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THE UNIVERSITY OF CHICAGO

PHYSICS DEPARTMENT

PHYSICS 309

PROBLEM SET 1

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New Jersey Court of Errors and Appeals

Petition of Appeal

(Filed Jan. 16, 1923)

NEW JERSEY COURT OF ERRORS AND APPEALS

Between THOMAS J. NAGLE, Complainant-Respondent, and BERNARD E. MCCOY and BER- NARD WERBEL, <i>et al.</i> , Defendants-Appellants.	} On Bill etc. Petition of Appeal.	20
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*To the Honorable, the Court of Errors and
Appeals in the last resort in all causes:*

The petition of Bernard E. McCoy and Bernard 30
Werbel, defendants-appellants in above stated
cause, respectfully shows, that your petitioners
are aggrieved by the final decree made by his
Honor, Edwin Robert Walker, Chancellor of New
Jersey, bearing date November 26, 1922, in a
cause wherein the said Thomas J. Nagel is
complainant and your petitioners, Bernard E.
McCoy and Bernard Werbel, and John I. Yampel,
Lionel L. Meyers, and Leo Landou are defend-
ants, in this respect, to wit; the said decree 40

Petition of Appeal

adjudges the difference between the actual price paid to Mary E. Reimuller for the lands and premises described in the bill, being \$7,250, and the price paid by the complainant for the same lands and premises, being \$7,750, namely, the sum
10 of \$500.00, to be a fraudulent and illegal profit received by defendants, your petitioners, Bernard E. McCoy and Bernard Werbel, and that said defendants, your petitioners, pay to the said complainant the said sum of \$500.00 with interest from July 29th, 1921, and also the complainant's costs of suit to be taxed and a counsel fee of \$100.00.

And your petitioners humbly appeal from the whole of said decree as aforesaid, upon the
20 ground that the same is erroneous, for that:

1. The Court below erred, in that it should have dismissed the bill of complaint.

2. The Court below erred in that it found and adjudged that the sum of \$500.00 the difference between the price received by Mary E. Reimuller for the premises, and the price paid therefor by the complainant-respondent, was a fraudulent and illegal profit received by defendants-appel-
30 lants, Bernard E. McCoy and Bernard Werbel.

3. The Court below erred in that it decreed that the defendants-appellants Bernard E. McCoy and Bernard Werbel pay to complainant the sum of \$500.00 so found by it to be a fraudulent and illegal profit, with interest thereon from July 29, 1921.

4. The Court below erred in that it decreed that the defendants-appellants Bernard E. McCoy and
40 Bernard Werbel, pay to complainant his costs of suit to be taxed, and a counsel fee of \$100.00.

Notice of Appeal

5. The Court below erred in that it found and decreed that the said sum of \$500.00 received by the defendants-appellants, Bernard E. McCoy and Bernard Werbel was a fraudulent and illegal profit obtained by them from the complainant-respondent.

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Your petitioners, therefore, pray that the said decree of the Chancellor, be reversed and set aside and for nothing holden; and that your petitioners may have such relief in the premises as to this Honorable Court shall seem meet.

HERBERT BOGGS,
Sol'r for and of Counsel with
Def'ts-Appellants, Bernard E.
McCoy and Bernard Werbel.

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Notice of Appeal

(Filed Dec. 27, 1922)

IN CHANCERY OF NEW JERSEY

Between THOMAS J. NAGLE, Complainant, and BERNARD E. MCCOY, <i>et als.</i> , Defendants.	}	On Bill etc. Notice of Appeal.	30
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The defendants Bernard E. McCoy and Bernard Werbel, hereby appeal from the final decree made in the above entitled cause on the twenty-sixth day of December 1922, and from the whole 40

Bill of Complaint

and every part thereof, to the Court of Errors and Appeals in the last resort in all causes.

Dated, December , 1922.

HERBERT BOGGS,

Sol'r and of Counsel with
said defendants Bernard E.
McCoy and Bernard Werbel.

10

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

HERBERT BOGGS,

Of Counsel with said Defendants.

Bill of Complaint

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(Filed Jan. 20, 1922)

IN CHANCERY OF NEW JERSEY

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

Complaining, shows unto your Honor, your orator, Thomas J. Nagle of the City of East Orange, in the County of Essex and State of New Jersey:

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1. At all the time and during the periods set forth in this bill of complaint, Bernard E. McCoy of the Town of Bloomfield, Essex County, New Jersey; John I. Yampol of the said Town of Bloomfield; Bernard Werbel of the said Town of Bloomfield and Lionel L. Meyers, residing in the City of Newark, Essex County, New Jersey, having an office at #790 Broad Street, Newark, N. J., and Leo Landow of the Town of Bloomfield, Essex
40 County, New Jersey, were all associated and connected in business as real estate brokers and

Bill of Complaint

agents and were partners and associates in certain real estate transactions, making their headquarters for those purposes at the office of said Bernard E. McCoy in the said Town of Bloomfield; that for the purposes of said transactions of their business, the above named individuals owned and controlled a corporation known as "Monroe Investment Company," whereof said John I. Yampol was Vice President; said Bernard Werbel was Treasurer; Lionel L. Meyers was at one time Secretary and after him Leo Landau; said Bernard E. McCoy held some office therein and that some or all of the above named individuals were directors or officers of said Monroe Investment Company, or both directors and officers, or connected in business and associated with said McCoy as a part of which business said Monroe Investment Company was so owned and controlled.

2. That on or about the 20th day of June 1921, complainant having heard of said Bernard E. McCoy in connection with his business as a real estate broker and agent in the Town of Bloomfield, went to the office of said McCoy at #276 Glenwood Avenue, Bloomfield, N. J., for the purpose of engaging said Bernard E. McCoy, to assist him in the purchase of the house and premises known as #208 Renshaw Avenue, East Orange, N. J. At the time of complainant's call said McCoy was absent and complainant found said Bernard Werbel in charge of the office of said McCoy, and understanding that said Werbel was a partner or associate of said McCoy requested him, as a representative of said McCoy, to ascertain for complainant on what terms he might procure said house and premises. Said Werbel undertook on behalf of said complainant and as

Bill of Complaint

representative of said McCoy to procure the necessary information and, if possible, to effect a purchase of said house by complainant.

10 3. On or about the 1st day of July 1921, said Werbel called at said premises #208 Renshaw Avenue, and interviewed one Mary E. Reimuller then the owner of said premises, alleging to her that he desired to buy the said house for his mother and sister. He falsely represented that he was not connected with any real estate firm, nor was he in the real estate brokerage business.

20 4. The negotiations thus opened resulted in an agreement made about two weeks thereafter, whereby said Mrs. Reimuller agreed to sell to said Werbel said premises for the sum of \$7,250, and to accept in partial payment therefor a second hand Oldsmobile, Type A-37 at a valuation of \$1,500, although said car was fairly worth only \$650.00. Said Werbel falsely represented that said automobile was a model of 1921, but actually said automobile was either a model of 1919 or 1920, and was manufactured in the year of 1919. Thereupon a contract in writing dated on the 19th day of July 1921, was entered into between said
30 Mary E. Reimuller and said Bernard Werbel for the sale of said premises for the said consideration of \$7,250, upon which contract said Werbel made a payment on that day of \$5.00; said contract provided that the title should close on the 15th day of September 1921. No place being fixed for said closing or for the passing of the deed. At the time of signing said contract with said Mrs. Reimuller said Werbel again specifically denied that he had any connection
40 with any real estate firm.

Bill of Complaint

5. Between the first interview above referred to between complainant and said Werbel and the 19th day of July 1921, complainant had other interviews with said Werbel as representative of said McCoy at which they represented to him that they were having difficulty in arranging for the purchase of said premises on behalf of complainant and continued to state that they had not been able to arrange for the purchase of said premises up to the 27th day of July 1921. On that day said Werbel told complainant that he had arranged to buy the property for him for the sum of \$7,750, and requested complainant to bring in \$250, to be used as a deposit on account of said purchase price. Said Werbel and said McCoy concealed from complainant and have always concealed from him that the true purchase price was only \$7,250, including said automobile at a value of \$1,500, although only worth \$650. They uniformly representing to him that the price being paid for said property to the owner thereof was \$7,750.

6. Prior to July 28th, 1921, as complainant is informed and believes, said Werbel assigned, set over and transferred all his right, title and interest in said Reimuller contract to said Monroe Investment Company, of which John I. Yampol was Vice President; Bernard Werbel, Treasurer; Leo Landau, Secretary and Bernard E. McCoy was an officer.

7. Pursuant to the request of said McCoy and Werbel complainant on July 28th, 1921, believing that said McCoy and Werbel were acting in his interest and that the purchase price of said property was to be \$7,750, brought and paid to said McCoy \$250 on account thereof, whereupon said

Bill of Complaint

McCoy had complainant sign a contract with said John I. Yampol, who did not then and never has owned said property, whereby said complainant agreed to buy said property from said Yampol at a consideration of \$7,750. On the following day,
10 July 29th, 1921, at the request of said McCoy, complainant brought and paid to him an additional deposit of \$500 on account of the purchase price of said property, making a total deposit of \$750 paid on account of said purchase price under contract with said Yampol, although said McCoy and Werbel well knew that said Yampol did not own said property and never had owned it, and although they well knew that said Monroe Investment Company of which they were officers had an
20 assignment to purchase the said premises for \$7,250, including said automobile at a value of \$1,500, although only worth \$650.00, and had paid only \$5.00 on account thereof.

8. The signatures to said agreement with said Yampol were witnessed by said Werbel and said Bernard E. McCoy and said agreement provided that deed to said premises should be delivered at the office of said McCoy on the 1st day of October 1921. Said McCoy and Werbel had caused
30 complainant to sign said contract with said Yampol for the purpose of concealing from him who the true owner of said property was and for the purpose of preventing him from learning that the actual purchase price to be paid to said Mary E. Reimuller was only the sum of \$7,250 made up as above set forth. Pursuant to said purpose of concealment and fraud they caused said Werbel to assign his contract with Mary E. Reimuller, which was the only true contract for the sale of
40 said property, to the Monroe Investment Company of which they were officers and directors,

Bill of Complaint

and when said Werbel had only made a deposit of \$5.00 on account of said purchase price of said property, they caused complainant nearly two months before passing title to said property to make a deposit of \$750 to said McCoy on account of said purchase price.

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9. On or about the 31st day of August, 1921, by deed bearing date on that day said Werbel and the other defendants or some of them caused said Mary E. Reimuller to convey said premises to the Monroe Investment Company, which said deed was recorded on the 13th day of September 1921; and complainant charges that the moneys therefore advanced by him and paid to said McCoy at his request on account of the purchase price of said premises were used by said McCoy through the fraudulent device of Monroe Investment Company in part payment of the moneys forming the consideration for said deed from said Mary E. Reimuller to said Monroe Investment Company, whereby a resulting trust arose in favor of complainant and he became in equity the purchaser of said lands and premises from said Mary E. Reimuller. Thereafter said McCoy and the other defendants or some of them caused the said Monroe Investment Company to convey said lands and premises to said complainant and wife at the consideration above stated of \$7,750, although said lands and premises had cost the defendants not to exceed \$6,250. In connection with the purchase of said premises said defendants continued to conceal from complainant the price actually paid for said lands and premises by them, and concealed the fact that the conveyance from Mary E. Reimuller to Monroe Investment Company was for a consideration of less than \$7,750, so that complainant relied upon the

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Bill of Complaint

representations of the defendants and paid \$7,750 for said premises, taking the title therein in the name of himself and wife. The defendants or some of them making a fraudulent profit out of the said transaction of \$1,500, or thereabouts.

- 10 10. The name of said Meyers was suggested to complainant by said defendants, McCoy and Werbel, as a lawyer who would protect his interest and represent him in connection with the purchase of said property and the closing of the title. Relying on said recommendation complainant engaged said Meyers for the purposes above stated, and placing confidence in said Meyers trusted him to arrange the details of said purchase and to search the title thereof and to represent him on the closing of such title. Complainant expressly charges that said Meyers was informed as to the fraudulent plan and intent and concealment of defendants and wrongfully concealed from complainant the fact that said premises were being purchased for a sum substantially less than \$7,750, and the fact that all of the defendants were interested directly or indirectly in said Monroe Investment Company, and that said defendants directly or indirectly through
- 20 said Monroe Investment Company were about to share in said fraudulent transaction above set forth. Said Meyers by his advice and representations induced complainant at the closing to advance the moneys necessary to complete the purchase of said premises, and represented to complainant that all phases of the transaction were entirely straightforward, and that complainant could safely trust said McCoy and Werbel, Yampol and the other defendants. Said Meyers
- 30 after searching the title of said property fraudulently concealed from said complainant the fact
- 40

Bill of Complaint

which he then well knew that said John I. Yampol had not and had never been the owner of said premises nor any part thereof, and that the contract made by said Yampol with complainant was fraudulent and only intended to conceal from complainant the name of the true owner of said premises. 10

11. The fraudulent profit of \$1,500, or thereabouts obtained by the defendants from the complainant by reason of the transaction above set forth were shared among the defendants, but in what proportions complainant is unaware and has not been able to ascertain. He expressly charges and avers that all of said defendants shared in said profit either directly or indirectly through the Monroe Investment Company in which all of the said defendants were interested, to none of which were they entitled by reason of their deception and fraud practiced on complainant. 20

That said contract was taken by said Werbel in his own name after complainant had instructed him to purchase same on behalf of complainant, and after said McCoy and Werbel had undertaken to make such purchase as agent for complainant; that the offer made to said Mary E. Reimuller was complainant's offer made by said Werbel as complainant's agent, and that offer was the one accepted by said Mary E. Reimuller, and in pursuance of that offer the contract entered into by Mary E. Reimuller with said Werbel was made. 30

Complainant further shows that neither said Werbel, McCoy or any of the other defendants had any right, either in law or in equity, while so acting or pretending to act in the employment of complainant in purchasing said property for complainant, to purchase or assist in purchasing 40

Bill of Complaint

said land for any other person, or for himself, and that the conduct of said Werbel and McCoy as hereinbefore stated, was contrary to equity and good conscience.

10 Complainant further shows that he did not learn of the fraud and deception practiced upon him until after the 31st day of October 1921, and after the closing of the title and the delivery of the deed from the Monroe Investment Company to complainant and his wife as above set forth, and as soon as he did learn of said deception and
20 fraud he remonstrated with said Werbel and McCoy and the other defendants and demanded an accounting of the fraudulent profits resulting from their fraud and deception practiced upon him, and demanded a repayment of the moneys paid by him to them for their alleged services in connection with the purchase of said property, but all of the said defendants have refused to comply with complainant's reasonable request.

WHEREFORE complainant prays the aid of this Court in the premises and that the said Werbel, McCoy and the other defendants, may answer without oath (answer under oath being waived) all and singular the premises; that it may be
30 declared and decreed by this Court that the contract made with Mary E. Reimuller by Bernard J. Werbel, taken in his own name, was in equity taken for the benefit of complainant and that the complainant had the right to become the purchaser of the lands and premises in said contract described upon the very terms in said contract; that the difference between the actual price paid in money value to said Mary E. Reimuller for said lands and premises and the price of \$7,750
40 paid by complainant for said premises shall be

Bill of Complaint

adjudged to be a fraudulent and illegal profit received by the defendants or some of them, and that the said defendants may be directed to account to complainant for said profits, and that the defendants may each of them be directed to repay to complainant the moneys so received by them respectively as illegal and fraudulent profit, and that complainant may have such other relief as may be found just and equitable. 10

May it please Your Honor, the premises considered to grant unto complainant the state's writ of subpoena to—issued under the seal of this Court and directed to the said defendants, commanding them upon a certain day and under a certain penalty therein to be named to be and appear before this honorable Court to answer all and singular the premises, and to stand to, abide and perform such decree in the premises as to Your Honor shall seem meet and just. 20

And your complainant as in duty bound will ever pray, etc.

ROBERT M. BOYD, Jr.,
Solr. & of Counsel with Complainant.

**Answer of Defendant Bernard
Werbel**

(Filed Feb'y 15, 1922)

IN CHANCERY OF NEW JERSEY

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Between THOMAS J. NAGLE, <div style="text-align: right; padding-right: 20px;">Complainant,</div> and BERNARD E. MCCOY, <i>et als.</i> , <div style="text-align: right; padding-right: 20px;">Defendants.</div>	}	On Bill etc. Answer of Defendant Bernard Wer- bel.
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20 The answer of the defendant Bernard Werbel to the bill of complaint of the complainant.

This defendant, Bernard Werbel, answering the bill of complaint, says that:

30 1. This defendant admits so much of paragraph 1 as states that this defendant and Bernard E. McCoy were connected in business as real estate brokers and agents to this extent, that the said defendant Bernard Werbel acted for said defendant Bernard E. McCoy, in making sales of real estate, and was paid by him for such services; that this defendant and Bernard E. McCoy were interested in and owned the stock of the corporation known as Monroe Investment Company, except one share thereof held by the defendant Lionel L. Meyers, and one share held by John I. Yampol, and that the defendant John I. Yampol was Vice President and the defendant Lionel L. Meyers, Secretary until October 8th, 1921, and that after that the defendant Leo Landow was Secretary. He denies that the said John I. Yampol, Leo Landow or Lionel L. Meyers were

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Answer of Defendant Bernard Werbel

connected in business and associated with him as part of the business of the Monroe Investment Company, and he denies that the said defendants Lionel L. Meyers, John I. Yampol and Leo Landow, ever had any business dealings or connection with him whatsoever, except that as said Lionel L. Meyers might have been employed in different transactions as this defendant's attorney and legal advisor. 10

2. Paragraphs 2 and 3 are denied.

3. Paragraph 4 is denied except this, that on or about the 19th day of July 1921, Mrs. Mary E. Reimuller entered into a written contract with this defendant to sell and convey to him the premises 208 Renshaw Avenue, upon the terms and conditions set forth in said paragraph, but he denies that the said car was worth only \$650.00. He admits that he stated that the car was a model of 1921. He denies that the said automobile was either of the model of 1919 or 1921 and says that it actually was a 1921 model, and was worth the sum of \$1,500. 20

4. Paragraph 5 is denied.

5. Defendant admits that he assigned and transferred his right, title and interest in the contract made by him with Mary E. Reimuller for the sale of the premises 208 Renshaw Avenue, East Orange, to the said Monroe Investment Company, but says that said assignment was not made until long after the time mentioned and stated in said paragraph. 30

6. This defendant admits so much of paragraph 7 as sets forth the making of the contract between the complainant and the defendant John I. 40

Answer of Defendant Bernard Werbel

Yampol for the consideration herein named and the payment of the deposits as therein stated, but he denies that he was acting in the interest of the complainant or that the complainant so believed. He denies that the said automobile was only worth
10 \$650.00 and he says that while he knew that the said Yampol did not own said property, that the agreement with Mary E. Reimuller for the sale thereof had then been made, and had been assigned to the said Yampol, and that the assignment to the Monroe Investment Company was not then made, and was not made until long afterwards, and only as a formality, for convenience and for the protection of Mary E. Reimuller who had conveyed the premises to the Monroe Invest-
20 ment Company in pursuance of an understanding between this defendant and the defendants McCoy, Yampol and said Company.

7. This defendant admits so much of paragraph 8 as states that the agreements between the complainant and the said Yampol were witnessed by this defendant and said McCoy and that the agreements provided that the deed to said premises should be delivered as in said paragraph stated. This defendant denies that he and the
30 defendant McCoy caused complainant to sign said contract for the purpose of concealing from him the true owner, and for the purpose of preventing him from learning the actual price to be paid to the said Mary E. Reimuller. He denies that the assignment to Yampol, or to the Monroe Investment Company, was made for the purpose of concealment and fraud, or for the purpose of concealing from the complainant the nature of the transaction between Mary E. Reimuller and
40 this defendant, or the amount paid by this defendant on account of the purchase price.

Answer of Defendant Bernard Werbel

8. The whole of paragraph 9 is denied except defendant admits the conveyance by Mary E. Reimuller to the Monroe Investment Company, and the conveyance by the Monroe Investment Company to complainant and wife, at the consideration above stated.

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9. Paragraph 10 is denied except this, that defendant McCoy suggested to the complainant that as the defendant Lionel L. Meyers was an attorney at law, and had been employed by him to examine the title to the premises in question, it might be well for the complainant to employ said Meyers to act for him as it would cost him less than to employ a separate attorney, and that the complainant did engage the said defendant Meyers to act for him in the premises.

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10. The whole of paragraph 11 is denied.

And defendant further says:

11. That he and defendant McCoy were not agents of complainant to purchase for him the said premises 208 Renshaw Avenue, East Orange, or, any other premises, and that complainant never so employed them or either of them, and never in any way or manner suggested to them or either of them the purchase of said premises for him, or that they or either of them should procure information for him as to the terms on which complainant might procure said premises, and defendant never did in fact undertake to procure any information relative to said premises for complainant, or to purchase said premises for him.

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12. That when complainant first saw defendant, he asked him if he, or defendant McCoy, had any two family house for sale; that this defendant had

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Answer of Defendant Bernard Werbel

long before then made and executed the agreement with Mary E. Reimuller for the purchase from her of said premises 208 Renshaw Avenue, and was then the equitable owner, although he had not yet acquired the legal title; that he offered to sell said premises to complainant at the price mentioned in the bill of complaint, and complainant after looking at the premises, agreed to purchase the same at the price stated; that the whole transaction between complainant and this defendant was that of the purchase and sale of real estate, the complainant willingly paying the price asked; and, that defendant and said McCoy never in any way acted as complainant's agent.

13. That said defendants John I. Yampol and Leo Landow had no interest pecuniary or otherwise, in the transaction, and derived no benefit whatsoever therefrom, and had no knowledge thereof, and no part therein, save that said Landow acted as Secretary of the Monroe Investment Company in and about the execution of the deed to complainant, and said Yampol consented to the making of the contract of sale with complainant, and assigned the same to said Monroe Investment Company.

14. That said defendant Lionel L. Meyers had no part whatsoever in said transaction, save that he examined the title of Mary E. Reimuller to said premises, and drew and took the acknowledgment of the deeds, and was present at the closing with Mary E. Reimuller and with complainant; that he had no knowledge otherwise, of said transactions, save as appeared from the contracts of sale; that he had no interest therein pecuniary or otherwise, and derived no benefit whatsoever therefrom save fees paid him for his

Answer of Defendant Bernard E. McCoy

legal services in and about the searching the title, the drawing and execution of the deeds, and settling the details of the terms of the sales according to the contracts.

HERBERT BOGGS,
Sol'r. of Defendant Bernard Werbel. 10

Answer of Defendant Bernard E. McCoy

(Filed, Feby 10, 1922)

IN CHANCERY OF NEW JERSEY

Between THOMAS J. NAGLE, Complainant, and BERNARD E. MCCOY, <i>et als.</i> , Defendants.	}	On Bill, etc. Answer of Defendant Bernard E. McCoy.
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The answer of the defendant Bernard E. McCoy to the bill of complaint of the complainant. 30

This defendant, Bernard E. McCoy, answering the bill of complaint, says that:

1. This defendant ADMITS so much of paragraph 1 as states that this defendant and Bernard Werbel were connected in business as real estate brokers and agents to this extent, that the said Bernard Werbel acted for this defendant Bernard E. McCoy, in making sales of real estate, and was paid by him for such services; that this defendant and Bernard Werbel were interested in and owned 40

Answer of Defendant Bernard E. McCoy

the stock of the corporation known as Monroe Investment Company, except one share thereof held by the defendant Lionel L. Meyers, and one share held by John I. Yampol, and that the defendant John I. Yampol was Vice President and the defendant Lionel L. Meyers, Secretary until October 8th, 1921, and that after that the defendant Leo Landow was Secretary. HE DENIES that the said John I. Yampol, Leo Landow or Lionel L. Myers were connected in business and associated with him as part of the business of the Monroe Investment Company, and he DENIES that the said defendants, Lionel L. Meyers, John I. Yampol and Leo Landow, ever had any business dealings or connection with him whatsoever, except that as said Lionel L. Meyers might have been employed in different transactions as this defendant's attorney and legal advisor.

2. Paragraphs 2 and 3 are DENIED.

3. Paragraph 4 is DENIED except this, that on or about the 19th day of July, Mrs. Mary E. Reimuller entered into a written contract with the defendant Bernard Werbel to sell and convey to him the premises 208 Renshaw Avenue, upon the terms and conditions set forth in said paragraph, but he DENIES that the said car was worth only \$650.00. He ADMITS that the said Werbel stated that the car was a model of 1921. He DENIES that the said automobile was either of the model of 1919 or 1920 and says that it actually was a 1921 model, and was worth the sum of \$1,500.

4. Paragraph 5 is DENIED.

5. Defendant ADMITS that the said defendant Bernard Werbel assigned and transferred his right, title and interest in the contract made by

Answer of Defendant Bernard E. McCoy

him with Mary E. Reimuller for the sale of the premises 208 Renshaw Avenue, East Orange, to the said Monroe Investment Company, but says that said assignment was not made until long after the time mentioned and stated in said paragraph as he is informed and verily believes.

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6. This defendant ADMITS so much of paragraph 7 as sets forth the making of the contract between the complainant and the defendant John I. Yampol for the consideration therein named and the payment of the deposits as therein stated, but he DENIES that he was acting in the interest of the complainant or that the complainant so believed. He DENIES that the said automobile was only worth \$650.00 and he says that while he knew that the said Yampol did not own said property, that the agreement with Mary E. Reimuller for the sale thereof had then been made, and had been assigned to the said Yampol, and that the assignment to the Monroe Investment Company was not then made, and was not made until long afterwards, and only as a formality, for convenience and for the protection of Mary E. Reimuller who had conveyed the premises to the Monroe Investment Company in pursuance of an understanding between this defendant and the defendants Werbel, Yampol and said Company.

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7. This defendant ADMITS so much of paragraph 8 as states that the agreements between the complainant and the said Yampol were witnessed by the said Werbel and this defendant, and that the agreement provided that the deed to said premises should be delivered as in said paragraph stated. This defendant DENIES that he and the defendant Werbel caused complainant to sign said contract for the purpose of concealing from him the true

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Answer of Defendant Bernard E. McCoy

owner, and for the purpose of preventing him from learning the actual price to be paid to the said Mary E. Reimuller. He DENIES that the assignment of Werbel to Yampol or to the Monroe Investment Company, was made for the purpose
10 of concealment and fraud, or for the purpose of concealing from the complainant the nature of the transaction between Mary E. Reimuller and Bernard Werbel, or the amount paid by the said Werbel on account of the purchase price.

8. The whole of paragraph 9 is DENIED except defendant ADMITS the conveyance by Mary E. Reimuller to the Monroe Investment Company, and the conveyance by the Monroe Investment Company to complainant and wife, at the consid-
20 eration above stated.

9. Paragraph 10 is DENIED except this, that defendant suggested to the complainant that as the defendant Lionel L. Meyers was an attorney at law, and had been employed by him to examine the title to the premises in question, it might be well for the complainant to employ said Meyers to act for him as it would cost him less than to employ a separate attorney, and that the complainant did engage the said defendant Meyers to
30 act for him in the premises.

10. The whole of paragraph 11 is DENIED.
And defendant further says:

11. That he and defendant Werbel were not agents of complainant to purchase for him the said premises 208 Renshaw Avenue, East Orange, or, any other premises, and that complainant never so employed them or either of them, and never in any way or manner suggested to them
40 or either of them the purchase of said premises

Answer of Defendant Bernard E. McCoy

for him, or that they or either of them should procure information for him as to the terms on which complainant might procure said premises, and defendant never did in fact undertake to procure any information relative to said premises for complainant, or to purchase said premises for him. 10

12. That when complainant first saw defendant Werbel, he asked him if he, or this defendant, had any two-family house for sale; that said Werbel had long before then made and executed the agreement with Mary E. Reimuller for the purchase from her of said premises 208 Renshaw Avenue, and was then the equitable owner, although he had not yet acquired the legal title; that he offered to sell said premises to complainant at the price mentioned in the bill of complaint, and complainant after looking at the premises, agreed to purchase the same at the price stated; that the whole transaction between complainant and said Werbel and this defendant, was that of the purchase and sale of real estate, the complainant willingly paying the price asked; and, that defendant and said Werbel never in any way acted as complainant's agent. 20

13. That said defendants John I. Yampol and Leo Landow had no interest pecuniary or otherwise, in the transaction, and derived no benefit whatsoever therefrom, and had no knowledge thereof, and no part therein, save that said Landow acted as secretary of the Monroe Investment Company in and about the execution of the deed to complainant, and said Yampol consented to the making of the contract of sale with complainant, and assigned the same to said Monroe Investment Company. 30
40

Answer of Defendant Bernard E. McCoy

14. That said defendant Lionel L. Meyers had no part whatsoever in said transaction, save that he examined the title of Mary E. Reimuller to said premises, and drew and took the acknowledgment of the deeds, and was present at the closing with Mary E. Reimuller and with complainant; that he had no knowledge otherwise, of said transactions, save as appeared from the contracts of sale; that he had no interest therein pecuniary or otherwise, and derived no benefit whatsoever therefrom save fees paid him for his legal services in and about the searching the title, the drawing and execution of the deeds, and settling the details of the terms of the sales according to the contracts.

20

HERBERT BOGGS,
Sol'r. of Defendant,
Bernard E. McCoy.

**Answer of Defendant Lionel L.
Meyers**

(*Filed, Feby. 15, 1922*)

IN CHANCERY OF NEW JERSEY

Between THOMAS J. NAGLE, <div style="text-align: right; padding-right: 20px;">Complainant,</div> and BERNARD E. MCCOY, <i>et als.</i> , <div style="text-align: right; padding-right: 20px;">Defendants.</div>	}	On Bill, etc. Answer of De- fendant Lionel L. Meyers.
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The answer of the defendant Lionel L. Meyers, to the bill of complaint of the complainant. 20

This defendant, Lionel L. Meyers, answering the bill of complaint, says that:

1. In answer to paragraph 1 this defendant DENIES that he was at the time and periods mentioned in the bill, or ever at any time, associated and connected in business with the defendants Bernard E. McCoy, Bernard Werbel, John I. Yampol and Leo Landow, or any or either of them, as real estate brokers and agents, or as a partner or agent in any real estate transaction, with headquarters at the office of Bernard E. McCoy, or that he was ever associated and connected with said defendants or any or either of them, in any business transaction whatsoever. He ADMITS that he was Secretary and a Director of the Monroe Investment Company from its incorporation until October 8th, 1921, but without receiving any salary, fees or emolument whatsoever, when he resigned and ceased to be and to act as Secretary 40

30

Answer of Defendant Lionel L. Meyers

and Director thereof. He DENIES that he was connected and associated in business with said defendant Bernard E. McCoy as part of which business said Monroe Investment Company was owner and controlled. He DENIES that he ever
10 had or now has, any interest or ownership in said Monroe Investment Company whatsoever, save that he is entitled to one share of the capital stock of said company received as part payment for services for incorporating said company, but no certificate has been issued to him therefor, and he has never received any dividend thereon, or any interest, share or return from its earnings or profits, if any have been made by said company. He ADMITS that said John I. Yampol was Vice
20 President, Bernard E. McCoy, President and Bernard Werbel, Treasurer during the time and period set forth in the bill, and that Leo Landow became Secretary after the defendant's resignation. This defendant has no knowledge or information sufficient to form a belief as to the remaining statements set forth in said paragraph 1.

2. This defendant has no knowledge or information sufficient to form a belief as to the statements set forth in paragraphs 2, 3, 4, 5, 6, 7 and 8
30 except this, that he knows and ADMITS that a contract for the sale of the premises 208 Renshaw Avenue, East Orange, N. J., was entered into and between Mary E. Reimuller and the defendant Bernard Werbel, as set forth in paragraph 4, and that the said Werbel assigned his interest therein to said Monroe Investment Company, and further, that the complainant executed a contract with the defendant John I. Yampol for the purchase of the said property, 208 Renshaw Avenue,
40 East Orange, from the said John I. Yampol, and that the terms of said agreements were as set

Answer of Defendant Lionel L. Meyers

forth in said paragraph. Defendant had no knowledge of the contract of complainant with said Yampol, or its contents, until a few days prior to the delivery of the deed to complainant.

3. This defendant has no knowledge or information sufficient to form a belief as to the statements in paragraph 9 in so far as they relate to or set forth the acts and the conduct of the other defendants and of the complainant, save this, that he ADMITS that the said Mary E. Reimuller conveyed the premises 208 Renshaw Avenue, East Orange, to the Monroe Investment Company by deed dated August 31st, 1921, and recorded on September 13th, 1921, but defendant has no knowledge of the moneys advanced by the complainant and paid to the defendant McCoy before the delivery of said deed, the amount of, or reason for such advances and payments, if any there were, or the use made by the said defendant McCoy or anyone else, of the moneys, if any, so received from said complainant. This defendant DENIES that he acted with the said McCoy and the other defendants or any of them, or alone, to cause the said Monroe Investment Company to convey said lands to the complainant, as stated in said paragraph 9, at the consideration therein, or for any other consideration. He DENIES that he continued to conceal, or ever concealed from complainant, the price actually paid for the said lands and premises, or that he concealed the fact that the conveyance from Mary E. Reimuller to Monroe Investment Company was for a consideration less than \$7,750, and he DENIES that the complainant relied upon any representations made by this defendant in paying the consideration for said premises, or taking the title thereto. He DENIES

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20

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Answer of Defendant Lionel L. Meyers

that he made a fraudulent profit out of the said transaction, or any profit whatsoever, or received any consideration or money whatsoever therefrom.

4. This defendant DENIES the whole and every
10 part of paragraph 10 so far as the same relates
in anywise to this defendant, save this, that he
had been employed by the said McCoy and Wer-
bel after the execution of the contract with Mary
E. Reimuller, for the purchase from her of the
premises, 208 Renshaw Avenue, East Orange, to
examine the title thereto for them; and that some
time thereafter he was informed by the said Mc-
Coy that he had suggested to the complainant that
he, the complainant, employ this defendant to ex-
20 amine and pass upon the title for him in the trans-
fer of the premises to the complainant, as it
would be less expensive to the complainant than
to employ another lawyer for the purpose; that
some time afterwards, and shortly before the
conveyance of the premises to the complainant,
the complainant called up this defendant's office
in Newark on the telephone, and left instructions
for defendant that he should examine the title and
act for him in the matter; defendant did not draw
30 the contract between complainant and defendant
Yampol, or see the same, or have knowledge of
its contents until shortly prior to delivery of the
deed to complainant.

5. This defendant DENIES the whole of para-
graph 11 in so far as it relates in anywise to this
defendant, and expressly DENIES that any part of
any profits that may have been realized by the
sale of said premises to the complainant, were re-
40 ceived by this defendant, or shared by him with
any of the defendants, or with any person; and he

Answer of Defendant Lionel L. Meyers

DENIES any interest in the Monroe Investment Company except as above in paragraph 1 set forth. And this defendant has no knowledge or information sufficient to form a belief as to the allegations in paragraph 11 relating to and setting forth the conduct and actions of the other defendants, or of the complainant. He DENIES 10 that the complainant ever remonstrated with this defendant at any time or in any way, relative to the transaction or any part thereof, or that he ever spoke to him about the matter, or ever demanded an accounting from him or repayment of the moneys paid by him or any of it.

6. This defendant says, that he had no knowledge whatsoever, of the transactions between the complainant and the other defendants McCoy, 20 Werbel, Yampol and Landow as set forth in the bill of complaint, relative to the purchase of the said premises 208 Renshaw Avenue, East Orange, and the sale thereof to the complainant; that he, defendant, is an attorney at law of this State, and acted as attorney in the search of the title to said premises for the complainant and for the Monroe Investment Company, and in the transfer of the title from Mary E. Reimuller to the Monroe Investment Company, and from the Monroe In- 30 vestment Company to the complainant, and has no knowledge other than as gained by an examination of the County records, and from the contracts of sale between Mary E. Reimuller and Bernard Werbel, and between the complainant and the defendant John I. Yampol; and had no pecuniary interest whatsoever in the matter, and did not in anywise, profit therefrom or receive anything except his compensation for his legal services in and about the said transfers and 40 searches.

Answer of Defendants John I. Yampol and Leo
Landow

Defendant prays the bill of complaint be dis-
missed as to him.

HERBERT BOGGS,
Sol'r of Defendant,
Lionel L. Meyers.

10

**Answer of Defendants John I.
Yampol and Leo Landow**

(Filed, Feby 15, 1292)

IN CHANCERY OF NEW JERSEY

20

Between THOMAS J. NAGLE, Complainant, and BERNARD E. MCCOY, <i>et als.</i> , Defendants.	}	On Bills, etc. Answer of De- fendants John I. Yampol and Leo Landow.
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30 The joint and several answer of John I. Yam-
pol and Leo Landow, two of the defendants, to
the bill of complaint.

These defendants, John I. Yampol and Leo
Landow, answering the bill of complaint, say
that:

1. They DENY the whole and every part of para-
graph 1 save this, that they ADMIT that defendant
John I. Yampol was and is Vice President and a
director, and was entitled to one share of the capi-
tal stock of the Monroe Investment Company, but
40 DENY that he had any other pecuniary interest

Answer of Defendants John I. Yampol and Leo
Landow

therein, that defendant Leo Landow became Secretary of said company October 10th, 1921, and now is Secretary, but DENY that he had or now has any pecuniary interest therein. They ADMIT that defendant Bernard E. McCoy was and is President and a director and defendant Bernard Werpel was and is Treasurer and a director, and that they own and control said corporation, and that defendant Lionel L. Meyers was Secretary until October 8th, 1921. 10

2. These defendants have no knowledge or information sufficient to form a belief as to the statements in paragraphs 2, 3, 4 and 5.

3. They ADMIT paragraph 6. 20

4. These defendants have no knowledge or information sufficient to form a belief as to the facts stated in paragraph 7 save this, that they know and ADMIT that complainant executed an agreement with this defendant John I. Yampol for the purchase of the premises 208 Renshaw Avenue, East Orange, for the price stated in said paragraph, and this defendant John I. Yampol says that he executed said agreement at the request of defendant Bernard Werbel and had no interest pecuniary or otherwise in the matter. 30

5. These defendants have no knowledge or information sufficient to form a belief as to the facts set forth in paragraph 8 save this, that they ADMIT that the said agreement between complainant and this defendant John I. Yampol was witnessed by defendants Werbel and McCoy and provided that the deed should be delivered as stated in said paragraph. 40

Answer of Defendants John I. Yampol and Leo Landow

6. These defendants DENY so much of paragraph 9 as states or charges that they or either of them caused said Mary E. Reimuller to convey said premises to Monroe Investment Company, or that
10 they or either of them caused said Monroe Investment Company to convey said premises to complainant and wife, or had any part therein, or that they or either of them concealed from complainant the price paid for said lands, or that they or either of them concealed from complainant the price paid to said Mary E. Reimuller, or that these defendants or either of them made any representations whatsoever to complainant, and they
20 DENY that they or either of them made any profit whatever out of the transaction. These defendants have no knowledge or information sufficient to form a belief as to the acts and conduct of the other defendants as set forth in said paragraph.

7. These defendants DENY so much of paragraph 10 as charges any fraudulent knowledge, conduct or acts by these defendants, or either of them, or any profit or share whatsoever in the sale or conveyance of said premises to complainant, and in the proceeds thereof, and they DENY that
30 complainant has ever demanded any accounting from them or either of them, or repayment from them or either of them of any moneys whatsoever; and as to all other matters and facts in said paragraph set forth, these defendants have no knowledge or information sufficient to form a belief.

8. And this defendant John I. Yampol DENIES that he ever had any part whatsoever in any of the transactions set out in the bill, or any knowledge thereof save this, that at the request of defendant Werbel, this defendant executed the con-
40

Answer of Defendants John I. Yampol and Leo
Landow

tract with complainant, that he never deceived or defrauded complainant in any way or manner, or in any way or manner aided in any deceit of complainant or in defrauding him, or received any profit or any money whatever from or on account of the sale or conveyance of said premises. 10

9. And this defendant Leo Landow DENIES that he ever had any part whatever in any of the transactions set out in the bill, or any knowledge thereof save this, that he as Secretary of Monroe Investment Company, witnessed the execution of the deed to complainant by the company, by its President, and attested and affixed the corporate seal, and made proof of acknowledgment thereof; He DENIES that he deceived or defrauded complainant in any way or manner, or in any way or manner aided in any deceit of complainant, or in defrauding him or received any profit or any money whatever from or on account of the sale or conveyance of said premises. 20

And defendants pray the bill of complaint be dismissed as to them.

HERBERT BOGGS,
Sol'r. of Defendants, John I.
Yampol and Leo Landow. 30

Replication

Formal Replication filed
by complainant to several
answers of defendants.

Final Decree*(Filed, Dec. 26, 1923)*

IN CHANCERY OF NEW JERSEY

10	Between THOMAS J. NAGLE, <div style="text-align: right; padding-right: 10px;">Complainant,</div>	} On Bill, etc. Decree.
	<div style="text-align: center; padding: 0 10px;">and</div>	
	BERNARD E. MCCOY, JOHN I. YAMPOL, BERNARD WERBEL, LIONEL L. MEYERS and LEO LANDOW, <div style="text-align: right; padding-right: 10px;">Defendants.</div>	

20 This cause coming on to be heard on bill, answers of the respective defendants, Bernard E. McCoy, Bernard Werbel and Lionel L. Meyers and the joint answers of the defendants, John I. Yampol and Leo Landow, and replication, in the presence of Robert M. Boyd, Jr., of counsel with complainant and Herbert Boggs of counsel with

30 all the defendants, and proofs having been taken and witnesses examined, and the pleadings and proofs having been read and the Court having duly considered all said pleadings, proofs and agreements; and

It appearing to the Court that the complainant is entitled to part of the relief prayed for in the complaint; that a contract made with Mary E. Reimuller by Bernard Werbel taken in his own name was in equity taken for the benefit of complainant, and that the complainant had the right to become the purchaser of the lands and premises in said contract described upon the very

40 terms in said contract; that the difference be-

Final Decree

tween the actual price paid to said Mary E. Reimuller for said lands and premises and the price of \$7,750, namely the sum of \$500, paid by complainant for said premises is hereby adjudged to be a fraudulent and illegal profit received by the defendants, Bernard E. McCoy and Bernard Werbel. 10

It is on this 26th day of December, 1922, on motion of Robert M. Boyd, Jr., solicitor of said complainant, by Edwin Robert Walker, Chancellor of the State of New Jersey

ORDERED, ADJUDGED AND DECREED, that the defendants, Bernard E. McCoy and Bernard Werbel do pay to the complainant said sum of Five Hundred (\$500) Dollars, representing the fraudulent and illegal profit so received by them, together 20 with interest thereon from the 29th day of July, 1921; and

It is FURTHER ORDERED ADJUDGED AND DECREED, that said defendants pay to the complainant his costs in this suit to be taxed, and in addition a counsel fee of One Hundred (\$100) Dollars to be taxed in said costs.

Respectfully advised,

JOHN E. FOSTER,

V. C. 30

Testimony

IN CHANCERY OF NEW JERSEY

10	Between	
	THOMAS J. NAGLE,	Complainant,
	and	
	BERNARD E. MCCOY, <i>et als.</i> ,	Defendants.

Transcript of testimony in the above-entitled cause before Hon. John E. Foster, Vice Chancellor, at the Chancery Chambers, Newark, New Jersey, on Monday, December 4, 1922.

20

Appearances:

Mr. Robert M. Boyd, Jr., for complainant.

Mr. Herbert Boggs, for the defendants.

30

Mr. Boyd: I offer agreement dated July 28, 1921, between John I. Yampol, of the Town of Bloomfield, and Thomas J. Nagle of the Town of Bloomfield, agreeing to convey for the consideration of \$7,350, the property known as 208 Renshaw Avenue, East Orange, New Jersey, lot 50x253 feet more or less; signed by John I. Yampol and Thomas J. Nagle, and witnessed by the defendants Werbel and McCoy.

Marked Exhibit C-1.

40

I also offer in evidence agreement dated July 19, 1921, between Mary E. Reimuller and Bernard Werbel for the premises known as No. 208 Renshaw Avenue, East Orange, New Jersey, for the consideration of the sum of \$1,250, upon the terms therein contained, including payment down of \$5, signed by Mary E. Reimuller and Bernard Wer-

Thomas J. Nagle—Direct

bel. Together with an assignment endorsed upon it, from Bernard Werbel to Monroe Investment Company.

Mr. Boggs: Objected to on the ground of relevancy.

Court: Let it be marked.

10

Marked Exhibit C-2.

Mr. Boyd: I also offer in evidence agreement dated September 12, 1921, between Monroe Investment Company and Mrs. Mary E. Reimuller, relating to delivery of possession of the premises No. 208 Renshaw Avenue, East Orange, New Jersey.

Marked Exhibit C-3.

I also offer in evidence certified copy of a special meeting of the Board of Directors of the Monroe Investment Company, held at the office of the company on October 11, 1921, authorizing the conveyance of the premises No. 208 Renshaw Avenue, East Orange, New Jersey, to Thomas J. Nagle and wife for the sum of \$7,750.

20

Marked Exhibit C-4.

I also offer in evidence Bill of Sale of the Premier Olds Automobile Company to Bernard Werbel, dated the 16th of October, 1920, selling touring car 37a Serial number, together with assignment of Bill of Sale from Bernard Werbel to Mary E. Reimuller, dated on the 12th of September, 1921, and witnessed by B. E. McCoy and Lionel Meyers.

30

Marked Exhibit C-5.

THOMAS J. NAGLE, complainant, sworn:

Direct-examination by Mr. Boyd:

Q. You are the complainant in this case against Bernard E. McCoy and others? A. Yes.

40

Thomas J. Nagle—Direct

Q. Where do you reside? A. 208 Renshaw Avenue, East Orange, New Jersey.

Q. And prior to June, 1921, where did you reside? A. 27 Walnut Street, Bloomfield.

10 Q. During the spring or early summer of 1921 did you go to the office of Bernard E. McCoy? A. Yes.

Q. In Bloomfield? A. Yes.

Q. Fix the date as nearly as you can when you first went there. A. I first went there in the early part of June, and I wanted to see Mr. McCoy about obtaining two-family—

Q. Where was Mr. McCoy's business at that time? A. 276 Glenwood Avenue, Bloomfield.

20 Q. And what was his business there? A. His business there was a real estate agent.

Q. When you went to the office, whom did you see? A. I went there and I couldn't see Mr. McCoy; I wanted to see him, but I took the matter up with Mr. Werbel of obtaining the house.

Q. What relation had Mr. Werbel to Mr. McCoy's; where did you see Mr. Werbel? A. Mr. McCoy's office.

Q. Who was in charge of the office? A. I might say—

30 Court: Did you see him there?

Witness: Yes, I saw Mr. Werbel there.

Q. You had this conversation with Mr. Werbel? A. Yes.

Q. What was said about the transaction of this business in Mr. McCoy's office; what did Mr. Werbel say? A. Mr. Werbel said to me about the house—

40 Mr. Boggs: If this is an attempt to prove agency, isn't it an attempt to prove agency by the agent and not by the principal?

Court: I don't know what the testimony

Thomas J. Nagle—Direct

is. If it doesn't accomplish its purpose, it will be simply a waste of time; I will receive it. What did he say?

Q. What did Mr. Werbel say to you about his relation to Mr. McCoy? A. His relation to Mr. McCoy was that he was only working for him. 10

Q. He said he was in Mr. McCoy's employ? A. Yes.

Q. Tell the conversation between yourself and Mr. Werbel on that occasion. A. He said he was going to try to find me a house, and he had a nice place for me, and I told him to go ahead and see if he could obtain the place.

Q. What place had you in mind? A. No place in particular.

Court: What did you go there for? 20

Witness: To buy a house, to purchase a house, because I had to get out of my other house, and I had to have some other place to go to.

Q. You told him that? A. Yes.

Q. And what was the result of the conversation with Werbel; how far did you get with him in the conversation? A. He then said he would look and see if he couldn't find me a place, but there was no particular place he had in mind, so I should call around again. 30

Q. Did you call again? A. I called again.

Q. When? A. A couple of weeks after, around noon time, I came from the factory and asked him about it.

Q. Whom did you see? A. I saw Mr. Werbel.

Q. Was Mr. McCoy there? A. I didn't see him at the time; I was talking to him on the sidewalk, right outside of the office, and he said he was trying to look up a place for me, and it was a pretty 40

Thomas J. Nagle—Direct

good place, and he thought it would satisfy me, but I said, "You go ahead anyway."

Q. Did he name the location of the place? A. No, he didn't name the location; he said it was in East Orange; he never told me where it was.

10 Q. Go on. A. And then finally after that, around the twentieth of June, he began to think that he had a place all right; there was some dissatisfaction.

Q. You are telling what he said to you? A. Yes.

Q. Confine yourself to that. A. And he said there was some dissatisfaction with the people there, that he thought that they didn't want to sell. I was under the impression the people didn't
20 want to sell.

Court: Tell us what the conversation was.

Witness: The conversation was that there was some dissatisfaction with the people, and that they didn't want to sell, and I would have to come around again.

Q. When did you go back next? A. I came back again about the nineteenth of July, and he said he thought—

30 Court: When you say "he," whom do you mean?

Witness: Mr. Werbel. And he thought the people was making their mind up to sell the place but he wasn't quite definite about it yet, and that I should come around again to see him.

Q. Did he tell you what place it was then? A. No, he never told me what place it was.

Q. When did you see him next? A. Then when I saw him next, a couple of days after the nineteenth.

40 Court: What was said?

Thomas J. Nagle—Direct

Witness: He said, "I will bring you over and show you the house," and I see it from the outside. I said, "All right"; so we took a ride over there and we saw the place from the outside.

Q. Where was it? A. On 208 Renshaw Avenue, East Orange. At that time I knew where the property was, and after that it ran along until about the twenty-seventh of July. 10

Q. Tell what happened then. A. Then Mr. Werbel come to me and he said—I went to him and he said, "Well, I think I have obtained that property for you, and the best thing you can do is to bring down \$250 as first payment for the purchase price of the property.

Q. Did you? A. I said, "I will be down with it tomorrow at noon; I will get out from the factory and go to the bank and come over here and pay you." I came out the next day with the \$250 and went over to Mr. Werbel and he had an agreement with Mr. Yampol signed on it and Mr. McCoy as a witness. 20

Q. Was Mr. McCoy there at that time? A. No, he wasn't there, but his signature was signed to it.

Q. I show you Exhibit C-1, and I will ask you to tell us whether that is the agreement you have just spoken of. A. Yes, that is the agreement. 30

Q. Go ahead, and if it will refresh your memory any as to dates or terms, you can look at that agreement. You have come to the point where you paid him \$250; what day was that? A. On the twenty-eighth of July.

Q. When did you see him next?

Court: On the twenty-eighth did you get the agreement C-1?

Witness: No, he didn't show me that until the 40

Thomas J. Nagle—Direct

next day when I brought the \$500, the twenty-ninth.

Q. You saw him on the twenty-ninth? A. Yes.

Q. Tell what happened that day. A. On the twenty-ninth I brought \$500 more down, which he
10 requested me to bring, that \$250 wasn't enough.

Court: Do you mean you did all these things at Mr. McCoy's office?

Witness: Yes, and I brought down \$500, that making the deposit \$750 instead, making a receipt out for \$750.

Q. When you paid the \$250 did he give you a receipt? A. Yes.

Q. When you paid him the additional \$500, did he give you a receipt for it? A. Not for the \$500,
20 not separate.

Q. What did he give you a receipt for? A. For \$250.

Q. What became of the receipt which he had given you for the \$250? A. He asked for that back, and I gave it back to him.

Q. I show you a receipt dated July 29, 1921, acknowledging receipt from Thomas J. Nagle of \$750, deposit on 208 Renshaw Avenue, East Orange, purchase price \$7750, and signed B. E. McCoy, per B. Werbel, and ask you if that is the
30 receipt that he then gave you? A. Yes, that is the receipt.

Mr. Boyd: I offer that in evidence.

Marked Exhibit C-6.

Q. When did you see Mr. Werbel next? A. The last time I saw Mr. Werbel—I started to take the matter up about Mr. Meyers requesting me by letter that he was ready for closing up the title to the property.

40 Q. That is Mr. Lionel L. Meyers? A. Yes.

Q. Tell us how he came into it; how did you

Thomas J. Nagle—Direct

first hear of Mr. Lionel L. Meyers? A. Mr. McCoy recommended Mr. Meyers to me as an attorney for to execute the deed of the property.

Q. When did McCoy do that? A. He recommended me to him when the first payment was paid on it.

Q. On the twenty-eighth? A. Yes, twenty-eighth and twenty-ninth. 10

Q. The first payment was made on the twenty-eighth? A. Yes.

Q. You paid \$250 then? A. Yes.

Q. Was it on the twenty-ninth that you paid \$500? A. Yes.

Q. Was it on the twenty-eighth, when you paid the \$250, or on the twenty-ninth, when you paid the \$500, or both occasions, that Mr. McCoy recommended Mr. Meyers to act for you? A. No, not on both. 20

EXAMINATION by the Court:

Q. On which occasion was it? A. It might have been a little previous to that.

Q. You said you hadn't seen Mr. McCoy up to the time that you got this paper on the twenty-ninth? A. Only at times I saw him.

Q. With respect to this? A. No, I was practically doing business with Mr. Werbel in the absence of Mr. McCoy. 30

Q. When did you first come in contact with Mr. McCoy with respect to this property? A. When I first came in contact with him about this property?

Q. Yes, the one you bought; when was it? A. As near as I can recall, I think when he recommended to me Mr. Meyers about the property, it was two weeks previous to the payment.

Q. What did he say to you? A. He said that I 40

Thomas J. Nagle—Direct

could have Mr. Meyers as attorney, or I could get anyone else I felt like.

Q. You had seen the property at that time? A. Yes.

Q. And had agreed to buy it? A. I had seen
10 it from the outside.

Q. Had you agreed to buy it at that time? A. Yes.

Q. Why was payment delayed for two weeks, the first payment? You say about two weeks before you made your payment, you spoke to Mr. McCoy, and you then agreed to buy the property; why did you delay in making the first payment?

A. I didn't agree to buy it.

Q. Give me the facts. A. The two weeks after
20 when I paid the money, but I said the place looked all right to me, but I didn't agree to buy it.

Further DIRECT-EXAMINATION by Mr. Boyd:

Q. You said that he was recommended to you to draw the deed? A. Yes.

Q. Was anything said about a search of the property? A. No, he didn't say anything about the search.

30 The Court: Whom are you talking about now, when you say "he," Mr. McCoy or Mr. Meyers?

Witness: Mr. Meyers.

Mr. Boyd: After you paid your money on the twenty-ninth, making a payment of \$750 in all, you got this receipt which Mr. Boyd has shown you?

Witness: Yes.

Q. Did you get a copy of the contract? A. As soon as I got the receipt I got that.

Q. How soon after you got the paper did you
40 consult Mr. Meyers about the deed or search? A.

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That was left up to Mr. McCoy when I told him that I was going to have Mr. Meyers.

Q. When you told him you were going to have Mr. Meyers, did Mr. McCoy get Mr. Meyers for you? A. He must have got him when I requested him to get him.

10

Q. What did you get him for? A. To go ahead with the property.

Q. And get the title in shape for you? A. Yes.

Q. I show you a letter from Mr. Lionel L. Meyers, dated September 20, 1920, and ask you if you received that from him? A. Yes, I received that.

Mr. Boyd: I offer it in evidence.

Marked Exhibit C-7.

Q. I show you another letter from Mr. Meyers, dated October 5, 1921, and ask you if you received that from him? A. Yes, that is another one.

20

Mr. Boyd: I offer that in evidence.

Marked Exhibit C-8.

Q. Refreshing your memory from these letters, tell the Court what you understood Mr. Meyers was to do on your behalf in connection with this transaction.

Court: Understood from whom?

Q. And from whom did you get the understanding, if you had any? A. Mr. Meyers requested me that he was ready to close up the title on the property.

30

Q. Did you or did you not understand that Mr. Meyers was representing you in the transaction?

The Court: How is that competent? If he and Mr. Meyers had any transaction, or Mr. Meyers was acting for him through the request of Mr. McCoy, let him tell me so.

Q. When did you first see Mr. Meyers respecting this property? A. I met him shortly after that.

40

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Q. After what? A. After the agreement.

Q. Where did you meet him? A. On Glenwood Avenue.

Q. What did you talk about? A. And he wanted to know if I was ready to close the title to the property. I said, "No, I ain't ready yet," and he
10 said he was ready. I said, "I ain't ready yet." so I didn't tell him what the disagreement was or anything else.

Q. When that conversation was had did he tell you anything about the title? A. No, he didn't tell me anything about it, he simply said he was ready to close the title.

Q. Did he tell you who the owner was? A. No, he never told me who the owner was even.

Q. Did he tell you who the record owner was?
20 A. No.

Court: When you said you were not ready, did you tell him when you would be ready?

Witness: When it came up for the final closing.

Court: I mean this conversation when you first met him.

Witness: I told him I wasn't ready for the closing.

Court: Did you tell him when you would be ready?

30 Witness: No, I didn't give him no definite time.

Court: Did you know your contract required you to close on October first?

Witness: Yes.

Court: And this was a few days after the contract was signed that Mr. Meyers wanted to know how soon you would be ready to close?

Witness: Yes.

Court: Did he give any reason for being in such a hurry to close the transaction?

40 Witness: No.

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Q. When the contract purporting to be signed by Mr. Yampol as owner of the property was given you, did Mr. Werbel tell you who was the owner of the property; did he tell you anything about that? A. He told me that Yampol was on the agreement, that he was the owner. 10

Q. After that time did he ever tell you anything different as to the owner? A. He never told me nothing about it.

Q. When did you first find out that Yampol was not the owner of the property? A. When I first discovered that was pretty near coming to the close and I discovered I had the money paid.

Court: After you paid the money?

Witness: Yes, after I paid the money.

Court: After you paid the balance of the purchase price, you mean? 20

Witness: No.

Court: After you paid the \$750?

Witness: Yes.

Court: How long after?

Witness: I should judge a couple of weeks after.

Court: How did you learn that?

Witness: A couple of weeks after I had the deposit.

Q. From whom did you get the information that Yampol was not the owner of the property? You said you learned that two weeks after you paid the \$250? A. Yes. 30

Q. Whom did you get that information from? A. From Mr. Demarest; he was on the committee.

Court: When you entered into the agreement to buy the property, what was said to you about the purchase price?

Witness: There was nothing said about the purchase price until I paid the \$750. 40

Thomas J. Nagle—Direct

Court: Didn't you know what you had to pay for the property when you paid the \$250?

Witness: Yes.

Court: How much was it?

Witness: \$7750.

10 Court: Who told you that?

Witness: Mr. Werbel.

Court: Did he say anything about the purchase price at that time, other than that the amount was \$7750?

Witness: That is all.

Court: When you paid the balance, what was said?

Witness: The purchase price was the same.

20 Court: Or was anything else said as to how that price was fixed or arrived at?

Witness: No.

Q. Did he ever indicate to you in any way that he or anyone on his behalf was buying the property at a lesser price than that? A. He never told me anything about it.

Court: Did you know, in fact, that he was?

Witness: No.

30 Q. When did you find out that he was, if you ever did? A. I found out toward the last of it, almost pretty near ready for the closing before I found that out.

Q. From whom did you get that information?

A. Mr. Demarest, who was on the committee, the house committee.

Mr. Boyd: I call for the deed from Mrs. Reimuller to the Monroe Investment Company.

Mr. Boggs: Producing same.

40 Mr. Boyd: You admit that this is the deed for the property in question from

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Mary E. Reimuller to Monroe Investment Company?

Court: And is produced by the defendants?

Mr. Boyd: I offer it in evidence, being deed dated August 31, 1921, from Mary E. Reimuller, widow, of East Orange, to Monroe Investment Company, in consideration of one dollar and other valuable consideration, and conveying premises on the northerly side of Renshaw Avenue, East Orange, this being produced by the other side, with Lionel L. Meyers as witness, and Lionel L. Meyers, as attorney at law, who took the acknowledgment of Mrs. Reimuller's deed, recorded in Book 65 of Deeds, page 233, on September 13, 1921. 10 20

Marked Exhibit C-9.

I offer in evidence the deed to the complainant—the complainant neglected to bring it, but I will produce it later.

Mr. Boggs: We admit the conveyance.

Mr. Boyd: The conveyance was made from Monroe Investment Company to Mr. Nagle under date—

Mr. Meyers: The deed was dated October 28, 1921. 30

Court: Counsel will have leave to offer the deed itself in evidence.

Q. When did you next see Mr. Meyers after the time when you saw him on the street and he told you that he was ready for closing and you told him that you were not ready? A. I seen him after that on Glenwood Avenue, but I didn't say anything to him.

Q. When did you next see him to talk about this 40

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matter? A. I had a request from him in the letter, one of the notices.

Q. When did you next see him about this matter, to talk with him? A. I didn't see him any more to talk with him.

10 Q. When you got together to close the title was he there? A. Yes.

Q. Then you saw him to talk with him? A. Yes.

Q. When did you go to close the title and where? A. That was closed at McCoy's, 376 Glenwood Avenue, Bloomfield.

Q. When? A. In the evening, around October 27th or 28th.

Q. Who were the people present? A. There was a man there representing Mr. Yampol—Mr. Landow; Mr. McCoy was there.

20 Q. Was Mr. Yampol there? A. No, he wasn't there.

Q. Was Mr. Werbel there? A. Mr. Werbel was there.

Q. Was Mr. Meyers there? A. Yes.

Q. Anyone else? A. Of course, there was Mr. Demarest, on the housing committee, he was there, and me and my wife.

Q. Anyone else? A. I don't know if there was anyone else there outside of the—

30 Q. Those people who were there, did they all take part in the transaction or hear what was said and done on that occasion? A. Yes.

Q. Now, go to the point of Mr. Meyers; what did Mr. Meyers say to you and what did you say to him? A. I didn't say anything; he was going ahead with the closing and was figuring up the equity of the Building and Loan and one thing and another, and finally made out a bill for his services.

40 Q. And you paid it? A. I kind of remonstrated with Mr. McCoy and the rest, and through the as-

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sistance of my friend, Mr. Demarest, to withdraw the \$750, and not go ahead with the buying of the place, but he wouldn't have it.

Q. Who? A. Mr. McCoy. He wouldn't have nothing to do with it, and he said if I wanted \$750 I would have to bring suit to obtain it. 10

Q. Why did you want to withdraw your money and abandon the transaction? A. Because I was dissatisfied.

Q. Why were you dissatisfied? A. After I found out near the end who the owner was.

Q. Tell me what you found out; what made you dissatisfied; what information did you have that made you dissatisfied? A. After the information I got until I found out the right owner of the house, and then, of course, I have got that off a friend of mine. 20

Q. The Court doesn't know what you found out until you tell him; tell the Court what you found out about the situation of the property and the price that was really being paid to Mrs. Reimuller, and anything else you found out. A. I found out that Mary E. Reimuller was the original owner of the property and Mr. Werbel obtained the property on first payment of \$5, and then he had this transaction of an automobile in there with it, that I didn't know at all about, and I don't have enough off of it. 30

Q. Did you find out how much Mrs. Reimuller was receiving for the property? A. I know that Mrs. Reimuller was receiving \$7250 for the property.

Q. And had you known that before? A. No, I had not known it before.

Q. You found out, you say, that Mrs. Reimuller received as a first payment on the nineteenth of July \$5 on account; when did you find that out 40

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first? A. I found that out after the manufacturers housing committee come back and reported on it.

Court: What was the housing committee; what did the housing committee have to do with the property; who was the housing committee?

10 Witness: The housing committee was a man by the name of Mr. Skinner, of the Manufacturers Housing Committee.

Court: What is the housing committee; is it a loan association?

Witness: No, it was a housing committee of the Town of Bloomfield.

Q. Tell the Court—you said you were dissatisfied, tell the Court what further reason you had for saying, then, that you were not satisfied and wanted to back out. A. The reason I was dissatisfied was, I wasn't satisfied the way the sale was carried on.

20

Q. Explain what you mean by that. A. After all the information that I have got of the transaction of the house, the purchase of the house, like the automobile, etc., and way I made my payments, and the way the house was misrepresented.

Q. How was the house misrepresented to you? A. It was misrepresented because when I was buying it, I wasn't buying it off the proper owner, and after that I decided—"Well," I said, "I haven't any place to go, that I have got to take the place or go on the street; I have five children and cannot get any room, because no one wants us," so I decided to close.

30

Q. What did Mr. McCoy and Mr. Meyers and any of these other gentlemen say that night while you were in Mr. McCoy's office? A. They didn't say anything at all.

40 Q. Did you tell them that you learned that Mrs.

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Reimuller had sold the property for \$7200? A. I didn't tell them, no.

Q. You did that night take your deed and pay the balance of the \$7750 in cash and give back a mortgage; is that right? A. Yes.

Mr. Boggs: It was taken subject to a building and loan mortgage. 10

Court: How much?

Mr. Boggs: \$3323.

Q. When did you get possession of the property; at the time you took your deed? A. It was almost November first when I got in; it was October 30.

Q. Did you ever see Mrs. Reimuller? A. No, sir, outside of once, and I didn't know whether that was her or not. 20

Court: Before you left this meeting, you paid the balance of the money that night?

Witness: Yes, we closed the title.

Q. And the deed was given you? A. Yes, sir.

Q. What did you do with the deed? A. I kept the deed.

Q. Didn't anybody take it to have it recorded for you? A. That is right; Mr. Demarest took the deed and had it recorded for me, and mailed it to me.

Q. And Mr. Meyers' bill, did you pay that? A. I paid Mr. Meyers right there in Mr. McCoy's office. 30

Q. How much did you pay him? A. I believe it was \$80 of \$82.

Q. Have you a receipt? A. I haven't got it with me.

Q. Does that include the search? A. Yes, that included the entire search.

Mr. Meyers: And prior to that closing of title, on another transaction about a week or so prior to that date. 40

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Q. You say you never saw Mrs. Reimuller, to know her? A. No.

Q. Did Mr. Meyers ever tell you prior to the time you took your title that Mrs. Reimuller was the owner of the property? A. He never told me
10 anything about it.

Q. Who did he say was the owner? A. The man on the agreement, Yampol, as near as he could say.

Court: Strike it out; who did he tell you owned the property, if he told you that anyone did?

Witness: He didn't tell me who owned it.

Q. Did he ever tell you anything about this agreement marked Exhibit C-2, dated July 19, from Mary E. Reimuller to Bernard Werbel; did
20 he ever tell you that such an agreement had been made or was in existence? A. No, he never told me anything about an agreement like that that existed.

Court: Was it recorded?

Mr. Boyd: No, but we can show he knew it.

The Court: It may be a circumstance showing the good faith of Mr. Meyer's treatment of him.

Q. You say Mr. Yampol was not present at the
30 closing? A. No.

Q. Did you ever see Mr. Yampol? A. I don't know where Yampol—

Q. Did you ever see him? A. I have seen some people around there, but I cannot say that I knew him.

Q. But you say someone was there claiming to be the landlord and representing him? A. That was the man representing the Monroe Investment Company, in the interest of Mr. Yampol—Mr.
40 Landow.

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Q. Was he a lawyer? A. No, I don't think so.

Q. What were you told about the Monroe Investment Company? A. I was never told—

Court: When; on the night of the closing?

Q. Coming to the Monroe Investment Company, when did you first hear of the Monroe Investment Company? A. I first discovered about the Monroe Investment Company when they were closing the title. 10

Q. There was a deed from them? A. Yes.

Q. What was said by Mr. McCoy or Mr. Werbel or Mr. Meyers about the Monroe Investment Company? A. They never said anything at all to me about it.

EXAMINATION by the Court: 20

Q. Did you say anything to them about it? A. No.

Q. Did you ask any questions about it? A. No.

Q. Did you ask why you were getting the title from the Investment Company instead of Mr. Yampol? A. I didn't ask nothing at all.

Q. Why not? A. I was agreeable to get it closed up and get in the house, because they were hounding me in the house where I was living in. 30

Q. Did you know then that you were being defrauded at the time you took title? A. Yes, I knew I was being defrauded. I was in a position where I couldn't get out of it.

Q. I see your bill of complaint charges that you didn't discover it until October 31st, that you had been defrauded; that is three days after you took the deed. That is why I ask you did you know at the time that you paid the balance of the money on account that you were defrauded, or didn't you 40

Thomas J. Nagle—Direct

learn that fact until after you paid it? A. After I paid it.

Q. You told me both; which is correct? A. After I paid it I discovered that it was one hundred per cent crooked, but then before I had sus-
10 picions.

Q. Your suspicions were confirmed, then, after you paid your money? A. Yes.

Q. You have seen your deed since it was recorded? A. Yes, I have it home.

Q. And the deed of the property covers the same property referred to in this contract from Yampol to yourself; you know that, do you? A. Yes, the preliminary contract.

Q. That evening when Mr. McCoy and Mr.
20 Werbel and others were present in Mr. McCoy's office, state what was said to show you that Mr. Werbel had told you the truth when he said he was in Mr. McCoy's employ; tell what happened or what was said, to show that you could see that he was in his employ. A. I thought he was, and I placed enough confidence in him, because I knew Mr. McCoy for a long time, when he first started that place, and I always placed good confidence in him, and I considered the other man, I thought
30 being in his employ, the same.

Q. Was anything said or done that night in closing, to show that Werbel was employed by McCoy? A. No, nothing unusual took place. Simply his being in his employ; that is all I know.

Q. What took place as usual that night in the office? A. Only simply when we closed up; that is all I know.

Q. What was said that night, to show that Mr. Werbel was employed by Mr. McCoy; if anything was said? A. They didn't say anything that I
40 could see.

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Q. Didn't McCoy tell you that you could back out of the contract that Werbel had made for you?

A. Yes.

Q. Wasn't that something said, then? A. Sure, that was said.

Q. What else was said? A. There was nothing 10
more said.

Further EXAMINATION by Mr. Boyd:

Q. You took a receipt for the \$750 signed by Mr. McCoy, per Werbel; did Mr. McCoy deny having received that money? A. No, he didn't say anything about it.

Court: Did you show the receipt that night?

Witness: Yes, the receipt was put there at the closing. 20

Court: You showed it?

Witness: Yes.

Q. McCoy saw it? A. Yes.

Q. He didn't make any objection to Werbel's acknowledging a receipt in his name for the money? A. No.

Q. What else was said to indicate that Werbel was in Mr. McCoy's employ or connected with that office, in the business? A. Mr. McCoy told me that he had a notary public license, and that he had a license for selling real estate, and he might have been a co-partner of his, or he might have been in the employ. 30

Q. Is that what Mr. McCoy told you? A. No, I thought that myself.

Court: Strike out what you thought; tell what McCoy or Mr. Werbel said that night, if anything.

Q. What else was said to indicate that Werbel was in Mr. McCoy's employ or connected with that 40

Thomas J. Nagle—Direct

office, in the business? A. They didn't say anything.

Court: Anything said about commissions or dividing up commissions?

Witness: No, didn't say anything about
10 that either.

Q. You said a moment ago that Mr. McCoy said something about someone having a license to sell real estate; who was that that he said had a license to sell real estate? A. Werbel.

Q. McCoy told you that Werbel had a license as a real estate agent? A. Yes, and had a notary public license also.

Q. When it came to drawing the checks, who drew the checks? A. Mr. McCoy took care of the
20 drawing of the checks.

Q. He handled the detail of it? A. He looked after all the checks.

Q. You endorsed some checks, didn't you, for the payment on the closing? A. Yes.

Q. Do you remember to whom those checks or some of them were endorsed; can you tell us who got the proceeds of the checks? A. No, not after I presented the checks to him, I cannot say.

Q. Whose checks were they? A. A check I had.

Q. Your own? A. My own.
30

Q. On your own bank account? A. Just money I had from the other house.

Q. Where are the other checks? A. Bloomfield Trust Company.

Q. Why didn't you bring them with you? A. The checks, they turned them over to Mr. McCoy when I made the payment.

Q. But he used the checks to get the money on them? A. Yes.

Q. When they came back to the bank and were
40 paid, they were returned to you as your vouchers?

Thomas J. Nagle—Direct

A. I didn't have a permanent account there; it was only just temporary.

Q. But is it a Trust Company's check? A. Yes, the Bloomfield Trust Company.

Court: Have they been subpoenaed to produce the check? 10

Mr. Boyd: No.

Q. Do you remember the amount of that check?

A. The amount of the check, I cannot give you the exact amount of it now.

Q. Do you know who received the proceeds when it was cashed? A. Mr. McCoy did.

Q. It passed through his account? A. Yes.

Court: Is there any question about that?

Mr. Boggs: No, we admit all that in our answer; we deny any fraud as to the amount paid. 20

Q. So that there were no checks drawn in favor of Yampol? A. Not as I could say.

Q. Nor endorsed by him?

Court: Mr. Boggs, I haven't had time to examine the papers. Your answer admits that the check was made payable to McCoy.

Mr. Boggs: I merely say we admit the amount. 30

Court: If it becomes necessary, because of the defense that may be interposed showing that what you charge, that Yampol was merely a dummy in the matter, I will allow you to put in these checks.

Q. Did you learn on that occasion when you got together to close the title, who the officers of the Monroe Investment Company were, or some of them? A. I only knew by the minutes taken from the Monroe Investment Company.

Court: Did you see that authority that night? 40

Thomas J. Nagle—Direct

Witness: I saw the authority previous to that.

Q. Where did you see it? A. The Housing Committee.

10 It is admitted in the Answer that at that time the officers of the Monroe Investment Company were those named in the bill or answer, except that Mr. Meyers resigned as secretary and that Mr. Landow was selected to succeed him. Mr. McCoy was vice-president. Mr. Lionel L. Meyers was secretary until October 8, 1921, and after that Landow was secretary.

Court: Did Mr. McCoy hold any office in the company?

20 Mr. Boggs: In his answer he says he was president, and Mr. Werbel was treasurer.

Q. At the time that you got together for the closing, as you have testified, and when, as you say, you were dissatisfied because you found the party you were dealing with wasn't the real owner, did you make a protest, or did you agree or say you were satisfied? A. I protested right at the closing; I wanted to get the money back.

The Court: Strike it out; what was said.

30 Q. State what was said when you objected, what did you say? A. I said to go ahead with the closing.

Court: You don't remember Mr. Boyd's question.

Witness: I agreed.

Q. Agreed to do what? A. I made protest, but I took it there; I had to agree.

Court: You agreed to what?

Witness: To the closing.

Q. You agreed to go ahead and close the title?

40 A. Yes.

Q. When you made your protest, what did you

Thomas J. Nagle—Direct

say? A. I said I wanted the \$750 back, and Mr. McCoy said, "If you want it, you will have to sue for it."

Q. What was the reason you were dissatisfied, and then let it go ahead? A. The reason was I had no place to go and I had to take the house and close the matter up. 10

EXAMINATION by the Court:

Q. After you got the house and got possession of it, you say in your bill that you discovered about the thirty-first of October that you had been defrauded? A. Yes.

Q. How did you discover that? A. I made the discovery that—I found out when I made the agreement with Mr. Yampol—I found out previous to that that Mrs. Reimuller was the original owner before he bought the lot; the money had been paid and agreement signed, and I felt dissatisfied about it, but it wouldn't do me no good. 20

Q. How did you find out that you had been defrauded? A. I found out through the information of others.

Q. To what extent had you been defrauded; what was the fraud? A. That Mrs. Reimuller was the rightful owner. 30

Q. What did you lose, if anything, through the alleged fraud? A. I lost \$500.

Q. How? A. Through Mrs. Reimuller selling the place for \$7250 and my paying \$7750 for it.

Q. Did you make any demand on Mr. McCoy after you found that out, or on Meyers or Werbel that— A. I did at the closing, and Mr. Yampol wasn't there.

Q. After you found out, as you say in your bill, on October 31, that you had been defrauded of \$500, did you ask Mr. McCoy or any of these other 40

Thomas J. Nagle—Direct

people, to give you back the \$500 or any part of it? A. Yes, I requested it, and they said they couldn't get it back; they said I would have to sue for it.

10 Q. When did you make that request? A. I spoke to Mr. Werbel about it, but he said that was all right.

Q. I am directing your attention to the thirty-first of October. I don't know whether the date is right, but that is what your complaint says; you complained to him on the thirty-first of October you discovered that you had been defrauded. Do you understand this? A. Yes.

Q. You found out that you had been defrauded to the extent of \$500; is that right? A. Yes.

20 Q. I ask you now did you ever after finding out that you had lost \$500, ask McCoy or anyone else to give you back that \$500? A. No, I didn't.

Q. Did you at any time from the thirty-first of October, 1921, down to the commencement of the suit ever ask for the money? A. No.

Q. Ever tell them about it? A. No.

Further DIRECT-EXAMINATION by Mr. Boyd:

30 Q. Did you send someone or ask someone to go to them and demand that for you; did you send someone to make that demand? A. No, I didn't send anyone.

Q. Did you employ Mr. Boyd to get the money back for you? A. Oh, yes.

Q. When did you employ him? A. I think he was employed somewhere about—I really cannot tell you now.

40 Q. How long after October thirty-first or how soon after you got your deed? A. I might say a week after.

Thomas J. Nagle—Cross

Q. Didn't you tell him you wanted him to get the money back for you? A. Yes.

Q. Did you get that money back? A. No.

Q. No part of it? A. No part of it.

Q. Did you ever talk to Mr. McCoy or anyone else since October thirty-first about this trans- 10
action? A. No, sir.

Q. Did they ever say anything to you or write you about it? A. No, sir.

CROSS-EXAMINATION by Mr. Boggs:

Q. You say Mr. Boyd was employed; what do you mean by that? A. He was employed to protect my interest, to recover the money.

Q. Employed by whom? A. By me.

Q. When did you see Mr. Boyd; can you fix at 20
all the time, how soon after the thirty-first? A. Somewhere about a week after; that is as near as I can fix it.

Q. You say two weeks before the closing of the title and the payment of the money, you heard through a Mr. and Mrs. Demarest? A. Yes.

Q. Tell us what you heard; what they said to you.

Mr. Boyd: I object.

Court: He said as a result of infor- 30
mation received from Mr. Demarest of the Housing Committee, he learned certain things which made him dissatisfied. You have referred to it, and so have I, and I think if he (Mr. Boggs) doesn't object to it being hearsay, I will allow it. He may tell everything that Mr. Demarest told him.

Q. What did Mr. Demarest tell you at that time in regard to this property that you were buying, that made you suspicious? A. Mr. Demarest re- 40
quested me not to go ahead, and that he was going

Thomas J. Nagle—Cross

to try to get me rooms somewhere else; that we would have to try to recover the \$750, and not go ahead with the closing.

10 Q. Why didn't he want you to go ahead? A. He discovered through their investigation, that Mr. Yampol wasn't the rightful owner of the said property, and that Mrs. Mary Reimuller was the original owner.

Q. What else did he tell you? A. And then he told me—he said, "Well, you ain't going to close up on that." I said, "What am I going to do; I ain't got no place to go." He said, "You can suit yourself."

20 Q. What else did he tell you about the property before you got to the night of the closing? A. Nothing else.

Q. Didn't he tell you that Mrs. Reimuller was selling for \$750 less than you were paying? A. No.

Q. He didn't tell you that? A. No.

Q. You said something about \$750.

Court: \$7250.

A. \$7250.

Q. You said something about \$7250? A. Yes.

30 Q. Didn't he tell you that Mrs. Reimuller was selling for \$7250 and not for \$7750; didn't he tell you that? A. I am not quite sure whether he told me that or not.

Q. You understood at that time, two weeks before the closing, that Mrs. Reimuller was the owner of the property, and that she was getting \$500 less than you were paying for it; you understood that? A. Yes.

Q. You understood that two weeks before? A. Yes.

40 Q. And when you came to close the title did you tell Mr. McCoy or Mr. Werbel that they were buy-

Thomas J. Nagle—Cross

ing it from Mrs. Reimuller for \$500 less than you were paying? A. No, I never told them anything.

Q. You objected to purchasing at that time? A. Yes.

Q. Because you understood that the title was in Mrs. Reimuller; is that right? A. Yes. 10

Q. And you didn't want to take it for that reason; you made no objection to the difference in price at that time, did you? A. No.

Q. And you had no objection at that time? A. No, I only tried to recover what I had paid, and I closed because I didn't have no place to go; I had five kids and it was impossible to get a flat with children, and I knew well I would have to take it.

Q. And at that time you had no objection to paying \$500 more than Mr. Werbel was paying, or someone was paying Mrs. Reimuller? 20

Mr. Boyd: I object; that calls for a state of mind.

Court: He may answer.

Q. Had you any objection to paying \$500 more at that time than you understood was being paid by Werbel or someone else to Mrs. Reimuller? A. I did have objection, yes, but I simply couldn't carry out my objection; it was impossible, because I had to have a place.

Q. But you didn't state your objection? A. No. 30

Court: Except he did state that the title wasn't in the name of Yampol.

Q. But you didn't state any objection to the price? A. No, Mr. Yampol wasn't there at all when I signed the preliminary contract for \$750.

Q. And you were getting a deed from the Investment Company, and you understood that they had a deed from Mrs. Reimuller, didn't you? A. I didn't understand it, no, I didn't know anything about it. I never knew anything about it. 40

Thomas J. Nagle—Cross

Q. When you settled, the night you settled? A. The night I settled, then I knew what was what.

Q. You knew that the Investment Company had a deed from Mrs. Reimuller; you knew that? A. Yes.

10 Q. And you knew you were paying \$500 more to the Investment Company than Mrs. Reimuller was getting for the property, and you raised no objection at that time? A. The only objection I raised was that I tried to get my money back.

Q. The objection you raised was this, you wanted to get out of the contract, and not buy the property? A. That was the idea, to get my money back.

20 Q. And Mr. McCoy told you that if you were not ready to perform the contract, he would not pay you the money you paid him, the \$750? A. Yes.

Q. But that was your objection at that time, you didn't want to take the house, that was it? A. Yes, I didn't want to take it.

EXAMINATION by the Court:

Q. Why didn't you want to take it at that time? A. I thought maybe that I could probably get out of it some way, by moving to some other place, but I found I couldn't and I was forced to take it.

30 Q. Didn't you want to take it because you knew they were making \$500 on the transaction, or did you have some other objection? A. I knew that it was impossible for me to get the \$750.

Q. Didn't you want to close the title because you knew they were making \$500 off you? A. Yes.

Q. Was that your reason for not wanting to close? A. My reason was I had to close.

40 Q. I asked you if your reason for not wishing to close the title was because you knew that these

Thomas J. Nagle—Cross

people were making \$500 on the transaction? A. Yes.

Q. Was that your reason for not wishing to close? A. That was my reason for not wanting to close.

Q. You told me a little while ago that your reason was because you found out that the title was not in the name of the man who made the contract, but someone else; which is right? A. I found that it wasn't in the right name. 10

Q. You said that was your reason? A. Yes.

Q. Was it so? A. That was my reason.

Q. You have given two reasons; did you have both or only one; and if so, which one? A. I had one that I wanted to close up, and I had to close up with the Monroe Investment Company. 20

Q. And I asked you why you didn't want to close up. A. Because I tried to recover what money I paid.

Further CROSS-EXAMINATION by Mr. Boggs:

Q. But the only reason you stated was the fact that Mrs. Reimuller, as you understood it, was the owner of the property; that was the only one you stated as the reason for drawing out? A. Yes. 30

Q. And you knew at that time that there was a deed from Mrs. Reimuller to the Monroe Investment Company? A. No; I didn't know at that time.

Q. At the time of the closing? A. Yes, I knew it.

Q. This Mr. Demarest who appeared at the closing, came with you, did he not? A. Yes.

Q. And he represented you; he was your friend, wasn't he? A. Yes. 40

Thomas J. Nagle—Cross

Q. There to look after your interest? A. Yes.

Q. He had nothing to do with the demands—Mr. Demarest? A. No, he had nothing to do with it.

Q. Now you say that you first spoke to Mr. Werbel about getting a house, in the middle of
10 early part of June; are you sure it was as early as that? A. Oh, yes, it was as early as that.

Q. How did you fix it? A. It was around the eighteenth or nineteenth, something like that, or twentieth.

Q. Of June? A. Of June.

Q. Not of July? A. No, not of July.

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

Q. And then you simply talked to him about buying a house, isn't that right? A. Yes.

20 Q. You had a house of your own at that time? A. Yes.

Q. For sale? A. It was sold at that time and I had to get out of it.

Q. It was under contract? A. Yes, Mr. McCoy held the contract for selling it.

Q. And when was that title to close? A. That title was to close up in July, I believe.

Q. Was it the day you made this contract or after? A. Before.

30 Q. My question was, did you close the title to the house you owned before or after you signed this contract?

EXAMINATION by the Court:

Q. Did you give up your property; did you move out? A. No, I didn't move out, not until October thirty-first.

Q. Did you get paid in full for your property before October thirty-first? A. Yes.

40 Q. How long before the end of October did you

Thomas J. Nagle—Cross

get the full purchase price? A. That was a week before the end of October.

Q. So that time you and your wife gave a deed for the property? A. That was in July; the other house was closed up, I meant.

Q. The title passed? A. The title passed. 10

Q. You and your wife gave a deed for it? A. Yes.

Q. How did you continue to live in it until October? A. Because we didn't come to satisfactory terms on the other place.

Q. Did the man who bought your house agree to let you live there from July, when you closed, until October? A. He had to let us agree to it, because there was a misunderstanding on that house as well as this. 20

Q. You had the house you were living in at 27 Walnut Street in Bloomfield? A. Yes.

Q. And you went to Mr. McCoy's office first to see about selling this house, did you not? A. Yes.

Q. And that was the time you talked about buying another house; isn't that correct? A. Yes.

Q. You put it in the hands of Mr. McCoy for sale, did you not? A. Yes.

Q. Agreeing to pay him a commission for selling? A. Yes. 30

Q. You signed the paper, did you not? A. Yes.

Q. I show you a paper, is that your signature? A. Yes, that is my signature.

Q. And that is the paper which you signed at that time, authorizing him to sell the property, and a description of the property is on that? A. Yes, that is it.

Paper marked Exhibit D-1 for identification. 40

Thomas J. Nagle—Cross

Q. That is dated June 13, 1921, is it not? A. Yes.

Q. And then it was after June 13 that you spoke to Mr. Werbel about buying the house? A. Yes.

Q. Not at the same time, but after? A. Shortly
10 after.

Q. And it was probably two weeks after, was it not? A. It wasn't two weeks, I don't think.

Q. And what you said to him was that you would want to buy another house in case of the sale of this house; wasn't that right? A. Yes.

Q. You didn't want to buy the other house whether you sold this house or not? A. No, because I had to have some place to go to.

Q. So that before there was the purchase of
20 another house, he must get a sale of this house, before you would consider seriously the buying of another house; he must have made a sale of this house? A. Yes.

Q. When you first saw Mr. Werbel about buying your house, you didn't ask him about buying for you this house 208 Renshaw Avenue? A. No.

Q. You simply told him that you wanted a house? A. That is all.

Q. Wanted to buy a house? A. Yes.

30 Q. If he could find one for you; that is right? A. Yes.

Q. You did not instruct him in any way to find out what this house 208 Renshaw Avenue could be purchased for? A. No, I didn't give him any instructions.

Q. You didn't know anything about 208 Renshaw Avenue? A. I didn't know anything about it at that time.

40 Q. When did you first learn of 208 Renshaw

Thomas J. Nagle—Cross

Avenue? A. That was in July; that was about July 18th or 19th.

Q. At that time had Mr. McCoy sold your Walnut street house? A. Oh, yes, that was sold then, but it wasn't closed up; it wasn't passed on it.

Q. Had an agreement been signed? A. Yes, 10 the agreement was signed.

Q. Then you were ready to buy another house? A. Yes, I was ready to buy another place.

Q. But the other house had to be bought so that title would pass after you closed the Walnut Street house? A. Yes.

Q. Is that so? A. Yes, one title had to pass before the other.

Q. You couldn't perform your agreement for the purchase until the agreement for sale was 20 performed? A. Yes.

Q. And then about the nineteenth of July you say, or August? A. July.

Q. You first heard of the Renshaw Avenue house? A. Yes.

Q. That is the time he took you around? A. Yes, I went over and looked at it.

Q. That is, showed you the outside of it? A. Yes.

Q. How soon after you saw the Renshaw 30 Avenue house did you make up your mind to buy it?

Mr. Boyd: If you can now remember.

Court: He doesn't need any suggestion,

Mr. Boyd: That isn't proper. It is exactly on the lines you went into.

A. I made up my mind that I would tell my wife about it, and I told her all about it, and she wanted to have a look at the place before she decided 40 that we were to pay anything on it.

Thomas J. Nagle—Cross

Q. Did you do it? A. Yes, we came over and Mr. Werbel said, "I told you I couldn't take you inside; I will let you see it from the outside." We thought it was funny we couldn't see it inside, and had to see it from the outside; he agreed to take
 10 me inside to see the place, and then I went in to see the place, but I had to get in there to see it so quick, that I had to come out again.

Q. Having done all that, when did you first make up your mind to buy the place? A. I made up my mind, it was on the twenty-seventh, I would pay the money; I paid the \$250 on the twenty-eighth.

Q. When you were asked to bring the \$250 the next day, you made up your mind to buy the place?

20 A. Yes.

Q. From the nineteenth of July until the twenty seventh of July you were thinking it over, and decided to buy the place? A. Yes.

Q. And the price was mentioned to you? A. \$7750.

Q. You say you were on the inside of the house; did you see the person living in the house? A. I saw the people, but I didn't know them.

Q. Did you see them? A. Yes.

30 Q. You didn't ask whether they were tenants? A. No, I didn't ask no questions, whether they were the owners or anything else.

Q. And you first saw the house about the nineteenth of July? A. About that time.

Q. It might have been a day or two after? A. Yes, it might have been the nineteenth or a day or two after.

Court: What might have been doesn't help us. He doesn't remember the exact

Thomas J. Nagle—Cross

date, but he was there. It is certain in my mind he stated that on his direct.

Q. You cannot fix the time when you first saw the Reimuller house 208 Renshaw Avenue with Mr. Werbel by ten days, can you? (No answer.)

Q. You cannot say whether it was ten days before or after any particular date? A. No, not positively. 10

Q. And when you saw the house and went through it, and agreed to buy it, you were satisfied with the price at that time? A. I was satisfied to a certain extent, and when I went back and told my wife about it, she wanted to go over and see the place, and she said she didn't like it at all.

Q. I am speaking of the price now. The price you thought was reasonable? A. I thought the price wasn't very reasonable; I thought it was about all the place was worth. 20

Q. But you thought the place was worth that and were willing to pay it at that time? A. Yes.

Q. And it wasn't until you heard that Mrs. Reimuller was getting \$500 less that you were dissatisfied with the price; is that true? A. Yes, I found that out pretty late.

Q. And when you did find out you became dissatisfied with the price you were paying? A. Yes. 30

Recess.

Mr. Boyd: We have procured the deed and check, and while the cross-examination is in progress it may relieve both sides, to offer them now.

I offer in evidence deed dated September 23, 1921, from Monroe Investment Com- 40

Thomas J. Nagle—Cross

pany to Thomas J. Nagle and wife, conveying land on the northerly side of Renshaw Avenue, East Orange, New Jersey; recorded in the Register's Office of Essex County, October 31, 1921, in Book W 65 of Deeds, pages 85-86.

10

Marked Exhibit C-10.

Further DIRECT-EXAMINATION by Mr. Boyd:

Q. I show you check dated October 28, 1921, on the Bloomfield Trust Company, signed by Magdalena Nagle and Thomas J. Nagle, in favor of the Monroe Investment Company, for \$3647.71, and I ask you whether that is the check that was given in payment of the Renshaw Avenue property on the day when you all met to close the title? That is the check that you gave in exchange for the deed?

20

A. Yes.

Mr. Boyd: I offer it in evidence. It is endorsed "For deposit Monroe Investment Company." It is certified the same day it was drawn.

Marked Exhibit C-11.

30 Further CROSS-EXAMINATION by Mr. Boggs:

Q. I show you a slip of paper; is that your signature? A. Yes.

Mr. Boggs: I will ask to have that marked for identification.

Marked Exhibit D-1 for identification.

Q. I show you another one; is that your signature? A. Yes, reducing the price to \$6500—price of sale from the original slip \$7300.

40

Thomas J. Nagle—Cross

Court: The same authority that was given in the other slip, except as to the price reducing the price.

Mr. Boggs: And this latter slip is not dated.

Mr. Boyd: This does not relate to this 10 property.

Court: It shows why he went to McCoy and when, and that one thing hinged on the other, and the date.

Marked Exhibit D-2 for identification.

Q. This second slip was signed by you and given some time after the first slip, was it not?

A. Yes, I withdrew the sale of this property from him and then put it on sale later on.

Court: Can you tell me when you gave him that 20 second slip, the one you just looked at, reducing the price?

Witness: This price was reduced to \$6250; the original price was \$6500 and it was tried to be sold at \$5750.

Court: What is the date?

Witness: I might say May 28 or June 1.

Q. The first slip marked D-1 for identification, fixed the price at \$7300? A. Yes.

Q. And that is dated June 13? A. This is the 30 listing price.

Q. Is that the first one you gave? A. That is the first one.

Q. And that is dated June 13? A. Yes.

Q. And D-2, fixing the listing price at \$6500, was given afterwards? A. Yes.

Court: Do you know how long after?

Witness: This might have been around June 20 or 28.

Court: You don't remember. 40

Thomas J. Nagle—Cross

Witness: I cannot recall the exact date.

Q. It might have been a month later, might it not? A. No, I don't think it was a month.

Q. You are not sure? A. No, I don't think it was a month.

10 Q. And it was not until after the second slip was given that you talked about buying another house?

A. Yes, after the second slip was given, then I suggested I was going to go ahead and buy another house.

Q. When you first saw Mr. Werbel about another house, he stated to you, did he not, that they had a house that might suit you? A. Yes, in other places that I went around with him; I looked at them but they didn't suit me.

20 Q. He showed you several places that didn't suit you? A. Yes.

Q. And then finally he spoke to you about this particular house as having it for sale; he told you that he had this house 208 Renshaw Avenue for sale? A. No, he never told me that he had that house for sale.

Q. What did he say to you? A. He told me that he had a house for me, but he didn't tell me where it was.

30 Q. That he had a house for you? A. Yes.

Q. And then he took you and showed you 208 Renshaw Avenue? A. Yes, but he said he couldn't really draw up a sale on it yet, because there was some dissatisfaction about the people not wanting to sell.

Q. That was some other house? A. No, the same house.

40 Q. There was some dissatisfaction about the people not wanting to sell? A. They didn't want to sell.

Thomas J. Nagle—Cross

Q. And they didn't want to sell? A. That is what they told me.

Q. That was sometime before or at the time when he showed it to you? A. He told me before that, too.

Q. Did he mention this particular house? A. 10
No, he didn't mention the particular house before that at all, until I went down there.

Q. Then you don't know that it was as to this particular house that the people were objecting to sell, but it may have been some other house.?

Court: He said he does know.

A. That was the house. That was exactly the house that I knew that he offered.

Court: This man has been examined for an hour and says he cannot tell you the date 20
and yet you keep asking him questions about it.

Q. In regard to Mr. Lionel Meyers, you say you met him on Glenwood Avenue a short time before the deal was closed? A. Yes, sir.

Q. Are you sure it was before the deal was closed that you met him on the avenue, or after?
A. I met him before and after.

Q. Did you meet him after, too? A. Yes, but I didn't speak to him. 30

Q. You never spoke to him, then, about acting for you in this title? A. No, I never spoke to him about it.

Q. Didn't you call up his office on the 'phone?
A. I called up his office.

Q. And told the stenographer, or whoever answered, that you wanted him to act for you on this? A. That was before that.

Q. Did you? A. Yes, I called him.

Q. You testified that Mr. Demarest was with 40

Thomas J. Nagle—Cross

you that day at the closing. Is Mr. Demarest a lawyer? A. No, he is an importer in New York.

Q. So that you had no lawyer with you? A. No, I had no lawyer.

Court: Wasn't Mr. Meyers your lawyer?

10 Witness: Mr. Meyers was my lawyer.

Mr. Boggs: Will you kindly show me that bill which you showed Mr. Nagle?

Mr. Meyers: That is right with the exception of three dollars which Mr. Demarest took off for recording the deed.

Mr. Boyd: Mr. Nagle paid it?

Mr. Meyers: Except three dollars that Mr. Demarest took for recording fee. Mr. Demarest took care of the recording of the deed.

20

Court: Otherwise the paper is correct.

Mr. Boyd: I offer that in evidence.

Marked Exhibit C-12.

Court: So that Exhibit C-12 relates only to this particular transaction.

Mr. Boyd: Mr. Meyers voluntarily produced two statements of closing, one between the Monroe Investment Company and Mary E. Reimuller, showing the figures, and the other, closing between Monroe Investment Company and Nagle, showing the figures, and he consents that they be put in evidence.

30

Mr. Boggs: No objection.

Magdalena Nagle—Direct

MAGDALENA NAGLE, sworn:

Direct-examination by Mr. Boyd:

- Q. You are the wife of the last witness? A. Yes.
- Q. Who has just been on the stand? A. Yes. 10
- Q. Do you know Mr. Bernard Werbel? A. Yes.
- Q. When did you first see him? A. In the spring of 1921, or about that time.
- Q. With reference to the purchase of a house for yourself and your husband? A. I saw him on—the middle of June sometime.
- Q. Where was it that you saw him? A. I saw him in front of his office.
- Q. Whose office? A. Mr. McCoy's office. 20
- Q. Did you have a conversation with him at that time? A. Yes.
- Q. Tell the court what was said between you and him at that time. A. I asked Mr. Werbel if he have any houses for sale; he says he has one, but he couldn't just show me now, in a couple of weeks he will. I asked him where; he said, "Not far from here," but he didn't mention the town.
- Q. What was said; was Mr. McCoy's name mentioned in that conversation? A. No, not at that time. 30
- Q. How close to Mr. McCoy's office was it that you saw Mr. Werbel that day? A. Right in front of the door, a couple of feet away from the door.
- Q. You had other conversations with Mr. Werbel in connection with the purchase of this Renshaw Avenue house, had you? A. A couple of weeks after.
- Q. What was said at that time? A. Then he said if Mr. Nagle come up he show us the house, 40

Magdalena Nagle—Direct

but he couldn't show us in the house, inside, because of the dissatisfaction, and someone else was after the house and willing to pay \$500 on the house, and he said, "If you do want the house you had better hurry up and put the price on it."

10 Q. Was Mr. McCoy's name mentioned in that conversation? A. Not at that time.

Q. When was Mr. McCoy's name first mentioned in conversation between you and Mr. Werbel about that matter? A. When we tried to pay the deposit, the first deposit.

Q. And what did you say then what did Mr. Werbel say? A. I asked Mr. Werbel was he the one to take it up with or Mr. McCoy; he said, no, he is doing the business for Mr. McCoy. He said
20 Mr. McCoy give him that privilege to close the deal, to do his business himself.

Q. Were you present at the closing of the title when the deed was delivered in October? A. No, late in December.

Court: Don't get confused, Mrs. Nagle. The deed seems to have been dated and delivered in the last of October. You say December?

Witness: No, September. Not December; it was late in September.

30 Q. You were present, were you, at Mr. McCoy's office? A. Yes, I was.

Q. In September do you mean or October? A. No, September; late in September, around the twenty-eighth or twenty-ninth of September, when the deal was closed.

Q. The papers seem to indicate that the deal was closed October 28th or 29th; your husband says it was on the twenty-eighth of October or twenty-ninth; why do you think it was September,
40 ber, not October? A. We moved there on the

Magdalena Nagle—Direct

twenty-ninth of—October, I think; I don't quite remember just now; it must have been October, yes.

Court: Who was present when you were there?

Witness: My husband, Mr. Demarest, and Mr. McCoy; Mr. Werbel wasn't there. No one else. 10

Q. Who else was present; was Mr. Meyers there? A. I don't think he was there.

Q. Was this gentleman—Mr. Landow—there? A. Yes, he was there.

Q. Where was the meeting held? A. In Mr. McCoy's office.

Q. Was it day or night? A. Night.

Q. Was that the time when the deed was delivered to you and your husband and taken away by Mr. Demarest? A. Yes, that night. 20

Q. At that time what conversation did you have with Mr. McCoy on the subject of closing the title; I will first ask who had charge of closing it; who was attending to it? A. Mr. McCoy.

Q. What was said there that night by everybody? A. Mr. Demarest was asking Mr. McCoy—he told Mr. McCoy that he found out about the \$500 we paid more than we should for the house, and he said, "What are you going to do about it, Mr. McCoy?" Mr. McCoy said, "I don't intend to do anything about it." He said, "You know Mr. Nagle is poor and he don't know much, and I want you to the square deal with him." He said, "I am in a hurry, but if you want to close the deal, all right; if not," he said, "I will go home." Mr. Demarest said, "What are you going to do about the \$500?" He said, "I won't do anything." He said, "Aren't you going to go fifty-fifty with Mr. Nagle anyway?" He said he wouldn't do that. 30

Q. Did he say why? A. He said he was in a 40

Magdalena Nagle—Direct

hurry; he said he don't get nothing for it. He said, "I am doing this for \$20, and I want it closed as quick as I can. I don't want to waste too much time.

Q. What else was said that night by anybody?

10 A. Mr. Demarest said, "Go ahead," and "What do you think about it, Nagle?" because Mr. Nagle said, "I don't know what to do, because we have no place to move," and the other place was sold and we had to move. He said, "If you want to close it, all right," and Mr. Demarest said, "All right, and you had better close it, if you want to," and he went ahead and closed it.

Q. Do you know why the title wasn't closed on the first of October, the first contract called for?

20 A. I told Mr. McCoy—I told Mr. Werbel that I wouldn't buy the house until I sold the other house on Walnut Street, and he said that was understood and I didn't know that he marked it on the first of October that I would close the deal, until we closed the deal with the other house; I told him to be sure not to sell my house until we buy the other place and ready to move.

Court: The date is October first in the contract?

Mr. Boyd: Yes.

30 Q. Think carefully now about Mr. Meyers. Was Mr. Meyers there; who was making up the figures? A. Mr. McCoy.

Q. You don't remember seeing Mr. Meyers?

A. I don't quite remember.

Q. Did you know him by sight? A. Yes, but I don't remember was he there or not.

Magdalena Nagle—Cross

CROSS-EXAMINATION by Mr. Boggs:

Q. Mrs. Nagle, were you present when the sale of your house, the Walnut Street, was closed? A. Yes, I was.

Q. Are you sure that you are not mixing up the sale of the Walnut Street house with the purchase of the premises 208 Renshaw Avenue? A. No, I am sure. 10

Q. You think that what you testified to was surely at the time of the closing of the purchase of the Renshaw Avenue house, and not the closing of the sale of your own house, 27 Walnut Street? Do you understand me? A. Not quite.

Q. You told us about talking with Mr. Demarest and asking Mr. McCoy about the \$500; was there any dispute between you and Mr. Nagle and Mr. McCoy over \$500 connected with your Walnut Street house? A. No. 20

Q. Was there any dispute about the purchase price—the amount which was paid for that house, the Walnut Street house—was there any dispute between you and Mr. McCoy about the matter? A. Yes.

Q. What was the dispute about? A. On Walnut Street, because we were supposed to sell the house for \$6500, and did have my \$6500 to my deposit the same day, and the next day he brought more people in the house and said he couldn't sell the house for that price, and he said the best that he could get was \$5750, and he already got the deposit on the \$6500. 30

Q. Did you have a quarrel with him then? A. I did; I went the same day to Mr. McCoy, and Mr. Werbel wasn't there, and he said, "All right, Mr. Nagle, sit down, take a seat, your house is sold. We didn't say anything about it; we just went in the office and Mr. McCoy said, "Sit down, Mr. 40

Magdalena Nagle—Cross

Nagle, your house is sold, 27 Walnut Street, for the price you want, \$6500."

Q. How much did you get out of it? A. \$6250.

Q. What became of the balance of the \$6500; why didn't you get \$6500? A. We had to sell
10 because the man didn't want to pay \$6500 then; he wouldn't pay that much.

Court: Apparently they had a dispute almost over the same amount.

Q. You say you first saw Werbel about buying the house; when do you fix that time when you say you first talked to him about buying a house?
A. Sometime in June.

Q. You think it was in June? A. Yes.

Q. Simply told him that you wanted to buy a
20 house? A. Yes, I wanted to buy a house and he said he will find a nice house in a couple of weeks, if I come up, and tell me about it; he said he thinks he has a nice house for me, but I got to come in a couple of weeks, because there is some disagreement there.

Q. When did Mr. Werbel first speak to you about the purchase of the house on Renshaw Avenue, the one you bought? A. Just the time when I am asking him.

Q. Did he show you that? A. He said he come
30 in a couple of weeks, and he said "not far from here."

EXAMINATION by the Court:

Q. When did you first know that the house was on Renshaw Avenue, that he had for you to buy—was located on Renshaw Avenue? A. He told me it was "not far from here."

Q. When did you first know the name of the street on which the house was located? A. He
40 didn't tell me the name.

Magdalena Nagle—Cross

Q. Did you ever find it out from him? A. No, not until he took us to see it.

Q. When was that? A. In June—late in June.

Q. June or July? A. That was in July; that is right. 10

Q. What time in July? A. In July, around the twentieth, I think.

Q. Did you go in the house that time? A. I didn't go into the house because he said he couldn't take me in.

Q. Did you ever go into it before you took title to it? A. No.

Q. Your husband went in, didn't he? A. My husband went in as a painter or paper hanger. 20

Further CROSS-EXAMINATION by Mr. Boggs:

Q. And that was a day or two before your husband paid the deposit, wasn't it, that you went to look at the house? A. No, I believe he did pay a deposit on it; he paid \$250 before I saw the house.

Q. But you saw it from the outside? A. Yes.

Q. But he saw it from the inside? A. But he saw it from the inside.

Q. When you saw it from the outside was a day or two before he paid the deposit of \$250, wasn't it? A. The day before he paid the deposit we saw the house from the outside. 30

Q. That would make it about the twenty-sixth or twenty-seventh or twenty-eighth? A. Yes.

Complainant rests.

Lionel L. Meyers—Direct

LIONEL L. MEYERS, sworn for defendants:

Direct-examination by Mr. Boggs:

Q. You are an attorney at law and solicitor in chancery? A. Yes, I am.

10 Q. When were you admitted? A. In 1919 I believe.

Q. What did you have to do, if anything, with the transaction relating to the sale of the house 208 Renshaw Avenue to Mr. Nagle, the complainant? A. I made a search and closed title.

Q. State what part you took in the transaction? A. I made the search and closed the title.

20 Q. How did you come to make the search and take care of the closing? A. Mr. McCoy called me up and said, "Mr. Nagle wants you to make a search."

Q. Had you known Mr. and Mrs. Nagle prior to that? A. No, I had not.

Q. Ever done any work for them prior to that? A. No.

Q. When did he call you up? A. Offhand I should judge it was around September sometime; in the early part of September.

30 Q. Go on. A. I made a search and then I closed the title, and Mr. Demarest was there at the time of closing, and my recollection is that—

Mr. Boyd: This is not responsive.

A. (Continuing)—I appeared at Mr. McCoy's office in the evening, I think of October 28th and 29th, to close this title, and Mr. Demarest was there and Mr. Nagle; we met in the outer office.

40 Q. Who else was there? A. That was prior to closing the title. I don't believe the other side had arrived, and Mr. Demarest asked me if I had the search ready, and I said, "Yes," and he looked it over; we discussed the thing, and I told

Lionel L. Meyers—Direct

him the title was in the Monroe Investment Company, and then we adjourned to the inner room and closed the title. I figured up the figures together with Mr. Demarest, and during the course of the closing some question came up about a reduction on the purchase price, and Mr. McCoy and Mr. Demarest talked about that. 10

Q. What was the reason for that? A. I don't recollect just what the reason was; I know they were not satisfied or something of that sort.

Q. Don't you remember what was said about it? A. The exact conversation I don't know.

Q. Not the exact words, but the substance of it. A. They thought they were paying too much for the house; that was the general impression.

Q. Did they state that they found out that Mr. McCoy and his parties were making \$500 off of it? A. No, not in exact words. 20

Q. I didn't say "exact words"; did they make such a charge or make such a complaint? A. No, I don't think they did make that complaint, and then Mr. Demarest asked me to step out of the room with him, and we went into the outer office and Mr. and Mrs. Nagle came along and took up the matter with me and asked me if I couldn't use some persuasion with him and get them to reduce it a couple of hundred dollars. 30

Q. What reasons were given you; how were you to use any argument or persuasion? A. I don't know why they should have asked me to do that, except they knew that I had made a search and represented the Monroe Investment Company.

EXAMINATION by the Court:

Q. What ground had they to expect or ask for a reduction on? A. They thought the price was too much. 40

Lionel L. Meyers—Direct

Q. When did they arrive at that conclusion? A. At the time of closing was the first time that it came to my knowledge.

10 Q. Did they say why they thought it was too much then, when they hadn't thought so at the time of signing the contract? A. It has been so long, Your Honor, that I don't—I want to do justice and testify to just what happened, but I don't recollect the exact affair.

Q. You have been a defendant in this suit for some time? A. I have.

Q. You have known more or less that you would have to testify to what occurred; why can't you tell me what happened? A. I haven't the dates when these answers were filed or the bill.

20 Mr. Boyd: They were filed within twenty days from the filing of the bill. The bill was filed in January.

Q. You notice by the bill that these people charge that they were defrauded? A. Yes, I have gone through that.

Q. Didn't that bring to your mind the whole transaction and the discussion that night, as a lawyer? A. Yes.

30 Q. You knew that your professional and personal conduct was called in question? A. I did.

Q. It seems to me you ought to be able to tell me all that took place at that meeting; that is what I want to know; that is the whole gist of this controversy. A. Mr. Demarest said that they didn't feel satisfied with the deal, and they thought that the Monroe Investment Company, or Mr. McCoy, ought to take something off the purchase price.

40 Q. Were you attorney for Mr. McCoy at any time? A. No—for Mr. McCoy? Yes, I have been.

Lionel L. Meyers—Direct

Q. Were you at that time or had you been? A. Yes, I had been.

Q. Were you attorney for the Monroe Investment Company? A. I was.

Q. Were you a stockholder in it? A. There was never any stock issued. 10

Q. Were you interested in it? A. Yes, to the extent of holding one share of stock.

Q. Did you ever get any profit at any time out of it? A. No.

Q. Did you make any profit out of this transaction? A. No, sir.

Q. As a stockholder? A. No, sir.

Q. Were you an officer of the company? A. I was at one time; I resigned.

Q. At this time? A. No—just for the purpose of incorporating, getting the company going. 20

Q. Wasn't Mr. McCoy or this other gentleman, Mr. Werbel, weren't they accused by Mr. and Mrs. Nagle and Mr. Demarest, of not acting in good faith in this transaction, of having taken title to this property in the name of their own company? A. Not to my recollection.

Q. And then raised the price \$500 and then sold it to them? A. Not at the time of the closing.

Q. At any time? A. No, never brought it to my attention. 30

Further DIRECT-EXAMINATION by Mr. Boggs:

Q. When did you first know or learn, Mr. Meyers, of the agreement between Mrs. Reimuller and Mr. Werbel, Exhibit C-1? A. When Mr. Werbel purchased from Mrs. Reimuller.

Q. I mean the agreement for the purchase. A. I think that was turned over to me to make a search; I am not certain, but I think it was. 40

Lionel L. Meyers—Direct

Q. Do you know when? A. No, I cannot tell you just exactly when.

Q. And the agreement for the purchase by Mr. Nagle? A. I never saw that until the time of closing.

10 Court: You drew the assignment, didn't you, of this contract?

Witness: No.

Q. From the original vendor? A. Yes, I believe I did. I can tell better when I see the contract.

Q. On C-1? A. Yes, I think that was signed at the time of closing.

Court: Counsel said this was assigned.

Mr. Boggs: From Yampol to Nagle has been assigned.

20 Mr. Boyd: But not on my copy.

Mr. Boggs: I offer same in evidence. Marked Exhibit D-3.

Court: You drew the assignment of that contract, Exhibit D-3, to the Monroe Investment Company?

Witness: No.

Court: Did you know of the assignment?

Witness: No.

30 Court: When did you first learn of it?

Witness: When we closed title; that was the first time I saw the contract.

Mr. Boggs: When you closed which title?

Witness: Between the Monroe Investment Company and Mr. Nagle.

EXAMINATION by the Court:

Q. And had you made any report on this title that you searched, to Mr. Nagle? A. Yes.

40 Q. Between the time in July, when you were employed by Mr. McCoy, and October, when the

Lionel L. Meyers—Direct

title was closed? A. I think I discussed it once with Mr. Nagle, that is, when I closed this title, when I closed the Walnut Street title for him, I represented him there, and that was on the twenty-fifth of October. At that time he was anxious to get in, and he said he wanted to get in, and I told him I was ready, and had also written to him, advising him that I was ready. 10

Q. Do you know when this assignment was made to the Monroe Investment Company? A. I haven't the least idea.

Q. Do you know why it was made? A. I do not.

Q. Was Yampol a member of the investment company? A. Yes, he was vice-president, and held stock, and one of the incorporators. 20

EXAMINATION by Mr. Boggs:

Q. Were you acting for Mr. McCoy in and about the examination of this title or for Mr. Nagle alone? A. In this last transaction?

Q. Yes. A. I represented Mr. Nagle.

Court: Mr. Nagle said he met you on the street sometime late in July, and you urged him to close the title, that you were all ready to pass it.

Witness: I never did. I don't remember ever meeting Mr. Nagle on the street, other than after we closed the title, and then I stopped to ask him if he had filed the assignment of the building and loan shares with the secretary, and he told me he had filed it and reduced his mortgage some. 30

Q. How long after the closing was that? A. I should judge two or three weeks after.

Q. Did he express any dissatisfaction to you at that time? A. Not to me, no.

Q. Or was anything said about the deal? A. Absolutely not. 40

Lionel L. Meyers— Cross

Q. About the sale? A. Not a thing.

Q. Were you secretary of the Monroe Investment Company? A. I was for a short time while we organized it.

Q. Do you remember when you resigned? A.
10 The exact date I do not know.

Court: The answer states October 8, 1921.

Witness: It must have been October 8.

Court: Why did you resign?

Witness: Because prior to that—a few days prior to that time, the Monroe Investment Company sold a piece of property and I signed as secretary, and I didn't want my name to go on record as secretary; that was the only reason for resigning.

Q. I think you testified as to your interest in a
20 single share. A. I had a single share of stock, which was never issued.

Court: Did you pay for it?

Witness: It was supposed to be given to me for services.

Q. You incorporated the company? A. I did.

Mr. Boggs: I have here the certificate of incorporation of the company, which I will put in evidence. I want to show the
30 time when the company was incorporated. I think it may be material.

Court: You may offer it.

CROSS-EXAMINATION by Mr. Boyd:

Q. You said that you didn't know until that evening when you all gathered to close the Nagle title, that Mrs. Reimuller was the owner of 208 Renshaw Avenue? A. No, I didn't say anything of the sort.

Q. What did you say? A. I said I had not seen
40 the contract between the Monroe Investment Com-

Lionel L. Meyers— Cross

pany or Mr. Yampol and Mr. Nagle until the night we closed the title.

Q. When you searched the title for Mr. Nagle, you discovered, didn't you, that the record title was in Mary E. Reimuller? A. No, the Monroe Investment Company.

10

Q. You knew that before he called on you to search the title? A. I think so, yes; I must have; I closed it in September sometime; I must have known it.

Q. When were you requested to search the title? A. I imagine that must have been in the early part of September or around the latter part of July.

Q. The whole month of August you haven't mentioned. A. I mean between August and July.

20

Q. Then when, after you were requested to search the title and before the time for closing with Mr. Nagle—of course you did know because your search showed you that Mary E. Reimuller was the owner, didn't you? A. Yes, up to the thirteenth of September.

Q. 1921? A. The twelfth of September, 1921; I closed on the twelfth.

Q. Before you took that acknowledgement and recorded that deed from Mary E. Reimuller to the Monroe Investment Company, you knew that she was the owner of record? A. I did.

30

Q. How long before? A. I cannot give you the definite time.

Q. As nearly as you can. A. I should judge at least three weeks before, because my search must have been completed.

Lionel L. Meyers— Cross

EXAMINATION by the Court:

Q. Do you know Mrs. Reimuller? A. Yes.

Q. Was she connected with the Investment Company? A. No.

10 Q. Or with Mr. McCoy's business? A. No, she worked for the Park Commission.

Q. Did you learn why the conveyance was made by her to the Monroe Investment Company on the thirty-first of August? A. Did I learn why?

Q. Yes. A. I don't quite gather what you mean.

Q. Why was the deed from Mrs. Reimuller to the Monroe Investment Company made on August thirty-first? You knew it had been sold to Nagle prior to that? A. Yes.

20 Q. And now you were searching the title? A. Yes.

Q. Why wasn't it kept in her name and conveyed? A. Because the Monroe Investment Company told me they purchased it and I was to make a search for them.

Q. You were searching at the same time for Nagle? A. I was.

Q. Did you call Nagle's attention to the fact that the property you were searching for him had been sold to the Monroe Investment Company? A. At the time of closing?

30 Q. No, after you found it out? A. I only saw him once.

Q. You knew where he lived? A. Yes.

Q. That was the twelfth of September at least; why didn't you tell Nagle something about it between that and the 28th or 29th of October?

A. I didn't think it was necessary.

Q. You didn't? A. No.

40 Q. Didn't it look strange to you that the property that your client Nagle had agreed to purchase, and which had been sold to him, should be

Lionel L. Meyers— Cross

conveyed to another company in which you were the secretary? A. No, I didn't think that was strange.

Q. You were secretary at that time? A. Yes, at that time I was. It is common for people to buy property one day and sell it the next day. 10

Q. Do you have people buy property and sell it when you are acting, when it has already been sold to someone else? A. I didn't—

Q. You knew it was sold to Nagle, because you were searching the title? A. Yes.

Q. Then why did you as secretary of the Investment Company in which you were interested to that extent at least, allow that company to take title from her, without objection, or without informing Nagle of the fact? A. I hadn't seen Nagle's contract; I didn't know whether Nagle was buying from Monroe or anybody else. 20

Q. Didn't you inquire? A. No.

Q. Why didn't you get a copy of the contract? A. I was lax in that.

Q. You knew what property he was buying? A. Yes, they told me 208 Renshaw Avenue.

Q. You knew what property she was conveying to the Investment company? A. Yes.

Q. Can you give us any better explanation of your conduct in this matter than you have already given? A. I don't think so. I think I carried it out to the best of my ability. 30

Q. I want you to tell me what explanation you have to offer; I will do the thinking about it; I want to give you full latitude to put on the record anything you wish to say about this transaction. (No answer.)

Lionel L. Meyers— Cross

Further CROSS-EXAMINATION by Mr. Boyd:

Q. At that time you lived at 36 Monroe Place?

A. At that time, I don't think so.

Q. At the time that contract between Nagle and
10 Yampol was made? A. No, I was not living there
—yes, I lived next door to 36.

Q. You and Mr. Yampol lived in the same
house? A. No.

Q. How close did he live to you? A. I don't
know where he lived.

Q. Where did he live then in July, 1921? A. I
don't know.

Q. You mean that he and you didn't live to-
gether in the same house? A. Mr. Yampol and I
20 didn't live together in the same house.

Q. Did he live in the same house with you? A.
No, he did not.

Q. At no time? A. No, sir, at no time.

Q. How close did he live? A. I don't know
where Mr. Yampol lived.

Q. How long have you known Mr. Yampol? A.
Only a short while; he is in business in Bloom-
field.

Q. What kind of business? A. The restaurant
30 business.

Q. I call your attention to this contract, Exhibit
C-1, dated July 28, 1921, from John I. Yampol and
Thomas J. Nagle. You say you never saw that
contract until you got together on the night of the
closing? A. That is absolutely true.

Q. When you were asked to make a search how
did you know where to begin your search if you
didn't know who was contracting to sell the prop-
erty to Mr. Nagle? A. I had already closed—I
40 had searched the title for Monroe Investment
Company, and it was only a question of picking
up the title there then and continuing it down.

Lionel L. Meyers— Cross

EXAMINATION by the Court:

Q. When did you search for them? A. The report is from the searcher.

Q. When did you search from the Monroe Investment Company? A. On August 17, 1921, shows my search.

10

Q. Why did you search for them at that time? A. Because they had purchased it, and they asked me to.

Q. How did you know that they purchased it? A. They advised me.

Q. Whom do you mean by "they"? A. Mr. McCoy had advised me.

Q. That his company had purchased it? A. I didn't know whether the company had purchased it, or Mr. Werbel had purchased it, one of them had.

20

Q. You said you made a search for the Monroe Investment Company in August; is that right? A. I made a search, whether it was for the Monroe Investment Company or for Mr. Werbel; I don't know if the company was in existence.

Q. Who paid you? A. Mr. my searcher.

Q. Who is he? A. He searches for me, the Monroe Investment Company I believe paid me.

Q. Don't you know? A. The Monroe Investment Company must have paid me.

30

Q. Why do you think that, if you searched for Werbel? A. Because Mr. Werbel and Mr. McCoy organized the Monroe Investment Company and the assets were put in there, and this was work for the Monroe Investment Company.

Q. When was the Monroe Investment Company organized? A. I don't know the date.

Mr. Boggs; I have the certificate here.

Witness: I think August 21, 1921.

40

Lionel L. Meyers— Cross

Mr. Boggs; It was recorded in the County Clerk's office on the 19th of August, 1921, and the certificate of incorporation was dated August 16th.

10 Q. At the time you closed this matter for Nagle, you knew that the Monroe Company was making a profit on this transaction, didn't you? A. At the time of the closing, I did.

Q. How long before that had you learned of that? A. I hadn't until the night I saw the contract.

20 Q. Mr. Demarest had been to see you and complained that these people were not being treated fairly? A. No, he came down once and told me to draw the deed and close the other transaction.

Q. This Exhibit C-14, which is the settlement statement of September 12, 1921, between Mrs. Reimuller and Monroe Investment Company, was prepared by you? A. It was.

Q. Acting for the Monroe Investment Company? A. Yes.

Q. And at that time you were still searching the property for Mr. Nagle? A. I don't know whether at that time I was or not.

30 Q. Had you concluded your search or begun it? A. I don't think I started the search for Mr. Nagle.

Q. What was the sense of searching for Mr. Nagle when you were already searching it and had finished it? A. I made a continuation for him.

Q. From when? A. From the time the Monroe Investment Company took it.

Q. September 12th? A. Yes.

40 Q. Did you make such a continuation? A. Yes, I gave him his abstract.

Lionel L. Meyers— Cross

Q. Have you a copy of the abstract here? A. Yes.

Q. Let me see it? A. (Producing same.)

Further CROSS-EXAMINATION by Mr. Boyd:

Q. Did you ever tell Mr. Nagle that the Yampol contract called for \$500 more in purchase price than the Monroe Investment Company were paying for the property? A. No, I did not.

Q. You say that on that occasion you represented him and not Mr. McCoy? A. Yes.

Q. Explain to the Court why you kept secret from your own client that piece of information which he was entitled to know. A. At the time of closing.

Q. Yes. A. Mr. Demarest was carrying on the transaction for him; I had very little to say, Mr. Boyd; everything seemed to go through Mr. Demarest. All I was there for was to figure up the figures. He did the talking for Mr. Nagle from the very outset, the time when we got there.

Q. You had to pass on the deed? A. I had to pass on the deed.

Q. And on the title? A. And on the title.

Q. And on the encumbrances, in the way of taxes, and what not, connected with the matter?

A. Yes, I passed on all this.

Q. And in all that you represented Mr. Nagle? A. I did.

Q. You told him about all those matters? A. I believe I did.

Q. Explain why you told him nothing about the \$500. A. I don't know whether I told it to Mr. Nagle or to Mr. Demarest. Mr. Demarest examined that abstract of mine, and I told it to him.

Lionel L. Meyers— Cross

Q. You know that Mr. Demarest wasn't a lawyer? A. I knew it.

EXAMINATION by the Court:

10 Q. Will you look at the abstract and show me where there is any continuation of it at any time?

A. I have set forth the whole title.

Q. I know you have; you told me a moment ago you made a continuation of it from the time you stopped. A. I gave him a certificate for the whole title.

Q. Is there anything on your abstract to show that it was not all done at one time, and not a continuation? A. No, there is nothing there to show that.

20 Q. Then you didn't make the continuation you told me about? A. Yes, I believe I did.

Q. You mean you carried it down to the date of closing? A. Yes.

Q. There wasn't any continuation? A. That is what I meant.

Further CROSS-EXAMINATION by Mr. Boyd:

30 Q. You charge him \$60 for a continuation search from September 12th to the latter part of October?
A. That is right.

Q. Did you tell him that it was only a continuation search that you were charging him for? A. No, I hadn't told him that. I had searched the title prior to that examination of title, and I ran it down to date and gave him a full abstract certificate.

40 Q. Why did you charge him \$65 for continuing it a matter of six weeks? A. I thought it was a reasonable fee.

Lionel L. Meyers— Cross

Q. Why did you think it was reasonable? A. That is the usual charge.

Q. What do you mean usual, the rates? Do you know anything about the statutory rates, how search fees are calculated? A. No, I don't.

Q. Whose usual rates are you talking about? 10
A. The rates I think are customary in the profession.

Q. How do you charge; so much per book, per name and year? A. No, the amount of work involved, and the time spent in closing.

Q. Did you charge anything extra for time spent in closing? A. I bulked it altogether and charged him \$65.

Q. Your bill doesn't show that. A. Yes, search and time spent in closing. 20

Q. And time spent in closing took about an hour one evening? A. It might have been longer.

Q. I call your attention to Exhibit C-3, which was sworn to before you, apparently, under date of September 12th; you at that time knew what Mrs. Reimuller was getting for the property, because you prepared the statement at that time? A. I knew it.

Q. Did you ever indicate to Mr. or Mrs. Nagle, at any time what Mrs. Reimuller was getting out of this property which they were buying? A. No. 30

The Court: You drew the contract between Mrs. Reimuller and Werbel?

Witness: Yes.

Q. You wrote Mr. Nagle two or three letters? A. I believe I did.

Q. When you wrote him first, under date of September 20, when you advised him that the search for the property 208 Renshaw Avenue is complete, why didn't you state in the letter in whom you 40

Lionel L. Meyers— Cross

found the title and what the encumbrances were?

A. I didn't think it was necessary.

Q. Don't you ordinarily, when you make a report on a title, state in whom the title is found?

A. I don't do that; I usually bring those things to the parties' attention at the time of closing.

10 Q. You had no purpose of keeping secret from him who the owner of the property was when you wrote that? A. No, as far as I was concerned, it appeared to be an out and out sale and resale.

Q. You knew that the Monroe Investment Company on September 12th had bought the property from Mrs. Reimuller—the same property your client had already agreed to buy? A. Yes.

Q. And eight days later you didn't report to him who the real owner was; explain it if you can.

20 A. No, I didn't.

Court: Did you have your search complete then?

Witness: Yes. I knew I closed for the Monroe Investment Company. I knew that they owned it and I didn't think it was necessary.

Q. Didn't think what was necessary? A. To inform him that Monroe Investment Company owned it. I thought he knew from whom he was buying.

30 Q. Did you draw the deed from the Monroe Investment Company to him? A. No, I don't think I did, I know I didn't draw it. The only deed I drew was one from Mrs. Reimuller.

Q. Did you act at the closing for him? A. No—you mean for the Monroe?

Q. For Mr. Nagle. A. Yes, I was there at the closing; I took care of the figures, together with Mr. Demarest.

Q. Did you see his contract? A. Yes.

40 Q. Read it? A. Yes.

Lionel L. Meyers— Cross

Q. And compare it with the deed? A. Yes.

Q. The description? A. I don't think the contract had a description in; I think it just gave a recital, and the number and address. I had the deed there that I had drawn for Mrs. Reimuller. I knew the description and compared it at the office. 10

Q. And you then knew, whether you knew it before or not, that Mr. Nagle was paying \$500 more to the Monroe Investment Company for this property than they had just paid to the Monroe Investment Company for this property.

Court: Did you have a copy of the contract of Mrs. Reimiller at the time you made the search for the Monroe Investment Company?

Witness: I don't think I had that contract. I believe the assignment was put on there at the time of closing, because I refused to close without a proper assignment from the Monroe Investment Company given from Mr. Werbel. 20

Q. Was he present at the time of closing? A. I think he was, because the contract was between Mrs. Reimuller and Mr. Werbel, and not between the Monroe Investment Company, and that I turned over to Mrs. Reimuller with her contract.

Q. Isn't it a fact that Mr. McCoy or Mr. Werbel instructed you not to tell Mr. Nagle what price the Monroe Investment Company had just paid for the property? A. No. 30

Q. Did you ever have any conversation with him on the subject of the price? A. Never.

Q. Nor on the subject of the price which Mr. Nagle was going to pay? A. No, the only thing I was instructed to make a search.

Court: How much did you get for the Monroe Investment search?

Witness: I don't know what I charged them; I haven't the bill here. 40

Lionel L. Meyers— Cross

Court: What do you think it was?

Witness: I done general work for them; I rendered a general bill, and I imagine I charged them about the same as I charged Mr. Nagle.

Court: For the search?

10 Witness: For the services rendered in this transaction.

Q. You say Monroe Investment Company was organized by you, and that no stock had ever been issued to you down to the time of this transaction?

A. No, I never received a share of stock, although it was given to me for services.

Q. Was it a duly organized corporation? A. Yes.

Q. At that time? A. Yes.

20 Q. You say no stock had ever been issued? A. No.

Q. Had the stock been subscribed for? A. It had, and been paid for.

Q. How much? A. I don't know the exact amount. The certificate is there; I know it was all paid, and paid up; fully paid and nonassessable. They had paid in cash and in property.

30 Q. Why wasn't the stock issued? A. It was really—it was Mr. McCoy's and Mr. Werbel's company, practically, and rather than deal as partners, they organized the company.

Q. They were partners in business? A. No, only in this company. Mr. McCoy runs a real estate business.

Court: Mr. Werbel is employed by Mr. McCoy?

Witness: Yes.

Court: As a salesman?

Witness: Yes.

40 Q. The Monroe Investment Company had its principal office at your office in Newark? A. It did.

Lionel L. Meyers— Cross

Q. 790 Broad Street? A. Yes.

Q. You are designated as agent in charge upon whom process against the corporation may be served? A. Yes.

Q. And the John I. Yampol, who made the contract for the sale of this property was one of the incorporators, wasn't he? A. I think so. 10

Q. And it was incorporated immediately after the contract made by Mrs. Reimuller with Mr. Werbel? A. That I cannot say.

Q. That contract appears to be dated the nineteenth of July; this was incorporated just after that? A. Yes, I think so.

Q. At whose direction did you organize this company? A. Mr. Werbel's and Mr. McCoy's.

Q. How was Mr. Yampol connected with Mr. Werbel and Mr. McCoy? A. What do you mean; in what way? 20

Q. Just what I say; how was he connected with the enterprise? A. Employed?

Q. How was he connected? What connection had he? A. I don't think he had any.

Court: Why did he use him as a dummy in this transaction?

Witness: I don't know why he used him; they brought him in there as an incorporator. They wanted a third party, or something of that sort, and they used him as an incorporator. 30

Q. You knew he was a dummy? A. I do.

Q. You knew that he was a dummy in this contract? A. What contract?

Q. The contract with Nagle. A. No, I didn't know it until the time of closing.

Court: Then how did you find it out that he was a dummy?

Witness: Because they assigned it to the Monroe Investment Company. 40

Lionel L. Meyers— Cross

Court: He had, you mean; you say "they."

Witness: Yampol had assigned it; that is the only conclusion I would draw.

Court: Didn't you know, independent of that, that he was acting as a dummy in the transaction?
10 He had prior to the incorporation of the company acted in such capacity?

Witness: Yes.

Q. Did you tell Mr. Nagel that Mr. Yampol had assigned his contract to the Monroe Investment Company, too? A. No, Mr. Boyd, I didn't think that those transactions were necessary to be brought to his attention, because it was an out and out sale between Reimuller and the Monroe Investment Company, and an out and out sale between the Monroe Investment Company and Nagle. I didn't think it made any difference.
20

Q. You knew that this property was being purchased, in fact, by McCoy through this agency, and through Werbel and through another dummy, didn't you—you knew that for the purpose of selling it to Nagle? A. No, I did not.

Q. You never thought of that? A. I may have thought of that at the time—when I got ready to close, when I saw the transaction in that light.

Q. But you hadn't seen it in that light before?
30 A. No.

Q. You didn't tell Nagle anything about it when you saw that? A. No. At the time of closing, that discussion came up.

Court: What discussion came up?

Witness: Mr. Demarest hemmed and hawed about the whole transaction.

Court: What did he hem and haw about?

Witness: He thought it wasn't a fair transaction, that they were paying too much for the property.
40

Lionel L. Meyers—Re-direct

Court: What did he think was unfair about it?

Witness: He thought the price—

Court: How did he hem and haw?

Witness: I related how he went out in the outer office and discussed the thing, and he wanted a reduced price, and get them to reduce the price, etc. 10

Court: What else did he do in heming and hawing; what did he say?

Witness: I haven't the faintest recollection what else he said, other than the price was exorbitant.

Court: Did he say he had been defrauded out of \$500?

Witness: No, he never said that.

Q. He didn't object on the ground that he had found out that Mrs. Reimuller was going to get \$500 less for the property than was being charged Nagle? A. No, never mentioned anything like that. 20

Court: Didn't he accuse either Mr. McCoy or Werbel, of the fact that he had gone to them, having confidence in them to get him a home, and that they had learned of this Reimuller property and had purchased it from her for \$7250 and turned around then and sold it to him for \$7750?

Witness: No, I don't think they mentioned that. 30

Q. That was never said? A. No, it didn't come out in those words.

Q. I didn't ask you "in those words," but in substance, was that said? A. No, sir.

RE-DIRECT-EXAMINATION by Mr. Boggs:

Q. When you were employed to examine the title to this property, you had a search made, and you discovered that the title was in Mrs. Reimuller? A. I did. 40

Lionel L. Meyers—Re-direct

Q. And you were employed by the Monroe Investment Company and knew of the sale by the Monroe Investment Company to Nagle?

Mr. Boyd: I object; there wasn't any at that time.

10 Court: At that time—I don't know that Mr. Boggs has fixed the time.

Mr. Boggs: I say, when he made the search, he found the title in Mrs. Reimuller.

Court: He said when he closed the matter on September 12, he knew the title was in her; he didn't say when he made his search he knew the title was in her.

Q. When did you make the search? A. My report from the searcher shows he completed his
20 search on August 17, 1921. He must have run it down to date for me. There were some questions in the title that I had to take up. There were questions about two deeds and I took that up and settled that.

Q. Then the first search that you had made on the property was made on or about the nineteenth of August? A. Seventeenth August.

Q. And you found the title in Mrs. Reimuller? A. I did.

30 Q. And when did you first learn or know of the agreement for the sale by the Monroe Investment Company to Mr. Nagle?

Mr. Boyd: I object; there wasn't any; there is no evidence of any agreement between Monroe Investment Company.

Mr. Boggs: Of the agreement for the sale of this property to Mr. Nagle; when did you first learn of it?

A. That was at the time of closing.

40 Court: You are under oath; take your time.

Witness: I am confused.

Lionel L. Meyers—Re-direct

Q. When did you first learn of the sale, or agreement for sale to the complainant, Nagle? A. I think it was around the middle of September or before that.

Court: Do you know what you are swearing to now? 10

Witness: Yes.

Court: Do you remember what you just swore to less than ten minutes ago? You selected three different months, July, August and September; you finally selected either July or August; now you undertake to fix it September.

Witness: I don't recollect.

Court: I don't want you to swear to something that you don't know what you are talking about.

Witness: Then I must say that I don't know. 20

Court: If that is the truth say it.

Witness: I don't know the exact time.

Court: You said that sometime in July Mr. McCoy called you up and told you to make this search for Nagle; later you corrected that to September. When I reminded you that you omitted the whole month of August, then you say it must have been July or August.

Witness: I am not certain; I am not absolutely certain; I am trying to fix a date. 30

Q. Are you sure now about your dates as to when the first search was made? A. Yes, I have that before me.

Court: At the time that search was completed, did you know that Nagle was going to buy the property?

Witness: I don't know.

Q. You have no recollection of it? A. I don't remember. I have no records that will refresh my memory. 40

Lionel L. Meyers—Re-direct

Q. Did you get any word in your office from your stenographer as to being called up by Mr. Nagle in regard to making a search? A. Yes.

Q. Do you know when that was? A. No, I cannot fix the date.

10 Q. Did anybody else speak to you about making a search for Mr. Nagle, or acting for Mr. Nagle?

A. Only the day that we closed title on the Walnut Street house, Mr. Demarest was there, and we closed the title.

Q. When was that? A. October 26, I believe; that was the twenty-fifth of October.

Q. Had you had any communication from Mr. Nagle before that date? A. No, I had not, other than that telephone message.

20 Q. You had communicated with him before that? A. Those two letters.

Q. You must have had some word; the letter of September 20, Exhibit C-7, can you say whether or not at the time that letter was written you had had any communication from Mr. Nagle or from Mr. McCoy as to acting for Mr. Nagle in the matter of this transfer to him? A. I believe that telephone message came into the office.

30 Q. Before the date of that letter? A. I believe so, yes, sir.

Q. I call your attention to a pencil memorandum on this letter; is that your handwriting, or what is it? A. No, that is not mine.

Q. When did you first know of the agreement between Mrs. Reimuller and Bernard Werbel for the sale of these premises? A. I don't recollect now.

40 Adjourned to Wednesday, December 6,
1922, at 10 a. m.

Bernard Werbel—Direct

Continuation of testimony in the foregoing cause, before Hon. John E. Foster, Vice Chancellor, at the Chancery Chambers Newark, New Jersey, on Wednesday, December 6, 1922.

Present: Counsel as before stated. 10

BERNARD WERBEL, sworn:

Direct-examination by Mr. Boggs:

Q. You are one of the defendants in this suit?

A. Yes.

Q. And you reside where? A. 39 Lincoln Park, Newark.

Q. When did you first see Mrs. Reimuller with relation to this property in dispute, 208 Renshaw Avenue? A. I have to go back to the time when I inserted my ad in the Evening News in reference to the car. Will that be all right? 20

Q. Yes; go on. A. In the early part of February I inserted an ad in the Evening News to the effect that I was willing to exchange my car for a two-family house. As a result of that I got replies, about twenty-five or thirty of them, several different propositions, and it took me some time to get around these propositions, and finally simmered down to Mrs. Reimuller, and I think it was around the middle of March or beginning of April, I got down to Mrs. Reimuller, and we went over the proposition; she told me the price and I told her the price of the car; it seems that it was agreeable that she was going to exchange it; but she asked me to give her time to talk it over with her family. The question remained, she had a good position in the park there, and she didn't want to decide offhand, so I thought, and in the 30 40

Bernard Werbel—Direct

meantime I didn't pay any more attention to it, and at the same time I was looking at a new car to buy it, and made arrangements with the Haynes people to find out whether they would take my old car in trade.

10 Q. What was your car? A. An Olds.

Q. What was it worth? A. I had it about four or five months at the time; it was a new car.

Q. What did that cost you? A. \$1595 list price, and I had several extras on it; it cost me, I should judge, about \$1750 altogether. I made up my mind to buy a Haynes car. The Haynes people said at the time I was there, around April, that they couldn't get any deliveries until the end of May, or early part of June, so I didn't rush the question
20 of exchanging my car to Mrs. Reimuller, to give me time and give her time as well. At the time I was informed by the Haynes people that the cars were coming through—

Mr. Boyd: The only objection I have, this is encumbering the record.

The Court: Mr. Boggs asked you when you first met this lady; you stated March or April, 1921, in connection with the exchange of your car, and you agreed at that time to make the exchange,
30 subject to having her consult her family; we don't care about the Haynes Company, except the cause, and as an excuse for not hurrying the transaction. Did you finally come to an arrangement or agreement with Mrs. Reimuller about the property.

Witness: Yes, but I placed a deposit on the Haynes car; I took it up with Mrs. Reimuller to give me a definite answer whether she is ready to make an exchange. She said that she would accept the car in exchange for the house, but give
40 her some time to look around for a farm, which was on May 27th; that was the definite time; of

Bernard Werbel—Direct

course, no agreements were signed until July 19th.

Q. And then on July 19th you and Mrs. Reimuller executed this agreement, C-2, which is in evidence? A. Yes.

Q. When did you first see and have any conversation with Mr. Nagle with reference to the purchase of this property 208 Renshaw Avenue? 10

A. That was on July 27, 1921.

Q. Have you any way of fixing that date? A. Yes, I can fix it in a way that I know when I spoke to Mr. Nagle in reference to the property, I think the following day he came in and paid the deposit; that was on the twenty-eighth, which our books show, and I know that was on July 27, 1921.

Q. Please state just what took place at that time on July 27th in relation to this property 208 Renshaw Avenue. A. Mr. Nagle came in sometime in the afternoon—it was around 4:30 or 5 o'clock in the afternoon. 20

Q. He came in where? A. In Mr. McCoy's office. He asked me why we haven't sold this property as yet; he had his property listed since the early part of June.

Q. His other property? A. Yes, his own property. I told him that his price was rather excessive. I don't know whether it was \$7000 or \$7300 he was asking for it. At the time I showed it several times and the client I tried to interest said the price was too high, so Mr. Nagle told me, "Why, I don't know whether you could show me a better proposition from other agents than I have." I told in turn, "Better, if you are interested; if you want to see a better property, I will show you; I have a proposition on Renshaw Avenue. It won't cost you a great deal; in fact, you can get it for \$7750." I gave him the dimensions of the house 40

Bernard Werbel—Direct

and the size of the lot, and he seemed very much interested. In fact, I didn't make no effort; that is all that was said. Mr. Nagle went home; I went out with several clients and came back. Around six or seven that same evening I happened to meet
10 Mr. and Mrs. Nagle out in front of the office, and Mr. Nagle asked me whether I could show him the house; I told him that it was rather late in the evening; I would take him over and show him the outside, but it was too late to disturb the folks on the inside, and they were satisfied to see the property from the outside. I took them over there; when I got back Mr. Nagle said he liked it very much, but he would like to see the inside, but I told him to come back the next day. He came back
20 the next day and I took him through. He came back the next day and I showed him through and at that time I was pretty busy. When I got back, after showing the property to another client, Mr. McCoy told me that Mr. Nagle was in and paid the deposit on the house, \$250; that was on the same day.

Court: To whom was the \$250 paid; to you or Mr. McCoy?

Witness: Mr. McCoy; I wasn't in the office at
30 the time.

Q. When was the agreement with Mr. McCoy signed? A. There wasn't any agreement with Mr. McCoy.

Q. I beg your pardon; I mean Mr. Nagle. A. The agreement with Mr. Nagle was signed either on the twenty-eight or twenty-ninth, I am not positive.

Q. I show you Exhibit C-1, is that the agreement that was signed? A. Yes.

Bernard Werbel—Direct

Court: Between whom is that?

Mr. Boggs: Between Mr. Yampol and Thomas Nagle.

Q. Were you present when this agreement was signed and exchanged? A. I was present—I don't recall—I see Mr. McCoy's signature there. 10

Q. You witnessed Yampol's signature? A. Yes.

Q. But you are not sure you were present when the agreement was finally exchanged? A. No.

Court: Was this purchase a personal one of your own, or for McCoy?

Witness: That was a personal purchase.

Court: Not McCoy or the Monroe Investment Company?

Witness: No. 20

Q. That agreement is made with Mr. Yampol, and the agreement with Mrs. Reimuller was your agreement? A. That is it.

Q. Will you explain, if you can, why the agreement with Mr. Nagle for the same property was made with a Mr. Yampol and not with you? A. Yes, I can do that. About the same time Mr. McCoy and I were contemplating the organization—

Q. What same time? A. Around July—to organize a company to start to build houses, and the question came up as to whose name we should take the property, or who should sign documents. Mr. McCoy told me that he wasn't very much in favor to have anyone connected with the office to buy property, for the simple reason that his office was run strictly as a broker's business affair, and it wouldn't be nice to have anyone in the office to sell property and buy; that was the only reason I used Mr. Yampol. 30 40

Bernard Werbel—Direct

Q. Did you speak to Mr. Yampol about it? A. Yes, I mentioned it to him.

Q. I show you receipt, Exhibit C-6, for \$750, dated 29; is that your signature? A. It is.

Q. Just state how that receipt was given? A. 10 There was a deposit of \$250 and it is customary to get ten per cent on the purchase price on the contract, so this is \$500 additional which was paid when the contract was signed.

Q. That included the \$250 deposit to date? A. Yes.

Q. Then did you receive the \$500? A. Yes.

Q. Can you recall now whether that deposit was made, that \$500, at the time the agreements were actually executed and delivered—the second 20 agreement? A. Usually we take the deposit first and then draw the contract afterward; it may have been the same day, I don't know.

Mr. Boggs: The date of the certificate of incorporation of the company is August 16, and recorded in the County Clerk's office August 19, 1921. It doesn't appear when it was recorded by the Secretary of State.

Q. Do you remember the incorporation of the Monroe Investment Company? A. Yes.

30 Q. Were you interested in that? A. Yes.

Q. To what extent? A. Almost half of the interest in it.

Q. Who were the other interested parties? A. Mr. McCoy.

Q. Mr. Meyers? A. No, not at that time.

Q. The corporation was, then, for the benefit of yourself and Mr. McCoy? A. Yes.

Q. Will you state to the Court how you and Mr. McCoy—for what reason you and Mr. McCoy 40

Bernard Werbel—Direct

formed this corporation of the Monroe Investment Company?

Mr. Boyd: If that is material.

Court: It all goes to the good faith in this transaction; I will receive it.

A. The main reason we had, we intended to start to build houses, and it is hard, perhaps to sell your own stuff, if you have to pass title, and of course, as I stated before, Mr. McCoy objected to having his name connected in any way with documents in transferring the sales; that was the main reason. 10

EXAMINATION by the Court:

Q. Why didn't you apply the ten per cent deposit really to yourself; you say it was customary to require a deposit of ten per cent on the purchase price at the time of signing the agreement. I see you bought from Mrs. Reimuller for \$7250, and you paid her five rather than ten per cent. A. I still have my car; as far as my car was concerned, it was a fifteen hundred dollar proposition. 20

Q. There is no acknowledgment of the receipt of the car by her. A. That is true, but I didn't have any use of the car.

Q. Did she? A. No. 30

Q. Did she have any control of it? A. No.

Q. How do you figure that, that has anything to do with covering the ten per cent feature? You made Mr. Nagle pay \$750, which was all right. I am wondering why you didn't do the same thing yourself with Mrs. Reimuller? A. The reason for that, if I didn't exchange the car for the house, I would have exchanged it for another car; I wouldn't have—

Q. That was all right from your standpoint, 40

Bernard Werbel—Direct

but why didn't you treat her the same as you demand that Nagle should treat with you? A. She was satisfied with the arrangement.

Q. This contract with Mrs. Reimuller was assigned to the Monroe Investment Company; do
10 you know? A. Yes.

Q. And signed by you? A. Signed by me. That was at the time of the closing or taking title to the property.

Q. The contract with Mr. Nagle was assigned to the Monroe Investment Company? A. Yes.

Q. From Yampol to the Monroe, at the time of the closing? A. I presume it was.

Further DIRECT-EXAMINATION by Mr.
20 Boggs:

Q. Do you know about that positively? A. I know it was customary.

Q. I mean of your own knowledge. A. I think it was.

Court: What became of the \$750 that Mr. Nagle paid to you and Mr. McCoy?

Witness: We held it in trust.

Q. Held it for how long? A. Until the taking of the title to the property.

30 Q. Did Mr. Yampol get it at all? A. No, sir.

Q. Were there other properties to your knowledge—I ask you to speak only of your own knowledge, not what you may know through other people, but to your own knowledge, were there other properties besides these contracts conveyed to the Monroe Investment Company and the title vested in them?

Mr. Boyd: Objected to.

Court: Objection sustained.

40 Mr. Boggs: The object was not to form

Bernard Werbel—Cross

the company to deal with this one property.

Court: I will receive it for the purpose.

A. Yes, we had one in particular, on Glenwood Avenue.

Q. There were other properties? A. Yes.

10

CROSS-EXAMINATION by Mr. Boyd:

Q. Mr. Werbel, as I understand it, then, from May 27th there was an agreement, although not actually put into writing, between yourself and Mrs. Reimuller, by which you were to buy her house? A. And along July 19th you took a contract in writing from her to buy it, and she agreed to sell, and you agreed to buy, and you paid five dollars down? A. Yes, sir.

Q. And then when Mr. Nagle came in, which you said was on July 27th, you told him about the property; did you tell him that you had arranged to buy it yourself? A. No, sir.

20

Q. You didn't tell him anything about that? A. No, sir.

Q. Did you tell him who the owner was? A. I told him that the party living in there owned it and sold it to another party, who had it under contract.

Q. So that you did not in any way indicate that he, in negotiating for the purchase of that property, was really dealing with you? A. Not necessarily.

30

Court: Strike that out.

Q. I ask you the question, did you? A. Why, it is customary—

Court: Strike that out. Mr. Boggs will ask you for all the explanation he deems necessary. Give a responsive answer now to the question.

40

Bernard Werbel—Cross

Witness: I didn't get the question.

Q. (Repeated) So that you did not in any way indicate that he, in negotiating for the purchase of that property, was really dealing with you? A. Yes.

10

EXAMINATION by the Court:

Q. Did you indicate that he was dealing with you in the purchase of that property? A. No, sir.

Q. Mr. McCoy knew that this arrangement had been made between yourself and Mrs. Reimuller? A. I doubt whether he did.

Q. Did he know it, so far as you know? A. I don't know; that was my personal affair.

20 Q. Did he know it, so far as you knew? A. I don't think so.

Q. What is your knowledge on the subject? You knew whether he knew, or you know he didn't know it. A. I don't think he did.

Q. I didn't ask you what you think; what do you know about it? A. I don't think he did.

Court: That is the same answer you have given me three or four times; strike it out.

Witness: No, he didn't know.

30 Court: Why can't you answer the question frankly, instead of dodging so much?

Further CROSS-EXAMINATION by Mr. Boyd:

Q. Explain how it is that on July 29th you gave a receipt which is now in evidence, marked Exhibit C-6, and signed it in Mr. McCoy's name? Explain that. A. All properties—on what date was it you asked me about?

40 Court: The date on that receipt before you.

Bernard Werbel—Cross

A. July 29—at that date we discussed the matter—Mr. McCoy told me that he received a deposit on the property 208 Renshaw Avenue; he asked me whether I was to sell it; I told him about it at the time what arrangement I made, and I bought the property from Reimuller. 10

Q. And that was on the twenty-eighth of July?

A. On the twenty-seventh of July.

EXAMINATION by the Court:

Q. Who drew the contract for Nagle? A. They were drawn in the office.

Q. By whom? A. I don't recall.

Q. Who dictated it? A. Either myself or Mr. McCoy; it was after the deposit was received.

Q. You just said Mr. McCoy didn't know anything about the transaction; if he didn't, how could he dictate the contract? A. He didn't know anything about it, but after he received the deposit he took it up with me. 20

Q. You were not present when he received the \$250? A. No.

Q. How could he receive \$250 on a contract with this man Yampol, when he didn't know at the time he received it that you had a contract with this lady to have the property? You told me he didn't know it. A. The way it was arranged; when a man walks in— 30

Q. I want to know what you and Mr. McCoy did; I don't care for your custom in the office at all. Mr. McCoy gives a receipt, you say, not yourself, but Mr. McCoy, for this \$250; at the same time, or on the following day a contract is prepared—you don't know whether it is by you or Mr. McCoy; you told me that Mr. McCoy didn't know anything about your transaction, and yet he re- 40

Bernard Werbel—Cross

ceives \$250 from Mr. Nagle for the purchase of this property; how did he do that, if you know?

A. I cannot answer that better than I have.

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

10 Further CROSS-EXAMINATION by Mr. Boyd:

Q. Was Mr. Yampol connected in business with you? A. No, sir.

Q. Who was Mr. Yampol? A. He is in the restaurant business right near the office in Bloomfield.

Q. Near Mr. McCoy's office? A. Yes.

Q. You were employed in Mr. McCoy's office at the time? A. Yes.

20 Q. He had registered you as a salesman in his employ with the Real Estate Board? A. Yes.

Q. Mr. Yampol never got any of this money, did he? A. No, sir.

Q. And when it came to signing the contract, he signed it as you asked him to? A. Yes.

Q. But he never got anything for it, did he? A. No.

Q. He never got any part of this money? A. No.

30 Q. So that when Mr. Nagle came in and paid this money, he was really paying it to Mr. McCoy for your account; is that right? A. Yes.

Q. And so you gave a receipt "B. E. McCoy, per B. Werbel," because Mr. McCoy was receiving for you? A. Yes.

Q. Did that go into Mr. McCoy's account, or yours, or both? A. I don't recall now.

Q. You don't remember what became of it? A. All deposits are deposited in Mr. McCoy's ac-

40 count.

Bernard Werbel—Cross

Q. So that went into Mr. McCoy's account? A. Yes.

Q. Then the division came afterwards? A. Yes.

Q. Did the Monroe Investment Company get this money? A. Later on, after they were organized.

10

Q. At this time they hadn't been organized, had they? A. No, sir.

Q. Do you mean to say, then, that this purchase which you made individually, you afterwards assigned to the Monroe Investment Company, so as to let them get the benefit of it? A. I only thought I didn't have sufficient money to take over the property; that is why I turned it over to the Monroe Investment Company.

Q. You owned one-half of the Monroe Investment Company and Mr. McCoy owned the other half? A. Yes.

20

Q. Mr. Landow was an officer of the Monroe Investment Company? A. Yes, secretary.

Q. And the Monroe Investment Company knew about this contract from Mary E. Reimuller to you? A. Yes.

Q. And they knew what was being paid to her? A. Yes.

Q. And they knew of the contract from Mr. Yampol to Mr. Nagle, didn't they? A. Yes.

30

Q. And they knew that Mr. Nagle was being called on to pay for the same property? A. Yes.

Q. And the Monroe Investment Company, then, consisted of a group, consisting of Mr. Meyers, Mr. Landow, Mr. McCoy and yourself? A. Not at that particular time. Mr. Meyers was secretary only a short time, and Mr. Landow succeeded him.

Q. Didn't you hear him testify that he had a share of stock in it? A. Yes, but he resigned.

40

Bernard Werbel—Cross

Q. That was true? A. Yes.

Q. You heard him testify that the reason why he resigned was because he didn't want his name appearing on the documents which the Monroe Investment Company might be called on to make.

10 A. I don't know his reasons.

Q. Don't you remember hearing him say that?

A. I don't recall.

Q. Isn't that the real reason why you organized the Monroe Investment Company, so that when you were dealing with properties belonging to Mr. McCoy and yourself, because, as you said, it was hard for people to sell their own property, if the purchasers know that you own it, you organized this corporation, so that you might sell the prop-
20 erty in the name of the corporation, without the parties knowing—the parties who were buying, knowing that they were really buying from you; isn't that right? A. Yes.

Q. And that was the plan that you and Mr. McCoy discussed? A. Yes.

Q. So that when a customer came into the office to buy a piece of property which you and Mr. McCoy really owned, you could show it to him, and tell him it belonged to the Monroe Investment
30 Company, and keep it secret that you were the real people in the Monroe Investment Company, and yet get the money for it; isn't that right? A. At certain times.

Court: Was this the first property that the Monroe Investment Company acquired?

Witness: No, not the first.

Q. What property did they acquire before this?

A. They had a piece of property we were holding, and several mortgages that we bought in.

40 Q. I am talking about real estate, not mortgages. A. Yes.

Bernard Werbel—Cross

Q. Was this property the first property the Monroe Investment Company sold after its incorporation? A. I don't recall.

Q. Mr. Werbel, I call your attention to the contract between yourself and Mrs. Reimuller, in which you agreed to give as a part consideration on this purchase, an automobile which is described here, "One Oldsmobile Touring Car, Model 37a, 1921, Maker's Number Such and Such; Motor Number Such and Such;" is that the car that you did, after a while, give her a bill of sale for? A. Yes.

Q. You bought this car in October, 1920? A. Yes, October 16, 1920.

Q. And represented to her that it was a 1921 Model; is that right? A. It was represented to me by the Oldsmobile people that it was.

Court: Strike that out; did you represent to her that that was a 1921 Model?

Witness: Yes.

Mr. Boggs: In view of the fact that they have abandoned in their bill any question as to accounting for the difference between the actual value of the automobile and the price at which Mrs. Reimuller took it, and it is not a part of this controversy, is this material?

Court: I think it is all a circumstance from which I can, or may or may not, infer fraudulent transaction on the part of these defendants in their dealings with Mr. Nagle. In other words, it comes down to this, there is about \$500 difference which Mr. Nagle claims that by the manipulation in this contract he was defrauded of, by being compelled to pay \$7750 for the property,

Bernard Werbel—Cross

when he should have been able to acquire it for \$7250.

Q. You received this bill of sale, Exhibit C-5, from them, didn't you? A. Yes.

Q. From the Oldsmobile Company? A. Yes.

10 Q. And you received it in 1920, didn't you? A. Yes.

Q. When you assigned this contract, Exhibit C-2 from Mrs. Reimuller to yourself, to the Monroe Investment Company, you received nothing for that assignment, did you? A. I don't recall.

Q. You don't recall? A. No. I forget what arrangements were made.

Q. When was that assignment made, on the day of the closing? A. I presume it was.

20 Court: Closing with whom; Reimuller or Nagle?

Witness: With Reimuller.

Q. Let me call your attention; it couldn't have been then; you have already said it was on the day of closing with Nagle when both contracts were made. A. What contract is this?

30 Q. Reimuller with you; when was that assignment to the Monroe Investment Company? A. At the time we were organized and all properties that we had went into the Monroe Investment Company.

Q. Who wrote the assignment? A. I don't know.

Q. Look at the writing. A. It is my signature.

Q. Is it Mr. McCoy's writing? A. I don't think it is.

Q. Why wasn't it at the time? A. I don't know.

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

40 Court: Isn't that Mr. Lionel L. Meyers' handwriting?

Witness: It may be.

Bernard Werbel—Cross

Q. Isn't it?

Court: Do you know?

Witness: No.

Q. You have no other explanation for the fact that there is no date on that assignment? A. No.

Q. You still leave unanswered, the question, unless as I have your answer before, that that Reimuller contract was assigned on the date of the closing with Nagle? A. No. 10

Q. It is now assigned when? A. At the time when the Monroe took the property from Mrs. Reimuller.

Q. When was that? A. I don't recall the date.

Q. The only way the Monroe Company took it over, was by virtue of your assignment of the contract, wasn't it? 20

Court: The deed was dated August 31; and recorded the twelfth of September, according to my notes.

Q. Mr. Werbel, did you discuss this matter of the assignment of this contract with Mr. Lionel L. Meyers? A. I presume I did.

Q. Tell us when you discussed it with him. A. I cannot fix the date.

Q. As nearly as you can. A. It may have been in August. 30

Q. Wasn't it in August? A. It may have been; I am not positive.

Q. He was the attorney for the Monroe Investment Company, wasn't he? A. Yes.

Q. It was organized at his office, and Mr. Yampol was the dummy, one of the dummies that organized it, is that right? A. He was one of the shareholders.

Q. At that time? A. Yes.

Q. Is he a man of any means and property? A. I guess he has some property. 40

Bernard Werbel—Cross

Q. Do you know of any that he owns? A. Not that I know of.

10 Q. At that time in August, then, you discussed with Mr. Meyers this contract which you then had outstanding between Mrs. Reimuller and yourself for the purchase of the Renshaw Avenue property; is that right? A. I don't recall discussing it.

Q. Did you tell him about it then at that time, after the company was organized, or at the time of its organization? A. Yes, he was making the search for the Monroe on the property, and I presume we discussed it.

20 Q. He drew some papers way back in the early part of September in connection with the matter, didn't he? A. In what way?

Q. Didn't he draw an agreement between Mary E. Reimuller and the Monroe Investment Company, which you signed in September? A. There wasn't any agreement drawn between the Monroe Investment Company and Reimuller.

30 Q. I show you Exhibit C-3, which is an agreement regarding the leasing of this very property, signed by Mrs. Reimuller, and signed "Monroe Investment Company, per B. Werbel, Treasurer," and witnessed by Lionel L. Meyers. A. I wasn't present at the closing, so I don't recollect.

Q. Do you remember that paper; was that signed by you? A. Yes.

Court: That is dated September?

Witness: Twelfth of September.

Q. Do you remember that agreement? Look at it. A. Yes.

Q. You signed that, didn't you? A. Yes.

40 Q. I see that you acted as witness to Mr. Yampol's signature on the contract with Mr. Nagle, dated July 28, which is in evidence as Exhibit C-1;

Bernard Werbel—Cross

where was Mr. Yampol at that time when this contract was executed? A. At his place.

Q. You had received the first money from Mr. Nagle on that very day, the twenty-eighth of July?

A. I did not.

Q. You knew it had been received; Mr. McCoy 10
told you so? A. In the evening of the same day.

Q. That very same day you went out and got Mr. Yampol to sign this contract with Mr. Nagle, and you witnessed his signature; is that right? A. I don't know whether it is the same day, it must have been.

Q. Will you look at the date of it and refresh your memory? A. It must have been the same day.

Q. You knew when you had Mr. Yampol sign this, that he had no interest whatever in the prop- 20
erty? A. Yes.

Q. And that you were the real owner? A. Yes, sir.

Q. Isn't it a fact that the reason why you had that contract made, signed by Mr. Yampol and given to Mr. Nagle, was because you were trying to conceal from Mr. Nagle the fact that you were the real owner of the property? A. Yes, sir.

Q. And from that time on, you took whatever steps were necessary to keep Mr. Nagle ignorant 30
of the fact that you were the real owner, isn't that so? A. He wasn't inquiring as to who was the real owner.

EXAMINATION by the Court:

Q. Did you take the necessary steps to keep him ignorant? A. Yes.

Q. And Mr. McCoy did too? A. I don't know.

Q. You and Mr. McCoy discussed this, didn't you? A. When?

Bernard Werbel—Cross

Q. From time to time, at any time during that period? A. At the time the contracts were signed?

Q. After the contract was signed, did you discuss it? A. I didn't think it was necessary.

10 Q. Did you ever discuss it with Mr. McCoy or talk it over? A. Not that I recall.

Q. You discussed it with Mr. Meyers, too, didn't you? A. I may have; I don't recall.

Q. Who got this \$500 that you made off this transaction; was it divided between you and Mr. McCoy? A. It is in the corporation.

Q. Was it finally divided between you and Mr. McCoy; did you each get half of it? A. No, it remains in the treasury.

Q. To the credit of you two? A. Yes.

20 Q. Did Mr. Meyers participate in any part of it, or get any benefit from it? A. No.

Q. Mr. Landow, does he get any benefit? A. He has one share.

Q. And Mr. Meyers has one share? A. No, sir, not now.

Further CROSS-EXAMINATION by Mr. Boyd:

Q. He did have then? A. When the property was sold?

30 Q. Yes. A. No, sir.

Q. How many shares are there in your company? A. I cannot say offhand.

Q. What is the capital? A. I don't remember.

Mr. Boyd: The certificate shows there were eighty shares issued; the authorized capital is \$100,000.

Q. You have thirty-nine shares and Mr. McCoy has thirty-nine? A. Yes.

40 Q. Did you get those from Mr. Yampol? A. What?

Bernard Werbel—Cross

Q. Your thirty-nine shares. A. I presume it was assigned to me.

Q. So that you stand really in the place of the shares that he subscribed for? A. He admits that.

Court: As far as I see it, Meyers and Landow did not get any benefit from the \$500 profit that was made on the transaction, according to this version. 10

Mr. Boggs: Except possibly a share in some ultimate dividend on the share.

Court: I understand Meyers doesn't own that.

Q. When did Meyers give up the share? A. I think when he resigned the secretaryship.

Court: He concluded because he resigned as secretary that ended his connection with the company. 20

Mr. Boggs: Mr. Meyers testified that no stock was ever actually issued.

Q. The \$250 that was paid in first, who got that? A. The whole thing went to McCoy and Werbel, or to the Monroe Investment.

Q. What became of the ten dollars rent paid by Mrs. Reimuller; did that go into the company? A. I think so.

Q. Didn't you realize that that property was under contract to Mr. Nagle at that time? A. Yes. 30

Q. When was he to get possession of the property? A. According to the contract, October first.

Q. Where did the money come from to pay Mrs. Reimuller? A. Mr. McCoy and myself. Mr. McCoy helped me out in taking over the property.

Q. He advanced the money? A. Yes.

Q. You got five dollars to put in your automobile? A. \$1,500.

Q. That made \$1,505? A. Yes. 40

Bernard Werbel—Cross

Q. You assigned the building and loan mortgage on it? A. Yes.

Q. And the balance of the money amounting to some three thousand and odd hundred dollars was paid by Mr. McCoy? A. Yes, that is divided.

10 Q. Divided how? A. Half share; the interest I had in the property, and Mr. McCoy advanced.

Q. Did you advance any money yourself? A. A part.

Q. How much? A. I don't recall.

Q. Approximately? A. I cannot say offhand.

Q. Was it a hundred dollars or over a thousand? A. About a thousand.

Q. And Mr. McCoy advanced the balance? A. Yes.

20 Q. You said on your direct-examination that when you gave this receipt for the \$750, that it was for the \$250 paid to Mr. McCoy before that, and also \$500 which you were to get; that is right, isn't it? A. That I was to get? On the deposit?

Court: He said all the money went into the Monroe Investment Company.

EXAMINATION by the Court:

30 Q. A part of the money which was used to pay Mrs. Reimuller was this money which came into the Monroe Investment Company from Mr. Nagle, wasn't it? A. It may have been.

Q. Was it? A. I don't recall.

Q. Why don't you recall; you know whether you used his \$750 or didn't use it. A. If I am not mistaken, Mr. McCoy could hold it in escrow until we took title.

Q. Did you actually use it to make up the balance that you had to pay Mrs. Reimuller? A. Yes.

Bernard Werbel—Cross

Further CROSS-EXAMINATION by Mr. Boyd:

Q. Were you present on the day of closing, the latter part of October, when Mr. Nagle took his deed? A. No, sir.

Q. You were not present at all? A. No, sir, not at the closing. 10

Q. Mr. McCoy took charge of that? A. I think so.

Q. There was then an arrangement made between you and Mr. McCoy with regard to that, wasn't there, about the closing and what should be done there? A. I don't know what you mean.

Q. Did you have any arrangement or understanding with Mr. Nagle as to what he should do at the time of closing? A. Mr. McCoy takes care of all closings. 20

Q. He was president of the Monroe Investment Company at the time? A. Yes.

Q. In fact from the time they were organized, he was president? A. Yes.

EXAMINATION by the Court:

Q. How long had you known Mr. Nagle? A. After they listed the house.

Q. When was that? A. According to the listing, the first part of June. 30

Q. That is their house in Bloomfield? A. Yes.

Q. When did you sell that house for them? A. I cannot say offhand.

Q. Haven't you your books here? Wouldn't that show? A. It may.

Mr. Boggs: That was listed with Mr. McCoy.

Q. When did you actually make the sale of the Walnut Street house? A. I presume around September. 40

Bernard Werbel—Cross

Q. Don't you know? Won't your books tell you? A. I haven't got any books with me.

Q. Who made the sale, Mr. McCoy or you? A. Of his house?

Q. Yes, Nagle's house. A. I don't recall.

10 Q. Did you sell Nagle's house before the Monroe Company took title from Mrs. Reimuller to this house? A. The Walnut Street house? No.

Q. How long after that? A. It may have been a month.

Q. You mean in October? A. I think the Walnut Street house was sold in the early part of September.

Q. Was it sold on contract? A. Yes.

20 Q. When was the first deposit made on account of that sale? A. I cannot say offhand.

Q. Do you want me to understand that on the twenty-seventh or twenty-eighth of July that Mr. Nagle still having his own house in Bloomfield on his hands, unsold, entered into this contract that obligated him to buy Mrs. Reimuller's house at \$7750, without having disposed of his own house; is that what you say? A. Yes.

Q. Do you know why he did that? A. I cannot answer that.

30 Q. Did Mr. Nagle express any dissatisfaction to you about this transaction? A. Which one?

Q. About either transaction. A. Not to me.

Q. In your hearing? A. Not that I recall.

Further CROSS-EXAMINATION by Mr. Boggs:

40 Q. Mr. Werbel, do you mean to say that you never heard Mr. Nagle complain of the treatment that he had received from Mr. McCoy, or Mr. McCoy's office, in connection with the sale of his

Bernard E. McCoy—Direct

house and the purchase of the Reimuller house? A. He may have made.

Court: If you didn't hear him, say so.

Witness: I don't recall it.

Q. You don't recall anything of that sort? A. No, sir.

10

BERNARD E. McCOY, sworn:

Direct-examination by Mr. Boggs:

Q. You are one of the defendants in this case?

A. Yes, sir.

Q. Where do you live? A. Office or residence?

Q. Residence. A. 79 Washington street, Bloomfield. 20

Q. And you carry on a real estate business in the Town of Bloomfield? A. For the past nine years, yes, sir.

Q. What relation does Mr. Werbel have with you? A. Prior to August 19th Mr. Werbel was in my employ, and he is still in my employ now, but we have organized the Monroe Investment Company, and Mr. Werbel is an equal partner in that company. 30

Q. How was he employed? A. Salesman of real estate.

Q. When did you first learn of the purchase or of the agreement between Reimuller and Mr. Werbel in regard to the sale to Mr. Werbel of this 208 Renshaw Avenue? A. Mr. Werbel purchased the property.

Q. When did you first learn of it? A. I think it was on the twentieth or twenty-first.

Q. Of what? A. Of July, right after Mr. Werbel made the agreement with Mrs. Reimuller. 40

Bernard E. McCoy—Direct

Q. And how did you learn of it? A. Mr. Werbel came to me and said that he bought a house that he intended to live in, or some of his relatives, and he asked me if it was all right, and I said, "Certainly, Mr. Werbel, you can buy houses in your own name, provided you use them for yourself and not for speculation."

10 Q. When did you first learn or know of his sale of this house, or contemplated sale of this house to Mr. Nagle, the complainant? A. On July 28th Mr. Nagle came in and paid me a deposit of \$250, and I questioned Mr. Nagle at the time as to on what property the deposit referred to. He stated it was on 208 Renshaw Avenue; Mr. Werbel had sold it to him; "I took the matter up with him."
20 I said, "All right, I will take the deposit, Mr. Nagle, but we haven't the property for sale; it is not on my books and we didn't buy it; I don't know anything about it, but I will take the deposit, subject to the owner's approval," and I took \$250 from Mr. Nagle.

Q. I show you a receipt marked Exhibit C-6; do you know anything about that receipt of your own knowledge? A. No, sir, that is the first time I have seen it.

30 Q. That is the first time you have ever seen it?
A. Yes, sir.

Court: Did you see the money that was mentioned therein, \$750?

Witness: Yes.

Q. How much of it have you seen? A. \$750.

Q. You received \$250 of it from Mr. Nagle? A. Yes.

Q. Did you receive that money? A. Yes.

40 Q. From whom? A. From the safe, when I came in.

Bernard E. McCoy—Direct

Q. Get any explanation from him as to what it applied? A. I did that morning.

Q. That it was on account of this property? A. Yes.

Q. Who prepared the contract with Mr. Nagle for the property, or dictated it? A. I did. 10

Q. And where did you get the information or facts on which you prepared it?

Mr. Boggs: You prepared the contract; you dictated it; your typewriter wrote it, or did you write it yourself?

Witness: No, my stenographer—one of my stenographers.

Q. Where did you get the facts you embodied in that agreement? A. The night of the twenty-eighth I called Mr. Werbel in the private office and asked him why he intended to sell the property; he said he had a chance to make \$500 on it, and instead of moving in, he thought he would sell it. Then I objected to him selling any property in his own name, and suggested that he turn the property over to his relatives and convey it from them. 20

Q. Who is his relative? A. Some one of his relatives; I didn't question him, and he told me that he would do that and convey the property direct from his relative; instead of that, he turned it over, or made the assignment to Mr. Yampol. 30

Q. Is he a relative? A. I don't think so. On the twenty-ninth—the thirtieth, Saturday, Mr. Werbel gave me an assignment, or I had Mr. Yampol come over to the office and make an assignment from Werbel to Yampol of the property.

Q. On July 28th? A. I think it was on July 29th. The contracts were dated as of the twenty-eighth. 40

Q. Was that assignment made before or after

Bernard E. McCoy—Direct

the contracts were executed? A. Before; I had Mr. Werbel assign the contract over to Mr. Yampol, so that I could draw the contract between Mr. Yampol and Mr. Nagle.

Q. Who wrote the assignment? A. I did.

10 Q. Why didn't you take it? A. I did take that assignment.

Court: Where is it?

Witness: That assignment I destroyed at the closing of the title between the Monroe Investment Company and Mr. Nagle, because at that time Mr. Meyers requested an assignment from Werbel direct to the Monroe. He didn't know at the time anything of the assignment from Mr. Werbel to Nagle, so rather than have two assignments on record—two assignments in the office, I
20 destroyed the original assignment from Mr. Werbel to Mr. Yampol.

Q. How many copies of the contract between Mrs. Reimuller and Mr. Werbel were made in your office, do you know? A. We only make one assignment, or one copy.

Q. How many copies of the contract? A. Three contracts are always made.

30 Q. What became of those three contracts, Reimuller to Werbel? A. I didn't make those contracts; I don't know whether there was one made or three. Mr. Werbel, I believe, took care of that matter himself, because that was a personal matter, outside of the office; there was no commission involved there.

Q. I understood you to say that the Reimuller contract was assigned by Mr. Werbel at your direction, to Mr. Yampol? A. Yes, Mr. Werbel had one contract, and I assigned it at the time I made the contract from Mr. Yampol to Mr. Nagle.

40 Q. How was that assignment made, by endorse-

Bernard E. McCoy—Direct

ment on the original of any of the contracts, or by separate instrument? A. No, on the original contract.

Q. Will you explain or tell us why the deed from Mrs. Reimuller was made to the Monroe Investment Company? A. Early in August we had contemplated building houses and we bought two lots on Newark Avenue; at the same time we had property at 60 James Street that I had bought, and we contemplated building those houses, and we had about four or five second mortgages and one first mortgage in Mr. Werbel's and my name, jointly, and I think it was on about August 19 when we originated the Monroe Investment Company for the purpose of building houses and putting whatever stuff we had on the outside in the company, because I didn't want to form a partnership of the business, and I would rather form a separate company.

Q. How did you become interested in this contract of Mr. Werbel with Mrs. Reimuller? A. When the time came to close title with Mrs. Reimuller, Mr. Werbel didn't have enough finances, and he asked me if I wouldn't loan him some money. He offered me one-half of the profits that were in the sale, at that time. I suggested "Here now, instead of my putting in any additional cash, I have invested money in the Monroe and so have you, and why not assign the property from Yampol or from you direct, and we will destroy the Yampol assignment at the time of the closing with Mr. Nagle, and we will take the property over into the Monroe," and that was agreed upon, and that was assigned, I think, the early part of September; I don't recall that date, but it was prior to taking over the title of Mrs. Reimuller.

Bernard E. McCoy—Direct

Q. Where did the money come from that was paid to Mrs. Reimuller—the cash that was paid to Mrs. Reimuller at the time that the deed was delivered? A. From the Monroe Investment Company.

10 Q. What became of the \$250 that was paid to you by Mr. Nagle as a deposit on account of the agreement with him? A. I held that in escrow until the company took title from Mrs. Reimuller, and then I turned that deposit over to the Monroe Investment Company.

Q. Do you know what became of the additional \$500 paid by Mr. Nagle to Mr. Werbel when he gave him a receipt for the \$750? A. That \$500 was put in the cash drawer in the safe, and later
20 it took the same course as the \$250.

EXAMINATION by the Court:

Q. And was it later used by the Monroe Investment Company to pay the balance due on the contract of Mrs. Reimuller? A. The deposit of the \$750 was not turned over to the Monroe Investment Company until after they had taken title with Mrs. Reimuller.

Q. And was it used to either make up money
30 that the Monroe Company had advanced to pay the balance due her or to pay on account of the purchase price? A. I don't know; I held that in my own personal account.

Q. Where did the money come from? A. Out of the Monroe Investment Company.

Q. Was that money yours? A. Mr. Werbel's and mine.

Q. Did you each put in the amount called for by the number of shares of stock you held, 3900?

A. We assessed ourselves as we needed it.

40 Q. Where did you get the money actually to

Bernard E. McCoy—Direct

pay three thousand and odd to this lady when you took title for the company? A. We bought shares in the company.

Q. When did you pay the money in? A. We paid the money in as it was necessary.

Q. Did you pay it in at the time you took title from her? A. Yes. 10

Q. Did he pay for his shares? A. Yes.

Further DIRECT-EXAMINATION by Mr. Boggs:

Q. How was the money paid to Mrs. Reimuller; in cash or check? A. I believe that was in check. I am almost positive it was in check; we have a checking account.

Court: You have the check here? 20

Witness: No, sir.

Q. How much cash or check did you pay her? A. The balance on the closing statement—I think it was somewhere in the neighborhood of \$3,100.

Q. The building and loan mortgage was what? I show you a paper marked Exhibit C-14; is that the closing statement you refer to? A. Yes, sir.

Q. And the balance there is how much? A. \$2,176.

Q. Was that the share that was actually paid Mrs. Reimuller? A. Yes, sir. 30

Court: Do you know how much of that you contributed?

Witness: Equal amount in the Monroe.

Court: Are you guessing at that, or did you contribute more? Mr. Werbel gives me to understand that he didn't contribute, except about a thousand dollars.

Witness: That was all that was necessary.

Court: Do you know how much you put in it? 40

Bernard E. McCoy—Direct

Witness: I believe that check was from the Monroe Investment.

Court: Do you know how much you personally put in that transaction?

Witness: I don't recall.

10 Q. Your recollection is that the check was of the Monroe Investment Company? A. My recollections are that the check was drawn from the Monroe Investment Company.

Q. Between the time of the making of the contract by Mr. Nagle for the purchase of this property and the closing of the transaction by the delivery of the deed to Mr. Nagle and the payment of the money, did Mr. Nagle see you in regard to the matter and make any complaint of any kind about it? A. No, sir.

20 Q. At the time of the closing and the delivery of the deed were you present? A. Yes, sir.

Q. What, if anything, was said at that time by Mr. Nagle or by Mr. Demarest—which I think was the name of the gentleman who was with him, in regard to the transaction—the fairness or anything of that kind? A. Mr. Demarest, I believe, was spokesman then, and he asked to have the price reduced, I believe, a couple of hundred.

30 Q. Why? A. On the ground that he had learned that the Monroe had bought it, or Mr. Werbel had bought it, I don't know which, from Mary Reimuller, and he wasn't sure as to what date they bought it, but he thought they had bought it after they had signed the contract, and they were making \$500, or a secret profit, as he termed it, and he was willing to take \$200 and put the deal through.

Bernard E. McCoy—Direct

EXAMINATION by the Court:

Q. What did you say to Nagle when he suggested that? A. I told him Mr. Werbel was out and Mr. Landow was there.

Q. Why was Mr. Landow there, by the way? A. He was the secretary of the company. 10

Q. Is that the only reason for his presence at the closing? A. That is all.

Q. Mr. Werbel was out, and you told him a Mr. Landow was there? A. I told him that I had no authorization from the company to reduce the property one nickel, and that time was the essence of the agreement, it was now the twenty-eighth of October.

Q. Was it of the essence of the contract? A. Yes, sir, and it was now the twenty-eighth of October, and if they didn't want to close, I was only getting twenty dollars out of it for drawing the deed and closing, and that was my charges to the Monroe, and if they didn't want to close, I had another appointment and was going to leave, and then they left the room and went outside. 20

Q. Anything said before they left the room, that Mr. and Mrs. Nagle and their five children hadn't any home or any place to go? A. Nothing was brought up about that. 30

Q. You say you only got twenty dollars out of it; you were getting \$250 in addition? A. After expenses were paid, there was only about one hundred and some odd dollars profit.

Q. What expenses were there? A. There were fees to be paid and expenses for carrying that building and loan for one month—practically two months, and for taxes, and other adjustments up to October 28th, from the time we took it over on September 12th. 40

Bernard E. McCoy—Direct

Q. You got all that back, didn't you? A. We got it back?

Q. Exclusive of the \$500; when he paid you \$7,250, you got back what you paid for it, didn't you? A. We got \$7,750 for it.

10 Q. And you got \$7,250, what you had paid yourself for it? A. Yes.

Q. And in addition to that you got the income from the property? A. Yes, but we had expenses from carrying it from September 12th to the 28th of October.

Q. You got income, too, from the property? A. Ten dollars.

20 Q. Why did you want to put her out on the twentieth of September; what was your reason for fixing that date? A. That was the date that she wanted to move, and drew up a lease, to make sure she would move.

Q. Why did you close it September 12th? A. Our contract called for the fifteenth.

Q. Why did you close on the twelfth? A. I always believe in closing a few days in advance, as long as we had the money.

Further DIRECT-EXAMINATION by Mr. Boggs:

30 Q. You say Mr. Landow was present? A. Yes.

Q. What interest did Mr. Landow have in the company, if any? A. Mr. Landow, I think, took over the one share that Mr. Meyers had; he assigned it to Mr. Landow.

Court: Did he pay for it?

Witness: I cannot say. No, he didn't pay any consideration.

Court: Is he in your employ?

40 Witness: No, sir.

Bernard E. McCoy—Direct

Court: He was secretary of the company?

Witness: Yes.

Q. Why wasn't Mr. Werbel at the closing? A. Mr. Werbel attends very few closings.

Q. Why wasn't Mr. Werbel at the closing? A. I don't recall.

Q. Why was Mr. Landow present at the transaction? A. He was secretary of the Monroe Investment Company.

Q. Why was his presence necessary? A. To take down notes, if there were any figures, and he gave me the figures to enter in the books.

Q. At whose request was Mr. Meyers present? A. He was to make the continuation search, and brought the search up to date for Mr. Nagle.

Q. At your request? A. Yes; at Mr. Nagle's request, but through me.

Q. Did Mr. Nagle request you to employ Mr. Meyers to make the search? A. Yes.

Q. When? A. About September 15, or around that date, I met Mr. Nagle and I asked him if he was ready to close; he said he wasn't quite ready. I asked him who made the search for him, and he said he hadn't made any preparation for search, so I told him if he had Mr. Meyers—Mr. Meyers had just been over the title, and if he had him, Mr. Meyers would probably save him some money, and then I asked Mr. Meyers, inasmuch as we were saving Mr. Nagle some money on the search, to kind of make our bill lighter.

Q. Mr. Landow attested the deed as secretary? A. I believe he did; if you show it to me—

Q. And took the proof? A. Yes, he attested it.

Court: He made the proof?

Witness: Yes.

Mr. Boggs: On the twenty-eighth of October.

Bernard E. McCoy—Direct

Court: The deed was executed when you went there to close?

Witness: Yes, I think we had the deed executed just before the closing.

Q. In your office? A. In my office.

10 Q. And the closing was in your office? A. Yes.

Q. Do you know when Mr. Meyers resigned as secretary? A. I think Mr. Meyers resigned as secretary of the association about the latter part of September, but I wouldn't say definitely; I think around the latter part of September; either that or around the first of October.

Q. What relation did Mr. Meyers have with you, if any? A. Mr. Meyers organized the Monroe Investment Company.

20 Court: And he was one of the organizers—he took part in organizing the company; he drew the papers and so on?

Witness: Yes.

Q. So far as you know, has he any interest in the company now? A. He has absolutely no interest.

Q. Or in its dividends or profits and assets? A. No, sir.

30 Q. Has Mr. Landow any interest, aside from that one share? A. Absolutely not. Mr. Werbel and I are only two that are financially interested.

Court: Is the Monroe Investment Company a party defendant?

Mr. Boggs: No. I consider it mere subterfuge; we haven't raised any point on that.

40 Q. Did Mr. Meyers act for you, or the Investment Company, in any other way than as secretary? A. Only as requested to make searches and draw bonds and mortgages and deeds, if necessary.

Bernard E. McCoy—Direct

Q. Can you tell us when Mr. Meyers first knew of the agreement for the purchase of the property from Mrs. Reimuller? A. Mr. Meyers, I don't think, had any knowledge of the agreement.

Q. From Mrs. Reimuller to Mr. Werbel? A. Yes—no, I would—Mr. Werbel made his own arrangements on that proposition. 10

Court: Do you know when Mr. Meyers first learned of that arrangement?

Witness: No, I do not.

Q. Can you tell us, if you know, when Mr. Meyers had any knowledge of the agreement for the sale of the property to Mr. Nagle, the complainant? A. I called Mr. Meyers around the fifteenth day of September and asked him to make the search for Mr. Nagle. 20

Court: Is that as far as you know the first knowledge he had of Nagle's connection with the property?

Witness: Yes, I told him about making a search.

Court: We don't care about that. You fix the date Mr. Boggs asked about.

Q. You called him on the 'phone? A. About the fifteenth of September—middle of September.

Q. Had you any conversation before that with Mr. Nagle in regard to Mr. Meyers? A. Only as to asking him—it was about the time that I asked Mr. Nagle who was going to make the search, and told him he couldn't have it done more reasonably, if he had Mr. Meyers. 30

Q. When you spoke to Mr. Meyers about making the search for Mr. Nagle, over the 'phone, did you send him the agreement? A. No, sir, I gave Mr. Nagle his agreement and requested him to write Mr. Meyers and send him down the agreement. Instead of Mr. Nagle writing Mr. Meyers, 40

Bernard E. McCoy—Direct

he 'phoned him, but I don't believe he ever talked to Mr. Meyers.

Q. He 'phoned him? A. He 'phoned Mr. Meyers' office but I don't think he ever talked to Mr. Meyers.

10 Court: They both say he didn't. How did Mr. Meyers get the information about what he was to search?

Witness: I told him it was the same property.

Q. Why didn't you send him a copy of the agreement? A. I always keep my office record; I tell the purchaser to send their contract to their lawyer.

Q. At the time you informed Mr. Meyers over the 'phone did you tell him what the property was that Mr. Nagle was buying? A. I told him to run
20 down the title on the same property for Mr. Nagle as the Monroe just closed on.

Q. Do you know when Mr. Meyers first saw the agreement with Mr. Nagle? A. I don't believe it was until the time of closing, because I had Mr. Werbel make out an assignment direct to the Monroe at that time.

Q. Who had? A. Mr. Meyers asked Mr. Werbel to make an assignment direct to the Monroe at that time.

30 Q. At the time of the closing with Mr. Nagle? A. At the time, yes, sir.

Q. I have here a copy of the contract between Yampol and Nagle, marked Exhibit D-3, that I put in evidence, and it has an assignment on the back of it; is that your signature? A. As witness, yes, sir.

Q. Do you know whose signature that is? A. Mr. Yampol's.

Bernard E. McCoy—Direct

EXAMINATION by the Court:

Q. That is in your handwriting? A. Yes, that was written just prior to drawing up the contract, I think the twenty-ninth of July.

Q. Why wasn't it dated? A. I very seldom date assignments, because I figure that the date is on the outside of the agreement, and any time during that time and closing, I always figure an assignment could be made. 10

Q. That is your only reason for not dating it? A. Yes.

Q. I thought you told me that that assignment had been destroyed at the time you had the new one made? A. The assignment made from Mr. Werbel?

Q. No, assignment made from Mr. Yampol. A. Your Honor please, this is an assignment from Yampol to the Monroe Investment Company. The assignment from Mr. Werbel to Mr. Yampol I destroyed. 20

Q. That is the one you destroyed? A. Yes.

Q. Was that assignment written before the contract was made or after? A. Before.

Q. Then why didn't you have the Monroe Investment Company— A. Oh, this one here—I thought you referred to—

Q. No, this one you have in your hand; was that made before or after the contract was signed? You said that it was on the twenty-ninth or thirtieth of July, the one you have in your hand? A. This was made at the time or right after the organization of the Monroe Investment Company, and that was when I had the assignment made from Yampol into the Monroe. 30

Q. Why did you have that done? A. Because we merged over into the Monroe Investment Company. 40

Bernard E. McCoy—Cross

Q. Why didn't you let the assignment stand in Yampol's name? A. If anything happened to Mr. Yampol, I had no interest in the property.

Q. You hadn't paid anything on the property then? A. No.

10 Q. How did you have an interest in it? A. I am wrong about that, sir.

Q. Go back to my question; when was that assignment written, before or after the contract on which it is endorsed? I want the facts. A. This assignment was made after the contract was drawn.

Q. How long after? A. About September 5th, or early part of September.

20 Q. What was the object and purpose of having the assignment made at that time? A. Mr. Werbel came and told me he didn't have sufficient money to take the property over, and he suggested my loaning him some money, and I suggested that he put the property in the Monroe and divide the profits.

CROSS-EXAMINATION by Mr. Boyd:

30 Q. I understand that one original contract signed by Mr. Werbel was assigned from Mr. Werbel to Mr. Yampol about the twenty-eighth of July; is that right? A. About the twenty-ninth of July, just prior to having these contracts made.

Court: It was only dated the nineteenth of July.

Q. About ten days, and just as soon as Mr. Nagle came in and made his deposit and received the next day a contract from Mr. Yampol, you had an assignment executed from Mr. Werbel to Mr. Yampol of the same property; is that right? A. Yes.

40 Q. What necessity was there after that time for

Bernard E. McCoy—Cross

destroying an original contract with the assignment on it, and then having another duplicate of that contract assigned by another assignment written later in favor of someone else? A. When Mr. Werbel wanted me to loan him some money after we had organized the Monroe Investment Company, then I suggested that the property be assigned to the Monroe Investment Company. 10

Q. But didn't you understand that Mr. Nagle was the real owner of that contract, namely, that Mrs. Reimuller had agreed to sell to Mr. Werbel, and Werbel had assigned that contract to Mr. Yampol, and Yampol had made a contract to sell the same property to Mr. Nagle; didn't you understand that? A. Exactly.

Q. Then what right had you to cut off Mr. Nagle's right by destroying that assignment in favor of Yampol, who had contracted to sell to Mr. Nagle? A. The Monroe took the contract subject to whatever terms were stated in the contract. 20

Court: Strike it out; there is nothing responsive.

Q. (Last question repeated.) A. I didn't destroy the assignment from Mr. Werbel to Mr. Yampol until the twenty-eighth of October, until Mr. Meyers requested an assignment from Mr. Werbel direct to the Monroe Investment Company. 30

Q. So that right up to the twenty-eighth of October, and up to practically the time of closing the title, there was a straight line of assignments from Mr. Werbel to Mr. Yampol and then a contract from Mr. Yampol to Mr. Nagle? A. Yes.

Q. So that Mr. Nagle was entitled at that time to receive the benefit of the original contract with Mrs. Reimuller, isn't that right? A. No, sir. 40

Bernard E. McCoy—Cross

Q. State why that isn't right. A. Read that question again.

Court: It is so; it cannot help but be so.

10 Q. You said that after you told Mr. Meyers that you had gotten him the job of searching the title for Mr. Nagle, that you asked him to make his bill against you lighter? A. Yes—against the company.

Q. How much did he charge the Monroe Investment Company? A. I don't recall.

Q. As nearly as you can tell; did he make it lighter, in fact? A. I cannot tell you that.

Q. How much did he charge the Monroe? A. I cannot tell you.

20 Q. Did he charge you anything? A. The organization and everything together, and I think we paid him around—I have forgotten just now.

Q. It didn't impress you at all? A. Not expenses; never impressed my mind.

Q. But you knew that he had already done the work; your idea was that he was to collect from Nagle more, so as to collect from you—or your company less; is that right? A. I suggested that.

30 Q. You knew that all he had to do, so far as Nagle was concerned, was to make a continuation search from some date in September until the date of closing, and that he only had to make that search against the company, of which he was secretary himself; isn't that right? A. I don't know what he had to do.

Q. You know that Mrs. Reimuller was then selling to the Monroe Investment Company? A. Yes.

Q. And according to your recollection of dates, had already sold to the Monroe Investment Company? A. Yes.

40 Q. So that the Monroe Investment Company

Bernard E. McCoy—Cross

was the party who was to have the title from that time until Mr. Nagle took his deed; isn't that right, so that all he had to do was to make a continuation search against his own company for the intervening period of a few days? A. I presume that is all he had to do.

10

Q. I want you to tell us just as nearly as you can how much Mr. Meyers charged your company for that search, and I am entitled to know. A. I haven't any recollection; I don't recollect his bill. Have you the bill? I don't recall him ever delivering a bill, although I know there was one; there must have been one; lawyers don't forget bills.

Q. When you suggested Mr. Meyers as the lawyer to make that search, isn't it true that your purpose was that no other lawyer should come in who might disclose to Mr. Nagle the name of the real owner of the property? A. No, sir, that never entered my mind, because I didn't think it was necessary; we took the title from Mrs. Reimuller.

20

Q. You carefully kept from Mr. Nagle the name of the party who had sold to the Monroe Investment Company? A. It was never asked; the question was never raised.

Q. You mean to say that when Mr. Nagle took a contract from Mr. Yampol, that you had no purpose to conceal from him who the real owner was? A. Absolutely not.

30

EXAMINATION by the Court:

Q. How long have you known Mr. and Mrs. Nagle before this? A. I have known Mr. Nagle about eight years.

Q. He listed his house in Bloomfield with you? A. Yes. I sold three houses for him in Bloomfield.

40

Bernard E. McCoy—Cross

Q. I am talking about Walnut Street. A. Yes; I sold one prior to that.

Q. When did you effect the sale of the Walnut Street house? A. The sale that he accepted was effective on September 20, which was the third Tuesday in September, the Building and Loan.

10 Q. Was the contract signed that day, or the deed passed? A. The contracts were signed that day—the following day the contracts were signed, deposit accepted on September 20.

Q. Did you get a commission from the sale of that property? A. Yes; not on the second sale of the Reimuller property, there was no commission; that was an outside sale.

20 Q. If I understood you correctly, about the twenty-first of July Mr. Werbel told you that he had contracted to buy this property, that he wanted a place for the members of his family? A. Yes.

Q. And then about the 28th of July he told you that he thought he would sell it, that he didn't think the family wanted it, and he had a chance of making \$500? A. The twenty-eighth of July Mr. Nagle came in and paid a deposit.

Q. Mr. Nagle paid you \$250? A. Yes.

30 Q. And that was a deposit on what? A. He told me it was a deposit to be placed on 208 Renshaw Avenue.

Q. That was the property that you showed a week before? A. That Mr. Werbel purchased for his own use.

Q. You gave him a receipt for that? A. Yes, subject to the owner's approval.

Q. The owner you had in mind was Mr. Werbel? A. Yes.

40 Q. You knew he was the owner under contract? A. Yes.

Bernard E. McCoy—Cross

Q. Mr. Werbel came in that night and you and he had some conversation about it? A. Yes.

Q. You told him \$250 had been paid? A. Yes.

Q. You told him that Mr. Nagle was coming back the next day to pay the \$500 on account of the deposit? A. I didn't know as to the \$500; I didn't know as to the sale, in fact. 10

Q. You gave a receipt for the \$250 on account of the purchase price of the Renshaw Avenue property? A. Yes.

Q. And you gave that as the representative of Mr. Werbel, because you knew that he had a contract for that property? A. Yes.

Q. When Mr. Nagle left you, wasn't there any understanding as to when he was to complete the payment,—the balance of the ten per cent deposit? A. I think Mr. Werbel, if I am not mistaken, got in touch with Mr. Nagle that night. 20

Q. While you two were together—keep down to that. A. There was no understanding.

Q. When Mr. Nagle left you, after giving you the \$250 and took your receipt, was there any understanding between you and Mr. Nagle as to when he was to come back? A. No.

Q. Or when any further payment was to be made? A. No. 30

Q. Do you recall what your receipt said? I believe it has been destroyed. A. A receipt was dated July 28th, 1922; "Received of Thomas J. Nagle \$250 as a deposit on No. 208 Renshaw Avenue, the same being taken subject to owner's approval."

Q. That is the customary form of your receipt? A. It is now; we have adopted the form; it wasn't then.

Q. What difference was it then? A. I never 40

Bernard E. McCoy—Cross

put on "subject to owner's approval" at that time.

Q. Then Mr. Werbel came in and you told him you had received this payment? A. Yes.

10 Q. And then did he say whether he expected a further payment from Nagle the next day or not? A. No.

Q. The next day Nagle came in again? A. And paid \$500 more. Mr. Nagle came in and paid it to Mr. Werbel.

Q. Were you there at the time? A. No.

Q. Did Werbel tell you about it? A. Not until after the money had been paid.

Q. Was it the same day the money was paid that he told you? A. It must have been that night.

20 Q. Between the time when Nagle paid you the \$250 and the time when Nagle told you that he had paid him in addition \$500 more, were the contracts between Nagle and Yampol prepared? A. No, sir.

Q. Were they prepared after the \$500 was given? A. Yes.

30 Q. How long after, do you know; the next day? A. I think either on the following day or day or so later. They had to get the matter straightened out between Mr. Werbel and Mr. Yampol before we drew the contract.

Q. I want your reasons why this gentleman had paid your office or someone in it \$750 on account of a contract for this property; you knew that? A. Yes.

40 Q. Both from your actual participation to the extent of \$250 and from what Mr. Werbel told you, what was your reason for not having Mr. Werbel make that contract direct to Mr. Nagle? A. My reason was because Mr. Werbel was in my employ, and I never bought a piece of property through

Bernard E. McCoy—Cross

the office; I have always done a strictly brokerage business for eight or nine years, and I told him if he wanted to buy property and speculate, that he had to quit his job, and for him to go ahead and put that property in someone else's name, if he intended to sell it, and he had no business to take it for the purpose of selling it in his own name. 10

Q. He didn't quit his job, because he is still with you? A. Yes, but he transferred it to Mr. Yampol.

Q. Did you tell Mr. Nagle anything about that? A. I wasn't—about the transfer?

Q. No, that you wouldn't have the transaction go through in the name of Werbel. A. There was another— 20

Q. I asked you did you tell him? A. No.

Q. Why didn't you tell him? A. Because it wasn't a commission deal; it was purely a deal between Mr. Werbel, but I was connected—I was brought into the matter because Mr. Werbel was in my employ.

Q. You knew that Mr. and Mrs. Nagle were dealing with you, Mr. McCoy; they didn't come to see Mr. Nagle about selling their own property? A. Yes. 30

Q. They gave it to you; they didn't give it to Mr. Werbel to sell? A. The second time they listed it, they gave it to me.

Q. Mr. Werbel was your employee and it was your office? A. Yes.

Q. You knew when they were inquiring for property to replace the one that they intended to sell, that they were looking through you as the broker, not Mr. Werbel? A. I didn't know that Mr. Nagle was in the market to buy until he sold his property first. 40

Bernard E. McCoy—Cross

Q. Didn't Mr. Werbel report to you that he was looking for property? A. No.

Q. Is that a common thing, that people come in to look for property, and your employees don't tell you about it? A. Yes, they keep their own records.

10 Q. Don't they give you, generally, knowledge of what they do, and how they use your time, for which you are paying? A. Not necessarily.

Q. Do they? A. No, sir.

Q. You want me to understand that you never knew that Mr. and Mrs. Nagle were looking for another home as soon as they sold their Bloomfield home? A. As soon as they sold their Bloomfield home they would be, but they hadn't sold their Bloomfield home.

20 Q. How many times do you remember seeing Mr. and Mrs. Nagle in your office in June or July? A. I never saw Mrs. Nagle in the office, but Mr. Nagle worked very close to the office.

Q. Did you see him there frequently? A. Possibly every couple of weeks he would stop in. I was collecting some money for him on a mortgage, on installment payments, and Mr. Nagle stopped in and asked why we didn't sell his property, or if we had any good prospects, and we talked over different things, and then he would go home.

30 Q. Why were you reluctant to have the transaction appear in your own name, and had no reluctance to have the transaction appear in the name of a company in which you owned a half interest? A. I thought at the time it would be better to have the contract made in the name of the company, and not have my name appear.

40 Q. Better for whom? A. Better for the business.

Bernard E. McCoy—Cross

Q. Why was it better for the business? A. I think it would be better.

Q. I want to know what you thought then; why did you think it was better for the business, as you used the expression, to have this transaction go through in the name of the company, instead of going through in your own name, or Mr. Werbel's, in your employ; you say you thought it would; why did you think so at that time? A. At that time I thought it would be better for the property to go through in the name of the company, so that our business wouldn't look as though it was speculating. 10

Q. What harm would it do, if it did look that way? A. If an office speculates, people think they are buying for themselves, and it hurts them to a certain extent. 20

Q. That is what happened in this transaction? A. Yes; I was brought in the matter simply because Mr. Werbel was in my employ.

Q. You were brought into it more than that; you were brought in to the extent of getting half the profit. A. In September, but not at that time.

Mr. Boggs: I think it appears in the testimony. I wanted to fix the date of the closing of the sale of the house of Mrs. Reimuller to the Monroe Investment Company. 30

Defendants rest.

Charles H. Demarest—Direct

CHARLES H. DEMAREST, sworn in rebuttal for complainant.

Direct-examination by Mr. Boyd:

Q. You reside in Bloomfield? A. Yes.

10 Q. In the summer of 1921, were you a member of some housing committee in Bloomfield? A. Yes, I was chairman of the housing committee of the Men's League.

Q. In that connection did you get in touch with Thomas J. Nagle, who is the complainant in this case? A. I did.

Q. Did you give him some advice about the purchase he was making? A. Yes.

20 Q. Were you present along toward the close of October, 1921, at Mr. McCoy's office, in Bloomfield, at the time that the deed to Nagle passed? A. I was.

Q. Did you have some conversation with Nagle? A. I did.

30 Q. State what occurred; what that conversation was. A. When this closing was about to come up, I noticed several gentlemen there, and I asked Mr. McCoy who they were. It was stated that the transfer was to be made by the Monroe Investment Company, and that is the first I knew that the Monroe Investment Company had any part in this transaction, and Mr. McCoy stated that this man, Mr. Landow, was the secretary of the company, and Mr. Meyers was there as a part of the same company. I stated to Mr. McCoy that Mr. Nagle had been treated very rudely in another deal, and I thought this time looked very much the same way, and asked him if he was ready to make an apparent reduction of \$500, to which he didn't agree.

40 Q. What did he say? A. He said it was a mat-

Charles H. Demarest—Direct

ter for the Monroe Investment Company—that he was one of the officers, and it was a matter for the Monroe Investment Company; he would not do anything about it.

Q. Why did you fix the sum of \$500? A. I figured, talking with Mr. Nagle, that that was about the sum that was over the amount that he should have paid for that property. 10

Court: That he had been overcharged?

Witness: That he had been overcharged.

Q. Did you tell that to Mr. McCoy? A. I did tell him that.

Q. What did he reply? A. It was a matter for the Monroe Investment Company. He had a very off hand way about saying it.

Q. Did he deny that they were making a profit? A. He didn't make any statement about that. 20

Court: He doesn't deny it now?

Mr. Boggs: We don't deny it. The question is whether it was legitimate.

Q. What more was said? A. I took Mr. Nagle out; I said, "Do you want to go through this deal?" I took him just outside the office. He said, "I have got to have a place to go into."

Court: He sold his home in the meantime?

Witness: Yes, and the people were demanding possession, so I went back and I tried to talk reason by compromise in some way— 30

Q. With whom? A. Mr. McCoy, and suggested a lesser amount, but nothing was done; the deal went through.

Q. You mean he refused to make a reduction? A. He refused to make a reduction.

Q. Did you ever take the subject up with Mr. McCoy or anyone connected with the Monroe Investment Company after the closing? A. Mr. 40

Charles H. Demarest—Cross

Nagle asked me and I said, "I will tell you, I thing it is a legal—"

Mr. Boggs: I object.

Q. Did you ever take it up with Mr. McCoy or anyone connected— A. No, I never saw Mr. McCoy after that.

CROSS-EXAMINATION by Mr. Boggs:

Q. You asked Mr. McCoy to reduce the price?

A. Yes.

Q. You thought the property wasn't worth that amount? A. Oh, no, that hadn't anything to do with the question at all.

Q. You didn't think it was a high price for the property? A. No, I think Mr. Nagle made a fair purchase.

Q. What did you say to Mr. McCoy as a reason for asking for a reduction in the price? A. Because of this man we were going up there—Mr. Nagle had mentioned, and then this Monroe Investment Company.

Q. Why did you think there was an overcharge of \$500? A. Mr. Nagle said he had heard in a round-about way that there had been an automobile mixed up in the deal and had gotten information himself in some way about this matter.

Q. Did you say to Mr. McCoy as a reason for taking off or reducing \$500, that he was making an illegal profit out of it? A. I didn't put it that way.

Q. How did you put it? A. I told him that Mr. Nagle had been treated badly in another case, that he was very familiar with.

Q. Then you thought there ought to be a reduction of \$500 in this case because he had been treated badly in another case? A. No, not entirely,

Charles H. Demarest—Cross

because I had no information from Mr. Nagle in reference to the case.

Q. Did you tell him that? A. Mr. McCoy knew all about it.

Q. Did you tell Mr. McCoy anything about this case further than that you wanted a reduction of \$500 on the purchase price? A. I told him I thought he had been overcharged in his house. 10

Q. But you didn't state why he had been overcharged? A. I think that came up in the conversation; I am pretty sure of it.

Q. You don't remember? A. Yes, I told him that, that night.

Q. What did you tell him? A. I told him that he had been overcharged in this case, he had been badly treated. 20

Q. That is, that he was paying too much for the property? A. No, not that.

Q. You simply told him that Mr. Nagle had been overcharged as a reason why he should reduce \$500? A. No, not that simply.

Q. What else did you say to him, except that he was overcharged? A. I told him that the money to the Monroe Investment Company was going through two or three people; I even asked who a certain man was, and he said it was Landow. It was going through another company, and Mr. Nagle I asked more questions about where the agreements were, and he told me that night that they had been destroyed. 30

Q. Didn't he tell you that the Monroe Investment Company held the title? A. No, because the transfer was made right there that night from the Monroe Investment Company to us.

Court: He means he saw it without being told?

Witness: I saw it on the document. 40

Charles H. Demarest—Cross

Q. You saw the deed from Mrs. Reimuller to the Monroe? A. No, the deed from the Monroe to Nagle.

Q. Didn't you also know that Mrs. Reimuller conveyed to the Monroe Investment Company?

10 A. No, I didn't know anything except what Mr. Nagle had told me.

Q. You didn't know who was the owner of the property? A. No, it was all a mystery to me.

Q. It seemed to you that there was some mystery about it? A. Yes.

Q. And therefore you thought that he ought to reduce \$500? A. I felt pretty sure, from what Nagle had told me, that he had been overcharged \$500 on that house—the money that didn't belong
20 to anybody but Nagle; it was an overcharge.

Q. Did Mr. Nagle make any protest that night? A. Yes, he did.

Q. Except through you? A. He said something that night.

Q. What did he say? A. I don't recall exactly; it was a pretty hot night, the whole thing.

Court: Temperature was heated, or conversation?

Witness: The conversation was rather heated.

30 Q. Did you first speak to Mr. Meyers about it; take him outside and talk to him about it? A. No, I did not. I spoke in public with Mr. McCoy.

Q. You understood that Mr. Meyers that night was the attorney to close the matter? A. Yes.

Court: Attorney for whom?

Witness: Mr. McCoy had put in Mr. Meyers as attorney for Mr. Nagle, and Mr. Meyers also represented Mr. Nagle in a previous sale of property.

40 Q. In the passing of title, you mean? A. Yes.

Charles H. Demarest—Cross

Q. Making a search, and so forth? A. Yes.

Q. In passing of title only, there wouldn't be a search? A. Yes.

Court: Have you any interest in this matter at all?

Witness: No interest at all, your Honor. 10

Q. Mr. Meyers that night at the time of the closing had a search there, didn't he of the property? A. I think he did.

Q. And you went over it, didn't you? A. I think I was there to look after Nagle.

Q. I say you went over it; do you remember looking over it? A. I remember seeing the search there.

Q. And didn't the search show you the deed to Mrs. Reimuller? A. That is the first I knew of 20 it.

Q. A deed from Mrs. Reimuller to the company. The deed from Mrs. Reimuller to the company was on that search? A. I cannot recall what was on that search, now; if you have the papers here, I can refresh my memory.

Mr. Boyd: I wish to move to amend my bill to conform to the pleadings, so as to include a claim against Meyers for this \$60, where he was not acting in his client's 30 interest.

I move to amend my bill, so as to make a claim against Mr. Meyers for the \$60 in addition to the \$500. The \$60 is for a search and closing.

Mr. Boggs: To bring in Mr. Meyers at this time, I object to it.

Court: I will allow you to amend and you may put in any additional proof you desire, as a result of it. I think Mr. Meyers 40

Lionel L. Meyers—Direct

has covered it, but if he has not, I will allow him to do it; I will allow the amendment.

Mr. Boggs: I will.

10 Court: If you wish to supplement the proof you will have an opportunity to do so.

LIONEL L. MEYERS, re-called:

Direct-examination by Mr. Boggs:

Q. Mr. Meyers, how much of a search did you make on this property 208 Renshaw Avenue?

Mr. Boyd: I object.

20 Court: Hasn't he been all over that? He has gone over the question with you and Mr. Boyd and myself yesterday. He has his abstract here, which has been offered in evidence; it is marked—if it is not marked, it can be marked.

Mr. Boggs: I will offer it in evidence.

Marked Exhibit D-10, December 6, 1922.

Mr. Boggs: It shows a search from 1863.

30 Q. Did you state as to whether Mr. Nagle received a copy of this search? A. Yes, I turned it over to Mr. Demarest that night, the night of closing.

Q. The original? A. Yes, sir.

Court: I think he called it an abstract yesterday, in his testimony.

Q. It was an original of this copy? A. Yes, with the official searches, tax search, etc.

40 Q. Was there one meeting for the closing of this title or more than one? A. My recollection is there were two; there were not two meetings, but

Lionel L. Meyers—Direct

when we closed the Walnut Street house, Mr. Nagle said to me that he was anxious to close the Renshaw Avenue house, and we made an appointment to close it at Mr. McCoy's office the following day, and I appeared at the office once and no one showed up, and called off; and then I was notified to close the transaction on the twenty-eighth. That was shortly after the closing of the transaction in Mr. Erlich's office on the Walnut street property. 10

Q. Do you know how much you charged the Monroe Investment Company for the search you made Mrs. Reimuller's property? A. I don't know.

Q. Have you your books? A. I looked yesterday for them. I have moved; I have never kept any real books with debits and credits in; I have tried to look it up. 20

Q. How much did you pay for incorporating the company and searching the property? A. Around \$200; I think it was around that.

Q. Can you give any estimate of what portion of that would represent the charge for the search? A. I cannot, because there were drawings of other deeds for other properties.

Q. Would you say it was as much as for the search? A. I judge in that neighborhood. 30

Q. You apparently searched from 1863 down to the twelfth or thirteenth of September, 1921, for the Monroe Company? A. Yes.

Q. You continued the search for Mr. Nagle from the twelfth or thirteenth of September, when the conveyance out of Mrs. Reimuller into the company was effected and recorded, down to the date of closing, about the twenty-eighth or twenty-ninth of October? A. Yes.

Q. So you had a matter of about six weeks to 40

Findings

make the continuation to Mr. Nagle? A. Yes, but I guaranteed the title for sixty years.

Q. You guaranteed it? A. Yes, I gave him a certificate. There is a certificate on the bank.

10 Mr. Boggs: And also his responsibility for mistakes.

Court: Is there in addition a guarantee for sixty years?

Witness: A certificate.

Mr. Boggs: He didn't mean that.

Witness: I meant a certificate.

(Reading certificate.)

Mr. Boggs: He is liable for his errors and mistakes.

20 Q. Did you charge anything for your so-called guarantee? A. Yes.

Q. How much? A. I cannot give an exact figure; the closing took about two and a half hours there was much hemming and hawing, and I was there two and a half.

Court: Did you draw the deed?

Witness: Deed from whom?

Court: From the Monroe Company.

Witness: No; I testified before, I didn't.

30 Court: I am ready to dispose of this case; I have reached a conclusion. Do you wish to make any comment?

(After hearing counsel.)

This action is brought to recover money of which complainant claims defendants, or some of them, defrauded him under the following circumstances:

40 About June 13, 1921, complainant placed his property on Walnut Street, Bloomfield, for sale with the McCoy Real Estate Agency, of which the defendant McCoy was the owner and the defendant Werbel an employee; and he then told either

Findings

McCoy or Werbel that he wished to sell his property and desired to buy another place for a home.

At a number of conversations thereafter, Werbel repeatedly told him he had not found anything he thought would suit him. About the middle of July, Werbel took complainant and his wife to inspect No. 208 Renshaw Avenue, East Orange, but stated he could not show them the interior of the house because the owners had not finally decided to sell it. About July 28, Werbel permitted the complainant to make a hurried inspection of the interior of the house and stated he could get it for complainant for \$7750, and thereupon complainant paid Werbel as the representative of the McCoy Agency, the ostensible brokers having the property for sale, \$250 to bind the bargain, and the following day he made an additional payment of \$500, and surrendered his receipt for \$750, being ten per cent of the purchase price, signed in McCoy's name by Werbel. McCoy testifies that the receipt for \$250 which he destroyed contained the recital that the sale was made subject to the approval of the owner; if this is so, the ostensible owner, a Mr. Yampol, was never consulted and his approval was never obtained and in fact it was unnecessary, for at the time the sale was made and these deposits paid, Werbel was the owner under contract of the property, because Werbel claims that as a result of offering his automobile for sale through newspaper advertising, he entered into a contract with Mrs. Reimuller, the actual owner of the property, on July 19, 1921, whereby he agreed to buy the property for \$7250, and he paid her five dollars on account of this price and agreed to pay her the balance in cash by September following, less \$1500, which she was to pay or

Findings

credit him for his automobile. It will be noticed that while this contract bears date July 19, the date complainant states he was first shown the property, there is no proof to show that it was executed on that date by Mrs. Reimuller; although
10 it does appear from McCoy's testimony that about July 21 Werbel told him he had bought the property for his family, and that seven days later Werbel sold the property to complainant at an advance of \$500, and had a dummy, Yampol, execute the contract, claiming to have assigned to Yampol his contract with Mrs. Reimuller for that purchase.

McCoy claims that when he learned Werbel was speculating with the property he objected and as a consequence, Yampol was selected to make the
20 contract, and that later, on August 19th, still because of McCoy's objection to having any one connected with his agency, engaged in speculating with a property his client, complainant, desired to buy, he and Werbel organized the Monroe Investment Co., and turned over to it the \$750 paid by complainant.

This company had the defendant Meyers, its attorney, make a search against the property, and September 12, 1921, while the contract between
30 complainant and Yampol was outstanding McCoy and Werbel had Mrs. Reimuller convey the property to the Monroe Investment Co., by a deed dated August 31st, 1921, for \$7250, and apparently the \$750 paid by complainant was used by this company to pay part of this purchase price.

While complainant's contract with Yampol was still in an executory stage, McCoy and Werbel, or rather their company, after taking title in September, rented the property for some days to Mrs.
40 Reimuller and kept the rent received as company income.

Findings

In the meantime the McCoy agency had sold complainant's Bloomfield property which left him without a home for himself and wife and five small children after this sale was effected complainant learned through Mr. Demarest and others of the Citizens Housing Committee of Bloomfield, 10 that the title to and the price of the Reimuller property was being manipulated by McCoy and Werbel, so that they were charging him \$500 more than they could and actually did obtain the property for when he had signified his willingness to purchase it; and on October 29th, when this transaction was closed, complainant and Mr. Demarest complained to McCoy, that he had abused the trust and confidence which complainant had reposed in him as his agent and broker and in effect 20 charged McCoy with conspiring with Werbel and others to defraud complainant out of \$500, in connection with the price of the property, and they demanded from McCoy a reduction of this or some other amount in the price. McCoy told complainant this was a matter for the Monroe Investment Co. to settle or adjust, without disclosing his or Werbel's connection with this company; and then because of the necessity of finding a house in which to place his family, complainant under protest, 30 paid the balance of the purchase price of \$7750, and took title to the property from the Monroe Investment Co., to which both Werbel and Yampol had assigned their respective contracts.

Within a few days thereafter complainant engaged counsel and this action was commenced.

The proofs establish the allegations of complainants bill so far as they relate to McCoy and Werbel; they show that McCoy and Werbel abuse the trust and confidence which complainant had 40

Findings

reposed in them as his agents, and the proofs also show that McCoy and Werbel conspired to defraud complainant out of \$500 by increasing the purchase price of the property by that amount after they knew complainant was ready and willing to buy it at \$7450, the price for which Mrs. Reimuller was willing to sell it and did sell it to Werbel and the Investment Company, and I will therefore advise a decree for the repayment by them of \$500 to complainant.

I do not find the proofs to implicate Mr. Meyers in this fraud, but I do find he made an excessive charge to complainant for the continuation of the search for a few days and the charge should be reduced from \$60 to \$25.

20 A counsel fee of \$100 and costs will be allowed complainant.

COMPLAINANT'S EXHIBITS**Exhibit C-1***Contract Sale Real Estate*

(Abridgement by consent—rule 12) 10

John I. Yampol, unmarried, and Thomas J. Nagle, dated, July 28th, 1921.

Yampol agrees in consideration of \$7,750 to convey to Nagle *their* heirs and assigns, by deed warranty, free from all encumbrances, except as hereinafter mentioned, on or before October first then next; premises 208 Renshaw Avenue, East Orange, N. J. lot 50 x 253 feet, more or less. Nagle agrees to pay said sum of \$7,750 purchase money; \$250 upon signing agreement, receipt, acknowledged; \$500 additional, not later than Saturday July 30, 1921, balance of purchase price in cash at date of passing title or delivery of deed. Time of essence of agreement. All taxes, water rates, insurance, interest, if any, etc. to be adjusted pro rata as of passing title; 20

Nagle or heirs may take possession October first, then next, and take rents.

Deed to be delivered at office Bernard E. McCoy—276-8 Glenwood Ave., Bloomfield N. J., between 10 and 3 October first, then next. 30

(Signed) JOHN I. YAMPOL
(Signed) THOMAS J. NAGLE

Witness, B. Werbel

Witness, B. E. Mc Coy.

(No acknowledgment)

Exhibit C-2*Contract Sale Real Estate*

(Abridgement by consent—rule 12)

1921/10 Mary E. Reimuller, widow, and Bernard Werbel—dated July 19, ~~1922~~

Reimuller agrees in consideration of \$7,250 to convey to Bernard Werbel, his heirs and assigns, by deed of warranty, free from all encumbrances, except as hereinafter mentioned, on or before September 15, then next, premises 208 Renshaw Avenue, East Orange, lot approximately 50 x 253 feet. Werbel agrees to pay said sum of \$7,250 purchase money; \$5.00 upon signing agreement, receipt acknowledged; \$1,500 at time of closing
20 by acceptance of bill of sale for one Oldsmobile touring car, model 37A 1921, Maker's 27482, Motor Number E. D. 59606.

Balance of purchase price in cash at date of closing. Werbel to have option, at time of closing, to take premises subject to existing building and loan mortgage thereon.

Risk of loss or damage by fire or otherwise, until delivery of deed, assumed by Reimuller.

30 Agreed premises never derived *thru* tax or assessment sale or *thru* tax or assessment sale *thru* the "Martin Act." All taxes, water rents, insurance, interest rents, if any, etc. adjusted as of date of closing. Screens, fixtures, etc. belonging to premises included in price.

Werbel and heirs may take possession September 15 then next, and take rents.

Deed to be delivered at between 10 and 3 September 15 then next.

(Signed) MARY E. REIMULLER (L. S.)

40 (Signed) BERNARD WERBEL.

Witness—Paul A. Mc Laughlin

Witness—Paul A. Mc Laughlin

Exhibit C-3

It is hereby agreed by and between the Monroe Investment Co., the owner of property 208 Renshaw Avenue, East Orange, N. J., that Mrs. Mary E. Reimuller, a tenant may enter into possession from the date hereof and until the 20th day of September, at a rental of \$10. And that said Mary Reimuller hereby agrees to deliver up possession on the aforesaid premises rented by her on the 20th day of September 1921. 10

Sworn and subscribed this 12th day of September 1921.

MARY E. REIMULLER
MONROE INVESTMENT CO.

Per B. Werbel

Treas. 20

Lionel L. Meyers.

Exhibit C-4*Special Meeting of the Board of Directors*

10 Special meeting of the Board of Directors of Monroe Investment Company was held at the office of the Company on October 11th, 1921, at four o'clock in the afternoon.

All directors were present.

Upon motion made and seconded by the directors, it was resolved that the proper officers be and they are hereby authorized to execute any instrument necessary for the conveyance of the premises, 208 Renshaw Avenue, East Orange, N. J., to Thomas J. Nagle and wife, for the sum of \$7750.

20 There being no further business the meeting adjourned.

LEO LANDOW,
Sec'y.

This is a true copy of the minutes of the Monroe Investment Company. Dated October 29th, 1921.
LEO LANDOW.

Exhibit C-5*Bill of Sale*

(Abridgement by consent—rule 12)

Premier Oldsmobile Company of Newark, etc.,
in consideration of one and other consideration 10
dollars, paid by Bernard Werbel of Bloomfield,
etc., does bargain, sell, grant and convey to said
Werbel, his heirs, etc., touring Oldsmobile, serial
27,482 Model 37A Motor E. D. 59,606.

Premier Oldsmobile Company covenants to war-
rant and dated

Dated October 16, 1920.

(Signed) PREMIER OLDSMOBILE COM.,
Walter E. White, Sec'y. 20

Signed &c.

Gertrude T. Scholl,
James O'Neill Jr.

Acknowledged by Walter E. White, June 15,
1921 before Margaret M. Baney, Notary Public,
N. J.

Assignment

Bernard Werbel of Bloomfield, etc, in consider- 30
ation of \$1500 sells, assigns, transfers and sets
over to Mary E. Reimuller, of East Orange, etc.,
said motor vehicle described in attached bill of
sale.

Dated, September 12, 1921.

(Signed) BERNARD WERBEL (L. S.)

Witnesses:

B. E. McCoy,
Lionel L. Meyer.

40

Exhibit C-6

July 29th 1921

\$750.00

Received of Thos. J. Nagle, Seven Hundred
Fifty and no/100 Dollars. Deposit on 208 Ren-
shaw Ave. E. O. Purchase price \$7,750.

B. E. McCOY per B. Werbel.

Exhibit C-7

Lionel L. Meyers
Attorney at Law, Proctor in Admiralty
790 Broad Street, Newark, N. J.
Tel. 6043 Market

20

Sept. 20, 1921

Mr. Thos. J. Nagle
27 Walnut Street
Bloomfield, N. J.

Dear Mr. Nagle:

The search for property 208 Renshaw Avenue
is complete and I can close title on the 24th inst.,
if it is convenient to you. Kindly advise me
whether or not the above date is satisfactory.

Very truly yours,

LIONEL L. MEYERS.

SSS/CHN

(in pencil) wait until Johnson deal is closed

Exhibit C-8

LIONEL L. MEYERS
Attorney at law, Proctor in Admiralty
790 Broad Street, Newark, N. J.
Tel. 4917-8 Market

Oct. 5, 1921. 10

Mr. Nagle,
23 Walnut St.,
Bloomfield, N. J.

Dear Mr. Nagle:

Mr. McCoy has advised me that the owner on Renshaw Avenue is ready and are waiting for you to close. Kindly let me know what date will be convenient so that I may run the search down to date. 20

Very truly yours,

LIONEL L. MEYERS.

LLM/CHN

Exhibit C-11

BLOOMFIELD TRUST COMPANY

No. Bloomfield, N. J., Oct. 28, 1921.
 Pay to the
 order of Monroe Investment Company \$3647.71 10
 Thirty-six Hundred Forty-seven 71/100 dollars
 Thomas J. Nagle.
 Magdalena Nagle.

Certified.
 (*Endorsed—for Deposit*)
 Monroe Investment Co.

Exhibit C-13

		20
		Oct. 1/21.
Closing Between Monroe Investment Co.		
To—Nagle.		
Purchase Price		\$7750.00
Deposit	\$750.00	
1st Mtge.	3323.04	
Int.		7.81
Taxes		
1st half	27.62	
Int.	.65	30
2nd. half	31.81	
Water	2.07	
No adjustment on rent.		
Insurance, Niagara Fire Ins. Co., Poly.		
186129		7.09
	<hr/>	
	\$4117.19	<hr/>
		\$7764.90
		4117.19
		<hr/>
Cost at closing		\$3647.71 40

Exhibit C-14

September 12, 1921.

Closing between Monroe Investment Co. and Mary E. Reimuller		
10	Purchase Price	\$7,250.00
	Deposit	\$105.00
	1st B & L	3366.40
	Interest	21.50
	Car	1500.00
	Ins. no adjustment	
	Water	1.10
	Taxes	34.02
	Int. on taxes	.35
		<hr/>
20		\$5,028.37
		5,028.00
		<hr/>
	To Reimuller	\$2,221.63
	Rent	10.00
		<hr/>
		\$2,211.63
	One-half transfer fee	3.23
		<hr/>
		\$2,208.40
	One month's taxes not figured above	4.33
		<hr/>
30		\$2,204.07
	Service	28.00
		<hr/>
		\$2,176.07

DEFENDANTS' EXHIBITS

Exhibit D-1

Listing card dated June 13, 1921
(not printed)

10

Exhibit D-2

Listing card
(not printed)

Exhibit D-3

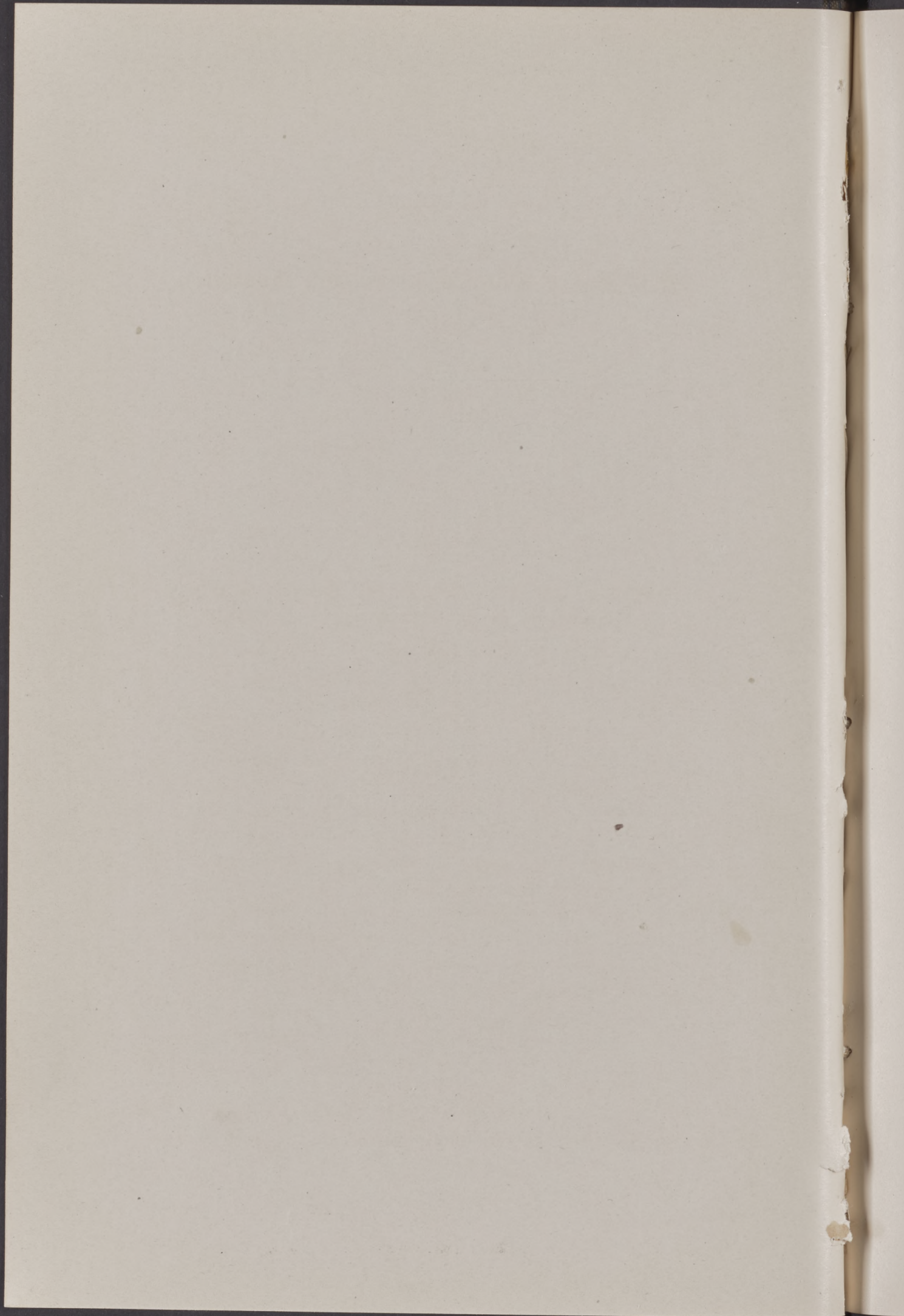
20

*(Endorsed on a duplicate of the contract Yam-
pol and Nagle—Exhibit D-1.)*

I, the undersigned, hereby transfer all my
rights, title and interest under the within contract
to Monroe Investment Co.

JOHN I. YAMPOL.

B. E. McCoy.



New Jersey Court of Errors and Appeals.

Between

THOMAS J. NAGLE,
Complainant-Respondent,

and

BERNARD E. MCCOY, *et als.*,
Defendants-Appellants.

On Bill, &c.

On Appeal.

**BRIEF OF ROBERT M. BOYD, JR.,
COUNSEL FOR THOMAS J. NAGLE,
COMPLAINANT-RESPONDENT.**

State of Facts.

The bill in this cause prayed that the contract made with one Mary E. Reimuller by defendant Bernard Werbel in his own name (State of Case, p. 174, Exhibit C-2) be decreed to have been taken for the benefit of complainant; that complainant had the right to become the purchaser of the lands described in said contract upon the very terms thereof; that the difference between the actual price paid to said Mary E. Reimuller and the price of \$7,750 paid by complainant for the same premises, be adjudged to be a fraudulent and illegal profit received by the defendants or some of them, and that they account for and repay to complainant the moneys so received (State of Case, p. 12, prayer of bill, line 30 *et seq.*).

The complainant-respondent, Thomas J. Nagle, on or about the 13th day of June, 1921, placed his

property No. 27 Walnut Street, Bloomfield, N. J., for sale with the defendant McCoy Real Estate Agency of which the defendant McCoy was the owner, and the defendant Werbel, an employee. He then told Werbel that he wished to sell his property and desired to buy a two family house for a home.

About the middle of July after the signing of an agreement of sale of his Walnut Street house this complainant learned from Werbel that he could buy a house at No. 208 Renshaw Avenue, East Orange, N. J., for \$7,750. At that time Werbel stated that he could not show him the interior of the house because the owners had not finally decided to sell it. The next day Werbel permitted a hurried inspection of the interior of the house but did not disclose the name of the owner. On July 27th, 1921, Nagle paid the deposit of \$250 requested receiving a receipt, and the next day was told that \$250 was not enough and to bring \$500 more, which he did on July 29th, 1921. He then surrendered the receipt for \$250 on request of defendant Werbel and was given a receipt in full for his \$750, stating it was a deposit on No. 208 Renshaw Avenue, East Orange, N. J., purchase price \$7,750 (Exhibit C-6, Case, p. 178). That day he signed an agreement for the purchase of this house for \$7,750 and received a like agreement already signed by John I. Yampol, a defendant, but not an appellant, who defendant Werbel told him was the owner of the premises. The signature of Yampol was witnessed by the defendant McCoy and the agreement provided for the delivery of the deed October 1, 1921 (Exhibit I, Case, p. 173).

Mary E. Reimuller the *actual* owner of the property contracted by agreement with the defendant Werbel by contract dated July 19, 1921, for a consideration of five dollars, to sell to said Werbel the premises in question for \$7,250 (Exhibit C-2,

Case, p. 174). Complainant did not know of this agreement.

Werbel by a writing, later destroyed by McCoy, assigned all his rights, title and interest to Yampol without consideration.

On or about the 19th day of August, 1921, McCoy, Werbel, Yampol and the defendant Meyers, but not an appellant, organized a corporation called the Monroe Investment Co. Werbel executed a second assignment of all his rights, title and interest in his contract to said corporation. Yampol by an undated writing endorsed upon his duplicate contract with Nagle assigned all his rights, title and interest to the Monroe Investment Co. (Exhibit D-1, Case, p. 183).

Reply to Point I of Defendants-Appellants.

McCoy and Werbel were acting as agents for Nagle complainant-respondent in the purchase of the premises, No. 208 Renshaw Avenue, East Orange. The complainant-respondent Nagle had in June placed his own house for sale with the defendant McCoy. Some time before July 19th, 1921 (the exact date is not fixed), this complainant had executed an agreement for the sale of his own house on Walnut Street, Bloomfield and was ready to purchase another house. He told Werbel probably not two weeks after June 13th, 1921, that he wanted to buy the house (Case, testimony of complainant, p. 70, line 24, *et seq.*). On or about the 18th or 19th of July, 1921, Nagle first heard of the Renshaw Avenue house and was taken around by Werbel and shown the outside of the house. It is admitted in the statement of facts in the brief of the Counsel for the defendants-appellants that about the 18th day of July, 1921, complainant learned from Werbel that he could

buy the house at No. 208 Renshaw Avenue, East Orange, for \$7,750. This was after he had signed an agreement to sell his own house. Werbel took complainant and his wife to look at the house, that is, the outside (Brief of Counsel for defendants-appellants, p. 2, line 15 *et seq.*).

Werbel executed an agreement with Mrs. Reimuller for the purchase of the Renshaw Avenue property *dated* July 19th, 1921, but there is no proof that it was executed on that date by Mrs. Reimuller (State of Case, p. 170, line 4).

As soon as an agent ceases to represent his principal by putting himself in a position where his interest conflicts with those of his principal no matter how fair his contract may be in that particular transaction, that moment he ceases to be that which his services require and his duty to his principal demands. If an agent buy property for himself opposed to the interest of his principal there arises evidence of a constructive trust which the courts will uphold unless the entire transaction is characterized by the utmost good faith and where there is no misrepresentation and an entire absence of concealment or a suppression of any fact within the knowledge of the agent which might influence the principal; and the burden of establishing a perfect fairness of the contract rests upon the agent (*Condit vs. Blackwell*, 22 N. J. Equity, 481; *Porter vs. Woodruff*, 36 N. J. Equity, 174).

The Vice Chancellor finds that Werbel and McCoy abused the trust and confidence imposed in them by complainant who employed them to sell one house for him and by another. The relationship is one of principal and agent. The main consideration in the selection of agents is integrity, fidelity and ability, and the law will carefully regard this fiduciary relationship. It will not allow an agent to act for himself and his principal; nor for two principals on opposite sides without their consent thereto in the same transaction. At the

time of the establishment of this fiduciary relationship, McCoy and Werbel were agents for Nagle, and the purchase by them from Mrs. Reimuller for \$7,250 was by implication of law a purchase for Nagle, and vested in him the equitable title (Rogers *vs.* Genung, 76 N. J. Equity, 306; Harrop *vs.* Cole, 85 N. J. Equity, 32; confirmed, 86 N. J. Equity, 250).

The learned Vice Chancellor finds, that Werbel took complainant and his wife to look at the Renshaw Avenue property, but stated that he could not show them the interior because the owners had not finally decided to sell; that about July 28th Werbel permitted complainant to make a hurried inspection (State of Case, Findings, p. 169, line 10).

Nagle testifies that Werbel showed him the outside of the house on or about July 18th, 1921, and the next day took him to see the inside (State of Case, Nagle, Cross, p. 71, line 26 *et seq.*). About July 18th, 1921, Werbel told Nagle that there was some dissatisfaction and that the people did not want to sell and that Nagle would have to come back and see him again. He came back shortly after that and Werbel said that the people had not made up their minds definitely (State of Case, Nagle, direct, p. 40, line 10 *et seq.*). This and other testimony tended to show that the contract dated July 19th, 1921, between Werbel and Mrs. Reimuller was really executed later than July 19th, 1921. Werbel's testimony as to his negotiations with Mrs. Reimuller stands alone and uncorroborated. Defendants-appellants admit in their brief that Werbel and McCoy withheld from the complainant the fact of ownership by Mrs. Reimuller, the agreement by Mrs. Reimuller with Werbel to sell the premises for \$7,250, and by the device of the dummy agreement signed by Yampol deceived complainant and made him believe that Yampol was the owner. They did more than that,

they told Nagle that Yampol was the owner (State of Case, Nagle, direct, p. 47, line 1). The defendant-appellants maintain they were under no legal obligation to state the facts. Certainly they were under a legal obligation not to *misstate* the facts. Where the agent knows the principal is anxious to purchase a piece of property and there is a fair inference that he will purchase it, if the agent acting on this inference purchases it for himself, there arises a trust by implication or construction of law out of the confidential relations of the parties in favor of the principal (*Rogers vs. Genung, supra*).

Mrs. Reimuller conveyed to Monroe Investment Company by deed dated August 31st, 1921 (State of Case, p. 180, Ex. C-9), and the \$750 paid by Nagle was principally used as part of the purchase money (State of Case, Findings, p. 170, line 30). In the case of *Harrop vs. Cole*, 85 N. J. Equity, 32; confirmed, 86 N. J. Equity, 250, the agent took title in his own name and paid the purchase price out of his own funds, and the Court of Errors and Appeals held in confirming this decision that the property was held by the agent for the benefit of the principal.

See *Rogers vs. Genung, supra*.

SECOND POINT.

Complainant Nagle had no knowledge of the fraud before taking title.

He had his suspicions aroused by what Mr. Demarest said, but Mr. Demarest himself did not know the facts. Neither of them had ever heard of Mrs. Reimuller nor had they seen her contract with Werbel. Nagle's lawyer represented Werbel and walked away when the question of fraud came up. He had concealed from Nagle that Yampol was only a dummy and that Werbel and McCoy

were the Monroe Investment Company which held title to the house. Nagle did not know the facts nor did he know his rights. The contract signed by him was with Yampol, who was not even present. He did not know how the Monroe Investment Company got its title. When he made inquiries he had been deceived by these appellants. After taking his deed he promptly investigated, retained counsel, and asserted his rights—one of which was to ratify the Reimuller contract, claim the benefit of it, and to receive back the \$500 representing the fraudulent profit which appellants admit they had put into their pockets.

If the agent acts in bad faith, when the principal acquires full knowledge he may adopt the transaction and compel the agent to account for any profits made thereby. Nothing will defeat this right of the principal except his own confirmation *after full knowledge of all the facts.*

31 Cyc. 1432-1433.

“Knowledge” and “Suspicion” are not synonymous.

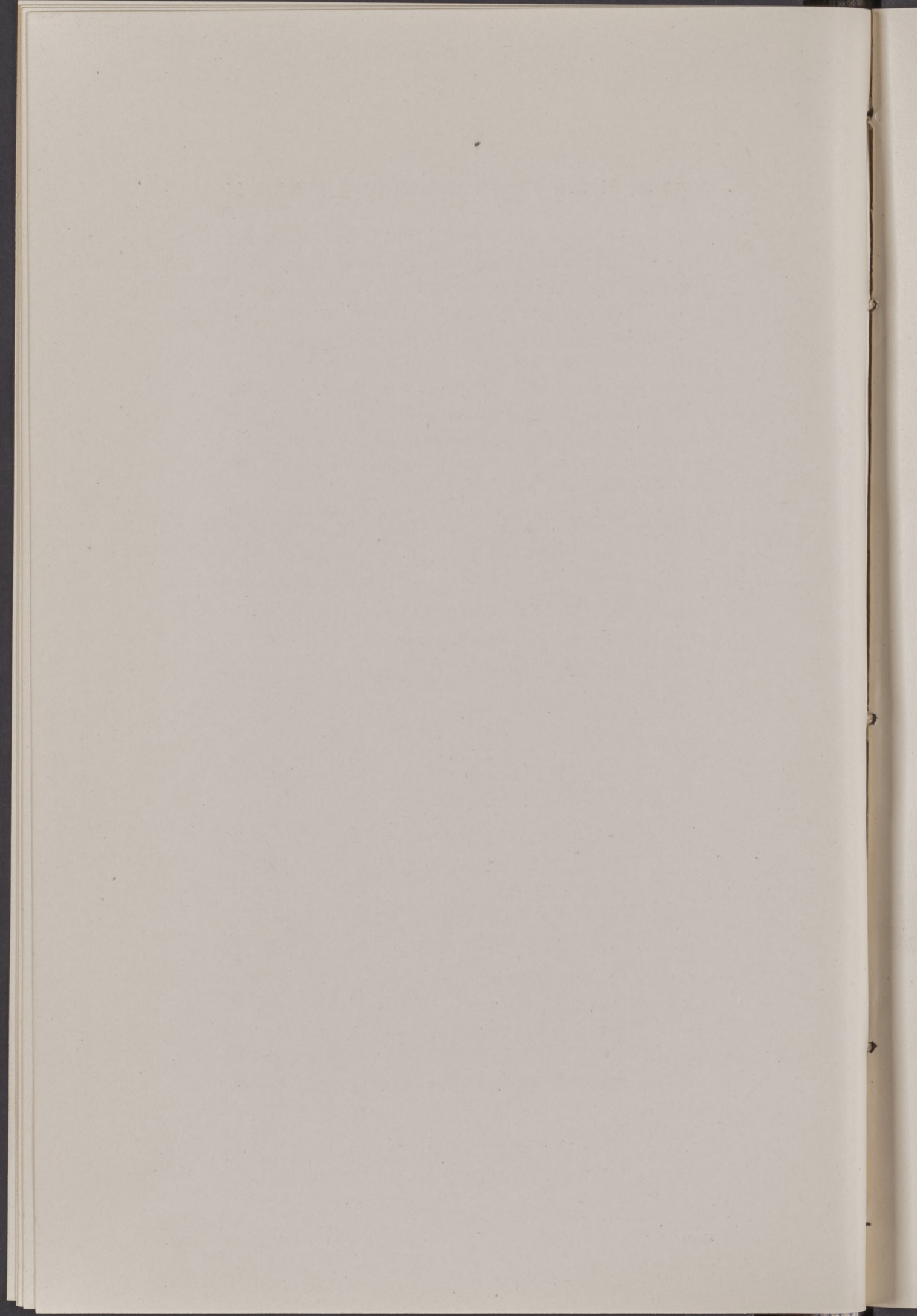
American Surety Co. *vs.* Pauly U. S., 72 Fed. 470-477.

“The beneficiary, thereupon, being the true owner, may always, by means of an equitable suit, compel the trustee to convey or assign the *corpus* of the trust property, and to account for and pay over the rents, profits, issues, and income which he has actually received, or in general, which he might with the exercise of reasonable care and diligence have received.”

3 Pomeroy's Equity (3rd), § 1058.

This appeal should be dismissed, with costs.

ROBERT M. BOYD, JR.,
Counsel for Complainant-Respondent.



New Jersey Court of Errors and Appeals

Between

THOMAS J. NAGLE,
Complainant-Respondent,

and

BERNARD E. MCCOY, *et al.*,
Defendants-Appellants.

On Bill, &c.
On Appeal.

BRIEF OF HERBERT BOGGS, COUNSEL FOR BERNARD E. MCCOY AND BER- NARD WERBEL, DEFENDANTS-AP- PELLANTS.

Statement.

The bill in this cause prayed, that the contract made with one Mary E. Reimuller by defendant Bernard Werbel in his own name (State of Case, p. 174, Exhibit C-2) be decreed to have been taken for the benefit of complainant; that complainant had the right to become the purchaser of the lands described in said contract upon the very terms thereof; that the difference between the actual price paid to said Mary E. Reimuller and the price of \$7,750 paid by complainant for the same premises, be adjudged to be a fraudulent and illegal profit received by defendants or some of them, and that they account for and repay to complainant the moneys so received (State of Case, p. 12; Prayer of Bill, line 30, *et seq.*).

The final decree, appealed from, decrees that de-

fendants Bernard E. McCoy and Bernard Werbel (the appellants herein) pay to complainant the sum of \$500.00, representing the fraudulent and illegal profit so received by them, together with the taxed costs and a counsel fee of \$100.00 (Case, p. 35; Final Decree, line 15, *et seq.*).

The appeal is from the whole of the decree.

About June 13, 1921, complainant placed his property on Walnut Street, Bloomfield, in which he then lived, for sale with the defendant McCoy, a real estate broker, by whom defendant Werbel was employed. At that time, or afterwards, complainant told McCoy, or Werbel, that he would buy another house for a home, if, and when he sold the Walnut Street house. About July 18th, 1921, complainant learned from Werbel that he could buy a house at 208 Renshaw Avenue, East Orange, for \$7,750. This was after he had signed an agreement to sell his own house. Werbel took complainant and his wife to look at the house. They saw the outside. The next day he saw the inside. He did not know the name of the owner. About July 27 he decided to buy this house for \$7,750. That day he went to McCoy's office and paid a deposit of \$250, receiving a receipt. July 29 he paid \$500 additional, and received a receipt for \$750, stating that it was a deposit on 208 Renshaw Avenue, East Orange, purchase price \$7,750 (Exhibit C-6, Case, p. 178), surrendering the \$250 receipt. That day, or the next, he signed an agreement for the sale and purchase of this house for \$7,750 with John I. Yampol, a defendant, but not an appellant, providing for delivery of deed, October 1, 1921 (Exhibit C-1, Case, p. 173).

This house was owned by one Mary E. Reimuller, and July 19, 1921, she executed an agreement with defendant Werbel, to sell the premises to Werbel for \$7,250, deed to be delivered September 15, 1921 (Exhibit C-2, Case, p. 174).

Yampol, by an undated writing endorsed upon

the duplicate held by him, assigned all his rights, title and interest in his contract with complainant, to Monroe Investment Company (Exhibit D-1, Case, p. 183). Mary E. Reimuller, by deed dated August 31, acknowledged September 12, and recorded September 13, 1923, conveyed the premises, 208 Renshaw Avenue, to Monroe Investment Company for \$7,250 (Exhibit C-9, Case, p. 180); and Monroe Investment Company, by deed dated September 19, acknowledged October 28 and recorded October 31, 1921, conveyed the same premises to complainant, Thomas J. Nagle, and his wife, Magdalena Nagle, for \$7,750 (Exhibit C-10, Case, p. 180). At the time complainant executed his agreement with Yampol for the purchase and sale of the premises in question (Exhibit C-1, Case, p. 180) he did not know that Mary E. Reimuller was the owner, nor did he know of the existence of the agreement of Mary E. Reimuller with the defendant Werbel, to sell to Werbel the premises for \$7,250 (Exhibit C-10, Case, p. 180).

Grounds of Appeal Relied Upon.

1. The Court below should have dismissed the bill.
2. That the Court below decreed that the sum of \$500, the difference between the price received by Mary E. Reimuller for the premises and the price paid by complainant therefor, was a fraudulent and illegal profit received by defendants-appellants, Werbel and McCoy.
3. That the Court below decreed that defendants-appellants, Werbel and McCoy, pay to complainant the said sum of \$500, so found to be a fraudulent and illegal profit.
4. That they pay to complainant his costs to be taxed and a counsel fee of \$100.

ARGUMENT.**FIRST POINT.**

The finding of fact by the Vice-Chancellor that the defendants-appellants, McCoy and Werbel, abused the trust and confidence which complainant had reposed in them as his agents, and that McCoy and Werbel conspired to defraud complainant out of \$500 by increasing the purchase price of the property by that amount after they knew complainant was ready and willing to buy it at \$7,250, the price for which Mrs. Reimuller was willing to sell it, and did sell it to Werbel and the Investment Company (Case, Findings of Vice Chancellor, p. 171, line 37, etc., p. 172), is not supported by the evidence. The bill should have been dismissed.

Werbel and McCoy were not acting as agents for Nagle, the complainant, in the purchase of the premises, 208 Renshaw Avenue, East Orange.

The complainant, Nagle, had in June, 1921, placed his own house for sale with defendant McCoy. McCoy was his agent only for the sale of his own house. If complainant sold his own house, he would be in the market for the purchase of another house for himself, but would not seriously consider a purchase until his own property was sold (Case, Testimony of Complainant, p. 70, line 12, *et seq.*). He only told Werbel that he would want to buy a house, if he sold his own. He knew nothing of the Renshaw Avenue property, the one he bought. He had no particular property in mind.

Some time before July 19th, 1921 (the exact date is not fixed), complainant had executed an agreement for the sale of his own house, and was then ready to buy another house, but this house had to

be bought so the title would pass after the sale of his own (Walnut Street) house was closed (Testimony of Nagle, Cross, Case, p. 71, to line 20). Complainant first heard about the Renshaw Avenue property (the one he bought from Werbel) the day Werbel took him to look at it (Case, p. 71, lines 24-26). When was this? Complainant thinks about July 19th, but he says he cannot fix the date positively, it might have been a day or two after the 19th (Case, p. 72, line 35). He cannot fix the time, positively, by ten days (Case, p. 73; line 10). Werbel testifies that he first spoke to complainant about the Renshaw Avenue house, and first showed it to him the day before he, complainant, decided to purchase and paid the first deposit of \$250. The deposit was paid on July 28th (Testimony of Bernard Werbel, Direct, Case, pp. 113 and 114).

Werbel executed the agreement with Mrs. Reimuller for the purchase of the Renshaw Avenue property on July 19th, so that, if he did not show the property to complainant, or offer it to him, or negotiate the sale of it to him until July 27th, Werbel was then the equitable owner, and, it would seem, had a right to agree to sell to complainant, *or anyone else*, at an advance.

The Vice-Chancellor finds that Werbel and McCoy abused the trust and confidence reposed in them by complainant, but, what trust or confidence? McCoy was, indeed, complainant's agent for the sale of his own (Walnut Street) house, but as to the purchase of a house by complainant, complainant had merely told Werbel that he would like to buy a house and to look out for him. Did this constitute Werbel or McCoy as agent, or create any trust relationship? Did it put them under any obligation to complainant? Werbel had the equitable title to these premises, the right to buy

from Mrs. Reimuller for \$7,250. More, he was under an enforceable contract to buy. It would seem from the whole evidence that neither he, nor McCoy, were under any obligation to give the benefit of this contract to complainant.

The learned Vice-Chancellor finds, that Werbel took complainant and his wife to look at the Renshaw Avenue property, but stated he could not show them the interior because the owners had not finally decided to sell; that about July 28th Werbel permitted complainant to make a hurried inspection (State of Case, Findings, p. 169, line 10). The Vice-Chancellor's theory of the case and of the proofs is, that after Werbel had found that complainant would buy the house for \$7,750, he went to Mrs. Reimuller, obtained from her the contract for \$7,250 and then used this to persuade complainant that he could not buy for less than \$7,750. But does the evidence support this? Werbel's own testimony is, that he had been negotiating with Mrs. Reimuller for the exchange of her house for an automobile he owned and part cash, as early as April, 1921, long before complainant placed his own house for sale with McCoy; that he came to an understanding with Mrs. Reimuller as to terms, as early as May, 1921, but that Mrs. Reimuller held off signing an agreement until she had found a farm she could buy; that this delayed matters and her agreement with Werbel was not actually executed until July 19th (Case, Testimony Bernard Werbel, pp. 111 and 112). This testimony stands, I think, absolutely uncontradicted. Werbel testifies he first talked to complainant about the purchase of the Renshaw Avenue house on July 27th, 1921, or eight days after he had executed the agreement with Mrs. Reimuller (Case, p. 113, line 10).

Werbel and McCoy, undoubtedly, withheld from complainant the fact of the ownership by Mrs.

Reimuller, the agreement of sale by Mrs. Reimuller with Werbel for \$7,250 and by having Yampol sign the agreement with complainant, let him believe that Yampol was the owner. This underhand method creates suspicion; *but*, were they under any legal obligation to state the facts? If Werbel had already executed the agreement with Mrs. Reimuller before he offered the property to complainant, Nagle, Nagle could not have bought from Mrs. Reimuller, and Nagle suffered no injury. He thought the price he was paying, \$7,750, was reasonable; he thought the place was worth that sum and was willing to pay it (Case, testimony, Nagle, cross, p. 73, line 20). Even if Werbel knew, when he closed the contract with Mrs. Reimuller, that complainant wished to buy a house; even if he believed, then, he could sell to complainant at an advance, it would seem he was under no legal or equitable duty to give complainant the benefit of his bargain with Mrs. Reimuller.

SECOND POINT.

The complainant-respondent accepted and performed his contract of sale with Monroe Investment Company, with full knowledge of the alleged fraud. He waived the alleged fraud and ratified. He elected to accept. He cannot now demand return of moneys voluntarily paid by him.

The evidence is conclusive that complainant, Nagle, knew of the alleged fraud some two weeks before closing the title and the acceptance by him of the deed for the premises on October 28th, 1921.

Nagle himself testifies that he understood two weeks before the closing, that Mrs. Reimuller was the owner of the property and that she was getting

\$500 less than he, Nagle, was paying for it (Case, testimony, Nagle, cross, p. 64, line 33, *et seq.*). The night the title was closed and the deed taken by him, he knew the Monroe Investment Company had a deed from Mrs. Reimuller and that he was paying \$500 more to the Company than Mrs. Reimuller was getting for the property (Case, testimony, Nagle, cross, p. 66 to line 14). He had full knowledge of the alleged fraud. His friend, Mr. Demarest, was with Nagle at the time the deed passed, and it is apparent from his testimony that they both had full knowledge and that Nagle acted with that knowledge (Case, testimony of Demarest, cross, p. 162).

And yet, with full knowledge that Mrs. Reimuller had owned the property but a short time before, that Werbel, or Monroe Investment Company, which was conveying to him, had acquired it for \$500 less than he was paying, the very \$500 he now alleges he was defrauded of, Nagle elected to complete the transaction, voluntarily took the deed and paid the full price of \$7,750. He paid voluntarily to defendants-appellants, Werbel and McCoy, the very \$500 he then knew (by his own testimony) he was being defrauded of. Nagle, the night of performance, protested. He demanded the \$500 be allowed him, but when this was refused and the return of the \$750 deposit also refused, he paid the full sum of \$7,750, took the deed for the premises and caused it to be recorded.

Complainant had his election to rescind and to demand back his deposit, or to demand conveyance for \$500 less than his contract price, but waived this when he accepted the deed and paid the full amount. After discovery of the fraud he elected to treat the fraudulent contract as valid and to abide by it.

The defrauded party to a contract has but one

election to rescind, which he must exercise with reasonable promptitude after discovery of the fraud; and when he once elects he must abide by his decision. Delay in rescission of the contract, payments in pursuance of it, and continued dealing with it and with reference to the fraudulent transaction, after discovery of the fraud, may be shown as an election to treat a fraudulent contract as valid.

Dennis v. Jones, 44 N. J. Eq., 513, and authorities cited at p. 516.

Fraud inducing a contract may be waived, and when waived it is unavailable as a defense.

Jenness v. Simpson, 78 Atl., 886.

“While the party entitled to relief may either avoid the transaction or confirm it, he cannot do both; if he adopts a part, he adopts all; he must reject it entirely if he desires to obtain relief. Any material act done by him, with knowledge of the facts constituting the fraud * * * which assumes that the transaction is valid, will be a ratification.”

Pomeroy Equity (4th Ed.), Vol. 2, Sec. 916.

“As acquiescence is a recognition of and consent to the contract or other transaction as existing, the requisites to its being effective as a bar are, knowledge or notice of the transaction itself, knowledge of his own rights, absence of all undue influence or restraint, and consequent freedom of action; a conscious intention to ratify the transaction, however, is not an essential element. When a party with full knowledge, or at least with sufficient notice or means of knowledge of his rights, and of all the material facts, freely does what amounts to a recognition of the transaction as existing, * * * there is acquiescence, and the transaction, although originally impeachable, becomes unimpeachable in equity.”

Pomeroy Equity (4th Ed.), Vol. 2, p. 2094,
Sec. 965.

“One who ratifies a transaction after obtaining knowledge of the facts, cannot come into equity for cancellation. * * * Ratification may be either express, or implied from the conduct of the parties. Any dealing between the parties inconsistent with an intention to rescind, such as payment or receipt of the purchase price, * * * and the like, after knowledge of the facts, is evidence, more or less conclusive, of a ratification.”

Pomeroy Equity (4th Ed.), Vol. 5, Sec.
2109.

“It is not necessary that the party was acquainted with all the evidence tending to prove the fraud, if he has knowledge of all the material facts showing the actual fraud.”

Munich Re-Ins. Co. v. United Surety Co.,
77 Atl., 579; 113 Md., 200.

When a party accepts the benefits of a contract not *contra bonos mores*, he is estopped to question its validity.

Belfast v. Belfast Water Co., 98 Atl., 738;
115 Me., 234.

It will be argued, and this seems to have been in the mind of the Vice Chancellor (Case, Findings, p. 171 at top and line 28) and to have influenced his decision, that complainant acted under constraint, under duress in accepting the deed and paying the purchase price of \$7,750. That consequently there was no ratification or acceptance, although he, Nagle, acted with knowledge of the alleged fraud.

Nagle testifies (Case, p. 65, line 15 and line 27), that he closed “because I didn’t have no place to go; I had five kids and it was impossible to get

a flat with five children, and I knew I would have to take it," and again, "I did have an objection, yes, but I simply couldn't carry out my objection; it was impossible, because I had to have a place." And this appears again and again throughout the testimony as his reason for closing that night.

But this was not duress.

Duress to be available as a defense must have been exercised by the party claiming the benefit of the contract or on his behalf.

Mullin *v.* Leamy, 80 N. J. Law, 484, 79 Atl., 257;

Travis *v.* Unkart, 89 N. J. L., 571; 99 Atl., 320.

Complainant's unfortunate position was the result of his own act in selling his own house and agreeing to give possession. Werbel and McCoy did not create the condition, were in no way responsible for it and placed no constraint upon him.

The duress for which a person may avoid any contract or conveyance made, or recover back any money paid under its influence, exists where one by the unlawful act of the beneficiary or his unauthorized agent, or by the act of some person with his knowledge, is constrained under circumstances which deprive him of free will to agree or to perform, the act sought to be avoided.

Koewing *v.* East Orange, 89 N. J. L., 571; 99 Atl., 203 and, quoting from and citing *In re Meyer* (D. C.), 106 Fed. Rep., 831.

If a person without mistake of fact, or in the absence of fraud, duress or coercion, pays money which is not enforceable against him, the payment is a voluntary one and cannot be recalled.

Camden *v.* Green, 54 N. J. L., 591; 25 Atl.,
357.

And the fact that the payment is made under protest does not aid.

Shoenmaker *v.* Board of Health, 83 N. J.
L., 425;

Koewing *v.* East Orange, *supra*.

The constraint complainant may have been under, certainly, was not such as to *deprive him of his free will*, to do the act (the payment of the money) he now seeks to avoid.

We do not know in fact to what extent it really existed. He thought he could not get a flat with five children. This appears to have been the only constraint. He thought, or feared, he would be unable to find accommodation for his family, if he refused to take the house he had agreed to buy, and if he was forced out of the house he had sold. And the constraint, if constraint there was, was not put upon him in any way by defendants.

It is submitted that the decree below should be reversed and the bill dismissed.

HERBERT BOGGS,
Counsel for Defendants-Appellants,
McCoy and Werbel.

