgage being given to secure a part of the purchase money therefor.

TOGETHER with all and singular the buildings, improvements, woods, ways, rights, liberties, privileges, hereditaments and appurtenances to the same

belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof:

TO HAVE AND TO HOLD the said hereditaments and premises above granted, or intended so to be, with the appurtenances, unto the said party of the second part, his Heirs and Assigns forever.

PROVIDED ALWAYS, NEVERTHELESS, that if the said Isador Goldman, his Heirs, Executors, Administrators or Assigns, do and shall well and truly pay, or cause to be paid, unto the said party of the second part, or to his certain Attorney or Attorneys, Heirs, Executors, Administrators or Assigns, the aforesaid debt or sum of ONE HUNDRED TWENTY-FIVE THOUSAND DOLLARS (\$125,000.00), on the day and time hereinbefore mentioned and appointed for the payment thereof, together with interest for the same, in like money, and pay all taxes and charges, and produce tax receipts, in way and manner hereinbefore specified therefor, without any fraud or further delay, and without any deduction, defalcation or abatement to be made for or in respect of any taxes, charges or assessments whatever; that then and from thenceforth, as well this present indenture, and the estate hereby granted, as the said obligation above recited, shall cease, determine and become absolutely null and void, to all intents and purposes, anything hereinbefore contained to the contrary thereof in anywise notwithstanding.

AND the said party of the first part, for himself, his Heirs, Executors and Administrators, does covenant and grant to and with the said party of the second part, his Heirs and Assigns, that the said party of the first part, his Heirs and Assigns, shall not, nor will apply for, or claim any deduction by reason of this mortgage, from the taxable value of

the said lands and premises and that the said party of the second part, Heirs and Assigns, shall and may from time to time, and at all times after default shall be made in the 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  
10 said party of the first part, his Heirs or Assigns, or of any other person or persons whatsoever.

AND it is also further agreed, by and between the parties to these presents, that the said party of the first part shall and will keep the buildings erected and to be erected upon the lands above conveyed insured against loss or damage by fire and wind storm, in some safe and responsible insurance Company or  
20 Companies, to an amount not less than ONE HUNDRED TWENTY-FIVE THOUSAND dollars, and assign the policy and certificate thereof to the said party of the second part as collateral security for the payment of the principal and interest aforesaid; and in default thereof, it shall be lawful for the said party of the second part to effect such insurance, and the premium and premiums paid for effecting the same shall be a lien on the said mortgage premises, added to the amount of the said bond and obligation, and secured by these presents, and payable on demand, with legal interest.

30 IT IS FURTHER UNDERSTOOD AND AGREED by and between the parties to these presents that any act to be done by the party of the first part shall be construed as a covenant running with the land; and shall be binding upon the heirs and assigns of the party of the first part hereto as fully as if they had personally made such agreement.  
IN WITNESS WHEREOF, the said party of the

first part has hereunto set his hand and seal the day and year first above written.

Isador Goldman (L. S.)

Signed, sealed and delivered  
in the presence of  
Yetta M. Fleminger

STATE OF Pennsylvania, }  
Philadelphia COUNTY, } ss.

10

BE IT REMEMBERED, that on this 16th day of February in the year of our Lord one thousand nine hundred and twenty-six, before me, personally appeared ISADOR GOLDMAN, who, I am satisfied is the grantor mentioned in the above deed or conveyance, and I having first made known to him the contents thereof, he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed. All of which is hereby certified.

Ray P. Cohan (SEAL) 20  
Notary Public  
Commission expires  
January 7, 1929

IN THE COURTS OF COMMON PLEAS  
OF PHILADELPHIA COUNTY

STATE OF PENNSYLVANIA }  
County of Philadelphia, } ss.

30

Acknowledgment (Notary)

I, John M. Scott, Prothonotary of the Courts of Common Pleas of said County, which are Courts of Record having a common seal, being the officer au-

thorized by the laws of the State of Pennsylvania to make the following Certificate, acting by my Principal Deputy, William J. Kerns, or my Second Deputy, Meredith Hanna do Certify, That RAY P. COHAN Esquire, whose name is subscribed to the certificate of the acknowledgment of the annexed instrument and thereon written, was at the time of such acknowledgment a NOTARY PUBLIC for the Commonwealth of Pennsylvania, residing in the County aforesaid, duly commissioned and qualified to administer oaths and affirmations and to take acknowledgments and proofs of Deeds or Conveyances for lands, tenements and hereditaments to be recorded in said State of Pennsylvania, and to all whose acts, as such, full faith and credit are and ought to be given, as well in Courts of Judicature as elsewhere; and that I am well acquainted with the handwriting of the said NOTARY PUBLIC and verily believe the signature thereto is genuine, and I further certify that the said Instrument is executed and acknowledged in conformity with the laws of the State of Pennsylvania.

The impression of the seal of the Notary Public is not required by law to be filed in this office.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, this 16th day of February, in the year of our Lord one thousand nine hundred and twenty six (1926)

JOHN M. SCOTT,

30 (SEAL)

Prothonotary.

by Wm. J. Kerns

Principal Deputy Prothonotary

Durante Absentia, Secundum Legem.

MORTGAGE.  
ISADOR GOLDMAN  
TO  
JEREMIAH E. MECRAY

Dated February 4, 1926

To secure \$125,000.—

Premises Washington St., Cape May

Received in the

office of the County of

10

on the                    day of

A. D. 19            at                    o'clock in

the                    noon, and recorded in Book

of Mortgages for said

County, on page

---

EXHIBIT C8.

10/13/26 M

20

Served upon

M. N. B.

5/25/26

Henry H. Eldredge,

Pres.

To Merchants National Bank of Cape May, and Samuel F. Eldredge, Esq., Attorney for Jeremiah E. Mecray:

You are hereby requested to pay to me, and I 30  
hereby demand of you the sum of six thousand three  
hundred and seventy-four dollars and nine cents, de-  
posited with you, The Merchants National Bank, of  
Cape May, on February 6, 1926, which sum was to  
be paid to the said Jeremiah E. Mecray upon his  
making marketable title to and delivery of a deed

for the Post-Office Building, Cape May, New Jersey, or suit at law will be entered for the return of the said sum.

Dated May 25, 1926.

Isador Goldman,  
By Lewis T. Stevens  
Attorney.

10

EXHIBIT C9.

10/13/26 M

U. S. Int. Rev. Stamps to the value of Ten Dollars  
THIS INDENTURE, MADE THE Thirtieth day  
of August in the year of our Lord one thousand nine  
hundred and twenty-four, BETWEEN LILLIAN M.  
FOCER, Widow of Daniel Focer, of the City and  
County of Cape May, in the State of New Jersey;  
20 MABEL F. MacADAMS and MATTHEW J. Mac-  
ADAMS, her husband, of Evanston, Illinois; CARO-  
LINE H. HINES and AUGUSTUS S. HINES, her  
husband, of the City and County of Philadelphia, in  
the State of Pennsylvania, parties of the first part,  
and JEREMIAH E. MECRAY, of the City and  
County of Cape May, in the State of New Jersey,  
party of the second part:

30 WITNESSETH, That the said party of the first  
part, for and in consideration of the sum of ONE  
DOLLAR (\$1.00) and other valuable consideration  
lawful money of the United States of America, well  
and truly paid by the said party of the second part  
to the said party of the first part, at and before the  
ensealing and delivery of these presents the receipt  
whereof is hereby acknowledged, have granted, bar-  
gained, sold, aliened, enfeoffed, released, conveyed  
and confirmed, and by these presents do grant, bar-

gain, sell, alien, enfeoff, release, convey and confirm, unto the said party of the second part, his heirs and assigns, ALL of their right, title and interest of, in and to ALL that certain lot of land and premises situate on the Southeasterly side of Washington Street, adjoining lands heretofore conveyed by Levi Wickersham to Teresa Townsend and lands of Barbara Shloss, Judith McCollum and others, and being known as the "Washington House" property, in the City and County of Cape May, State of New Jersey, bounded and described as follows: 10

BEGINNING at a stone near the curb on the Southeasterly side of said Washington Street, which stone is the Westwardly corner of the lot recently conveyed by said Wickersham to Teresa Townsend; thence binding by said Townsend's land, South forty-five degrees thirty minutes East, two hundred feet three inches to the rear line of lots fronting on Hughes Street; thence along said rear line of lots Southwestwardly one hundred thirty-five and one-half feet to land of said Shloss; thence thereby North twenty-four degrees thirty minutes West ninety-five and five-tenths feet to the land of said McCollum; thence thereby North forty-five degrees twenty minutes East twenty-two and one-half feet to the East corner of said McCollum's land; thence still thereby Northwestwardly one hundred and twenty-two feet to a stake in the sidewalk near the curb on the aforesaid side of street; thence Northeastwardly along said sidewalk eighty-one feet more or less, to the place of beginning. 20 30

BEING the same lot of land and premises which the American Ice Company, by deed dated February 1, 1921, and recorded in the Cape May County Clerk's Office in Deed Book No. 350, pages 361 &c., granted and conveyed unto Daniel Focer and Jeremiah E. Mecray, in fee.

ALSO ALL their right, title and interest of, in and to ALL that certain lot or piece of land situate, lying and being in the City and County of Cape May, New Jersey, bounded and described as follows:

BEGINNING at a point standing on the West side of Hughes Street, and Northeasterly corner of Lot No. Four on a Map of Lots which were mutually divided among the Heirs at law of Israel Hughes, deceased (said Lot No. 4 now or late belonging to the  
10 Heirs of Sophia Bennett, deceased), and running thence along the Westerly side of Hughes Street North, forty-one degrees East, sixty-six feet to a post and Southeasterly corner of Lot No. Six now or late belonging to Eveline Hughes; thence South fifty-five degrees West, bounding on said Eveline Hughes lot, one hundred and fifteen feet to a stake in the line of the lot whereon James Clark, formerly lived; thence South forty-one degrees West, sixty-six feet to the Northwesterly corner of Lot No. 4  
20 aforesaid; from thence binding on the same South fifty-five degrees East, one hundred and fifteen feet to the place of beginning: CONTAINING seventy-five hundred and ninety square feet of land.

BEING the same lot of land and premises which the Cape May Building and Loan Association, by deed dated February 20, 1923, and recorded in the Cape May County Clerk's Office in Deed Book No. 370, pages 370, granted and conveyed unto the said Daniel Focer and Jeremiah E. Mecray, in fee.  
30

The said Daniel Focer departed this life on or about May 30, A. D., 1924, and the parties of the first part hereto are all of the heirs-at-law and legatees under his Will, duly probated in the Cape May County Surrogate's Office and of record therein.

TOGETHER with all and singular, the buildings,

improvements, woods, ways, rights, liberties, privileges, hereditaments and appurtenances, to the same belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and the profits thereof, and of every part and parcel thereof:

AND ALSO, all the estate, right, title, interest, property, possession, claim, and demand whatsoever, both in law and equity, of the said party of the first part, of, in and to the said premises, with the appurtenances: 10

TO HAVE AND TO HOLD the said premises, with all and singular the appurtenances, unto the said party of the second part, his heirs and assigns, to the only proper use, benefit and behoof of the said party of the second part, his heirs and assigns forever.

AND the said parties of the first part, for themselves, their heirs, executors and administrators, do by these presents covenant, grant and agree to and with the said party of the second part, his heirs and assigns, that they, the said parties of the first part, their heirs, all and singular the hereditaments and premises herein above described and granted, or mentioned and intended to be so, with the appurtenances, unto the said party of the second part, his heirs and assigns, against them, the said parties of the first part, their heirs, and against all and every other person or persons whomsoever lawfully claiming or to claim the same, or any part thereof, SHALL and WILL WARRANT and forever DEFEND. 20 30

IN WITNESS WHEREOF, the said parties of the first part to these presents have hereunto set their

hands and seals dated the day and year first above written.

Lillian M. Focer (L. S.)  
 Caroline H. Hines (L. S.)  
 Augustus S. Hines (L. S.)  
 Mabel F. MacAdams (L. S.)  
 Matthew J. MacAdams (L. S.)

Signed, sealed and delivered  
 in the presence of

10 Samuel F. Eldredge as  
 to Lillian M. Focer  
 Elsie Edwards as to  
 Mabel F. MacAdams  
 Matthew J. MacAdams

---

STATE OF NEW JERSEY, }  
 CAPE MAY COUNTY, } SS:

20

BE IT REMEMBERED, that on this fourteenth day of September, in the year of our Lord one thousand nine hundred and twenty-four, before me, the subscriber, a Master in Chancery of New Jersey, personally appeared LILLIAN M. FOCER (Widow), CAROLINE H. HINES and AUGUSTUS S. HINES, her husband, who, I am satisfied, are three of the grantors mentioned in and who executed the above deed or conveyance, and I having first made known to them the contents thereof, they and each of them acknowledged that they signed, sealed and delivered the same as their voluntary act and deed. All of which is hereby certified.

30

Samuel F. Eldredge  
 Master in Chancery of  
 New Jersey.

STATE OF ILLINOIS, }  
 COUNTY OF COOK } SS:

BE IT REMEMBERED that on this thirteenth day of October in the year of our Lord one thousand nine hundred and twenty-four, before me, the subscriber, a Notary Public personally appeared MABEL F. MACADAMS and MATTHEW J. MacADAMS, her husband, who, I am satisfied, are two of the persons mentioned in and who executed the within Deed or Conveyance, and I having first made known to them the contents thereof, they acknowledged that they signed, sealed and delivered the same as and for their voluntary act and deed. All of which is hereby certified. 10

Elsie Edwards

Notary Public (SEAL)

My commission expires January 21st, 1926.

20

STATE OF ILLINOIS, }  
 County of Cook, } ss.

I, ROBERT M. SWEITZER, County Clerk of the County of Cook, and, also, Clerk of the County Court of said County, same being a Court of Record, DO HEREBY CERTIFY that, as County Clerk, I am the lawful custodian of the official records of Notaries Public of said County, and, as County Clerk, am, by the law of Illinois, the duly authorized County Officer to issue Certificates of Magistracy; that, Elsie Edwards, whose name is subscribed to the proof of acknowledgment of the annexed instrument in writing, was, at the time of taking such proof of acknowledgment, a Notary Public in and 30

for Cook County, duly commissioned, sworn and acting as such and authorized to take acknowledgments and proofs of deeds or conveyances of lands, tenements or hereditaments, in said State of Illinois, and to administer oaths; all of which appears from the records and files in the County Clerk's office; that I am well acquainted with the handwriting of said Notary and verily believe that the signature to the said proof of acknowledgment is genuine.

- 10 IN TESTIMONY WHEREOF I have hereunto set my hand and affixed my official seal as County Clerk, same being the seal of the County of Cook, at my office as County Clerk, in the City of Chicago, this 30 day of Oct., A. D. 1924

Robert M. Sweitzer

(SEAL)

County Clerk

- 20 IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of the County Court of Cook County, at my office as Clerk of the County Court, in the City of Chicago, this 38th day of October, A. D. 1924

Robert M. Sweitzer

(SEAL)

Clerk of the County Court.

DEED

LILLIAN M. FOCER (Widow),  
MABEL F. MacADAMS and  
MATTHEW J. MacADAMS,  
Her Husband,  
CAROLINE H. HINES and  
AUGUSTUS S. HINES,  
Her Husband  
To

JEREMIAH E. MECRAY

10

Dated August 30, 1924

Received in the Clerks office of the  
County of Cape May on the 24 day of  
May A. D. 1926 at 3 o'clock in the after-  
noon, and recorded in Book 428 of  
DEEDS for said County, on pages 349

A. C. Hildreth

Clerk

Jay E. Mecray  
Cape May City  
New Jersey

20

---

EXHIBIT C10.

10/13/26 M

U. S. Int. Rev. Stamps to the value Of Twelve  
Dollars and fifty cents

30

The bond accompanying this mortgage has been  
stamped according to law with U. S. Internal Rev-  
enue Stamps amounting to

THIS INDENTURE, MADE THE eighth day of  
December in the year of our Lord one thousand nine  
hundred and twenty-three (A. D. 1923) BETWEEN  
DANIEL FOCER And LILLIAN M. FOCER, his

wife, JEREMIAH E. MECRAY and RACHEL L. MECRAY, his wife, of the City and County of Cape May and State of New Jersey, of the first part, and CAMDEN SAFE DEPOSIT AND TRUST COMPANY, a New Jersey Corporation, of the second part.

- WHEREAS, the said Daniel Focer and Jeremiah E. Mecray, in and by a certain Obligation or Writing obligatory, under their hands and seals duly executed, bearing even date herewith, stand bound unto
- 10 the said party of the second part in the sum of FIFTY THOUSAND DOLLARS (\$50,000.00) lawful money of the United States of America, conditioned for the payment, in lawful money as aforesaid, of the just sum of TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00) at the expiration of one year from the date thereof, together with interest thereon, payable semi-annually, at the rate of six per cent. per annum and shall pay the taxes assessed upon the premises hereinafter described for
- 20 the first half of every year on or before the twentieth day of May therein, and for the second half of every year on or before the twentieth day of November therein, and shall produce receipts for taxes for each half of every year on or before the first day of June and the first day of December respectively therein; and shall also pay all other taxes, municipal assessments and charges in the nature thereof which may be laid or assessed upon the said premises immediately upon their assessment:
- 30 PROVIDED, however, and it was thereby expressly agreed, that no credit shall be claimed or allowed on the interest above provided because of any taxes paid upon said premises, and that if at any time default should be made in payment of interest as aforesaid for the space of Thirty days after any semi-annual payment thereof should fall due, or in the

payment of any tax or charge as aforesaid, for the space of thirty days after the same shall first become payable, or in such production of tax receipts as aforesaid, on or before the days aforesaid, then and in either such case the whole principal debt as aforesaid should, at the option of the obligee therein named its Successors or Assigns, become due and payable immediately, and payment of said principal debt, and all interest thereon, should be enforced and recovered at once, anything therein contained to the contrary notwithstanding, as in and by the said recited obligation, and the condition thereof, relation to the same being had, may more fully and at large appear. 10

NOW THIS INDENTURE WITNESSETH, that the said party of the first part, as well for and in consideration of the aforesaid debt or sum of TWENTY FIVE THOUSAND DOLLARS (\$25,000.00) and for the better securing the payment thereof unto the said party of the second part, its successors and Assigns, in discharge of the said obligation above recited, as for and in consideration of the further sum of one dollar, in specie, well and truly paid to the said party of the first part by the said party of the second part, at and before the en- sealing and delivery hereof, the receipt of which one dollar is hereby acknowledged, have granted, bargained, sold, released and confirmed and by these presents do grant, bargain, sell, release and confirm, unto the said party of the second part, its successors and Assigns, ALL that certain tract or parcel of land and premises situate in the City and County of Cape May, and State of New Jersey, known as the "Washington House" property, bounded and described as follows: 20 30

BEGINNING in the Southeasterly line of Washington Street (fifty feet wide) at the distance of

- two hundred fifty-four and seven tenths feet North-eastwardly from the Northeasterly line of Ocean Street (measured along the Southeasterly line of Washington Street) and at the westerly corner of land recently conveyed by Levi Wickersham to Teresa Townsend; thence binding by said Teresa Townsend's land, South forty-five degrees and thirty minutes East (now South fifty degrees and fifteen minutes East) one hundred ninety-two feet
- 10 to the rear line of lots fronting on Hughes Street; thence along said rear line of lots fronting on Hughes Street, Southwestwardly (now South thirty-six degrees and fifteen minutes west) one hundred thirty-five and five tenths feet to land of Barbara Shloss (now J. W. Mecray & Bro.); thence thereby North twenty-four degrees and thirty minutes West (now North twenty-nine degrees and thirty minutes West) ninety-five and five tenths feet to land of Judith McCollum (now Wa Wa Dairy); thence
- 20 thereby North forty-five degrees and twenty minutes East (now North thirty-six degrees and thirty minutes East) twenty-two and five tenths feet to the East corner of said McCollum's (now Wa Wa Dairy) land; thence still thereby Northwestwardly (now North fifty-one degrees and thirty minutes West) one hundred and three and three tenths feet to the Southeasterly line of Washington Street; thence Northeastwardly (now North thirty-six degrees and thirty minutes East) along the Southeasterly line of
- 30 Washington Street, eighty-one feet to the place of beginning.

BEING the same premises which American Ice Company, a New Jersey corporation, by its deed dated February 1st, 1921 and recorded in the Clerk's Office of Cape May County in Book 350 of Deeds, pages 361 &c. granted and conveyed unto Daniel Focer and Jeremiah E. Mecray, in fee.

TOGETHER with all and singular the improvements, buildings, woods, ways, waters, water-courses, rights, liberties, privileges, hereditaments and appurtenances whatsoever thereunto belonging or in any wise appertaining, and the reversion and remainders, rents, issues and profits thereof.

TO HAVE AND TO HOLD the said hereditaments and premises above granted, or mentioned and intended so to be, with the appurtenances, unto the said party of the second part, its successors and Assigns, to and for the only proper use and behoof of the said party of the second part, its successors and Assigns forever. 10

PROVIDED, ALWAYS, nevertheless, that if the said Daniel Focer and Jeremiah E. Mecray, their and each of their heirs, executors, administrators or assigns, do and shall well and truly pay, or cause to be paid unto the said party of the second part, its successors or Assigns, the aforesaid debt or principal sum of TWENTY FIVE THOUSAND DOLLARS (\$25,000.00) on the day and time hereinbefore mentioned and appointed for the payment thereof, together with interest for the same, in like money, and for all taxes and charges, and production of tax receipts, in way and manner hereinbefore specified therefor, without any fraud or further delay and without any deduction, defalcation or abatement to be made for or in respect of any taxes, charges, or assessments whatsoever; that then and from thenceforth, as well this present indenture, and the estate hereby granted, as the said obligation above recited, shall cease, determine and become absolutely null and void to all intents and purposes, anything hereinbefore contained to the contrary thereof in anywise notwithstanding. AND the said party of the first part, for themselves, their and each of their heirs, executors, administrators do 20 30

covenant and grant to and with the said party of the second part, its successors and Assigns, that the said party of the first part, their heirs and Assigns, shall not nor will apply for, or claim any deduction, by reason of this mortgage, from the taxable value of the said lands and premises; and that the said party of the second part, its successors and Assigns, shall and may from time to time, and at all times after default shall be made in the performance of the

10 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 party of the first part, their heirs or Assigns, or of any other person or persons whatsoever. AND it is also further agreed, by and between the parties to these presents, that the said party of the first part shall and will keep the buildings erected and to be

20 erected upon the lands above conveyed insured against loss or damage by fire and wind storm in some safe and responsible Insurance Company or Companies, TWENTY FIVE THOUSAND dollars, to be divided as to fire and wind storm, as the party of the second part may designate, and assign the policy and certificate thereof to the said party of the second part as collateral security for the payment of the principal and interest aforesaid; and in default thereof, it shall be lawful for the said party of the

30 second part to effect such insurance, and the premium and premiums paid for effecting the same shall be a lien on the said mortgaged premises, added to the amount of the said bond and obligation, and secured by these presents, and payable on demand, with legal interest.

IT IS FURTHER UNDERSTOOD AND AGREED by and between the parties to these presents that any

act or agreement to be done or performed by the party of the first part shall be construed as a covenant running with the land; and shall be binding upon the party of the first part hereto as fully as if they had personally made such agreement.

IN WITNESS WHEREOF, the said party of the first part hereto have hereunto set their hands and seals, the day and year first above written.

Daniel Focer (L. S.) 10  
Lillian M. Focer  
Jeremiah E. Mecray  
Rachel L. Mecray

Sealed and Delivered in the presence of A Spencer Nelson

STATE OF NEW JERSEY, }  
CAPE MAY COUNTY, } ss. 20

BE IT REMEMBERED, that on this 8th day of December in the year of our Lord one thousand nine hundred and 23, before me, a Notary Public personally appeared Daniel Focer and Lillian M. Focer, his wife, Jeremiah E. Mecray and Rachel L. Mecray, his wife who I am satisfied are the grantors mentioned in the above deed or conveyance, and I having first made known to them the contents thereof, they acknowledged that they signed, sealed and delivered the same as their voluntary act and deed. All of which is hereby certified. 30

A Spencer Nelson  
Notary Public of New Jersey  
My commission expires (Seal)  
Aug. 17th, 1927

10354

MORTGAGE

DANIEL FOCER ET UX,  
and JEREMIAH E. MECRAY, et ux

To

CAMDEN SAFE DEPOSIT AND  
TRUST COMPANY

Dated December 8th 1923

To Secure \$25,000 1 yr 6%

10

Premises Cape May City, N. J.

Received in the Clerks office of the  
County of Cape May on the 13th day of  
December A. D. 1923 at 9 o'clock in the  
forenoon, and recorded in Book 210 of  
Mortgages for said County, on pages  
86

A. C. Hildreth

Clerk

CANCELLED OF RECORD May 24,

20

1926

A. C. Hildreth Clerk

GEORGE REYNOLDS

216 Federal St., Camden, N. J.

30

EXHIBIT C11.

10/13/26 M

STATE OF NEW JERSEY  
Department of the Comptroller of the Treasury  
Transfer Inheritance Tax Bureau  
Trenton

May 18, 1926.

10

In the matter of the estate of

Daniel Focer,

Late of Cape May County.

This Waiver Must Be Immediately Filed or Re-  
corded with:

County Clerk of Cape May County,

Cape May Court House, N. J.

In consideration of the fact that the estate of the  
above named decedent has been declared exempt  
from a Transfer Inheritance Tax or that the tax  
and the penalty to which the said estate is subject  
has been fully paid or duly provided for, the Comp-  
troller of the Treasury hereby waives the require-  
ments of Section Twelve, Chapter Two Hundred  
Twenty-eight, Laws of One Thousand Nine Hundred  
and Nine, and the amendments thereof and supple-  
ments thereto, with respect to the property herein  
described, consents to the transfer of the said prop-  
erty, and further releases the said property from  
the lien of the State of New Jersey, as provided by  
Law:

20

30

Property situate on the south side of Washington  
Street, Cape May City, Cape May County, N. J.,  
and known as the Focer and Mecray Bldg., bounded  
northwardly by Washington St., eastwardly by  
lands of Theresa Townsend, southwardly by lands  
of Allen Konowitch and Cape May Bldg. and Loan

Association, and westwardly by land formerly of Arabella Rogers, being more fully described in Book 370 of Deeds, page 370.

Property situate and known as Lots No. 277-278-279-280-281 in Section G, plan of lots, Ocean City, Cape May County, N. J. Recorded in Book 160 of Deeds, page 96, &c.

Property situate and known as Lot No. 370, Section H, Ocean City, Cape May County, N. J.

- 10 Property situate and known as Lots No. 282-283-284-285-286 and 287, Section G, plan of lots of Ocean City, Cape May County, N. J.

N. A. K. Bugbee,  
Comptroller of the Treasury.  
(On Back.)

Record & Return to Saml Eldredge.

20

EXHIBIT C12.  
10/13/26 M

STATE OF NEW JERSEY  
Department of Comptroller of the Treasury  
Transfer Inheritance Tax Bureau  
Trenton

May 28, 1926.

In the matter of the estate of  
Daniel Focer,

- 30 Late of Cape May County.

This Waiver Must Be Immediately Filed or Recorded with:

County Clerk of Cape May County,  
At Cape May Court House, N. J.

In consideration of the fact that the estate of the above named decedent has been declared exempt

from a Transfer Inheritance Tax or that the tax and the penalty to which the said estate is subject has been fully paid or duly provided for, the Comptroller of the Treasury hereby waives the requirements of Section Twelve, Chapter Two Hundred Twenty-eight, Laws of One Thousand Nine Hundred and Nine, and the amendments thereof and supplements thereto, with respect to the property herein described, consents to the transfer of the said property, and further releases the said property from the lien of the State of New Jersey, as provided by law: 10

Property situate on the south side of Washington Street, Cape May City, Cape May County, N. J., and known as the Focer and Mecray Bldg. Bounded northwardly by Washington St., eastwardly by lands of Theresa Townsend, southwardly by lands of Allen Konowitch and Cape May Bldg. and Loan Association, and westwardly by land formerly of Arabella Rogers, being more fully described in deed recorded in Book 370 of Deeds, page 370, also by deed—American Ice Co., to Jeremiah E. Mecray and Daniel Focer,  $\frac{1}{2}$  interest. 20

Property situate and known as Lots Nos. 277,-278-279,-280-281 in Section G, plan of lots, Ocean City, Cape May County, N. J., being more fully described in deed recorded in Book 160 of deeds, page 96, etc.

Property situate and known as Lot No. 370, Section H, Ocean City, Cape May County, N. J.

Property situate and known as Lots Nos. 282-283-284-285-286 and 287—Section G, plan of lots of Ocean City, Cape May County, N. J. 30

Any and all interest that decedent may have in the following described real property:

Deed to Jeremiah E. Mecray for lands situate in Cape May Court House, Cape May Co., N. J., being portion of the Jane H. Smith store property, lying

on S. E. side of Main Seashore Rd., adjoining lands of Laura Steel on the southwest and southeast, and lands of Elvena R. Patten on the northeast, said lands being described in two deeds and given to the said Jeremiah E. Meecray, but in which the said Daniel Focer had an interest as above stated.

N. A. K. Bugbee,

Comptroller of the Treasury.

Samuel F. Eldredge, Esq.,

10 Box "A"

Cape May City, N. J.

(On Back.)

2.00 D

6448

Waiver

Estate of

Daniel Focer

20

Received in the clerk's office of Cape May County, N. J., at Cape May C. H. on the 3rd day of June, 1926, at 9 o'clock A. M., and recorded in Book No. 3 of Collateral, pages 337.

A. C. Hildreth,

Clerk.

Record & Return to  
Saml Eldredge

30

EXHIBIT C13.

10/13/26 M

204940

STATE OF NEW JERSEY

Department of Comptroller of the Treasury

Transfer Inheritance Tax Bureau

Trenton

May 17, 1926

10

Check May 18

Lillian M. Focer,

Executrix

of the Estate of Daniel Focer,

Samuel F. Eldredge, Esq.,

Box "A",

Cape May City, N. J.

Late of Cape May County

You are hereby notified that there is due the State of New Jersey by the above-named estate a transfer inheritance tax assessed pursuant to the laws per-  
taining thereto, amounting to \$151.38

20

Int. 14.66

\$166.04

28162

OK M M R

N. A. K. Bugbee,

Comptroller

DECEDENT DIED .....

If paid subsequent to.....add interest at rate of 10% per annum from said date to date of payment.

30

Return this statement to this office with certified check for amount due. Make checks payable to TREASURER STATE OF NEW JERSEY.

This receipt must not be detached

## OFFICE OF STATE TREASURER

\$166.04 Trenton, N. J., May 20, 1926.

RECEIVED FROM Estate Daniel Focer One hundred sixty-six 04/100 Dollars in settlement of account as above set forth

Wm. T. Read  
Treasurer

Countersigned:

10 N. A. K. Bugbee,  
Comptroller

This tax was assessed on the value of property of decedent disclosed to the State in accordance with the statute. The State does not waive its right to any tax on property not disclosed.

## EXHIBIT C14.

10/15/26 L.

20 STATE OF NEW JERSEY, }  
CAPE MAY COUNTY, } SS:

30 JEREMIAH E. MECRAY, of full age, being duly sworn according to law, upon his oath deposes and says that he is the Jeremiah E. Mecray who was in partnership with Daniel Focer at the time of his death, which occurred on May 30, 1924; that this deponent, having taken into consideration the value of the real estate belonging to said firm of Focer and Mecray in Cape May City, as well as the real estate at Cape May Court House, Cape May County, New Jersey, which latter real estate was in the name of Jeremiah E. Mecray, together with the mortgage indebtedness on the same, as well as the value of all personal property and the indebtedness of said firm has agreed to and with the widow of

the said Daniel Focer, Lillian M. Focer, and the two legatees, Caroline H. Armstrong, now Caroline H. Hines, and Mabel F. MacAdams, the two children of the said Daniel Focer, and the residuary legatees under his will, to pay them the sum of TWENTY-TWO THOUSAND FIVE HUNDRED DOLLARS (\$22,500.00), as and for their complete interests in the holdings of the late Daniel Focer in all lands, buildings, stock, fixtures, and personal property of every kind and description, and the partnership lately existing between the said Daniel Focer and Jeremiah E. Mecray. This deponent further says that the said Daniel Focer's interest in said partnership was a forty per cent. (40%) interest, and that this deponent owned a sixty per cent. (60%) interest in said partnership. That the appraised value of said interest amounted to TWENTY-TWO THOUSAND, FIVE HUNDRED AND THIRTEEN DOLLARS AND TEN CENTS (\$22,513.10), That the annexed account is a true and perfect account of the values and indebtedness of said firm of FOCER AND MECRAY on the 30th day of May, A. D. 1924.

Sworn and subscribed to )  
 before me this )  
 day of March, A. D., 1926. )

STATEMENT AND APPRAISAL OF THE  
 PROPERTIES OF FOCER AND MECRAY AS  
 OF MAY THE 30th 1924.

ASSETS CAPE MAY CITY, N. J.

Building Washington Street	74,045.49	30
Building Hughes Street	5,767.80	
Amount of bills due	7,269.01	
Ford Stock	2,192.83	
Merchandise	1,169.25	
New Cars	3,857.36	
Old Cars	950.00	

	Merchants.	1,397.63	
Cash	Security	450.98	1,848.61
Equipment			1,461.00
	P. O.	542.00	
Rent due	W. B.	100.00	
	S. O.	35.00	677.00
Amount of notes due			1,339.85
Building & Loan Assn.			405.00
Liberty Bonds			6,550.00
10 Shop			3,743.25
Notes due on cars			3,046.90
			114,323.35
LIABILITIES CAPE MAY CITY, N. J.			
Amount of bills owed			1,199.71
Taxes	W.	636.88	
	H.	213.69	850.57
Water Rent	W.	47.00	
	H.	20.00	67.00
Insurance	B.	243.25	
20	L.	186.91	430.16
Help			295.00
Security Trust	C. M.	12,850.00	
Camden Safe Deposit			8,750.00
Tuckahoe			1,700.00
First National	C. H.	7,500.00	
Merchants National	C. M.	14,000.00	
	W.	25,000.00	
Mortgage	H.	3,000.00	28,000.00
Geo. Ogden & Son			4,089.05
30 Cape May Coal & Ice Co.			892.90
Jesse Rutherford			100.00
M. Ware—work on bldg.			980.00
Jesse Brown			205.11
P. O. Fixtures			1,125.00
Dave Rodan			18.40
Chas. York			1,639.66

W. B. Gilbert	75.00	
Sam Schellenger	25.00	
Geo. Rea	31.34	
J. Chambers	27.00	
Borrowed from Mr. Focer	1,000.00	
Chas. Keeler, Sr.	166.60	
H. F. Otter	22.20	
		86,039.70

EQUITY 10  
\$28,283.65

STATEMENT AND APPRAISAL OF THE  
PROPERTIES OF FOCER AND MECRAY AS  
OF MAY THE 30th 1924.

ASSETS CAPE MAY COURT HOUSE, N. J.

Ground		
Building		
Furnishings	11,250.76	
Amount of bills due	9,093.46	
Ford Stock	2,543.24	20
Merchandise	1,674.06	
New Cars	3,260.89	
Old Cars	995.00	
Cash	1,893.36	
Extra equipment	137.00	
		30,847.77

LIABILITIES CAPE MAY COURT HOUSE, N. J.

Amount of bills owed	2,404.18	
Taxes	89.49	
Water rent	15.00	30
Insurance	90.00	
Help	250.00	
		2,848.67

EQUITY 10  
\$27,999.10

## SUMMARY

Equity Cape May Property	28,283.65
Equity Cape May Court House Property	27,999.10
	<hr/>
Total	\$56,282.75

## EXHIBIT C15

10/15/26 L.

10

STATE OF NEW JERSEY  
Office of Comptroller of the Treasury  
Trenton, April 20, 1926.

Samuel F. Eldredge, Esq.,  
Box "A",  
Cape May City, New Jersey.

Dear Sir:—

20 Before the Transfer Inheritance Tax proceeding in re estate of Daniel Focer, deceased, late of Cape May County, New Jersey, can be properly completed, it will be necessary to forward data with reference to the following features:

30 The inventory of the contents of the safe deposit box rented by this decedent includes the item "Deed dated Sept. 24, 1894 William Deney to Harry Earl and Daniel Focer for lot #217 North Wildwood, New Jersey." Did the decedent sell the property mentioned in this deed during his lifetime? If so, give all the facts with reference to the sale of said property. If the property was owned by the decedent at the time of his death, indicate how the same is disclosed in the schedules on file with this department.

Kindly forward a copy of the partnership agreement of the firm of Focer and Mecray. If

the articles of partnership contain provisions to the effect that the surviving partner may purchase the interest of the deceased partner at a value not including any amount for the Good Will of the business, it will be necessary to forward profit and loss statements of the partnership for a period of at least three years preceding the date of the decedent's death, together with any facts you may care to submit indicating the value of the Good Will of the business. 10

Upon receipt of the data requested above, the matter will be given further attention.

Very respectfully,

N. A. K. Bugbee,  
 Comptroller of the Treasury,  
 By William D. Kelly,  
 State Supervisor of the Transfer Inheritance Tax Bureau.

CAS:U

(Pencil Notations.)

20

D. B. 116  
 p. 39

D. B. 160  
 p. 165

All Interest  
 Daniel Focer  
 to

Harry Earl  
 Dated —  
 Apr 22 1901

30

Est Daniel  
 Focer

## EXHIBIT C16.

10/15/26 L.

STATE OF NEW JERSEY, CAPE MAY  
COUNTY, SS:

JEREMIAH E. MECRAY, of full age, being duly sworn according to law, upon his oath says that he

10 is the Jeremiah E. Mecray who was in partnership with Daniel Focer, under the firm name of Focer and Mecray for the past ten years; that the said Daniel Focer died in Cape May City, New Jersey, on the 30th day of May, A. D., 1924; that there was never any written agreement of partnership between this deponent and the said Daniel Focer, but that they operated on a basis of sixty per cent. interest to this deponent and forty per cent. interest to the said Daniel Focer, this deponent having devoted

20 all of his time and attention to this business from the time the partnership was begun until the death of the said Daniel Focer; that the said Daniel Focer devoted only so much of his time and attention to the said business as he cared to give, it being definitely understood between this deponent and the said Daniel Focer that the time and attention given by the said Daniel Focer would not conflict with any outside business with which the said Daniel Focer was connected, the said Daniel Focer being a Cape

30 May County representative of the Standard Oil Company; that it was understood as between this deponent and the said Daniel Focer that, in case of the death of the said Daniel Focer, who was a man 76 years of age at the time of his death, and this deponent at that time, May 30, 1924, being 44 years of age, the interest of the said Daniel Focer should be taken over by this deponent; that this de-

ponent never agreed to pay anything for the good will, in case of the sale of said business; but after the death of the said Daniel Focer, he offered to sell the said business to the Focer Heirs on the same proportional basis on which he purchased the Focer interest, said basis being the sale of the said sixty per cent. interest owned by this deponent; that the business of the said partnership was conducted by this deponent, and the increase of business, this deponent feels, is entirely due to his efforts, he having given up his other business at the time of going into the partnership, or shortly thereafter, and devoted all his time and attention to the business of the said partnership; that the profits accruing to said partnership for four years preceding the death of the said Daniel Focer are as follows:

1921 .....	\$ 1,824.48	
1922 .....	\$ 3,262.40	
1923 .....	\$11,720.25	
1924 .....	\$ 1,782.81	20

This deponent is unable to give the profit and loss statement of the partnership except as above set forth, which information this deponent has procured from copies of the income tax report filed with the Collector of Internal Revenue, Camden, New Jersey, for those years, because, when they moved from their former location on Delaware Avenue, Cape May, N. J., to the building erected by the partnership on Washington Street, in some unaccountable way the books containing the inventory of the business, as well as other valuable papers, were lost or, by mistake, destroyed.

Sworn and subscribed to )  
 before me this )  
 day of May, A. D., 1926. )

## EXHIBIT C17.

10/15/26 L.

May 13, 1926

William D. Kelly, Esq., State Supr.,  
Transfer Inheritance Tax Bureau,  
Trenton, N. J.

10 Dear Sir:

In RE: Estate Daniel Focer, Dec'd.

As for your letter of April 20, 1926, I sent you full affidavit of the firm of Focer & Mecray, giving all data available on the second paragraph of your letter.

As to the first paragraph of this letter, I was at Cape May Court House yesterday, and looked over the records in the County Clerk's office, and found that the property deeded September 24, 1894, by  
20 William Deney to Harry Earl, and Daniel Focer for lot 217 North Wildwood, New Jersey.

Daniel Focer on April 22, 1901, deeded his interest in said lot to Harry Earl, said deed being recorded in Cape May County Clerk's office in deed book 160, page 165.

I trust you will give this matter your immediate attention and that we may have the tax, if any, assessed right away.

Yours very truly,

Sam'l F. Eldredge

30 CHH:SFE

EXHIBIT C18.

10/15/26 L.

May 26, 1926

William D. Kelly, Esq.,  
c/o Comptroller's Office,  
Trenton, New Jersey.

Dear Sir:

10

In Re: Estate of Daniel Focer

When your office made up the release of Real Estate, the first paragraph in the release would appear to release only one property, but if you will look at the schedules, you will find that there are two deeds mentioned therein, although I was not able to give you the record of both deeds. Also when I was in your office I asked that there be sent me a release for the property mentioned in the third paragraph of the schedule, showing lands in the name of Jeremiah E. Mecray, at Cape May Court House. 20

As a mortgage is being procured on this Court House property, and the Building & Loan Association, knowing that while the land is in Jeremiah E. Mecray, it is Focer and Mecray's project, they will not do anything relative to the mortgage, until a release from your department is filed.

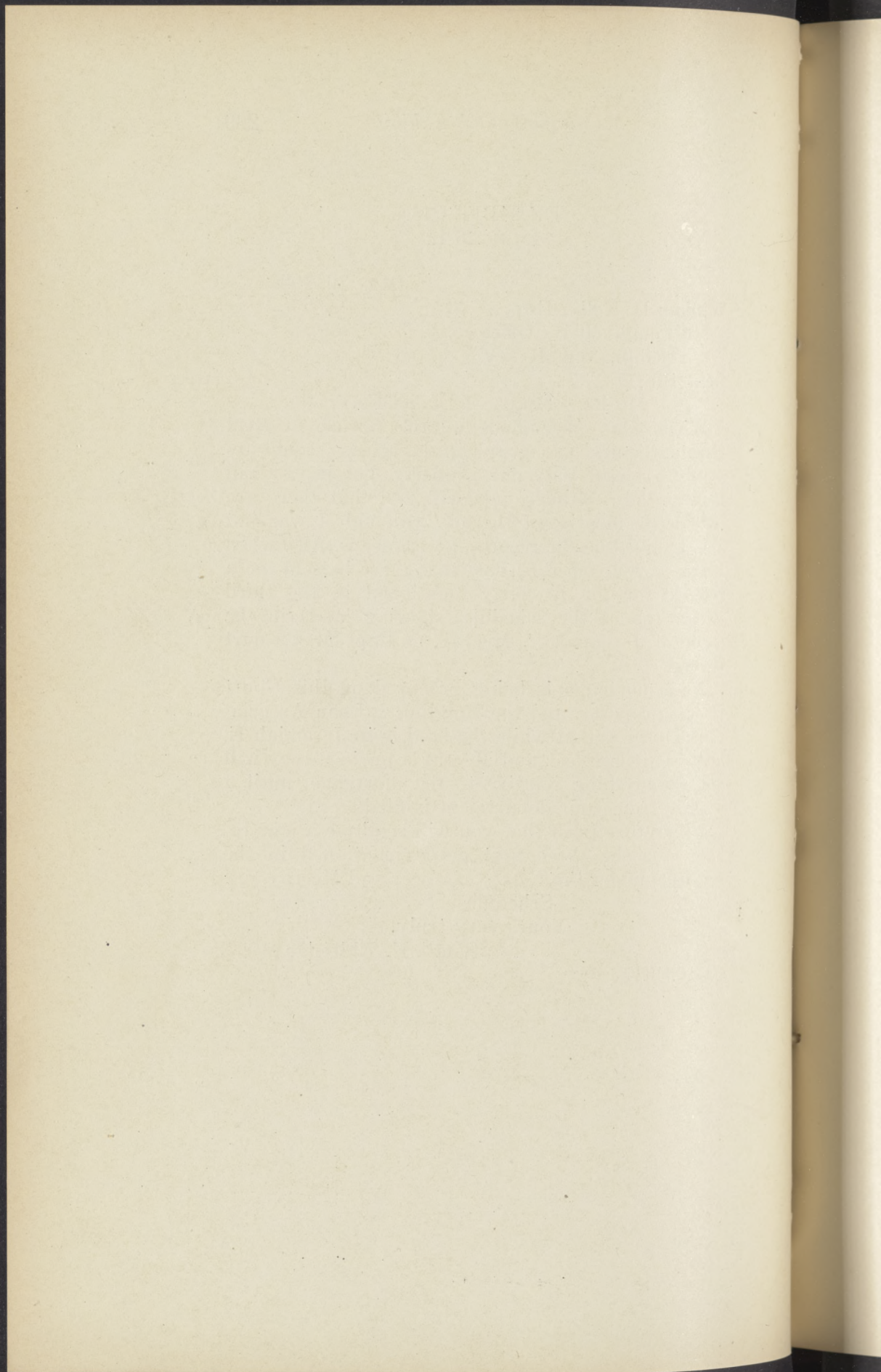
I therefore trust that you will send me a new release for the three first deeds mentioned in the schedule under the Estate of Focer and Mecray. 30

Schedule

Yours very truly,

Sam'l F. Eldredge

CHH:SFE



## New Jersey Supreme Court.

---

Between

JEREMIAH E. MECRAY ET UX.,

*Complainants-Appellants,*

*and*

ISADOR GOLDMAN ET AL.,

*Defendants-Respondents.*

} On Appeal from  
Chancery.

### RESPONDENTS' BRIEF.

#### Facts.

This controversy arose over a sale of real estate called the Post Office property in Cape May City, New Jersey. The complainants, by an agreement of sale dated August 28, 1925 (page 9, State of the Case), agreed to sell to the defendants the Post Office or Forcer-Mecray Building for \$150,000, \$25,000 in cash and a \$125,000 mortgage, \$5,000 down, \$5,000 December 1, and \$15,000 on the date of settlement, January 4, 1926. The premises were to be conveyed clear of encumbrances.

On January 4, 1926, the date of settlement was extended to February 6, 1926, in writing. On February 6 the complainants and defendants met in the office of Senator Lewis T. Stevens in Cape May City to effect the settlement. No settlement was effected because the complainants had not cleared the title in three respects; First, State Inheritance taxes to an undetermined amount were a lien upon the property; second, a \$25,000 mortgage held by the Camden Safe Deposit and Trust Company was unpaid; third, a title to one undi-

vided half interest in the property was not in the complainant Mecray.

It appears from the testimony that the property was originally owned jointly by Daniel Forcer and Jeremiah Mecray, that Forcer died May 30, 1924, and that Mecray later purchased from Forcer's widow the one-half undivided interest for about \$22,000. At the time of the events that formed the subject of this suit Mecray had not yet paid the Forcer estate in cash for the half interest.

When these facts were made known to the purchasers, the defendants, by their counsel, Senator Stevens, they suggested that a further extension for thirty days be granted by Mecray. This Mecray refused to do, alleging that the title defects could all be cleaned up within a week and insisted that the adjustments of rent and taxes be completed and that the balance of \$10,000 purchase money be paid forthwith (an additional \$5,000 had been paid on January 4th). The adjustment figures were then computed and found that there would be due to Mecray \$6,374.09. This money was then taken to the Merchants National Bank and placed in the hands of Judge Henry Eldredge, the president of the bank "in escrow." This so-called escrow agreement merely acknowledges the receipt of the money and then states that "at final settlement for the above described property the funds so held are to be distributed as follows." A commission of \$4,500 was to be paid and the balance of \$1,800 to be paid to Mecray. A mortgage, differing somewhat from the mortgage tendered at the settlement, in the sum of \$125,000 executed personally by Goldman was to be forwarded to the bank, and this mortgage apparently was to be delivered to the Camden Safe Deposit and Trust Company as collateral for a loan of \$25,000 which was to be used to cancel the \$25,000 mortgage then a lien on the premises. "The above arrangement is to be carried out with the approval of Lewis T. Stevens, attorney for purchaser, and Samuel F. Eldredge, attorney for seller."

It will be noted that this agreement was silent as to the time of final settlement. It is the contention of the defendant purchasers that it was to be consummated within a week or ten days. The facts upon this subject will be marshalled in their appropriate place. On February 17th the Merchants National Bank received the duly executed Goldman mortgage for \$125,000 dated February 4th and acknowledged February 16th.

After this meeting of February 6th nothing whatever was done by the seller towards clearing up the title. On March 22d formal demand was made by Senator Stevens upon Mecray to either deliver possession of the Post Office building within five days or else return the mortgage and the moneys paid on the purchase. To this notice no attention was paid; and on April 17th Stevens served upon Mecray a second notice demanding return of the moneys paid on account of the purchase of the Post Office price, to wit, \$25,000, thereby effecting a rescission of the contract as of that day. To this no reply was made, and on May 15th Mecray met the purchasers in company with their Philadelphia counsel, William A. Gray, in Senator Stevens' office, where a formal demand was again made for the return of the purchase money, with the statement by Mr. Gray that suit would be commenced immediately for its recovery.

After this demand the seller, for the first time, became active in undertaking to get in the title. On May 18th he and his counsel, Samuel Eldredge, visited the Comptroller's office in Trenton, paid the inheritance taxes and obtained the necessary receipt. The release, however, was not recorded until June 3d. On May 24th they cancelled the mortgage, and put on record the deed from Lillian M. Forcer to Jeremiah Mecray covering the one undivided half interest.

In the meantime Senator Stevens had forwarded to the Clerk's office by mail a summons and complaint suing for the return of the \$25,000, which suit was filed on May 27th. Thereafter the complainants sought by injunction in the Court of Chancery to restrain defend-

ants from prosecuting their suit and praying for a specific performance of the contract of sale. The defendants answered and counterclaimed, praying for the return of the \$25,000, the surrendering of the mortgage already tendered, and a cancellation of the contract of sale. The result was a decree in favor of the defendants and decreeing the return of the purchase price and the cancellation of the agreement of sale.

### Argument.

There seems to be no novel proposition of law involved in this appeal. The only thing to be considered is whether or not the facts as brought out in the testimony warranted the conclusions of the learned Vice-Chancellor.

At the conclusion of the testimony it was agreed by both sides that there were two questions to be decided:

1. Was an actual settlement made between these parties upon February 6th, and with the different papers and the money placed in escrow without any limit as to time?

2. If there was no limit as to time, was the escrow such as could be terminated upon a given notice, and if so, was it terminated by a notice? (Page 223, State of the Case.)

Taking the first question up in its two parts, we will first discuss whether there was an actual settlement on February 6th.

#### Was There An Actual Settlement on February Sixth?

This seems to be settled by the escrow agreement itself. The third paragraph reads, "*At final settlement for the above described property the funds so held are to be distributed as follows.*" (Page 11, lines 12 to 14, State of the Case.)

Was the Different Moneys and Papers Placed in Escrow Without Any Limit as to Time?

Upon this subject there is controlling evidence that the time limit was a week or ten days.

Senator Stevens testified that when the parties met at his office on February 6th, Mr. Perlstein, representing the purchaser, informed Mecray that they had come to settle. Mecray said he was ready. Stevens then inquired about the mortgage and the inheritance tax, whereupon Mr. Perlstein said:

"Well, hadn't we better extend the time for a month?"

Mr. Mecray said:

"No, we will settle now." (State of the Case, page 203, lines 12 to 31.)

The settlement figures were then gotten up. The question arose about the amortization in the mortgage and the amount was changed; and about four o'clock in the afternoon, Stevens testifies,

"They had agreed to put the money in escrow and deliver the deed to Judge Eldredge with the money, and Mr. Perlstein was to take back to Philadelphia the bond and mortgage to be executed by Mr. Goldman, and they in turn were to be forwarded to Judge Eldredge to be kept there until Mr. Eldredge, representing Mecray, and myself representing the other gentlemen, should let the papers be exchanged and the money passed." (Page 204, lines 19 to 28.)

Questioned about the time limit, Senator Stevens said:

"A. In the morning when Mr. Mecray said we will settle now, he says this matter can be all cleaned up within a week. He did not say this matter can be all cleared up, but said this matter ought to be all cleared up within a week." (Page 204, lines 31 to 35.)

Questioned whether anything was said at the bank, Senator Stevens said:

"That there was a reference made to cleaning the matter up within ten days." (Page 205, lines 1 to 5.)

Phillip I. Schaffer testified:

"Senator Stevens said at the time he didn't see why there was any money to be put up if they weren't ready, and Mr. Mecray said, 'We will have everything fixed up in about a week,' and the suggestion was then made about putting the money in escrow. Everything would be cleared up in about a week." (Page 195, lines 34 to 37, page 196, lines 1 to 3.)

At the bank Schaffer testifies:

"A. I heard Mr. Perlstein say to him, 'It is a question of a matter of ten days—a week or ten days, that we are to be paid interest for this money that we are putting up here,' and Judge Eldredge in sort of a jocular way said, 'I ought to charge you for keeping it, putting me to, bringing me down here on a Saturday afternoon and putting me to this trouble.'" (Page 197, lines 6 to 12.)

Sidney Lissman testified as follows:

"It is my recollection that Mr. Eldredge suggested putting the money in escrow, the balance of the money due. Senator Stevens said 'What is the sense of doing that? You are not ready to settle. You might as well postpone it,' and Mecray says 'Why we will have this thing all cleared up in a week.' We then went to the bank." (Page 156, lines 3 to 10.)

The witness was asked why the sellers were not able to settle, and Senator Stevens in Mecray's presence said:

"'You fellows cannot settle because it has not been satisfied' (the \$25,000 mortgage). Therefore wouldn't be first; there would be two mortgages on it. Now, the best thing you can do is to satisfy that first mortgage \$25,000,' and

Senator said 'also clear up the other objections.' ”  
(Page 186, lines 16 to 22.)

“Q. Now, what, if anything, did Mecray say about clearing up the mortgage?

A. He said the whole thing would be cleared up in a week or ten days.” (Page 186, lines 25 to 28.)

“Q. Did he say why he did not clear up the inheritance tax before?

A. No. I didn't hear him say anything about that.

Q. Just admitted that they had not been cleared up, is that it?

A. Yes, sir.” (Page 156, lines 31 to 37.)

At the bank he testified Mr. Perlstein said to Mr. Eldredge, the president of the bank:

“He said, 'You ought to pay us interest for the time it would be here.' and Mecray said that 'we will have this thing all cleaned up. There won't be a question of any interest.' And then Mr. Eldredge said, 'Why,' he said, 'you ought to pay me for holding the money.'” (Page 188, lines 2 to 11.)

Mr. Perlstein, who was Goldman's agent in the whole transaction, testified, after detailing the meeting on February 6th, in Senator Stevens' office, as follows:

“A. Well, now, there were several things that were not cleared up in the title. The title papers were not there and he insisted upon us making settlement that day. I then asked him for an extension from the time for an additional thirty days, and he insisted upon the money being put up and that led to, I believe, Mr. Eldredge called Judge Eldredge up on the telephone and asking him to act in escrow for this fund, saying they would clear this matter up within a week or ten days from that time.” (Page 145, lines 33 to 36, page 146, lines 1 to 7.)

This testimony was further amplified by page 147 of the record, Perlstein asking for an extension of the settlement until all of the matters were cleared up, which Mecray refused.

It should be noted that at the time of the settlement it appeared that the searches had not yet been delivered to Senator Stevens and therefore the buyers did not know whether there were other encumbrances or defects in the title except those that Senator Stevens knew of personally.

"A. Refusal was that he would clear the matter up within a week or ten days and for us to put the money in escrow at the Merchants National Bank.

Q. Did you agree to do that?

A. We agreed to do that.

Q. Now, what did he (Mecray) say he hadn't cleaned up?

A. Well, I knew of the inheritance tax.

Q. Now, what you knew, but what he told you.

A. He told me the inheritance tax was not cleared up with no settlement made with the Forcer estate. The \$25,000 mortgage had not been cleared up." (Page 147, State of the Case.)

At the bank, witness testified:

"Q. Now, was there anything said, Mr. Perlstein, at the bank on the sixth of February, any conversation between Judge Eldredge and yourself that impressed upon your mind the fact that Mecray had said that he would clean up these exceptions within a week or ten days?" (State of the Case, page 150, lines 26 to 32.)

"A. We were originally in the back room of the bank and in the conversation where we told Judge Eldredge that he was going to take this money in escrow; we were then led behind the counter of the bank, right by the vault, where

Judge Eldredge then typed the escrow agreement, and I then recall distinctly saying to Judge Eldredge, 'You pay us interest for this money for the amount of ten days' delay here,' and Judge Eldredge's answer was, 'Well, we will charge you for keeping the money.'" (Page 151, lines 6 to 19.)

Senator Stevens was originally called by the complainant and when asked concerning the length of time it would take to complete the escrow agreement, testified as follows:

"A. And at the time it was determined to put the money in bank in escrow, Mr. Mecray made the statement that this matter ought to be settled up in ten days. No, I am mistaken. That this matter ought to be settled up in a week." (Page 132, lines 24 to 29.)

Since Stevens was called as their witness, this testimony unimpeached was binding upon them.

Against the testimony of these four witnesses, none of whom had any interest in the outcome of the suit, and one of whom, Senator Stevens, is a member of this bar and enjoys the highest repute, we have little direct testimony in contradiction of any probative value. Judge Eldredge testified that he did not recall the conversation.

"Q. And you do not recall whether or not anything was said in your presence about when these various papers were to be delivered?

A. I recall nothing definite said about fixing a time, Senator." (Page 49, lines 5 to 9.)

It will be noted that Judge Eldredge was not recalled in rebuttal to deny the positive testimony of the defendants' witnesses on this point.

Mr. Samuel Eldredge, Mecray's attorney, testified:

"Q. Was there any definite time fixed in which settlement was to be made?

A. The time fixed when settlement was to be made was when the mortgage of \$25,000 held

by the Camden Safe Deposit and Trust Company and the New Jersey State inheritance tax was paid." (Page 57, lines 34 to 37, page 58, lines 1 and 2.)

On pages 70 and 71 of the record, after considerable verbal fencing, Mr. Eldredge admitted that Mr. Perlstein had suggested an extension of the time of final settlement.

"That is true. He did suggest that in view of the fact that the mortgage and the inheritance taxes were not paid, that they extend the time of settlement?

A. Yes.

Q. To that, what did Mr. Mecray reply?

A. I don't know. At the time that—

Q. Didn't he refuse?

A. No. At the time that Perlstein was talking with me about that, and the only time I know of, he and I were talking together about it.

Q. What did you say about it?

A. Why, it was the only thing that could be done." (Page 71, lines 19 to 30.)

Q. Why didn't you make an extension agreement like that you did prior to the sixth of February?

A. Why didn't we?

Q. Yes.

A. We did.

Q. You think you did?

A. No, we did.

Q. You did make an extension agreement?

A. Yes.

Q. Where is it? Will you produce it?

A. Judge Eldredge referred to the agreement for the extension.

Q. You are referring to Exhibit C-2?

A. The escrow agreement of February 6th.

Q. When did that extend the time to for performance?

A. Until such time as the mortgage could be paid and the inheritance tax could be paid.

Q. Does it say that in the agreement?

A. Why, I am not absolutely sure about saying it in the agreement."

Witness was then allowed to read the agreement.

"Q. So it is silent on that subject, isn't it?

A. Yes, silent." (Page 71, lines 34 to 37, page 72, lines 1 to 27.)

Pressed for a time that the settlement was to be postponed, witness could only say that he did not remember. (Pages 72 and 73.)

The next witness is Sol Needles. Needles undertook to imply that nothing was said about a week or ten days. He admitted that he was present only through part of the conversation in Senator Stevens' office and undertakes to swear that he was present through all the conversation that took place in Judge Eldredge's office, which he designates as the "back room." All the witnesses agree that the conversation regarding the ten days occurred outside of Judge Eldredge's office and in the bank proper. Needles refused, on cross-examination to say that there was no such conversation, merely saying:

"A. I did not hear that conversation at all.

Q. Never heard such a conversation?

A. No.

Q. And you want to say no such conversation took place, is that so?

A. I say that I didn't hear it." (Page 97, lines 1 to 6.)

Needles was an interested party to the extent of a \$4 000 commission.

The witness Schaffer testified that Needles was near the bank door and that he could not have heard the conversation. (Page 166, lines 30 to 37.)

Lissman testified:

"Q. Now, was Needles present at the conversation at the bank?

A. He stood outside in the corridor between the window and the cage and we were in the back room for a portion of the time and then we went behind the cage to the paying teller's desk on the inside where the escrow agreement was drawn." (Page 187, lines 26 to 32.)

It is noteworthy that neither Samuel Eldredge nor Needles were recalled for the purpose of denying the direct testimony of the defense, and that there remains only the testimony of Mecray. At the outset the Court is invited to read the entire cross-examination of this witness, because it reveals such a mass of contradictory statements on the part of the witness as to leave no other conclusion but that his testimony is utterly unworthy of belief. On the question of time for the fulfillment of the escrow agreement, his testimony was:

"There wasn't any time set except that the agreement said that both lawyers must be satisfied." (Page 102, lines 11 and 12.)

Throughout both his direct and cross-examination he repeatedly makes the statement that he had made *several* extensions of the time of settlement for the accommodation of the purchasers and that the escrow agreement was another extension agreement made at the request of the purchasers. For illustration, on pages 110 and 111:

"Q. Do you mean that there was more than one extension, Mr. Mecray?"

A. Yes, sir. Two or three."

He could not remember the dates, and then:

"Q. Well, now, one minute. You want to be entirely frank with us about this transaction, don't you?"

A. You go ahead.

Q. I am now asking you to try to give us your best recollection of when the first extension was asked for and granted by you.

A. It was in January, I think.

Q. That was the first one, in January?"

A. Yes, sir.

Q. When was the second one asked for?

A. February.

Q. When was the third one asked for?

A. March.

Q. The third one in March?

A. Yes, sir.

Q. Was there any other after the third one?

A. No others, because it was about March 6th when they decided to put it in escrow, and just as——

Q. It was on February 6th that it was put in escrow?

A. Well, it was the sixth of February then. I probably made a mistake on March.

Q. All right, we have got that mistake out of the way. You now say that they asked you for an extension in February?

A. They asked me for two extensions, which I granted. I won't say what months.

Q. Was the first one prior to January?

A. I don't remember.

Q. Or before the sixth of January was an extension asked for?

A. I granted every extension that they asked me for and tried to go along with them." (Pages 110 and 111.)

Still reiterating that he had given two extensions, on page 112 he was confronted with the agreement and compelled to admit that each payment had been made as designated in the agreement.

"Q. So there wasn't any money due until the fourth of January, was there, so you couldn't have granted them any extension before the fourth of January, could you?

A. I thought I did.

Q. You didn't, did you?

A. I don't know."

On page 113 of the record the witness insisted that the escrow agreement was an extension. Continuing, on page 114, witness makes this extraordinary statement:

“Q. It was for you to clean that up. You hadn’t cleaned it up on that day. They didn’t want an extension because you hadn’t done your part, did they?”

A. They certainly did. They asked for it and suggested they would put it at escrow.”

Continuing through this cross-examination, on pages 118 and 119 we find, at the beginning of page 119, the following:

“Q. Look here, Mr. Mecray, didn’t Mr. Perlstein suggest that inasmuch as you were not ready to give them the title, that they extend the date of settlement for another month, and didn’t you refuse?”

A. There was no specified time——

Q. And didn’t you say that you wanted a settlement that day, and wasn’t it after that that they suggested the escrow proposition?”

A. No, sir. I never demanded settlement. I was going along with them any way they wanted, and it was extension after extension. Anything that they wanted.”

Since all of the other testimony in the case shows that the defendants had complied promptly with the terms of their agreement, and that the only reason for the failure to settle on February 6th was that Mecray and his counsel had failed to remove the exceptions to the title, it is obvious that this testimony was entirely untruthful.

We therefore have the positive statement of four witnesses to the effect that the title defects were to be removed within a week or ten days against the testimony of three witnesses who do not recall the conversation and that of Mecray which was unworthy of belief. Under the circumstances there is no doubt but that the title

defects were to be removed and title passed within ten days after February 6th, 1926.

**2. If There Was No Limit as to Time, Was the Escrow Such as Could Be Terminated Upon a Given Notice, and if so Was It Terminated by a Notice?**

Being an agreement for the transfer of real estate upon the happening of certain contingencies is controlled by the law as stated by Vice-Chancellor Backes in

*Orange Society v. Konski*, 94 Equity, p. 632, and affirmed in the Court of Errors in 95 Equity, p. 254.

"Where the time fixed is regarded as a formality only and the period has gone by, or where time is of the essence and there is a waiver, time may nevertheless be made of the essence by a formal demand that the title be closed by a given day, but the time given must be reasonable."

The cases cited by the learned Vice-Chancellor on page 636 of his conclusions are undoubtedly the law. Therefore time was made of the essence of the contract by the formal demand made upon Mecray in writing by Senator Stevens on March 23d. The time nominated for delivery, five days, was not too short. They had agreed to clean up the exceptions within ten days after February 6th. March 23d was forty-five days after the time agreed upon. Moreover, a further period of twenty-five days elapsed until April 17th, before a demand was made for the return of the money, making a total of seventy days in which Mecray could have acted.

Under the circumstances it may be important to inquire why Mecray did not act promptly. The motive on Mecray's part can be found in the testimony of Perlstein, who testified that there was intense real estate activity in February of 1926 and prior thereto. Unquestionably Mecray had repented of his bargain made in August of 1925. Perlstein had a conversation with Mecray, and this is undenied, in December or January (page 157, State of the Case), in which Mecray told him that

"He had an offer on the property for someone interested in the property, at the rate of \$165,000 and who suggested to him not to offer the property for sale for the reason that he was then working on some people in Cape May trying to get together ten or twelve men to interest them in the bank to put in that building."

Unquestionably Mecray undertook to play fast and loose with Goldman, trying to hold him to the sale if he could not make a better bargain and expecting to break the contract by means of the title defects if it became convenient for him to do so. He testified that he could have removed the \$25,000 mortgage on twenty-four hours' notice, yet he made no effort to remove it between August of 1925 and May 24th, 1926. Forcer had died on May 30, 1924. The inheritance tax on his estate, which was a lien upon the property in question, should have been paid within a year from his death. Mecray knew that it was not paid in August of 1925 when he made the agreement and he did nothing towards having it removed between that date and February 6th, when he had to make settlement. It is entirely true that this was up to Mr. Samuel Eldredge, counsel for the Forcer estate, but since Mecray had made the agreement of sale to give title free of encumbrances, it was his duty to compel the Forcer estate to liquidate the tax, and it certainly became still more important after the sixth of February to insist upon its payment.

An explanation of why he did not do so can probably be found in the fact that he himself had never performed his agreement for the purchaser of Forcer's half interest in the property. He had bought this half interest for \$22,000 and he claims to have received the deed therefor. A reading of his cross-examination demonstrates that he did not tell the truth when he claims that the deed had been delivered to him. If it had, why did he keep it unrecorded for two years and did not record it until May 24, 1926, after suit had been started. The fact was that the deed turned upon the hands of Mr.

Samuel Eldredge, counsel for the estate. It was from this deed that he drew the description for the \$125,000 mortgage.

The testimony is that when Mr. Eldredge first came to Senator Stevens' office he said that he had come there to get \$10,000 for the Forcer estate, the amount then remaining due. Perlstein testified:

"At the time I asked Mr. Eldredge what he was doing here. He said, 'The only interest I have here is the Forcer estate. I want some money out of this.' Mr. Mecray then asked him to look after the settlement that day for him" (page 146, lines 10 to 15).

There is similar testimony by Senator Stevens and others. Mecray claimed to have paid the consideration for the deed by giving a note for it. Later it turned out that about the time the deed was put on record, May 24, 1926, a mortgage for the purchase price was recorded by the Forcer estate.

Undoubtedly there had been no delivery of the deed and Mecray was not in a position to pass the title until he got the balance of the purchase money out of Goldman or made some other arrangement to satisfy the Forcer estate.

"Q. Did you tell them anything like that?

A. I might have said that Mecray was going to give us \$10,000.

Q. That you are going to get \$10,000 out of the settlement, wasn't that right?

A. Yes, sir, that might have been. I don't say.

Q. And that Mecray had not paid for the property? Wasn't that right then?

A. Then?

Q. Yes.

A. Well, I don't consider and never did consider that the sale of this property depended on Mecray's settling with the Forcer people." (Page 88, lines 1 to 15.)

The same thing was true of the \$25,000 mortgage. His declaration that he could have cancelled this at any time must be taken with the proverbial grain of salt, otherwise why was it stipulated in the escrow agreement that the \$125,000 mortgage was to be put up as collateral for the \$25,000 loan to cancel this mortgage?

So far as the inheritance tax lien was concerned, there is no question but what Mr. Samuel Eldredge simply neglected the whole affair. He claimed in his direct testimony that he was working on this matter diligently from the sixth of February until the eighteenth of May. He testified:

“A. I wrote four or five different letters to the State Department.” (Page 75, lines 3 and 4.)

He fixes this time as between the first of January and the time the tax was assessed (page 75, lines 31 and 32) and that he had to supply data. This data was an affidavit from Mecray and one from Mrs. Forcer (page 76, lines 1 to 6). Adjournment was taken for two days after this testimony was submitted, during which time Mr. Eldredge was asked to bring all of the correspondence that he had with the State Department. He was able to produce only one letter (page 162, lines 33 and 34). This letter was dated May 13, 1926. He admitted that he had not forwarded the inventory up until April 20, 1926 (page 176, lines 34 to 37). He admitted that he did not apply for a waiver upon this property, which he easily could have done, since there was sufficient other property upon which the taxes could have remained a lien (page 178).

“Q. Had you ever applied to the Comptroller for the purpose of obtaining a release specifically of the post office property prior to the sixth of February, 1926?

A. I don't remember that I ever did.

Q. Did you do it after the sixth of February?

A. I don't remember ever having done it.”  
(Page 178, lines 15 to 22.)

The truth of the situation is that when Mr. Gray, Philadelphia counsel, informed Mecray and Eldredge on May 15, 1926, that he intended to forthwith commence suit for the return of the \$25,000 that they both rushed to Trenton on the eighteenth and there settled up the tax and obtained the release. So that the contention that the inheritance tax could not have been adjusted before is without the slightest foundation. There could first have been a waiver; secondly, nothing substantial appears to have been done until suit was brought proving that the whole matter could have been adjusted immediately after February 6th and within the week or ten days that they originally specified; that the matter was simply neglected on the part of Eldredge and not insisted upon by Mecray because he was hoping for a better bargain.

#### Was Notice Served Upon Mecray?

Mecray denies it. The written notices were produced, but Mecray denies ever receiving any notice or demand even for a return of the money. In this he is contradicted by Lissman (page 190, lines 18 to 30).

"A. That letter, a copy of that letter, was handed to Mr. Mecray. He turned around to Mr. Eldredge and he said, 'Sam, shall I take it?' And he said, 'Yes. There is no harm in taking it.'"

The same testimony is given by Schaffer (page 199, lines 30 to 37). Since Mecray was not truthful about the second demand, there is no reason to give weight to his contradiction of Senator Stevens' testimony concerning the first demand.

"Q. As a result of that talk did you address a letter to Mr. Mecray?"

A. As a result of some talk I addressed a letter to Mr. Mecray.

Q. Witness is shown D-1 for identification, and I ask you, is that the letter that you addressed to Mr. Mecray?

A. On March 22d, yes; this is a copy of it.

Q. How did you deliver that letter?

A. Personally in his store building, in the post office building, Cape May, at his desk.

Q. Handed it to him?

A. Handed it to him personally, yes." (Page 208, lines 4 to 20.)

The second demand is testified to on page 209, State of the Case.

### Conclusion.

It therefore appears that the two questions that were agreed as being the only matters in controversy were correctly resolved by the learned Vice-Chancellor in favor of the defendants and that they rightly rescinded the contract for its non-performance on the part of complainant after having exhausted every means at their disposal to do so within a reasonable time after the original date of settlement.

Respectfully submitted,

EMERSON RICHARDS,

*Solicitor for Respondents.*

