

# INDEX.

	PAGE.
Notice of Appeal .....	1
Petition of Appeal .....	2
Answer to Petition of Appeal.....	5
Bill of Complaint .....	6
Answer .....	10
Replication .....	12
Order of Reference .....	12
Opinion of Vice-Chancellor .....	133
Final Decree .....	135

## TESTIMONY FOR COMPLAINANT.

Charles A. Rubens,	direct examination.....	13
	cross " .....	14
Herman J. Jaeger,	direct examination.....	15
	cross " .....	20
	re-direct " .....	37
	re-cross " .....	39
Louis Menscheler,	direct examination.....	39
	George Frankenstein,	
	direct examination.....	41
	cross " .....	43
	re-direct " .....	47
William F. Burne,	direct examination.....	54
	cross " .....	57
	re-direct " .....	60
	re-cross " .....	60
Robert H. Herschman,	direct examination.....	60
	cross " .....	64
	re-direct " .....	65

## TESTIMONY FOR DEFENDANT.

Stephen Spitz,	direct examination.....	66
	cross " .....	68
Michael J. Carney,	direct examination.....	73
	cross " .....	75
	re-direct " .....	77
Henry W. Drury,	direct examination.....	77
	cross " .....	78
George Riegler,	direct examination.....	78
	cross " .....	79

		PAGE.
Ralph Bernhardt,	direct examination.....	79
	cross ".....	79
Thomas Carroll,	direct examination.....	79
	cross ".....	81
John Hannan,	direct examination.....	82
	cross ".....	96

#### COMPLAINANT'S REBUTTAL.

F. A. Von Moschzisker,	direct examination.....	113
	cross ".....	114
	re-direct ".....	116
Herman J. Jaeger,	direct examination.....	116
	cross ".....	118
	re-direct ".....	119
Answers to Interrogatories.....		121

#### EXHIBITS.

	<i>Off'd.</i>	<i>P't'd.</i>
C. 1—Articles of Incorporation.....	13	124
C. 2—Agreement for Sale of Property.....	14	124
C. 3—Deed .....	14	124
C. 4—Card Containing Memorandum.....	18	124
C. 5—Receipt .....	18	124
C. 6—Check .....	18	124
C. 7—Contract and Assignment.....	42	124
C. 7—Check for \$225.00 .....	42	127
D. 4½—Check for \$2,000.00.....	45	127
D. 5½—Check for \$2,025.00.....	46	128
D. 6½—Check for \$3,185.31.....	47	128
C. 7½—Same as C. 7.....	65	129
W. A. 1—Letter by Neuscheler.....	87	129
W. A. 2—Reply to Neuscheler.....	87	129
W. A. 3—Contract .....	92	130
W. A. 4—Check for \$360.00.....	94	132
W. A. 5—Check for \$500.00.....	94	132
W. A. 6—Stub of Check.....	94	132
W. A. 7—Stub of Check.....	94	132
Well 2—Check for \$12.00 .....	120	132a
Well 3—Check for \$50.00 .....	120	132a
Well 4—Check for \$33.00 .....	120	132a

*Notice of Appeal.*

**NOTICE OF APPEAL.**

Filed Dec. 30, 1919.

**In Chancery of New Jersey**

10

*Between*

H. J. JAEGER COMPANY,

*Complainant,*

*On Bill, Etc.*

*and*

*Notice of  
Appeal.*

JOHN M. HANNAN,

*Defendant.*

To Messrs. Weller & Lichtenstein, Solicitors of Complainant.

20

Gentlemen:

The defendant, JOHN M. HANNAN, hereby appeals from the final decree and every part thereof, made in this Court in the above entitled cause, of the twenty-second day of December, 1919, to the Court of Errors and Appeals, the last resort in all causes.

Dated December 29th, 1919.

J. EMIL WALSCHEID,

*Solicitor and of Counsel with Defendant.*

30

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

J. EMIL WALSCHEID,

*Of Counsel with Defendant.*

Service of the within notice of appeal is hereby acknowledged this 31st day of December, 1919.

WELLER & LICHTENSTEIN,

*Solicitors for Complainant.*

40

*Petition of Appeal.*

**PETITION OF APPEAL.**

Filed February 13, 1920.

**New Jersey Court of Errors and Appeals**

10

*Between*

H. J. JAEGER COMPANY,  
*Complainant-Appellee,*

*and*

JOHN M. HANNAN,  
*Defendant-Appellant.*

*On Appeal  
from Court of  
Chancery.*

*Petition of  
Appeal.*

20 To the Honorable Court of Errors and Appeals, the last resort  
in all causes:

The petition of JOHN M. HANNAN, appellant in this cause, respectfully shows:

That your petitioner finds himself aggrieved by a final decree made in the Court of Chancery, by his Honor EDWIN ROBERT WALKER, Chancellor of the State of New Jersey, bearing date the twenty-fourth day of December, A. D. 1919, in a cause where-  
in the H. J. JAEGER COMPANY was complainant and your petitioner, JOHN M. HANNAN, was defendant, in this respect, to  
30 wit:

That the following is a copy of the decree as filed in said cause:

40 "This cause coming on to be heard in the presence of Weller and Lichtenstein, solicitors for the complainant, and J. Emil Walscheid, Esq., solicitor for the defendant; and it appearing to the Court that by virtue of a certain agreement made by and between the said complainant, the H. J. JAEGER COMPANY, a body corporate, and the defendant, JOHN M. HANNAN, on or about the 1st day of May, 1915, he, the said JOHN M. HANNAN, became the agent of the complainant to purchase for it certain lands and premises, a description of which is fully set out in the bill of complaint filed herein; that the said complainant informed the said defendant that it wished to buy said lands through him from the Manor Real Estate & Investment Co., in whose name

*Petition of Appeal.*

the title to the property then stood, and offered to pay the sum of \$2,000. for the same; and thereafter the said H. J. JAEGER COMPANY informed the said JOHN M. HANNAN that it would pay for the purchase of said premises the sum of \$2,250.; that thereafter the said JOHN M. HANNAN informed the said complainant that the lowest price for which the said lands could be purchased from the Manor Real Estate & Investment Company was \$3,600., and believing and relying upon the said defendant's statement, the said complainant purchased the said property for \$3,600. on or about the 10th day of June, 1915; that after the said complainant had informed the said defendant, his agent, of his willingness to pay the Manor Real Estate and Investment Company \$2,500., the said defendant did maneuver and manipulate a sale of the said land from the said Manor Real Estate and Investment Company to a dummy, who thereafter re-sold said lands to the complainant for \$3,600. as aforesaid, although the defendant only paid to the said Manor Real Estate & Investment Company the sum of \$2,250., and did not inform the said complainant that the property could be purchased for the sum of \$2,500., and thereby made a profit of \$1,350., by such maneuvering and manipulation; all of which was concealed from the complainant contrary to the duty owing from the said defendant to the complainant; and the Court being of the opinion that the complainant is entitled to a decree in favor of the said complainant and against the said defendant for the said sum of \$1,350., and interest thereon from the said 10th day of June, 1915, as prayed for by the bill of complaint, together with costs of suit to be taxed;

It Is, on this 22nd day of December, 1919, on motion of Weller & Lichtenstein, solicitors for the complainant, ORDERED, ADJUDGED AND DECREED that the said defendant, JOHN M. HANNAN, on or before thirty days from the service of a certified copy of this decree on him, pay the complainant the sum of \$1,350. aforesaid, together with interest thereon at the rate of 6% per annum from the 10th day of June, 1915, together with the costs of this suit to be taxed.

AND it is further ORDERED, ADJUDGED AND DECREED that the complainant may be at liberty to apply to this court for execution in the event that the said sum is not paid, and for further directions as it may be advised.

*Petition of Appeal.*

AND it is further ORDERED, ADJUDGED AND DECREED, that the said defendant do further pay to the complainant, or its solicitors, the costs of this suit to be taxed, and also the sum of \$200.00, which is hereby ADJUDGED and DECREED to be a reasonable counsel fee for the counsel of said complainant; and that the said complainant do have execution for said costs and counsel fee according to the practice of this court.”

Your petitioner, therefore, humbly appeals from all of the said decree of the said Chancellor, which decree is as aforesaid, on the grounds that the same is erroneous for the following reasons:

I. The defendant Hannon was not engaged by the complainant to procure for it the land mentioned in the complaint.

II. No judiciary relation existed between complainant and the defendant.

III. No secret profit was made by the defendant out of the transaction involved in the suit.

IV. There is no relation, contractual or otherwise, between complainant and defendant upon which the bill of complaint could be based.

V. The defendant did not act as agent in the transactions involved in the suit but as a vendor.

VI. The complainant fraudulently concealed from the defendant that HERMAN J. JAEGER through whom it purchased the land involved in the suit was the representative of the complainant in the transaction.

VII. The defendant is not indebted to the complainant in the amount fixed by the decree.

VIII. The Court of Chancery admitted illegal evidence prejudicial to the defendant over the objection of the defendant.

IX. The Court of Chancery refused to admit legal evidence beneficial to the defendant against the objection of the defendant.

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

And your petitioner will ever pray.

J. EMIL WALSCHEID,  
*Solicitor and of Counsel with Petitioner.*

*Answer to Petition of Appeal.*

We hereby consent that the within petition of appeal be filed as of time.

WELLER & LICHTENSTEIN,  
*Solicitors and of Counsel with Complainant-Appellee.*

10

**ANSWER TO PETITION OF APPEAL.**

Filed Feb. , 1920.

The answer of H. J. Jaeger Company, the above-named complainant-appellee, to the petition of appeal of the above-named defendant-appellant.

This complainant-appellee, not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto, nevertheless, says and admits that a final decree was on the 24th day of December, 1919, made and entered in the Court of Chancery, in the cause for that purpose mentioned in the said petition, as is herein stated; but as to the substance and form thereof this complainant-appellee prays to refer thereto when the same shall be produced; and this complainant-appellee is advised and believes that the said final decree is agreeable to equity; and it prays that the same may be affirmed with costs to this complainant-appellee.

20

WELLER & LICHTENSTEIN,  
*Solicitors for and of Counsel with Complainant-Appellee.*

30

40

*Bill of Complaint.*

**BILL OF COMPLAINT.**

Filed August 11, 1915.

**In Chancery of New Jersey**

10

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

The complainant, H. J. Jaeger Company, a corporation duly organized and existing under the laws of the State of New Jersey, respectfully shows that:

20

1. On or about the 1st day of April, 1915, your orator was desirous of purchasing a certain parcel of real estate lying in the Township of Weehawken, Hudson County, New Jersey, described as follows:

“All that lot, tract or parcel of land and premises hereinafter particularly described, situate, lying and being in the Township of Weehawken, in the County of Hudson and State of New Jersey, bounded and described as follows, viz:

30

BEGINNING at a point in the southeasterly line of Branch Road, formerly Bull's Ferry Road at the distance of sixty-five feet northeasterly from the intersection of the said line of Branch Road with the northwesterly line of the Hudson County Boulevard, as the said road and boulevard are laid down on the plan of land known as Weehawken, and extending thence in a northeasterly direction along the said line of Branch Road two hundred and twenty-six feet and sixty-eight one-hundredths of a foot, more or less, to a point; thence south thirty-one degrees thirty-four minutes east twelve feet and eight-tenths of a foot to a point; thence north fifty-eight degrees twenty-seven minutes east ninety-four feet and twenty-five one-hundredths of a foot to a point; thence north fifty-eight degrees thirty-seven minutes east fifty-one feet and thirteen one-hundredths of a foot to a point; thence south seventy-nine degrees thirty-four minutes east fifty-nine feet and fifty-four one-hundredths of a foot to a point; thence south eighty-eight degrees six minutes east eighteen feet and sixty-two one-hundredths of a foot to the northwesterly line of Hudson County Boulevard aforesaid; thence along the said line of said boulevard in a southwesterly direc-

40

*Bill of Complaint.*

tion four hundred and twenty feet and ninety-four one-hundredths of a foot to a point; and thence north forty-eight degrees fifty minutes west ten feet to the point of beginning; containing twenty-eight one-hundredths of an acre.

BEING the same premises which Benjamin W. Carskaddon and wife by deed dated the twenty-second day of September, 1904, recorded in Book 894 of Deeds, page 8, &c., conveyed to the Manor Real Estate and Trust Company, subject to the railroad and tunnel rights granted by the said Benjamin W. Carskaddon and wife to the Pennsylvania, New Jersey & New York Railroad Company, by deed dated September twenty-first, 1904, recorded in Book 894 of Deeds, page 5, &c.”

10

2. At the time aforesaid, one John M. Hannan, was engaged in the business of, and holding himself out as, a real estate agent, with offices in the Town of Union, in the County and State aforesaid.

20

3. At the time aforesaid, your orator authorized and empowered Herman J. Jaeger, one of its officers, to act for and in its behalf in negotiating for the purchase of said land and to make a contract for the purchase thereof in his own name for the use and benefit of the company; the title to the said lands when purchased to be taken in its name.

4. Thereupon and on or about said 1st day of April, 1915, your orator, through the said Herman J. Jaeger, employed said John M. Hannan to act for it and in its behalf as its agent and representative, in negotiating for the purchase of said real estate for it at the lowest price at which the same could be obtained; the said John M. Hannan then and there agreeing to use his best efforts to obtain the same at the lowest price possible for your orator.

30

5. Thereafter the said John M. Hannan informed your orator that said lands belonged to one Charles A. Rubens, and could not be purchased for less than \$3,600.; that your orator relying upon and believing such statements and representations so made by the said John M. Hannan that said lands could not be purchased for less than \$3,600. to be true, concluded to purchase the same at the figure aforesaid.

40

6. That on the 14th day of April, 1915, a contract in writing was entered into between the said Charles A. Rubens of the

*Bill of Complaint.*

10 first part, and your orator's representative, Herman J. Jaeger, of the second part, wherein and whereby the said Charles A. Rubens agreed to convey the lands and premises hereinabove described to the said Herman J. Jaeger, or his assigns, for the sum of \$3,600., \$360. of which purchase price was paid at the time of the signing of said contract, in cash, and the balance was to be paid at the time of taking title.

20 7. Under said agreement, title was to be passed at the office of George Frankenstein, an attorney at law of the State of New Jersey, 126 Fourth street, in the Town of Union, N. J.; that on the tenth day of June, 1915, and pursuant to the terms of said written agreement, your orator paid over to the said George Frankenstein, Esq., when then and there represented himself as the attorney for the said Charles A. Rubens, the balance of the purchase price of said lands and premises, namely, \$3,240., and received from the said George Frankenstein, a warranty deed purporting to have been executed by the said Charles A. Rubens and Lillian Rubens, his wife, conveying to your orator the fee of said premises, according to the terms of said written agreement, which said deed is recorded in Book 1204 of Deeds for Hudson County, on page 388, &c.

30 8. Your orator is informed and believes the same to be true, that at the time the said John M. Hannan was engaged by your orator through the said Herman J. Jaeger, to negotiate for the purchase of said lands and premises for it at the lowest price possible, said lands were owned by the Manor Real Estate and Trust Company; that the said John M. Hannan, upon being retained to negotiate for the purchase of the same for your orator, learned from said Manor Real Estate and Trust Company, that said lands could be purchased for the sum of \$2,250. and less, and thereupon, without the knowledge and consent of your orator and in order to cheat and defraud it for his own personal gain, entered into a contract with the said Manor Real Estate and Trust Company, to purchase said lands and premises for the sum of \$2,250., or some other sum less than that amount, in the name of the said Charles A. Rubens, who was then and there acting in concert with him for the purpose aforesaid, and that thereafter, and pursuant to said agreement, and after your orator had been induced to enter into said contract dated April 40 14th, 1915, with the said Charles A. Rubens for the purchase of

*Bill of Complaint.*

said lands and premises for the sum of \$3,600., had said lands and premises conveyed to the said Charles A. Rubens in order that he might convey the same to your orator and thereby afford an opportunity to the said John M. Hannan to cheat and defraud your orator and to make a secret profit from the purchase thereof.

10

9. Your orator is informed and believes the same to be true that the said Charles A. Rubens had full knowledge of the purpose of the said John M. Hannan in having said lands and premises conveyed to him as aforesaid, and lent himself as a party to the scheme whereby a secret profit was taken from your orator in the purchase of said lands by it as aforesaid, and that the said Charles A. Rubens held said lands and premises for the use and benefit of the said John M. Hannan, and he, the said Charles A. Rubens, received some compensation in money from the said John M. Hannan, the amount of which your orator is unable to ascertain, for the services rendered by him in take title to said lands in his name and making a conveyance thereof to your orator.

20

10. Your orator has been unable to ascertain how much was paid by the said John M. Hannan for said lands when the same were purchased from the Manor Real Estate and Trust Company, or how much moneys were made by the said John M. Hannan as a secret profit from the sale of said lands to your orator as aforesaid.

30

11. Plaintiff is without adequate remedy in the courts of law, and therefore prays:

(a) That the said John M. Hannan may answer this bill of complaint without oath, and each statement therein made.

(b) That the said John M. Hannan may be compelled to account to your orator for the difference between the amount paid for said lands to the said Manor Real Estate and Trust Company, and the amount paid by your orator for said lands, and any and all other sums of money that he may have made in connection with the purchase and sale of said lands and premises during the time that he acted as the agent for your orator and the said Herman J. Jaeger, your orator's agent, and representative.

40

*Answer.*

(c) That said John M. Hannan may be decreed to pay complainant the amount so found due, with interest and costs by a short day to be appointed by this court.

(d) That a writ of subpoena may issue commanding said John M. Hannan to answer this bill of complaint and to abide by such decree as this court may make in the premises.

WELLER & LICHTENSTEIN,  
*Solicitors and Counsel with Complainant.*

**ANSWER.**

Filed Nov. 15, 1915.

20

The answer of the defendant, John M. Hannan, to the bill of complaint of H. J. Jaeger Company, a corporation.

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

1. This defendant has no knowledge or information sufficient to form a belief as to the statement in paragraph one of the bill of complaint.

30

2. This defendant admits that he was, on or about the first day of April, 1915, and from thence forward, engaged in the real estate business, buying, selling and dealing in real estate for his own account, and occasionally acting as a real estate agent for others.

3. This defendant has no knowledge or information sufficient to form a belief as to the statements in paragraph three of the bill of complaint.

40

4. This defendant denies that on or about the first day of April, 1915, or at any other time, the complainant, through Herman J. Jaeger in said paragraph mentioned, or through any other person, or by any other means whatsoever, employed this defendant to act for and in its behalf or as its agent and representative, either in negotiating for the purchase of said real estate or in any other manner or form whatsoever, and he denies that he then and there or at any other time agreed to use his best efforts to obtain said real estate for said complainant at the lowest possible or at any other price.

*Answer.*

5. This defendant denies that he informed complainant or the said Herman J. Jaeger that said lands belonged to one Charles A. Rubens; he admits that he told the said Jaeger that said lands could not be purchased for less than \$3,600.00; he has no knowledge or information sufficient to form a belief as to the rest of the statements in paragraph five in the bill of complaint contained. 10

6. This defendant is informed and believes that the facts set forth in paragraph six are true, excepting that he has neither knowledge or information sufficient to form a belief of the fact that Herman J. Jaeger was acting as the representative of complainant.

7. This defendant is informed and believes that it is true as stated in paragraph seven of the bill of complaint that under said agreement title was to be passed at the office of George Frankenstein, an attorney at law of the State of New Jersey, 136 Fourth street, Town of Union, N. J., and that on the 10th day of June, 1915, pursuant to the terms of said agreement, there was paid over to the said George Frankenstein, Esq., the balance of the purchase price of said lands and premises, namely, \$3,240.00 and that there was then and there received from the said George Frankenstein a warranty deed purported to have been executed by Charles A. Rubens and Lillian Rubens, his wife, conveying the fee of said premises according to the terms of said written agreement and that said deed is recorded in Book 1204 of Deeds of Hudson County, on page 388; but this defendant has no knowledge or information sufficient to form a belief that the said George Frankenstein then and there represented himself as the attorney for the said Charles A. Rubens or that complainant paid over to said Frankenstein the balance of said purchase price; and this defendant denies that the deed aforesaid conveyed to complainant said premises, but asserts that said conveyance was made to Herman J. Jaeger personally. 20 30

8. Paragraphs eight and nine of the bill of complaint are denied. 40

J. EMIL WALSCHEID,  
*Solicitor of Defendant,*  
*John M. Hannan.*

*Replication—Order of Reference.*

**REPLICATION.**

Filed Jan. 8, 1916.

The complainant joins issue on the answer of the defendant.

10

WELLER & LICHTENSTEIN,  
*Solicitors for Complainant.*

Dated, Jan. 4th, 1915.

**ORDER OF REFERENCE.**

Filed March 31, 1916.

20 The within cause was referred to Hon. Vivian M. Lewis, Vice-Chancellor.

30

40

*Charles A. Rubens, direct.*

IN CHANCERY OF NEW JERSEY.

*Between*

H. J. JAEGER COMPANY, a corporation,  
Complainant,

and

JOHN M. HANNAN,

Defendant.

*On Bill, &c.*

*Testimony.*

10

Transcript of testimony taken in the above-entitled cause, at the Chancery Chambers, Jersey City, New Jersey, on the third day of October, 1917, before HON. VIVIAN M. LEWIS, Vice-Chancellor.

Appearances:

20

Weller & Lichtenstein, Esqs., for the complainant.

J. Emil Walscheid, Esq., for the defendant.

*Mr. Weller.* I want to offer in evidence the certified copy of the articles of incorporation.

Marked Exhibit C. 1.

CHARLES A. RUBENS, sworn in behalf of the complainant, testified as follows:

*Direct examination* by Mr. Weller.

30

Q Where do you live? A 54 Grace street, Jersey City.

Q What is your business? A I am a wholesale grocery salesman.

Q How long have you been such? A About fifteen years.

Q I show you a contract, or what purports to be a contract, dated the 14th of April, 1915, and ask you if that is your signature to that contract? A Yes, sir.

Q Where did you sign that contract? A I don't recall, sir.

Q How did you happen to sign the contract? A I had several times, for accommodation to Mr. Frankenstein, who I had known for a long time, sometimes acted in allowing him to use my name for certain things; he always had explained the thing as to why it was done, and I had known him so long; I have been his partner, and he has never asked me to do

40

*Charles A. Rubens, cross.*

anything that was not quite right, so when he asked me to do this I said, "All right."

Q You never got any money for this property? A No, sir.

Q You never owned the property? A No, sir.

Q You did not know anything about it? A No, sir.

10 Q You afterwards signed a deed, didn't you, you and your wife? A I don't recall; that is my signature.

Q How did you happen to do that? A He asked me to.

Q That is the only reason you did it? A Yes, sir.

Q Who asked you? A Mr. Frankenstein.

Q Do you know Charles E. Galler? A That is not the right name, it must be Gorrell, Charles E. Gorrell.

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

Q Did you ever see an assignment from him to you? A I cannot recall, sir; it is two and a half years ago.

20 Q There is a deed on record from the Manor Real Estate and Trust Company to you; did you ever receive that deed? A No, sir.

Q You never saw the deed? A No, sir.

Q Did you ever pay them any money for any property? A No, sir.

Q Do you know where the property described in this contract is located? A Only in a general way.

*Mr. Weller.* The contract will be marked "Exhibit C 2," and the deed "Exhibit C 3." (So marked.)

30 *Cross examination by Mr. Walscheid.*

Q Do you know John M. Hannan? A I might have seen the gentleman, but I don't know him.

Q Did you ever speak to him prior to today? A No, sir.

Q All of your dealings which you have had in connection with this matter were with Mr. Frankenstein? A Yes, sir.

Q An attorney and counsellor-at-law of the Town of Union? A Yes, sir.

40 *Mr. Weller.* Will you admit the record of the conveyance of the Manor Real Estate and Trust Company to Mr. Rubens?

*Mr. Walscheid.* Yes.

*Mr. Weller.* I want to show the consideration here \$2,250.00—that is in the deed to Rubens—that deed we

*Herman J. Jaeger, direct.*

have not got and don't know where it is. I offer the deed, recorded in Book 1204 of Deeds, Register's office of the County of Hudson, dated June 8, 1915, from the Manor Real Estate and Trust Company to Charles A. Rubens, 212 Clinton street, West Hoboken, New Jersey; consideration \$2,250.00; conveying premises therein described, which are the premises involved in this suit; acknowledged at Philadelphia, Pennsylvania, on the 8th of June, 1915, before John J. Taney, a Commissioner of Deeds, and recorded in the office of the Register, County of Hudson, on June 11, 1915, at 9:28 A. M. 10

*Mr. Walscheid.* I offer the record of "Exhibit C. 3," as it appears in the Book of Deeds 1204 of the Register's office of the County of Hudson, page 388, showing that that deed was recorded on June 11, 1915, at 9:28 A. M.

*The Court.* All right; send that book back now. 20

HERMAN J. JAEGER, sworn in behalf of the complainant, testified as follows:

*Direct examination* by Mr. Weller.

Q Where do you live? A 88 Sterling avenue, Weehawken.

Q Are you president of the H. J. Jaeger Lamp Company?

A Yes, sir.

Q Where was your business located in the spring of 1915?

A At the Terminal Building, Hoboken. 30

Q At that time had you in mind building a factory?

*Mr. Walscheid.* Objected to as immaterial.

*The Court.* The objection is sustained.

Q Did you go to anyone to get them to buy a property for you?

*Mr. Walscheid.* Objected to as immaterial and irrelevant.

Q Did you go to Mr. Hannan? A Yes, sir, I saw Mr. Hannan. 40

Q Where did you see him first? A He called my attention—

Q Answer the question. A At the Boulevard Cafe that is there, kept by a man named Spitz.

*Herman J. Jaeger, direct.*

Q Did you meet him there at the cafe? A Yes, sir.

Q What conversation took place there between you and him in regard to purchasing the property? A Mr. Hannan called my attention to the fact that he had some property down at Park avenue—that he knew a property—and Shippen street steps; I told him I knew about this property through Mr. Rock, and I believed it was too small; Mr. Hannan told me in the cafe—

Q You did not go there to see him? A I met him there by accident—not by appointment; he told me that the property was large enough, and persuaded me to come—

*Mr. Walscheid. Objected to.*

Q What did he say to you? A He said “The property is large enough,” and he wanted me to go the next door—he asked me to go into his real estate office to show me the map.

Q Did you go? A Yes, sir.

Q Right away? A Yes, sir.

Q What was that date? A That is about the middle of March, 1915.

Q You both went over to Mr. Hannan’s office? A Yes, sir.

*By the Court.*

Q Where is that? A In Shuster’s real estate office, next door to the cafe; he showed me the map and figured out that there were more feet to this property than I thought there were. He told me then that he could get that property for me, that it was for sale, and he asked me to make an offer; I made him an offer of \$2,000, and he told me that that was rather a small amount of money for commission, whereupon I told him I would give him a commission equal to the one he was getting.

Q Did he say anything about getting any other commission? A That is the commission that you generally get for selling property.

Q Did he say anything about getting any other commission? A Yes, sir, the commission was too small, he said—

Q Do you understand me; did he say to you “I am going to get a commission for selling the property,” from anyone? A Yes, sir, from the Pennsylvania Railroad Company.

*Herman J. Jaeger, direct.*

*Further direct.*

Q Now, then, you made him an offer of \$2,000? A Yes, sir.

Q What was the next thing that happened? A He told me he would see what he could do, and let me know. In about four days or so, I believe, I met him again, and he told me the price that I offered was too small and he could not do anything for me, and would not I give him a better offer, and I then offered \$2,500.00, and I told him in that case if he got it any cheaper than \$2,500, the difference would be divided between us; he said, "All right, I will let you know in a day or so;" I met him again in a day or two, and he told me if I could not do a little better, and I made an offer of \$2,700.00, I believe, or \$2,800.00, and told him that there was no commission on my part at that time, I think; so he told me he would see me again in a few days, when he told me that the property could not be bought for that price that I offered, and I said, "What is the matter?" and he said, "Well, they have made an offer to sell it for \$4,000; the best thing you can get it for;" and I told him I would let him know the next day, after some talk.

*By the Court.*

Q Did you let him know the next day? A The next day I met him in my office, I believe, and I offered \$3,600, and I told him there was no commission or anything on my part—

Q Did you tell him that was the highest you would go? A Yes, sir, and no higher, and he said he would let me know the next day, I believe—I believe the next day he would let me know.

*Further direct.*

Q I show you a card; did you ever see that before? A Yes, sir.

Q Where did you get that from (showing witness a card)? A The next day I was not in, and he called at the office and left this card which was given to me.

*Mr. Walscheid.* I object to that.

Q Did you come in the next day and find a card there? A Yes, sir; it was given to me by the Secretary of the Jaeger Company, Mr. Herschman.

*Herman J. Jaeger, direct.*

Q You know whose handwriting that is in? A Mr. Hannan's.

Q And his name is signed to it? A Yes, sir.

Q "Everything O. K. Will see you Tuesday night, Hannan?" A Yes, sir.

10 *Mr. Weller.* I offer that card in evidence.  
Marked "Exhibit C 4."

Q Did you see him the next Tuesday night? A Yes, sir.

Q What took place between you there, if anything? A He told me the property is mine, and that we would make out a contract. I referred him to Mr. Burke, who was my attorney, for that part.

*By the Court.*

20 Q What occurred next in regard to this transaction? A I was called up by Mr. Burke, and I signed a contract.

Q You went to Mr. Burke's office? A Yes, sir, and I signed the contract to take the property.

Q Was Mr. Hannan there? A I don't know.

*Further direct.*

Q I show you "Exhibit C 2," and ask you if that is the contract that you signed? A Yes, sir, it is.

Q At that time how much money, if any, did you pay down?  
30 A \$360.00.

Q I show you another paper and ask you where you got that? A I got this made out to protect my \$360.00 deposit.

*The Court.* Ten per cent.

*Mr. Weller.* I offer this receipt in evidence.

Marked "Exhibit C 5."

Q Did you pay that money in cash or by check? A By check.

40 Q Is that the check of the H. J. Jaeger Company for \$360.00? A Yes, sir.

Marked "Exhibit C 6."

Q Under the contract the title was to pass on the first of June; did the title pass on the first of June? A I believe it did.

*Herman J. Jaeger, direct.*

Q Look at the deed and see and tell us when it did pass.  
A The 10th day of June.

Q Now, then, when it did not pass on the first of June, did you see Mr. Hannan? A Yes, sir.

Q When did you see him—how near the first of June? A I saw Mr. Hannan on the first of June.

Q The title was to pass under that contract on the first of June; now, it appears by the deed that it did not pass until the 10th of June, ten days later? A The 10th of June.

Q Did you see anyone to find out why you did not get your deed on the first of June? A Well, we were up to Frankenstein's office to tender our money.

Q Who was? A Myself, Mr. Herschman and Mr. Burke.

Q When did you go up there? A On the first of June.

Q You went up there and tendered the money? A Yes, sir.

Q Did you see Mr. Frankenstein there? A No, sir.

Q To whom did you tender the money? A To Mr. Frankenstein's assistant or secretary, and Mr. Burke tendered the money also—showed the money.

Q You had the cash there? A Yes, sir, we were ordered to bring the cash, but no check.

Q When did the title finally pass? A On the 10th of June.

Q Where did it pass? A At Mr. Burke's office.

Q At the time you took the deed and paid your money, did you know how much Mr. Hannan had bought the place for?  
A No, sir.

Q When did you find out? A Mr. Herschman called my attention to that at Mr. Burke's office.

Q After you had paid your money or before? A I had paid the money; I laid down the money on the desk—on the table, rather.

Q Who was present? A Mr. Burke, Mr. Herschman and myself.

Q When you turned the money over? A Yes, sir; then Mr. Herschman looked at one of the deeds and called my attention and told me that they had put one over on me; I did not know what it meant; then I looked at the deeds myself.

Q Then you saw the \$2,250.00? A Yes, sir.

Q That is while your money was lying on the table? A No, sir, the money was paid; I laid it on the table; Mr. Burke handed it over to Mr. Frankenstein, I think.

*Herman J. Jaeger, cross.*

Q Had the money been paid over? A Yes, sir.

Q To whom? A Mr. Burke paid it over to Mr. Frankenstein.

Q In your presence? A Yes, sir.

Q Then Mr. Herschman said he had put one over on you?

10 A Yes, sir.

Q Did you after that go down and see Mr. Hannan and speak to him about this? A I met him about three or four days afterwards, and I spoke to him about it and told him that he did not do the right thing, and he laughed at me.

*Mr. Walscheid.* Objected to as immaterial and irrelevant.

*By the Court.*

20 Q Did he say anything else to you? A Yes, sir, I told him that it was against the law, and he told me in return, "What are you going to do about it?" and I said, "Well, I can sue for it;" and he said, "You go ahead and sue, and if you get anything out of me you are a good one."

Q Was anything further said? A No, sir.

Q Who were present? A There were some present, but I don't know whether they heard the conversation or not; it was in the cafe.

Q (*Further direct.*) How much did he say that he got out of it? A Over \$1,400.00.

30 *By the Court.*

Q Mr. Herschman said that to you? A Yes, sir.

*Cross examination by Mr. Walscheid.*

Q So that the first time you saw him after the business transaction was completed, you spoke to him about the profit, didn't you? A I called his attention to what he had done.

Q And he said to you that he had made \$1,400? A Yes, sir.

Q That is what he told you? A Yes, sir.

40 Q How long have you known Mr. Hannan? A About four years.

Q How long have you lived in Weehawken? A Four years.

Q Where did you live before that? A New York City.

Q How long have you been in business in Weehawken?

A Four years.

*Herman J. Jaeger, cross.*

Q You have been in business longer than that in Weehawken? A I may have been.

Q Haven't you been there with the Tifes Land Company for fourteen or fifteen years? A I came to Weehawken in 1911; we moved our business to Weehawken.

Q Ever since then you have known Mr. Hannan? A Possibly I may have known him longer than four years. 10

Q And in 1911, when you came over here, you were looking for a residence? A Maybe—1912—

Q At that time you met Mr. Hannan as a real estate agent? A I met Mr. Rock first; I met Mr. Hannan about four years ago.

Q And at that time he took you around to show you some real estate properties, didn't he? A About four years ago.

*Mr. Weller.* This is immaterial. 20

Q You wanted to buy some property at that time, about four years ago? A No, sir, I was looking for investing money in property.

Q And Mr. Hannan showed you some property? A He never did.

Q He took you around, you said, a moment ago? A He never showed me any property.

Q What did he show you when he was taking you around? A He called my attention to some property, but never showed me any. 30

Q Properties which he had for sale? A I don't know whether he had it for sale or not.

Q You went to him because you wanted to invest some money in property? A He was trying to sell me property.

Q And you were trying to buy property? A I did not buy any from him.

Q You were trying to buy property? A I was not trying to buy; I only had money which I was willing to invest for property; I was not looking around for property. 40

*The Court.* Do not evade the questions.

Q And you at that time knew that Mr. Hannan was a real estate agent? A I knew Mr. Hannan was a real estate agent at all times.

*Herman J. Jaeger, cross.*

Q You knew at that time that Hannan was working for commissions on the sales of real estate? A The same as every other real estate man does.

10 Q And he showed you properties, and you agreed to pay him a commission on them at that time, and then you turned around and bought your property through Mr. Rock, after having seen them through Mr. Hannan, didn't you? A He never showed me any property; the property that I purchased, Mr. Rock showed me.

Q You purchased what property at that time? A King's Estate property, on Sterling avenue and Hawkshurst Park.

20 Q Isn't it a fact that at that time you bought a piece of property in Hawkshurst avenue, at the corner of Jefferson street, on which you were to pay Mr. Hannan 5% commission, but you had not given it to him in writing, and you bought it through somebody else? A No, sir.

*Mr. Weller.* Objected to.

Q Did you buy the house on that corner? A I purchased that from Mr. Rock.

Q You did buy it? A Yes, sir, and Mr. Hannan had no dealings in that whatsoever.

Q Did you give Mr. Hannan any writings whatsoever in connection with this purchase that is now before the Court? A No, sir.

30 Q Did he give you any writings outside of this particular little card? A No, sir.

Q Are you sure of that? A Yes, sir.

Q The dealings that you had were always had between you and Mr. Hannan, were they not—on this property, in this case? A Yes, sir.

Q You say that the first dealings you had with Mr. Hannan were in the middle of March? A About that.

40 Q Now, when you went to Mr. Weller with this case you told him that your first dealings you had with Mr. Hannan was on about the first day of April, 1915, didn't you? A I cannot remember that.

Q You have, of course, seen the bill of complaint in this case, haven't you? A I don't know what this is.

Q That is a copy of the bill of complaint; (may I have the original bill of complaint, your Honor?) Now, I show you the

*Herman J. Jaeger, cross.*

original bill of complaint in this cause, "Bill of Complaint, Jaeger vs. Hannan—Weller & Lichtenstein—Filed," and I call your attention to paragraph 4 of that bill of complaint; will you kindly read the beginning of that paragraph? A I don't know anything about this affair.

Q You know nothing about this particular paper? A No, sir. 10

Q But it was read over to you? A No, sir.

Q But you went to Mr. Weller and told him your story, didn't you? A Yes, sir.

Q And as a result of that story, he prepared the papers? A I suppose he did.

Q Then afterwards you had a further talk with Mr. Weller, after the papers were filed—many of them, didn't you? A About three or four talks.

*Mr. Walscheid.* Have you the original interrogatories and answers, Mr. Weller? 20

*Mr. Weller.* I think I have, yes.

Q And as a result of those talks you learned that Mr. Hannan had sworn, in answers to interrogatories, that he, Hannan, started to deal for the property which you said you started to deal for on April 1st, in your papers—that he, Hannan, started to deal for that property on March 23, 1915? A No, sir, I did not.

Q That he swore to that? A No, sir. 30

Q What, then, makes you now change your mind and say that you started your dealings with Hannan in the middle of March when you originally told Mr. Weller that you started your dealings on or about the first day of April? A I never told Mr. Weller it was April; the question was never brought up to me.

Q Where do you think he got the date from? A I don't know; I am liable to forget.

Q And you are liable to be wrong about starting these dealings in the middle of March; now you know, don't you, that Mr. Weller had asked Mr. Hannan to answer certain questions under oath? A No, sir, I don't know that. 40

Q You know that Mr. Weller had asked Mr. Hannan to answer under oath the following question: "When, if at all, did you commence negotiations for the purchase of said lands from the Manor Real Estate and Trust Company?" and that Mr. Han-

*Herman J. Jaeger, cross.*

nan had answered, "On March 23rd, 1915?" A I don't remember that.

Q You don't remember? A I never saw that.

Q Didn't you talk with Mr. Weller about that? A Mr. Weller asked me: "What time did it happen?" and I told him around the middle of March.

10

Q And then Mr. Weller writes in the papers "around the first of April?" A I don't know anything about that.

*Mr. Walscheid.* I desire to offer in evidence, or mark for identification the interrogatories and the answers; they have not been filed; they ought to have been filed.

*Mr. Weller.* I wish to make a motion to amend, to change that from the first of April to the middle of March or first of February; here is a copy of it. The reason I did that was this: I found out from the minutes—I examined the minutes here—and I found out from the minutes just when it was that he was authorized; he could not tell me exactly.

20

*Mr. Walscheid.* I desire to oppose that motion on the ground that it is not made in good faith, and that it is made upon information obtained out of the answer to these interrogatories. This is the situation: on the 15th day of November, 1916, these interrogatories and the answers thereto were sworn to. The complaint said that the negotiations started on or about April 1st. Of course, if Mr. Hannan was dealing for this property independently of Mr. Jaeger prior to April 1st, it constituted an important factor as to whether or not he ever became the agent of Mr. Jaeger. He answers that particular question, Hannan does, in answer No. 4, Question No. 4: "When, if at all, did you commence negotiations for the purchase of said lands from the Manor Real Estate and Trust Company;" the answer is: "March 23rd, 1915." These answers are served upon Mr. Weller in the month of November, 1915; in February, 1916, thereupon, after he has had these interrogatories and read them, and known the importance of that, he comes along in order to bring himself back into agency, or establish the agency before the negotiations between Hannan and the Manor Real Estate and Trust Company started, and offers to amend by

30

40

*Herman J. Jaeger, cross.*

changing the date when negotiations began from April to February. Now, I say that such an amendment ought not to be allowed at this time, without anything to support it.

*The Court.* The Court will retain the motion until it has heard the case, and will deal with it later. I will retain the motion until the conclusion of the cause. 10

*Mr. Walscheid.* I desire to offer the interrogatories and the answers.

*Mr. Weller.* I will offer them.

*The Court.* I had better mark them in the case.

*Mr. Weller.* No, I don't think they are on the files. I understood that you could use so many of them as you wished. I am only going to offer the one as to the price paid for this property. 20

*Mr. Walscheid.* We won't dispute that at all; you don't have to offer that. I offer them for identification at this time.

*Mr. Weller.* That I cannot object to.

*The Court.* I think they should be filed.

*Mr. Walscheid.* I offer them for identification at this time.

*The Court.* That will be the course pursued then.

Q You finally agreed with Mr. Hannan to pay \$3,600.00 for this property? A Yes, sir. 30

Q And Mr. Hannan to receive no commissions? A That is right.

Q From you? A From me.

Q You knowing or believing that he was receiving commissions from the other side? A Yes, sir.

Q You believed that? A Yes, sir.

Q And you believed that he was getting a commission from the other side at the time when you paid over your money to close the title in Mr. Burke's office? 40

*Mr. Weller.* Objected to as incompetent, irrelevant and immaterial.

*The Court.* The objection is sustained.

*Herman J. Jaeger, cross.*

Q When you paid over your money in Mr. Burke's office, you knew that, so far as Mr. Hannan's compensation was concerned, he was to be taken care of by the other side?

*Mr. Weller.* Objected to as incompetent, irrelevant and immaterial.

10

*The Court.* The objection is overruled.

Q Did you know, at the time when the balance was paid, that Mr. Hannan was to get a commission from the Pennsylvania Railroad? A Yes, sir, just the same as any broker would that acts for you.

Q You knew that? A As my broker.

*The Court.* Strike that out.

*By the Court.*

20

Q Had he said he was going to get a commission from the other side, to you? A No, sir.

Q Now, when you went to Mr. Hannan to employ him, you did not tell him that you were going to buy this property for the H. J. Jaeger Company, did you; "Yes" or "No"? A Yes, sir.

Q You did tell him that? A Yes, he knew about it.

Q Did you tell him that? A Yes, sir.

30

Q Did you tell him that the first time you met him—in the cafe? A I believe I did.

Q You believe you did? A It was understood.

Q Did you tell him in whose name the title was to be taken? A Well, I cannot recollect.

Q Isn't it a fact that your authorization from the company was to go out into the market and to buy a piece of property for the use and benefit of the company, in your own name? A That was a question—

40

Q Answer my question "Yes" or "No." A I could have purchased the property in my name and signed it over to the company if I had pleased to do it.

Q Isn't it a fact that you did buy the property in your own name? A The deed will tell you—the deed and the contract will tell you.

Q Where is the contract? A Here is the contract.

*Herman J. Jaeger, cross.*

Q Kindly look at the contract and state if you did not contract with the vendor mentioned in the contract in your own name. A It says "The H. J. Jaeger Company."

Q In the contract? A Yes.

Q No, that is the deed. A Oh, here it is; it is signed by me personally.

Q And is made out to you personally? A Yes, sir. 10

Q So that on the 14th day of April, 1915, you entered into contract personally with Rubens to buy this piece of property, didn't you? A Yes, sir.

Q And you were told to do that by your company? A No, sir.

Q Did you give Mr. Weller this information that when your company desired to buy property they authorized and empowered H. J. Jaeger, one of its officers, to act for and in its behalf in negotiating for the purchase of such land, and to make a contract for the purchase thereof in his own name for the use and benefit of the company, the title to said lands when purchased to be taken in its name? A The minutes will tell you that. 20

Q Kindly answer the question of whether or not you told Mr. Weller that. A I cannot remember what I told Mr. Weller; I only could tell him what was in the minutes; I believe I was to buy the property for the company.

Q In your own name? A To make the contract in my own name, perhaps; I had this contract drawn out in my own name. 30

Q And you gave the instructions to draw it in your name, didn't you? A I believe I did.

Q And up to the time when that contract was signed, nobody knew from you that that property was being bought for the Jaeger Company? A I was authorized by the Jaeger Company.

Q Up to the time when that contract was signed, and only after that contract was signed, you did not tell anybody that you were buying this piece of property for the Jaeger Company, did you? A It was all understood; I told everybody that I was buying it for the Jaeger Company. 40

Q Told everybody; whom do you mean? A Everybody I knew.

Q Did you tell Mr. Frankenstein before this paper was signed by you that this property was being bought by the Jaeger Company? A I cannot remember.

*Herman J. Jaeger, cross.*

Q Did you tell Mr. Hannan before this paper was signed that it was being bought for the Jaeger Company? A He knew it.

Q Did you tell him? A Yes, sir.

10 *Mr. Weller.* Objected to, he has already answered the question.

Q Did you tell Mr. Hannan, or didn't you, or don't you remember, that you were buying the property for the Jaeger Company? A Yes, sir.

Q When did you tell him that? A I don't remember; it was understood.

*The Court.* Strike that out.

20 Q You don't remember when you told him? A No, sir, I could not remember.

Q You are sure of that? A I don't believe I ever told him before we made out the contract.

*Mr. Walscheid.* That does not mean that Mr. Herschman, sitting at counsel's table, has the right to interrupt this witness.

(At this moment Mr. Herschman was introduced to the Court.)

30 Q Do you remember when, if at all, you told Mr. Hannan that you were purchasing this property for the H. J. Jaeger Company? A I want to go back a little on this. When I spoke to Mr. Hannan—

*The Court.* Strike that out.

A When Mr. Hannan saw me first he even made the remark, "I know your business is looking for a property," and that is the time this property was brought up; in that case he knew it was for the H. J. Jaeger Company.

40 Q When, if at all, did you tell him that you were buying this property, and that you were going to sign this contract for the H. J. Jaeger Company? A That was at the time he showed me the map.

Q Is that the first time you went to his office after you had been in the cafe together? A Yes, sir; I told him, I believe, that property was large enough for the factory.

*Herman J. Jaeger, cross.*

Q What else did you say to him? A Then he asked me to make an offer on it.

Q And that is what you were talking about? A Yes, sir.

Q You did not, at that time, say to him, "Mr. Hannan, I am going to buy this property in my own name—I am going to sign the contract in my own name, but I am really buying it for the H. J. Jaeger Company"; you did not say that, did you? A I did not say I would buy it in my own name, I said, "I am buying it for the Jaeger Company." 10

Q Are you sure you said that the first time? A I believe so.

Q And yet at that time you had instructions to buy it in your own name? A If I wanted to do so.

Q And you had instructions to do that? A The minutes will tell you that.

Q Now, Mr. Jaeger, when you first went into this real estate office of Mr. Hannan's, you had full authority to buy, didn't you? 20

A Yes, sir.

Q And you had an idea about what that property was worth, didn't you? A I believe so.

Q What did you then think it was worth? A About \$2,000 or so.

Q Well, anywhere between \$2,000 and \$2,500—you thought it was worth that? A Not quite as much as that, because it was offered for less than that.

Q How much did you then think it was worth? A About \$2,200.00. 30

Q And thinking it was worth \$2,200.00, you went into Hannan's office that night, and after a conversation you offered him \$2,000, didn't you? A He wanted me to make an offer, and I made an offer of \$2,000.

Q Now, what did he say to that offer? A That he would see what he could do for me.

Q When next did you see him? A After we had a talk about the commissions, he would see about it.

Q What talk did you have about commissions that night, the first night? A Well, he told me that the commissions on \$2,000 was rather small. 40

Q How much was it to be? A I believe it was 5 per cent.

Q What did he say? A He did not tell me.

Q He just told you that the commission on \$2,000 was rather small? A Yes, sir.

*Herman J. Jaeger, cross.*

Q He did not tell you how much it was? A No, sir.

Q What did you say about commissions then? A I told him that I would give him the same commission that he got from the other side—the difference.

10 Q You did not know how much that commission was? A No, sir.

Q So that if he had gotten \$1,000 commission from the other side, you bound yourself to pay him another thousand dollars, didn't you? A That is correct.

Q And he did not say "Yes" or "No" to that offer of yours, did he? A He said, "That is all right," that he would see what he could do; he said it was all right—that he felt that that would be satisfactory if he could get the property.

Q What would be satisfactory? A Giving him the extra commission on my side.

20 Q Did you ever tell the Pennsylvania Railroad Company that you were doing this? A I did not know any Pennsylvania Railroad Company.

Q You did not know the property belonged to them? A Yes, I knew that, but I had had no transactions with them.

Q When you went in the office, was there a map of this property on the walls of Mr. Hannan's office? A In the book.

Q He had it listed in the book? A In the town book.

Q This is the book you are speaking about? A Yes, sir.

30 Q Mr. Hannan for years had been township assessor of Weehawken? A There is a larger book than that.

Q There is the book, isn't it? A No, there is a larger book.

Q Then what happened next after this \$2,000 offer? A Well, he called upon me again and told me could not I do any better than \$2,000—that he could not get it for \$2,000.

Q Did he say what he could get it for? A No, sir, he did not; he wanted me to make another offer, so I made another offer of \$2,500.

Q What did you say you would do then? A Well, if he got it any cheaper than \$2,500, that I would go fifty-fifty.

40 Q So your second offer was to pay him \$2,500 and do what? A I offered \$2,500, and if he got it any cheaper than that, that I would split the difference between what he gets it for less money than \$2,500.

Q And his commission, too? A There was no mention about the commissions.

*Herman J. Jaeger, cross.*

Q Do I understand you to say that on the second offer the only interest that Hannan was to have in the bargain was the difference between \$2,500 and the amount he could get it cheaper for? A I would go him fifty-fifty; if \$2,400 was paid for the property, naturally there would be \$100 to be split up between us.

*By the Court.*

10

Q Why? A Because I was trying to get the property for \$2,000.

*Further cross.*

Q Let us understand that; you first said you offered \$2,500 the second time? A Yes, sir.

Q You said, "I offer you \$2,500?" A Yes, sir.

Q And if you get it for anything less than \$2,500, I will split the difference with you between \$2,000," and what? A Whatever price we got it for less than \$2,500 we would split the difference.

20

Q How would that work out? A If we bought it for \$2,450 I would only pay him \$25.

Q Do you mean to say that Mr. Hannan as a real estate agent agreed to that? A Yes, sir, he agreed to that.

Q And didn't he at that time ask you to put your proposition in writing? A There was nothing done in writing.

Q Didn't he ask you to put it in writing? A No, sir, he did not ask for anything in writing.

30

Q Then he came back again, did he? A Yes, sir, and he told me "I cannot get that property for that price; cannot you make a better offer?"

Q What happened then? A I made another offer.

Q \$2,700? A \$2,700 or \$2,800.

Q \$2,700 you said before? A I think that may be right.

Q On the third occasion you said \$2,700? A Yes, sir.

Q Then you said, "If I buy it at this offer, I will pay you nothing at all?" A I pay no commissions.

Q So that the commission which you would have paid to Mr. Hannan ceased at the sum of \$2,700? A No, sir.

40

Q Well, over and above that you never offered him any commission? A There was a \$2,700—there was still the same thing—

*Herman J. Jaeger, cross.*

*Mr. Weller.* It does not matter whether a man was doing it gratuitously or not, the law is just the same.

*Mr. Walscheid.* We want the facts.

Q Now, you said that at \$2,700—you would buy it at \$2,700, but would pay him no commissions? A That is right, but there  
10 was always an understanding there—

Q Tell me what you said. A Well, I told him that this is the same, under the same conditions as the \$2,500; it is the same conditions.

Q Then why did you say, upon your direct examination, “I offered \$2,700, and told him there would be no commissions;” why did you say that? A Because he wanted me to make another offer.

Q What did you think he would take from that when you said that to him; did you think that he would think that you were  
20 taking him into partnership?

*Mr. Weller.* I object to the question.

*The Court.* Objection sustained.

Q Now, this contract was handed to you, wasn't it? A It was handed to me to be signed, and I signed it right down here.

Q Where were you when you signed it? A At Burke's office.

Q And Mr. Burke witnessed it, didn't he? A Yes, sir, I believe so.

Q And when you signed that both you and Mr. Burke were  
30 there alone, were you not? A I cannot remember.

Q Mr. Hannan was not there, was he? A I don't remember.

Q And Mr. Frankenstein was not there? A I cannot remember.

Q You signed it on the 14th, didn't you, the 14th of April?  
A The 14th of April, I believe that's right.

Q So that on the 14th of April, 1915, you know that you were buying this property from a man named Charles A. Rubens, didn't you? A Yes, sir.

Q On the 14th of April when you signed that paper, you knew  
40 you were buying from Charles A. Rubens? A Yes, sir, whom I did not know.

Q And you left this contract with Mr. Burke? A Yes, sir.

Q And you told him to go ahead and search the property, didn't you, at that time? A No, sir.

*Herman J. Jaeger, cross.*

Q Did not Mr. Burke search the property? A I am not sure whether he searched the property.

Q Was it searched? A I could not tell you.

Q Well, you left it with Mr. Burke, the contract? A I left the contract with Mr. Burke.

Q Then on June 1st, the day when the contract was closed, you went to Mr. Frankenstein's office? A I went there on June 1st to pay over. 10

Q You went on the date when it was to be closed, didn't you? A Yes, sir.

Q And Mr. Burke went with you? A Yes, sir.

Q And you took the money with you? A Yes, sir.

Q And you went there under the advice of Mr. Burke to go there and make the tender? A Yes, sir.

Q So as not to be in default? A Yes, sir.

Q And you did not find Mr. Frankenstein? A No, sir. 20

Q And you made the tender to somebody in the office? A Yes, sir.

Q That was on the first of June? A I believe so.

Q And that day, on June the 1st, after Mr. Burke had advised you to make the tender, and you had not been able to make the tender, he also said to you, "Now, we had better record this contract so as to protect ourselves," didn't he? A Yes, sir.

Q And recorded for William F. Burke? A Yes, sir.

Q Now, just remember, on June 1st you were at Frankenstein's office; on June 2nd you went to Hannan's office to ask him why he had not closed the title? A No, sir. 30

Q You did state you went to Hannan's office right after that to close the title—after they failed to close the title—to find out why it was not closed? A No, sir, Mr. Burke had charge of that matter.

Q Didn't you go there? A Yes, sir.

Q And didn't you get into a talk with Mr. Hannan about that, about why they had not closed the title? A There was no title to be closed; I never spoke to Mr. Hannan; everything was left in Mr. Burke's hands.

Q You never spoke to Mr. Hannan again about this matter? A I spoke to him later on—later than that. 40

Q And about why the title was not closed—why they did not live up to their bargain; didn't you see him right after June 1st at his office and ask him why they had fallen down and why they

*Herman J. Jaeger, cross.*

had not completed their bargain; and during the course of the conversation he said to you, "What is the matter; are you getting afraid; don't you want the property?" A No, sir, there was no such conversation took place.

Q And he said, "You want to give the property back;" and you said "Yes?" A No, sir, I cannot remember anything like that.

Q And didn't you say, "How much will you give me for the property back?" and he said, "I will give you \$360 back;" and didn't you then say, "No, I want \$500 more?" A No, sir.

Q Didn't he then write out these two checks and tender them to you, dated June 2nd, 1915, for \$360, and another one June 2, 1915, for \$500? A What was that, anyway.

Q Look at them—to complete your offer to give him back the property, to have you give back the property, with a profit of \$500? A I don't know what that means.

*By the Court.*

Q Do you recall Mr. Hannan making out these two checks for \$360 and \$500? A He never offered those checks to me.

Checks marked "Exhibits C 1 for identification," and "C 2 for identification."

*Further cross.*

Q Now, you are sure that you never had any such check tendered to you, one for \$360 and one for \$500, profit on your bargain, for a cancellation of that agreement? A I don't understand what that means at all.

*By the Court.*

Q Are you sure Mr. Hannan never made all these checks, the return of your deposit, \$360 and \$500 in profit to your bargain? A No, sir, I cannot remember anything like that.

Q Did it occur, did such a thing ever happen? A I cannot remember anything about checks.

*Further cross.*

Q Do you remember agreeing with him that you would give him back the property for \$360 which you had paid him, plus \$500 profit for you, and when he tried to give you the money,

*Herman J. Jaeger, cross.*

you would not take it? A No, sir, I cannot remember anything like that.

Q Do you remember his offering you \$500 for your bargain?

A There might have been some conversation after the property was purchased and belonged to the H. J. Jaeger Company; he made funny remarks once in a while in that respect; he said, "Jaeger, you got a bargain, any any time you want to sell the property, I will give you what you paid for it;" that was after the property belonged to the H. J. Jaeger Company.

10

Q You don't remember him offering to return back to you the deposit which you had paid? A No, sir.

*By the Court.*

Q Do you remember any offer of \$500 before the property passed to the Jaeger Company by Mr. Hannan to you? A No, sir, I don't remember it.

20

*Further cross.*

Q Now, I show you "Exhibit C 5," this paper; you don't know anything about that, do you? A Yes, sir.

Q What do you know about it? A That was to protect my money.

Q Were you there when it was signed? A No, sir.

Q That was to protect your money? A Mr. Burke had that drawn up.

Q Mr. Burke had that drawn up after you had signed the contract, didn't he? A Yes, sir.

30

Q And that was to protect your money against Rubens? A I don't know.

Q Don't you know that you did not know Rubens? A No, sir.

Q Don't you know that you knew that Rubens did not have title to this property? A I did not know that either.

Q Didn't you know that you and Mr. Burke knew that Rubens was a dummy in this transaction? A I did not know that.

40

Q And don't you know that this paper was drawn and signed by Mr. Frankenstein and by Mr. Hannan to protect you against this money being paid over to a dummy on a dummy contract? A I don't know anything about that; I knew there was a lot of red tape in getting that property, and I knew Rubens was

*Herman J. Jaeger, cross.*

the party that had to give up the deeds from the Pennsylvania Railroad.

10 Q Then you knew the title was in the Pennsylvania Railroad on April 14, when you got this contract signed by Rubens, you knew the title was in the Pennsylvania Railroad, didn't you? A That was going to be purchased from the Pennsylvania Railroad, I knew.

Q And because it was being purchased from Rubens instead of the Pennsylvania Railroad, this paper was made out, "Exhibit C 5?" A No, sir.

Q Now, get down to the deed, Mr. Jaeger; the deed was dated on the 10th day of June, wasn't it? A Yes, sir.

Q The title was closed in Mr. Burke's office? A He and I were there—Mr. Burke, Mr. Herschman, Mr. Frankenstein and myself.

20 Q Nobody else? A That is all I can remember.

Q According to your recollection, Mr. Hannan was not there? A I cannot recollect that he was there.

Q You did not see this deed drawn, did you? A No, sir, I don't think I did.

Q Who produced this deed, do you remember, "Exhibit C 3?" A I don't know; Mr. Burke had this matter in charge.

Q You were going to pay out the money? A Yes, sir.

Q And you were going to pay it out in cash? A Yes, sir.

30 Q And did Mr. Burke have this deed before you paid it out in cash? (Question withdrawn.) You did pay the money out in cash? A Yes, sir.

Q You laid it out on the table? A Yes, sir, and Mr. Burke gave it to Mr. Frankenstein.

Q While that money was lying on the table, Mr. Herschman, your secretary, read this deed, didn't he? A I want to see whether this is the deed that he read.

Q He did read the deed from the Manor Realty Company? A He read both deeds.

40 Q While the money was lying on the table? A No, sir, the money was given to Mr. Frankenstein, and then Mr. Herschman picked up the deeds and looked at them, and showed me one of them, and he said, "They have put one over on you."

Q And why had they put one over on you? A I don't know.

Q Didn't he show you the price in the deed, \$2,250? A Yes, sir.

*Herman J. Jaeger, re-direct.*

Q He showed you that in the deed to Rubens from the Pennsylvania Railroad the price was given at \$2,250? A Yes, sir.

Q And he said "they put one over on you?" A Yes, sir.

Q And Mr. Frankenstein was sitting there? A He and Mr. Burke.

Q Sitting there? A Yes, sir.

Q And Mr. Herschman was sitting there? A Yes, sir. 10

Q And you say the money was then in Mr. Frankenstein's hands? A Yes, sir, he was counting the money.

Q Did you ask him to give it back to you? A No, sir.

Q Didn't you both laugh and say the property was worth it? A No, sir—if you will allow me to say something—I had been building the foundation before I ever got the deed.

*Mr. Walscheid.* I ask that that be stricken out as immaterial.

*The Court.* It is not responsive; strike it out. 20

Q At that time, when you knew that this property had been bought from the Pennsylvania Railroad Company for \$2,250, and you were buying it through Mr. Hannan for \$3,600, you did not say, "Give me back the difference," did you?

*Mr. Weller.* He has already answered the question, he said "No."

A I said "No."

Q And nobody else asked to give back the difference? A No, sir. 30

*Re-direct examination by Mr. Weller.*

Q When you came to my office to get me to draw the bill, could you remember just when it was that you first talked with Hannan? A No, sir, not exactly, but I stated, I believe I told you at the time I came to your office—it must have been about three or four months ago.

Q Did you afterwards look at the minutes to see when you had been authorized? A No, sir.

Q Did Mr. Herschman show you the minutes? A I saw the minutes when we had our meeting. 40

Q Didn't you know from those minutes when you had been authorized? A Yes, sir; but I could not remember when I was at your office what the date was.

*Herman J. Jaeger, re-direct.*

Q You said that Mr. Hannan was to get his commission from the other side; how did you know that at that time? A Every real estate broker generally gets his commission.

Q You did not know then excepting what you thought?

*Mr. Walscheid.* Objected to as leading.

10 *The Court.* The objection will be sustained.

Q Who drew the contract for purchase there—the contract that you signed, do you know? A I believe Mr. Burke did.

Q You said you told Mr. Hannan about building a factory; what factory did you tell him was to be built? A We all had it understood that I was obliged to build a factory because I had so much business.

Q What kind of factory? A A lamp factory for the H. J. Jaeger Company, incandescent lamp.

20 Q Now, this contract seems to have been signed on the 14th of April, 1915? A Yes, sir.

Q How soon after that did you commence your foundation? A I started the foundation in May.

Q I see; then when you got your deed, how near up was the foundation? A I had it all built; it was all up.

*Mr. Weller.* Will you let me see those two checks that were marked for identification?

*Mr. Walscheid.* No.

30 Q Now, speaking about a check, did Mr. Hannan ever offer to settle this case with you after the bill of complaint was filed, and he was served?

*Mr. Walscheid.* Objected to.

*Mr. Weller.* An offer to compromise is always permissible to show.

*Mr. Walscheid.* I asked him whether on June 2nd or thereabouts—that was before the bargain was closed.

*Mr. Weller.* I want to ask about these checks.

40 *Mr. Walscheid.* Here, look at the checks; those checks will do you no good; they are dated June 2nd.

Q You say you built that wall before you got your deed?

*Mr. Walscheid.* Objected to.

A Yes, sir.

*Louis Menscheler, direct.*

*Re-cross examination by Mr. Walscheid.*

Q Who did your excavating, who was your contractor? A Some Italian name; I cannot remember.

Q Have you it in your records here? I want to know the name of that contractor; who did your mason work? A The foundation mason work was done by Reegler. 10

Q Are your contracts filed at the court house? A I don't know; George Reegler built the foundation, and some Italian did the excavating.

Q Who did the blasting? A There was no blasting; Enrill Grauart was the architect.

LOUIS MENSCHELER, sworn in behalf of the complainant, testified as follows:

*Direct examination by Mr. Weller.* 20

Q I show you a letter and ask you whose signature that is? A That is Mr. Hannan's signature, and I told him to write my name at the bottom.

Q He wrote the letter and you gave him the authority to write your name at the bottom? A Yes, sir, I was there at the time.

Q Do you know Mr. Charles E. Gorrell? A No, sir.

Q What is your business? A Commission broker.

Q For a furniture house? A No, sir, at that time it was real estate and furniture also. 30

Q You have been in the furniture business a great many years? A Yes, sir.

Q You don't know Mr. Rubens? A No, sir.

Q Who got the letter up? A Mr. Hannan and I.

Q Mr. Hannan drew the letter and you signed your name to it? A No, sir.

Q When Mr. Hannan drew the letter, who was it that wrote the letter out on the typewriter? A Mr. Hannan's typewriter.

Q Why didn't you sign the letter yourself; you were there? A I was there— 40

Q Just tell us exactly what conversation took place between you and Mr. Hannan at that time.

*Mr. Walscheid.* Objected to as immaterial and irrelevant.

*Louis Menscheler, direct.*

*The Court.* What is the relevancy of this?

Q In whose behalf did you make that offer?

*Mr. Walscheid.* Objected to as immaterial.

Q In whose behalf did you make that?

10

*Mr. Walscheid.* The objection is withdrawn.

A Mr. Hannan's.

Q Why didn't he take the property in his own name? A Mr. Hannan told me that the agent, Mr. Von Moschzisker, he told me he could not do business with Von Moschzisker, and, therefore, he said, "you can make an offer for the property and the brokerage belongs to you."

Q You say in that letter, "My client offers \$2,000;" who was that client? A Mr. Hannan.

20

Q Mr. Hannan was offering the \$2,000? A Yes, sir.

Q You never knew anything about this property before? A No, sir.

Q The first you knew of it was when Mr. Hannan told you that he had a client?

*Mr. Walscheid.* Objected to.

30

Q Just tell us what he did say. A Mr. Hannan told me, "Do you want to collect some brokerage? I am going to write this letter and offer the Pennsylvania Railroad \$2,000; you collect the brokerage."

Q That was on the 23rd of March? A About that time.

*Mr. Walscheid.* To simplify matters, where did you get that letter from, Mr. Weller?

*Mr. Weller.* You find out.

*The Court.* I don't think it is proved sufficiently. You got it from the Pennsylvania Railroad, didn't you?

40

*Mr. Weller.* If your Honor thinks I should answer the question, I will say "Yes"; all I wanted to prove was, that this letter really went to Mr. Von Moschzisker.

*George Frankenstein, direct.*

GEORGE FRANKENSTEIN, sworn in behalf of the complainant, testified as follows:

*Direct examination* by Mr. Weller.

Q You are an attorney and counsellor at law? A Yes, sir.

Q Where was your office on the 15th of June? A 136  
Fourth street, Union Hill. 10

Q And it had been there for some time? A Yes, sir.

Q Did you draw the contract for the purchase of this property? A Yes, sir.

*By the Court.*

Q Did you draw the contract? A Yes, sir.

*Further direct.*

Q By whose direction did you draw it? A John Hannan came to me about the middle or latter part of March, and told me he wanted to buy a piece of property from the Pennsylvania Railroad, or the holding company. 20

Q (Question read.) A No particular parties.

Q Did not somebody direct you to draw a contract? A It was the outcome of some negotiation.

Q Who directed you to draw this contract? A No one in particular told me.

Q You did not draw a contract without being told to do so? A Nobody told me to draw that particular contract.

Q How did you happen to draw that contract? (Question withdrawn.) How did you happen to draw the contract? A About the middle or latter part of March, 1915, John Hannan came to me and said, "I want to buy a piece of property from the Manor Realty Company," and he said, "I want you to attend to the details for me," and among other things he said, "I cannot take title in my name, because when I was assessor this man, Mr. Von Moschzisker, and I had a lot of trouble, and I am afraid he would not O. K. any contract with me," and he said, "Go and buy it in some dummy's name," and he gave me the price of \$2,250.00; he said, "I cannot take title in my own name," and he said, "You take the title in some dummy's name"; so a man named Charles E. Gorrell happened to be in the office, he is an engineer for the Starrett Thompson Company; he was on his vacation at that time, and he used to be around my 30 40

*George Frankenstein, direct.*

office a good deal, and I said, "Charlie, let us go over to New York, and I will take a contract in your name"; and I did, I drew my check for \$225.00.

Q Who went to New York? A Mr. Gorrell and I.

10 Q Who is he? A A friend of mine, an engineer who works for Starrett Thompson Company. John Hannan told me he did not have any money, and he said, "Will you put up the deposit?" and I did. I took the check to Mr. Gorrell and went to the Pennsylvania Railroad depot; we went over to New York to the Pennsylvania Railroad depot to Von Morschzisker's office, and saw him, and made this contract in duplicate.

*Mr. Walscheid.* Kindly note that the date is the 14th.

A (Continued.) Coming back, or at some part of the trip, Mr. Gorrell confided in me that he was a married man.

20 *The Court.* Strike that out.

A I want to tell you how it got to Rubens. I had the original of this contract assigned to Charles A. Rubens on the back of the contract.

*Mr. Weller.* I offer that contract in evidence.

*The Court.* I see no objection to that; it will be received in evidence.

Marked Exhibit C. 7.

30 Q I will ask you, did anyone direct you to assign this contract over to Rubens? A No, sir.

Q Did anyone direct you to draw the contract between Mr. Rubens and Jaeger? A No, sir.

Q Nobody? A No, sir.

Q Who told you how much Mr. Jaeger was to give? A John Hannan.

*By Mr. Walscheid.*

40 Q That was after you had come back from New York with this contract on the 14th? A Some time after that, I think, yes, sir.

Q I want the check for \$225.00 to go in as evidence.

Marked "Exhibit C. 7."

*George Frankenstein, cross.*

*Cross examination by Mr. Walscheid.*

Q Do you remember what time of the day you got back from New York with this contract? A I think it was around afternoon.

Q How soon after that did you meet Mr. Hannan? A I guess he was in the office; I don't know that he was; it is two and a half years ago, and I don't exactly remember. 10.

Q After you came back to the office with this contract you drew this, did you? A Yes, sir; I think so.

Q Tell us how Mr. Gorrell's name got out of the transaction. A I always understood Mr. Gorrell to be a single man, and on coming back, or through some part of the trip, he told me he was married; he said he could get his wife to sign a deed, but she was in Baltimore, and it was inconvenient, and I switched it around to Rubens for convenience sake; he lives in Jersey City Heights now, but he lived in West Hoboken then. They did not know anything about this thing, except that they did it to accommodate me. 20

Q After you came home that afternoon you drew that contract? A I must have done so. The description is so long that they put on this diagram, and I got this when I paid the deposit; I must have done it after that.

Q That is your recollection? A I think so; yes, sir.

Q That diagram which is attached to and part of that contract comes from the Manor Realty Company? A Yes, sir. 30

Q Then, having drawn the contract, when you came back from New York, where did you go with it? A To Burke's office.

Q When did you get there that day? A I think it was around five o'clock.

Q What did you do there with it? A I was to have Mr. Jaeger sign this contract, and Mr. Jaeger was not there, as I remember it, and I left the papers there, and Mr. Burke mailed me a check the next day.

Q So that the next day you received a check? A Yes, sir. 40

Q Is that the check you then received? A \$360.00, April 14th.

Q I show you "Exhibit C. 6." A I received that on the 15th.

*George Frankenstein, cross.*

Q You had paid out your check on the 14th? A Yes, sir; I received that on the 15th through the mail.

Q And you deposited it on the 15th? A Yes, sir.

Q And does that book show the deposit of the \$360.00? A My book shows \$370.00.

10 Q While you were at Mr. Burke's office, was anything said about the title being in Ruben's name? A Yes, sir; that was understood.

Q Was any paper drawn as the result of that conversation? A Upon seeing this paper I refreshed my memory, and my recollection is that Mr. Burke, because of the fact that Charles A. Rubens had no title on record, and because he did not know Charles A. Rubens, he wanted me to personally guarantee that the deposit would be refunded if the title was defective, and I, having control of the money, consented to do it.

20 Q When did you sign that? A Mr. Walschied, I have no recollection as to that; I forgot all about that until I see it here this morning; I do recollect Mr. Burke saying something about that he did not know whether Rubens would be any good if he had to sue him, and would I guarantee the deposit; I do recollect some such conversation.

RECESS TO 2 P. M.

AFTER RECESS.

30 GEORGE FRANKENSTEIN resumes the witness stand.

*Cross examination* (continued) by Mr. Walscheid.

Q When Mr. Hannan came to you in relation to this matter, did you and he make any arrangement about financing this proposed purchase? A Yes, sir.

Q What was the arrangement that you made? A He told me he had no money, and would I pay the deposit, \$225.00, and I did.

40 Q What about financing the rest of the purchase price? A Within 30 days, that brought it to sometime after May 15th, so on the 7th of May John Hannan gave me his note for \$2,000, and I had it discounted in my bank.

Q What was that discounted for? A For the purpose of taking up this deed.

*George Frankenstein, cross.*

Q And does that bank-book show the entry? A Yes, sir; May 17th, 1915, \$1,996.34; that is \$2,000 less ten days' interest.

Q You did that just prior to the time when the title was to be closed; now, on May 14th or 15th, the title was not ready? A No, sir.

Q And on May 17th it was not ready? A No, sir. 10

Q What did you do then? A John Hannan gave me another note for \$2,000.

Q For how long a time? A For ten days.

Q What did you do with that? A I discounted it at my bank.

Q What is the name of the bank? A The Trust Company of New Jersey.

Q Is the entry in the book showing the discount of that second note? A Yes, sir; May 17, 1915, \$1,996.27. 20

Q Now, on May 27th, the title had not yet passed? A No, sir.

Q What happened then, so far as the money was concerned—the balance that was to be paid? A A day before that—May 26th, John Hannan came to me—on June 9th—

Q On May 27th this note became due and it was not renewed? A Yes, sir.

Q Was there any reason for that? A Yes, sir; John Hannan said he would not have to give me the note any more, as he had sold some other properties and had the money. 30

Q Was it the sale of a property or a mortgage that he had? A I don't know; I think he said he sold something and got the money.

Q On June 9th what happened? A He gave me his check for \$2,000, and I deposited it.

Q And is that the check? A Yes, sir; that is the check to my order for \$2,000; that is the only transaction I had with John Hannan anywhere about that time.

Q What was that \$2,000 for? A To pay the balance of the consideration. 40

Q You deposited that into your account? A Yes, sir.

*Mr. Walscheid.* I offer it in evidence.

Marked "Exhibit C. 4½."

*Mr. Weller.* I do not object to that.

*George Frankenstein, cross.*

Q Then, having deposited that check, what did you next do? A I drew my check for \$2,025.00 to the order of The Manor Real Estate and Trust Company.

Q What is the date of that check? A June 9, 1915.

Q And was that certified? A Yes, sir.

10 Q And is that the check? A Yes, sir.

*Mr. Walscheid.* Now, I offer that check in evidence. Marked "Exhibit C. 5½."

Q Did you use this? A Yes, sir.

Q How did you use it? A I gave it to Mr. Von Moschzisker, and he gave me the deed.

Q And on what date—the 9th? A I think so.

Q That is the deed to Rubens? A Yes, sir.

Q You received it on the 9th? A Yes, sir.

20 Q And having received that deed on the 9th, then what next did you do? A I prepared the deed from Rubens to the Jaeger Company, or whoever it is to—if it is to the company—

Q Having prepared the deed to the Jaeger Company, what did you do? A I went to Mr. Burke to pass the title.

Q On what date, on the 10th? A I will tell you by the deposit—the day I received the money, June 11th, I think.

Q June 11th you made the deposit? A Yes, sir; June 11th I paid John Hannan, so I believe that was the same day.

30 Q You went to Burke's office? A Yes, sir.

Q Who was there when you got there? A Mr. Jaeger, Mr. Herschman and Mr. Burke.

Q This deed from the company to Rubens, did that show the true consideration? A Yes, sir.

Q What transpired in relation to the closing of this title at Mr. Burke's after you got there on the 11th? A I gave both deeds to Mr. Burke to look over.

Q Was that before you had received any money? A Yes, sir.

40 Q Did he look them over? A Yes, sir.

Q What next did he do after this? A He passed them over to Mr. Herschman to look over, and Mr. Herschman made some remark about "property went up in that neighborhood suddenly."

Q Did he look at the deed? A Yes, sir.

*George Frankenstein, re-direct.*

Q At both of them? A Yes, sir.

Q Did he see the consideration? A Yes, sir; that is what caused him to make that remark.

Q Did he show it to Mr. Jaeger? A Yes, sir.

Q Tell us what next happened? A They spoke about the difference in the price, and joked about it, and said, "Who is this fellow Rubens, somebody is making money on this." 10

Q Had any money been passed to you when this was being said? A No, sir; after the money was passed I went out; that is the last thing that interested me.

Q Then you went out and deposited the money in your account? A Yes, sir.

Q Does the account show it? A Yes, sir.

Q What is the deposit on June 11th? A \$3,240.00.

Q All of that you received from Mr. Jaeger? A Yes, sir. 20

Q Then what did you do after depositing that money? A I gave John Hannan a check for what was coming to him.

Q Less your fees? A Yes, sir.

Q \$3,181.31? A Yes, sir; John Hannan owed me \$250.00 cash that I paid out in the consideration; he only paid \$2,000 of the consideration; I paid \$250.00 of it, so my fees were not the whole difference between the amount of my check and \$3,600, because I had already loaned—

Q How much was your fee? A \$125.00 or \$150.00, I am not sure which. 30

Q That is the check you gave him that same day? A Yes, sir; and some odd cents for revenue stamps, and such things as that.

*Mr. Walscheid.* I offer it in evidence.

Marked "Exhibit C. 6½."

*Re-direct examination by Mr. Weller.*

Q When did you tell Mr. Jaeger that Mr. Hannan was interested in this deed? A I never told Mr. Jaeger anything.

Q You never told him a word about it? A I only met him once. 40

Q Why not; you met him at the time the contract was drawn? A No, sir.

Q You did not? A No, sir.

*George Frankenstein, re-direct.*

Q Why did Mr. Hannan sign this agreement to pay back part of the money? A Mr. Burke wanted him to sign that and wanted me to sign it, to secure the deposit.

Q Was Mr. Hannan up with you there at that time? A No, sir.

10 Q How did Mr. Burke happen to want John Hannan to sign this? A He knew that Hannan was the real party in interest.

Q Do you know that? A Yes, sir.

Q When did you first know that? A The first time he spoke to me in March.

Q He told you that he was the real party in interest, and also he told you he wanted to make about \$1,400— A He only told me about buying it the first time.

Q Did he tell you at that time that Mr. Jaeger had spoken to him about this? A No, sir.

20 Q When did he tell you? A On the 14th of April he told me.

Q Where were you? A When I got back to my office with the contract to Gorrell, I think.

Q It was then that Mr. Hannan told you what? A About selling it to Jaeger.

Q And that is the first he had ever told you? A Yes, sir.

Q Are you sure of that? A I think so, that is my recollection.

30 Q You know that was the 14th of April when this was signed? A He did not tell it to me for two or three weeks after, the first time—

Q Do you know that this contract was signed on the 14th of April? A Yes, sir.

Q You know the contract was made by Mr. Jaeger the same day? A Yes, sir.

Q And you know that Mr. Jaeger gave you a check on that same day? A No, sir, Mr. Burke mailed it to me.

Q It is dated on the 14th of April? A I presume so, the contract is signed the same day.

40 Q When was the contract delivered? A The same day, to Mr. Burke—from me to Mr. Burke.

Q Where did you go to have Mr. Hannan sign this little agreement to return the \$360? A That was not signed for a couple of days afterwards.

*George Frankenstein, re-direct.*

Q It is dated on the same day? A That may be, but it was not signed that day, because I did not see Hannan any more.

Q You left the whole thing in abeyance? A I did not think it was in abeyance; I left it with Mr. Burke.

Q But Mr. Burke did not want to trust this man Rubens—  
A Because he did not know Rubens.

Q And that is the reason this contract was signed? A Yes, sir. 10

Q Why was it that it was allowed to stand for two days?  
A I think it was an after thought on Mr. Burke's part, if I remember right.

Q Why was this contract drawn to Gorrell? A Because he happened to be handy that day when I got ready to go to New York.

Q Was Mr. Hannan there? A No, sir.

Q How did you happen to draw it to Mr. Gorrell? A Because he happened to come in the office, and he was handy. 20

Q Did not Mr. Hannan say to you at that time, "Whose name shall I put this in?" or didn't you say that to Hannan at that time? A No, sir, Hannan told me to have it in somebody else's name, because he had some matters in difference with Mr. Von Moschzisker.

Q Did he tell you what matters they were? A Tax matters; he was an assessor of Weehawken.

Q When did you first know that Mr. Hannan was the real party in the contract? A I knew it at the outset; Mr. Hannan was the first man that spoke to me about it; it was entirely Mr. Hannan's affair. 30

Q Did he tell you how much he wanted to make out of it—where does Mr. Rubens live? A In Jersey City now, and at that time he lived in West Hoboken.

Q How did you happen to take the assignment from Gorrell over to Rubens? A Because Rubens was a boyhood chum of mine, and he was the first one I thought of; they simply did it for my convenience.

Q Where did Mr. Rubens live at that time? A West Hoboken. 40

Q Whereabouts? A Clinton avenue.

Q Do you know whether Mr. Rubens is worth any property or not? A He is not at the present time.

Q And he was not at that time? A I don't think so.

*George Frankenstein, re-direct.*

Q Gorrell had nothing either? A He is worth considerable in personal property, but not in real estate.

Q What did you tell him Gorrell's business is? A Superintendent for the Starrett Thompson Company.

Q Didn't you think it was funny that Mr. Hannan was asked to guarantee the repayment of the \$360? A No, sir, I did not.

10 Q Did you ask him to guarantee it? A I told him Mr. Burke wanted it that way; Mr. Hannan was my client.

Q How much did he pay you? A Whatever the difference is—either \$125 or \$150, I forget which; whatever the difference is.

Q Did he know that the contract was taken in Gorrell's name and signed over to Rubens? A I don't know whether I mentioned the parties' names to him or not.

Q Did he know it had been taken by somebody and then signed over to Rubens? A Yes, sir.

20 Q What time of day did Mr. Gorrell enter into this contract? A I think we left my office about 11 o'clock, and got there about a quarter to 12, and got all through by 12 o'clock.

Q What time was it signed over to Rubens? A Immediately.

Q Was it ever delivered to Rubens? A The contract itself, no, sir.

Q Was the contract from the Railroad Company ever delivered to Gorrell? A No, sir.

Q You had it all in your charge? A Yes, sir.

Q You say your money paid the initial deposit? A Yes, sir.

30 Q You gave your check? A Yes, sir.

Q When did you draw this \$2,000 of Hannan's money on his note? A I never drew it; I simply had that much credit in the bank, so that if I needed it, I had it.

Q When did you get that credit? A First note made May 7th, the second, May 17th.

Q And that was the credit that you had in the bank? A Yes, sir.

Q But you never drew against that credit? A I never needed it.

40 Q Then Mr. Hannan gave you his own check— A Yes, on the 9th of June; I think it is the 9th of June that he gave me his check.

Q You knew at that time that the title to Jaeger was to pass the next day? A Yes, sir.

*George Frankenstein, re-direct.*

Q Why did you get Hannan's check if you knew you were to get the amount of money from Jaeger the next day? A I had to.

Q Did you go over to New York and pay it? A Yes, sir.

Q The whole thing? A Yes, sir.

Q You got the deed in advance, the deed to Mr. Rubens, then, before you got any money from Mr. Jaeger? A Oh, yes; Mr. Jaeger's money never financed any part of this deal, absolutely—

10

Q Now, you have mentioned two notes there that were discounted on May 7th and May 17th? A Yes, sir.

Q Why did you have those notes discounted at that time, when you knew at that time that the contract had not been signed to Jaeger, and the title was not to pass to Jaeger until June 1st? A Because I wanted to be ready to take up the deed from the Manor Real Estate and Trust Company, irrespective of whether Jaeger was ready or not.

20

*By the Court.*

Q The deed was to be delivered at any time within thirty days? A Yes, sir.

Q When did you make application for discount? A I have been in the habit of discounting notes; I simply put them in and they say "Come back in a few days;" I have never been refused.

Q Isn't it a fact that there was considerable correspondence with the company after this first contract was assigned to Gorrell? A Yes, sir.

30

Q And didn't you from that correspondence learn that this title could not be delivered until sometime in June? A There was no correspondence between the company and myself.

Q Do you know whether there was any correspondence between the company and Mr. Gorrell? A No, sir.

Q What led you to believe, when you drew the contract on the 14th of April, between Mr. Rubens and the Jaeger Company—what led you to believe that the title could not be passed until June 1st? A There was not anything in particular, only I did not want to make it before the time that Hannan was to get title; I wanted to be on the safe side; that is why I made it June 1st.

40

Q You knew it could all be done on the same day? A Yes, sir.

*George Frankenstein, re-direct.*

Q How did you find out when you were going to get title from the Manor Company? A Von Moschzisker telephoned.

Q Had he or Mr. Smith telephoned to you right along before that? A I think I had been telephoning to them at Mr. Burke's behest; I think Mr. Burke asked me a number of times to pass title before the time set.

10

Q Had not the Manor Real Estate Company's office told you at all times that they could not get the title until some time in June? A No, sir.

Q They told you, didn't they, that it would have to go before the board and be approved first? A Yes, sir.

Q And they said it would take considerable time? A Yes, sir.

Q Yet you drew out this money from the bank on these two notes? A The time had been up all that time.

20

Q When you got the deed why did you hold it off until Mr. Jaeger paid off his money? A I gave it to Mr. Burke; I had to show him some evidence of title, and before I had recorded it I would not get it back for three weeks from the Register's office here. I think Mr. Burke and I had an arrangement that he should record it and that I should give him the two deeds.

Q Why didn't you assign this contract directly over to Mr. Hannan and have the contract drawn between the Jaeger Company and Mr. Hannan? A I cannot give you any particular reason for that.

30

Q Don't you know Mr. Hannan was trying to hide how much he was paying? A I don't know anything about that.

Q Why didn't you have it assigned over to Mr. Hannan and let Mr. Hannan make this contract? A It did not occur to me.

Q It occurred to you to do the thing in a roundabout way, and not in a straight way? A I always do things in a straight way.

*By the Court.*

40

Q Why did you go through all that rigmarole? A Mr. Hannan did not want to have anything to do with Von Moschzisker.

Q Why did you make a second grantee in Rubens? A Because Hannan did not want the title in his name; the title was in my friend Rubens, and I was satisfied with the property.

*George Frankenstein, re-direct.*

Q Why did you put the property in Rubens after having one grantee from the Manor Company already; why did you make those two transactions? A I don't know why besides the fact that Hannan did not want the title in his name.

*Further re-direct.*

Q You knew that Mr. Rubens was a married man? A Yes, sir. 10

Q And you knew he lived way down in West Hoboken, and you knew that after the deed was made to him that he would have to trot his wife all the way to your office to sign it; why didn't you assign the contract to Hannan after it went over to Rubens, in order to save his wife the trouble of coming down there? A I did not consider it any trouble for Rubens and his wife; they used to come there very often.

Q When do you say you paid yourself back that \$250.00? A 20  
The deposit?

Q Yes, what you paid on account? A Just as soon as I got the check from Mr. Burke.

Q Which check? A \$360.00.

Q You paid yourself right away? A Yes, sir.

Q I thought you said you did not pay it back until afterwards? A As soon as I got Mr. Burke's check I deposited it to my account and left it there.

Q Didn't you say you did not pay yourself back until after you got the money from Mr. Jaeger? A Well, that was Mr. Jaeger's money. 30

Q Do you keep books of account? A Why, my receipts in the office and expenses, yes, sir.

Q When you paid this money over to the Manor Real Estate and Trust Company, did you charge it against anyone? A No, sir; I only keep books of account of my own fees and disbursements.

Q When you went over there, Mr. Hannan knew you were going to pay this money? A Yes, sir. 40

Q He asked you to pay it? A Yes, sir.

Q And you paid that out of your own funds? A Yes, sir.

Q Are you and Mr. Hannan friends or business acquaintances? A I probably had made half a dozen searches for him in my time.

*William F. Burke, direct.*

Q How close do you live to him? A Within a block and a half.

Q Mr. Herschman called my attention to a fact that you testified to; you show by your account how much your check was to Mr. Herschman? A Yes, sir.

10 Q Let us see that again—after the whole of the money had been paid off, I mean? A Yes, \$3,185.31.

Q How was that made up? A The consideration was \$3,600; I paid out \$250.00.

Q What was the \$50.00 for? A The contract price was \$2,250.00, and he only gave me \$2,000.

Q But he had not given you anything at that time? A Yes, sir; when I got this \$3,100 check, certainly—\$165.00—probably my fee was \$150.00 and \$15.00 for disbursements.

20 Q But you had in your hands at that time the difference between the \$200 and the \$25.00 and the \$150.00? A Yes, sir.

Q Did you put that back there? A Yes, sir.

Q You could not give any reason why you should not put that into Mr. Hannan's name and put it into Mr. Ruben's name when you discovered that Gorrell was a married man, could you, a moment ago? A Now, this matter, of course, is some two years old.

WILLIAM F. BURKE, sworn in behalf of the complainant, testified as follows:

30 *Direct examination by Mr. Weller.*

Q You are a member of the Bar of this State? A Yes, sir.

Q You are an attorney and counsellor at law? A Yes, sir.

Q You live where? A I live in the Town of Union.

Q Where do you carry on your business? A In West Hoboken.

40 Q Did you see the little contract marked—the little guarantee, I mean—oh, here it is, marked Exhibit C.5, I think—do you remember when that was drawn? A No, sir, excepting by reference to its date.

Q What is the date of it? A April 14, 1915.

Q That is dated the same day as the contract of the Manor Real Estate and Investment Company to a man named Gorrell, and the same date that that contract was assigned by Gorrell to Charles A. Rubens—

*William F. Burke, direct.*

*Mr. Walscheid.* I object.

A I don't know.

Q Will you look at the contracts and see if you witnessed all the contracts?

*Mr. Walscheid.* He witnessed the one from Rubens to Jaeger. 10

A The only contract I see here is this guarantee; here is the contract between Rubens and Jaeger, as to Jaeger, witnessed by me.

Q What date is that contract? A April 14, 1915.

Q What is the date of the little guarantee? A April 14, 1915.

Q Do you remember when this title passed finally? A No, sir; I don't remember, Mr. Weller—

Q Will you find the deed on the front and see if that will refresh your memory? A I find a deed from Rubens to the Jaeger Company, dated June 10, 1915, and recorded by me on June 11, 1915. Now, I should say that that passed on June 10th or June 11th. 20

Q You took an acknowledgment, didn't you? A Yes; it is acknowledged on the 10th of June, 1915; it probably was passed at that time and I recorded the deed the next day, but I am not certain about that.

Q Did you record both deeds, deed from Jaeger— A I think so, but I would rather look at the deed. 30

*Mr. Walscheid.* That is up in your office.

A I think so, Mr. Weller, my recollection is that I did see the two deeds when we closed.

Q Do you remember when the money was passed over to you by Mr. Jaeger? A Which money do you mean, the payment on account?

Q Yes. A I remember something about it.

Q Now, do you remember when the balance was paid over to you? A At the time of the passing of the title. 40

Q That was about the 10th of June? A I think so, yes, sir.

Q Do you remember anything that was said by Mr. Herschman after the title had passed, about this deed?

*Mr. Walscheid.* Objected to as leading.

*William F. Burke, direct.*

Q Who was there at the passing of this title? A My recollection is, that when the title was closed we examined both deeds; that is by "we" I mean particularly Mr. Herschman, who was the lawyer who represented Mr. Jaeger, and myself; there was a great deal said after the title was examined.

10 Q Who was there? A After I had been examining the title—

Q What do you mean? A Making the search.

Q I mean at the meeting in the office when title passed, who was there? A Mr. Herschman and Mr. Frankenstein, and I am not sure about Mr. Jaeger being there.

Q Did you know Mr. Rubens at that time? A No, sir.

Q Have you met Mr. Rubens since that time? A Yes, sir.

20 Q Did you know whether or not Mr. Rubens at that time was a bona fide holder of this property? A I am quite sure that I knew that he was not, and for that reason I exacted a guarantee by Mr. Frankenstein and Mr. Hannan.

*By the Court.*

Q You say you were quite sure that you knew that he was not a bona fide purchaser; did you know who the purchaser was? A My recollection is, that Mr. Jaeger either telephoned me or informed me that he was negotiating through Mr. Hannan to buy a piece of property, and the next thing I knew—

*Mr. Walscheid.* I don't think that is evidence, sir.

30 A And then a contract was submitted by Mr. Rubens, and I think then I told Mr. Jaeger that I did not know Mr. Rubens, and asked him whether he was willing to turn over this money to Mr. Rubens under the circumstances.

*Further direct.*

Q It was because you did not know whether he owned it or not, and whether he had any property, that you wanted a guarantee? A (No answer.)

40 *By the Court.*

Q You represented Mr. Jaeger in this transaction? A Yes, sir.

Q And he was present when the title was passed; did you have the cash yourself? A I don't remember.

*William F. Burke, cross.*

*Further direct.*

Q You looked at the deeds? A Yes, sir.

Q You noticed the consideration of those deeds? A Yes, sir.

Q You saw, therefore, a difference in the amount of the consideration? A Yes, sir.

Q Did you make any remarks yourself? A I turned it over to Mr. Herschman, and there was some talk. 10

Q Was that at the time the title was passed? A Yes, sir.

Q Had it actually been passed or had it not—had the money been paid and the deed passed over or had it not? A Before the money was paid I certainly showed the deed to Mr. Herschman and went over the deeds myself, but whether the remarks were passed after the thing was consummated or before I don't know; I think someone said something about money being made, but who made the remark I don't know.

Q You did not know at that time for sure who was making that money? A I cannot say that I did. 20

Q You say Mr. Jaeger told you that he was negotiating for the purchase of this land through Mr. Hannan; how long was that before the contract of sale was signed between the Manor Real Estate and Investment Company and Mr. Rubens? A He told me that a day or so before the contract was signed.

*Cross examination by Mr. Walscheid.*

Q The contract from Mr. Rubens to Mr. Jaeger was brought to your office by Mr. Frankenstein? A I think so. 30

Q You were not in when it was brought there? A I cannot say.

Q Well, it was left there? A I think so.

Q And Mr. Jaeger signed it afterwards? A Yes, sir.

Q Then you mailed the check to Mr. Frankenstein? A I don't know about that, but I am sure Mr. Jaeger signed afterwards.

Q You are sure Mr. Jaeger signed after Mr. Frankenstein had left? A Yes, sir.

Q So that at some period of time on that date you had the signed agreement by Mr. Rubens in your possession and had not paid for it? A Yes, sir. 40

Q And, of course, Mr. Jaeger had not left the money there with you; he was to come up and bring the money up and sign it, wasn't he? A I think so.

*William F. Burke, cross.*

Q He came up and brought the money up and signed it? A Yes, sir.

Q You did not see Mr. Frankenstein again on that 14th of April? A I cannot say that I did.

10 Q How would you get the money to him; wasn't it by mail, as he said? A I won't say that I did not send it by mail.

Q Isn't it a fact, that at the same time in sending it by mail, you also sent to him "Exhibit C. 5," and asked him to have that signed because you had then had your talk—because Mr. Jaeger had appeared at your office and you had had your talk with him about the responsibility of Mr. Rubens, and had decided it then as an after thought—"Exhibit C. 5"—and wanted Mr. Frankenstein and Mr. Hannan to sign it? A It does not seem likely that this was an after thought, Mr. Walscheid; my recollection is not that it was an after thought; it must have been a thought that presented itself to me when I saw the contract presented by Mr. Rubens.

20 Q You did not see that until after Mr. Frankenstein had left the office? A That might be.

Q And then you said to yourself: "We will send him the check for the \$360.00 and will ask him for a guarantee"; you said that to yourself or to Mr. Jaeger? A I remember talking to Mr. Jaeger and suggesting that we get some guarantee as to this money that he is paying; now, whether I trusted Mr. Frankenstein to get that signed or not, I don't know.

30 Q You did get it signed afterwards; but what I want is, you will not swear that Frankenstein or Hannan signed this paper on April 14, 1915, in your office? A No, sir; I won't swear to that.

Q Your recollection is, that they did not? A I think that my recollection is that they did not.

Q And that it came back to you in some shape some time after April 14th, signed that way? A That is my recollection.

Q Now, get down to the date of the deed transaction; Mr. Frankenstein was there, wasn't he; that was dated June 10th; Frankenstein was there, wasn't he? A Yes, sir.

40 Q Your recollection is, that Hannan was not there? A That is right.

Q You are sure of that? A Yes, sir; I am sure.

Q And Frankenstein presented to you as counsel for Jaeger the two deeds? A Yes, sir.

*William F. Burke, cross.*

Q And you read them over? A Yes, sir.

Q Now, at that time you had made an examination of the title to this property? A Yes, sir.

Q And you found the titles were put in the Manor Real Estate and Trust Company? A I think so; yes, sir.

Q Of course, you have the agreement of Rubens already on record since June 4th? A I don't know when he recorded the Rubens' agreement, but I know I advised recording it because there seemed to be some difficulty about getting the title to this property. 10

Q So that on June 10th or the 11th, Mr. Frankenstein was present about two deeds, one from the Manor Real Estate and Trust Company to Rubens, and the other from Rubens to the Jaeger Company? A I think so; yes, sir.

Q You, as counsel to the Jaeger Company, examined both of these deeds before you did anything else? A Yes, sir. 20

Q And immediately you noticed that the deed to Rubens for a consideration, or showed a consideration of \$2,250.00, whereas, the Jaeger Company was to pay \$3,600.00? A Yes, sir.

Q You noticed that immediately before the title was closed? A Yes, sir; I must have.

Q And, having noticed it, it was something that you called the attention of your client to? A Yes, sir.

Q And you wanted them to know before you had let them close the title? A Yes, sir. 30

Q You and Herschman talked it over? A Yes, sir.

Q You closed the title? A Yes, sir.

Q And then, after you had closed it, the money was paid over to Frankenstein? A Yes, sir.

Q Do you know when Mr. Frankenstein was notified to insert the name of the Jaeger Company in the deed instead of the name of Mr. Jaeger? A I really don't know, nor does anything here refresh my memory.

Q Isn't it a fact that at the time you gave him instructions as to how the deed was to be drawn, that that is the time? A That is very likely; I suppose Frankenstein called up and asked how the deed was to be drawn, and I asked Mr. Jaeger and he told me. 40

*The Court.* Strike that out.

*Robert H. Herschman, direct.*

*Re-direct examination by Mr. Weller.*

Q Did you turn over the \$360.00 that Mr. Jaeger gave you before you got that little guarantee? A I cannot answer that; it does not seem so, Mr. Weller, because that would defeat the whole idea I had in my mind.

10 Q Did John Hannan ever appear at your office in relation to this transaction? A I don't think he did.

Q He never appeared there to let you know that he was the real man behind the gun? A I don't think he ever made any such presentation to me.

Q You did not know he was interested in the deal at all? A I would not say that.

Q You don't know? A No, sir.

Q You don't remember? A I don't remember what?

Q Whether you knew that he had any interest in it or not? A I know that the name Hannan was mentioned, and I think by Mr. Jaeger.

Q What did he say about it? A He was negotiating through Mr. Hannan for the purchase of this property; whether he was the agent or not that is a conclusion, I suppose.

*Re-cross examination by Mr. Walscheid.*

Q And you did want Mr. Hannan's guarantee? A I wanted it; I asked for it.

30 ROBERT H. HERSCHMAN, sworn in behalf of the complainant, testified as follows:

*Direct examination by Mr. Weller.*

Q Where do you live? A New York City.

Q You are an attorney and counsellor-at-law of the State of New York? A Yes, sir.

Q What business are you engaged in at the present time? A Sales manager of the H. J. Jaeger Company, and secretary.

Q Do you remember when Mr. Jaeger was giving instructions to purchase land for a new factory?  
40

*Mr. Walscheid. Objected to as immaterial.*

*By the Court.*

Q How many were in the company? A There is a board of three directors.

*Robert H. Herschman, direct.*

Q Who is the other man besides yourself? A Mr. Rosenberg.

Q Do you keep minutes? A Yes, sir.

Q Have you got the minutes of this transaction? A Yes, sir.

*Further direct.*

Q Turn to those minutes? A (No answer.)

*By the Court.*

Q When did any reference to this transaction regarding this property appear in the minutes of the corporation? A There was a meeting held of the H. J. Jaeger Company on the 15th of February, 1915.

Q Was that in reference to the purchase of land? A Yes, sir, and there was a resolution made, "Resolved, that Mr. Herman J. Jaeger be appointed a committee of one for the purpose of negotiating for the building of a new factory;" that was on February 15, 1915.

Q When was the next meeting in reference to that? A On the 25th of March, 1915; Mr. Jaeger reported—the chairman of the building committee reported that it was inadvisable to build upon the property of the H. J. Jaeger Company property, and suggested that another piece of property be purchased, located on Park avenue, Weehawken, New Jersey, where the building of the factory would not cost as much as on the company's property.

*Mr. Walscheid.* I ask that that be stricken out.

*Mr. Weller.* The whole thing will be connected.

Q Read the whole thing.

*Mr. Walscheid.* I object to reading the whole thing; we are not a party to these minutes.

*The Court.* I will have the minutes read.

Q What is the resolution in regard to this property?

*Mr. Walscheid.* Objected to on the ground that it is immaterial, irrelevant and a self-serving declaration.

*The Court.* I will allow it.

*Robert H. Herschman, direct.*

A "Resolved, that Mr. Jaeger proceed with the purchasing of the property in question and report to the Board of Directors at the next regular meeting;" that is on the 25th of March.

Q What was the date prior to that? A The next meeting of the Board of Directors was held on the 25th of July.

10 *By the Court.*

Q Is there anything in the minutes that mentions Mr. Hannan at all? A No, sir.

*The Court.* Then it is immaterial, I think.

*Mr. Weller.* I want it to show the time when the transaction began and concluded.

Q I want to see the February notation. A Here it is.

20 *Mr. Weller.* I would like to offer the resolution of February 15th to show the time that they had appointed Mr. Jaeger a committee of one to purchase a site for a factory.

*The Court.* Mr. Jaeger has testified to that.

*Mr. Walscheid.* Read that into the record; I would like to have that in.

*Mr. Weller.* In the minutes of the 15th of February, 1915, the following resolution appeared:

30 "RESOLVED, that Mr. H. J. Jaeger be appointed a committee of one for the purpose of negotiating for the building of a new factory."

And the other one is in.

Q When did you first know Mr. Hannan in this transaction; how long before the contract was signed? A About two weeks or so before April 14, 1915.

Q Where did you first see him? A The first time I saw him was at 68 Hudson street—the office of the H. J. Jaeger Company, Hudson street, Hoboken.

40 Q That is where you formerly had your factory? A Yes, sir.

Q When he came there was he alone? A He came there alone; he came to see Mr. Jaeger.

Q What conversation did they have in your presence? A Mr. Hannan told Mr. Jaeger that he could not get the property

*Robert H. Herschman, direct.*

for less than \$4,000, and Mr. Jaeger said he would not go that high; as high as he could go would be \$3,600.

Q Had you seen him before that time? A No, sir, that is the first time I ever saw Mr. Hannan.

Q Did he, after that, leave anything with you?

*Mr. Walscheid.* Objected to the form of the question as leading. 10

Q Did he leave anything with you; did you have any further conversation or transaction with Mr. Hannan? A Not on that day.

Q Or at any other time? A Yes, sir.

Q When the next? A I believe it was a week or so after that first conversation that Mr. Hannan came in and asked for Mr. Jaeger, and I said Mr. Jaeger was out, that I believed he was in New York. Mr. Hannan then left this card in an envelope; I saw him use it; he wrote on the card and told me to give that to Mr. Jaeger. 20

Q When did you next see him? A This morning, in court.

Q Didn't you see him again before the contract? A No, sir.

Q You never saw him but those two times? A That is all.

Q Do you remember being up to Mr. Burke's office on the first of June, when a tender was made for some property? A It was made in Mr. Frankenstein's office.

Q Who went with you there? A Mr. Burke, Mr. Jaeger and myself; Mr. Burke suggested that he make a tender on that day, so Mr. Burke, Mr. Jaeger and myself went down there and made it in Mr. Frankenstein's office, but he happened to be out, and Mr. Burke counted out the money to the young lady in charge and said, "Here is the tender we are making on that property." 30

Q When did you first see the contract between Mr. Rubens and Mr. Jaeger? A I believe I saw that around the 14th of April; I am not sure of the date.

Q Did you know Mr. Rubens? A No, sir.

Q Did you know who he was? A No, sir.

Q Do you remember when the title was passed and the money paid over? A Yes, sir, that was passed on the 10th of June in Mr. Burke's office. 40

Q Were you in the corporation then? A Yes, sir, I was a member of the corporation at that time.

*Robert H. Herschman, cross.*

Q Did you see the two deeds? A Yes, sir, on the 10th of June.

Q Did you notice the consideration? A Yes, sir.

10 Q Did you have any words about the matter? A I called Mr. Burke's attention to it, and he said, "What are you going to do about it?" and I said "Nothing;" I said, "We have the foundations practically laid, and I will see what we can do about it later on," because Mr. Burke asked me if we wanted to reject the title on that day, and I said "No, we have the foundations pretty well laid down now, and we can take this matter up afterwards;" and I said, "Hannan put it over on you, Mr. Jaeger."

Q Did you use the word "Hannan?" A Yes, sir.

Q Why did you do that? A Because Hannan was the agent in this entire transaction.

*Mr. Walscheid.* I ask to have that struck out.

20 *The Court.* I will allow it and overrule the objection.

Q Did you ever know of any such a man as Gorrell? A No, sir.

Q Had you ever heard at all of such a man? A The first time I heard about him was in your office a day or so ago when you spoke about him.

Q Where this card was left was where? A At 68 Hudson street, Hoboken, at the office of the H. J. Jaeger Company.

*Cross examination by Mr. Walscheid.*

30 Q That was left for Mr. Jaeger, that card? A Yes, sir.

Q And you gave him the envelope containing the card? A Yes, sir.

Q And Mr. Jaeger's name was written on it? A No, sir.

Q The instructions to you were to give it to Mr. Jaeger? A Yes, sir.

Q Now, you have read to us all that your minutes show about the authorization of Mr. Jaeger to buy property? A Yes, sir.

40 Q And there is nothing in your minutes of an authorization such as the following—I am now reading to you from paragraph 3 of the bill of complaint: "(3) At the time aforesaid, being on or about April 1st, 1915, at the time aforesaid, your orator (meaning the Jaeger Company) authorized and empowered H. J. Jaeger, one of its officers, to act for and in its behalf in negotiating for the purchase of said lands, and to make a contract

*Robert H. Herschman, re-direct.*

for the purchase thereof, in his own name for the use and benefit of the company, the title to said land when purchased to be taken in his name?" A Not in that form.

Q And, of course, you cannot understand how such a paragraph got into this bill of complaint? A Yes, sir, I can understand it.

10

*Re-direct examination by Mr. Weller.*

Q How did it get in there?

*Mr. Walscheid.* Objected to as immaterial and irrelevant.

*By the Court.*

Q Did you put it in; did you draw this bill? A No, sir.

*Further re-direct.*

20

Q You know who gave the information on which it was founded? A I told Mr. Weller at the time he asked me.

*Mr. Walscheid.* This is over my objection.

*The Court.* All right; it is not at all binding on the defendant here, anyhow.

*The Witness.* There was a meeting of the Jaeger Company whereby Mr. Jaeger was authorized to go out and look for a suitable piece of ground for a factory building, and I believe Mr. Weller put my words in the bill, in the words used in the bill.

30

*Mr. Walscheid.* I offer in evidence the contract between the Manor Real Estate and Trust Company and Charles E. Gorrell, having indorsed thereon the assignment of Mr. Gorrell, the paper coming from the possession of the Manor Real Estate and Trust Company.

Marked "Exhibit C 7½."

*Mr. Walscheid.* It is stipulated and agreed that "Exhibit C 7½" is identical with "Exhibit C 7," excepting that indorsed upon the back thereon there is the following language: "For and in consideration of \$1 I hereby assign all my right, title and interest to the within contract to Charles A. Rubens, of 212 Clinton street, West Hoboken, New Jersey, and authorize and request the

40

*Stephen Spitz, direct.*

Manor Real Estate and Trust Company to execute and deliver the deed therein referred to, to the said Charles A. Rubens upon his complying with the conditions of said contract. Dated April 14, 1915. Witness: George Frankenstein, Edgar W. Smith. (Signed) Charles E. Gorrell."

10 And it is further stipulated that Edgar W. Smith is in Mr. Von Moschzisker's office.

*Mr. Weller.* Yes, we agree to that.

COMPLAINANT RESTS.

DEFENSE.

20 STEPHEN SPITZ, sworn in behalf of the defendant, testified as follows:

*Direct examination* by Mr. Walscheid.

Q Where do you live? A 951 Park avenue, Woodcliffe, North Bergen, New Jersey.

Q What business are you in? A In the liquor business.

Q You keep the Boulevard Cafe at the corner of Union street and Park avenue, in Union Hill? A Yes, sir.

Q In April, 1915, Mr. Hannan's real estate office was immediately adjoining that? A Yes, sir.

30 Q Do you know Mr. Jaeger? A Yes, sir.

Q How long did you know him prior to April, 1915? A About six or seven years.

Q Was he in the habit of coming into your place? A Yes, sir.

Q Do you remember him coming into your place and meeting or running across Mr. Hannan there and starting a conversation about the purchase of some factory property? A Yes, sir; I do.

40 Q And is there any way in which you can fix the date that that took place? A Well, I imagine it was around the first of April, 1915.

Q How do you fix the date of the meeting? A Because Mr. Hannan was around for his rent at that time.

Q Can you tell when you paid your rent for that month of April? A It was on the 3rd.

*Stephen Spitz, direct.*

Q How can you tell? A I have my receipt book here.

Q Show me the receipt for the rent of that month of April of that year. A Right here.

Q That is dated, "Received April 3, 1915, \$54.00, rent of store;" signed, "J. M. Hannan." Now, you say it was while he was in the store for the purpose of collecting that rent that you heard the conversation? A Yes, sir. 10

Q Tell us what you heard at that time; what did Mr. Jaeger say, if you remember it? A Mr. Jaeger said he was looking for a property to build a factory; he said that to Mr. Hannan.

Q Where was Mr. Hannan in relation to your bar when that was said? A At the Park avenue entrance, right near the entrance, which is nearest to the Shuster and Hannan office.

Q What did Mr. Hannan say then? A He said he had something he would like to show him, and he called him to his office. 20

Q And they went next door? A Yes, sir, and I thought they went down to look the property over.

Q Did you hear anything else of the conversation between them that night? A I cannot recollect.

Q Was anything said during that night by either of them of a map, or having shown a map? A It was mentioned that a map had been shown next door. 30

Q Do you know who said that? A I don't recollect that.

Q After that meeting, which you place as of the 3rd, did you hear any further conversation between them about purchasing of property? A Yes, sir; several times.

Q After April 3rd? A Yes, sir.

Q Where were these conversations, were they in your saloon? A Yes, sir; all in my saloon.

Q What was said? A I did not pay any attention every time, but I heard them have an argument once.

Q What was that? A Hannan said he would not take Mr. Jaeger's word; Jaeger asked him to buy the property in for him, and Hannan said he would not take his word for it; that he wanted something in black and white from him. 40

Q What did Mr. Jaeger say to that, if anything; do you remember? A I don't remember anything else.

*Stephen Spitz, cross.*

Q Soon after the 3rd of April, 1915, was it, that you heard that conversation, about? A A few days, three or four days after.

Q How often did you hear them talk? A Several times, on different occasions.

10 Q Did you hear any of the other conversations between them? A After Mr. Jaeger had bought the property Mr. Hannan offered him some profit.

Q Where was that? A In my storehouse, \$500.00 was the profit.

Q Do you know when that was; can you fix the time of that? A No, sir; I could not fix the time.

Q Can you tell us anything more than that you heard Hannan offer him \$500.00 profit? A That is all he offered, \$500.00 profit—because Mr. Jaeger made a remark he had bought a bargain.

20 Q When did he make that remark? A After they signed the contract, I imagine.

Q Is there anything else that you can remember that Jaeger said in relation to this matter? A That is all I can recollect.

*Cross examination by Mr. Weller.*

Q When was it that Mr. Hannan told him he had bought a bargain? A (No answer.)

*Mr. Walscheid. Excuse me just one moment.*

02  
30 *By Mr. Walscheid.*

Q Did you hear any conversation between Hannan and Jaeger in which Hannan told Jaeger that he did not trust Jaeger?

*The Court. Strike out that.*

*Further cross.*

Q Mr. Spitz, you are a saloonkeeper? A At the present time; yes, sir.

04  
40 Q Mr. Hannan is your landlord? A Yes, sir.

Q And you have been in the place a good many years? A Yes, sir.

Q Mr. Hannan ran the place before you? A Not directly; he did not run it.

*Stephen Spitz, cross.*

*Mr. Walscheid.* Objected to.

*The Court.* He says he is a tenant.

Q. When was it that you heard Mr. Hannan tell Mr. Jaeger he would not take his word and would not trust him? A. It was some evening in April.

Q. What time in April was it? A. I don't know the day. 10

Q. Was it before or after the contract was signed? A. It was before the contract was signed, as far as I know.

Q. Just tell us what Mr. Jaeger said and what Mr. Hannan said. A. I don't know; Mr. Hannan said to Mr. Jaeger that he would not trust him; he said he had had an experience with Mr. Jaeger once before about trying to sell him some property, and that Mr. Jaeger had bought the same property from somebody else—I imagine it was from Mr. Rock—I am pretty sure it was Mr. Rock; Mr. Rock told me that himself. 20

Q. What did Mr. Rock tell you? A. I know Mr. Rock sold him the property.

Q. What did Mr. Rock tell you? A. Mr. Rock told me that he sold him property that Hannan had tried to sell.

Q. Why did Mr. Hannan say to Mr. Jaeger, "I would not trust you?" A. On those grounds I mentioned before.

Q. I want to know just exactly what Hannan said. A. Mr. Hannan would not trust him; he would not take his word for it, to go to work and buy property without signing, having it in black and white that he was going to buy the property; he wanted Mr. Jaeger to give it in black and white, to give him a guarantee. 30

Q. What did he say? A. That he would not trust him.

Q. He said, "I won't trust you?" A. Yes, sir.

Q. How long was that before the 14th of April? A. Maybe a week or so.

Q. He told him he would not trust him? A. Yes, sir.

Q. What did Mr. Jaeger say? A. He laughed.

Q. Did he laugh pretty loud? A. I guess Mr. Jaeger does laugh pretty loud sometimes. 40

Q. Did not they come to any agreement at that time? A. I don't remember.

Q. About this time they went in to look at this property? A. No, sir; a few days after they went in to look at the property.

Q. Went in to see the map? A. Yes, sir.

*Stephen Spitz, cross.*

Q When was that that they went in to see this map? A Between the first and the third of April.

Q What time of day or night was it? A Around six o'clock.

Q In the night or morning? A In the evening.

10 Q And you fixed this in your memory because you had paid your rent that day? A Yes, sir.

Q Do you pay your rent regularly on the same day? A No, sir.

Q How did you know then that this was on this date you mention? A Because the receipt says so.

Q He does not give you a receipt in the book every month? A Yes, sir, he certainly does.

20 Q It appears by this book that you paid rent on March 20, 1915; and you also paid rent on April 3rd, 1915; that is only a few days' difference? A That does not make any difference.

Q How do you know that it was not the March rent you were paying at that time? A No, sir; it was the April rent.

Q How do you know it was not March 20th?

*Mr. Walscheid.* Let him have the book to refresh his memory.

A March 20, 1915, paid balance of March rent, balance of March rent; paid April rent in full April 3rd.

30 Q How do you know which one of these conversations it was, which one of these payments it was that this conversation took place? A It was April, because Mr. Hannan signed my liquor license the same day; the license was due May 1st, and Mr. Hannan signed it the first few days in April.

Q How is it you have not kept this book of rent payments right along? A Yes, I did; I have a new book.

Q And this book was used for something else? A That is my private affair.

Q He just wrote this in the book? A Yes, sir; that is good enough, that is all he gave me.

40 Q Now, do you remember paying rent on June 1st, 1915? A No, sir.

Q Who was in there when you paid rent that day? A I don't remember.

Q Did you pay it on June 2nd or 3rd that year? A I don't remember.

*Stephen Spitz, cross.*

Q Refresh your memory from the book, and see what day you paid it in June? A June 5th.

Q Who was there at that time? A I cannot recollect everything.

Q Was Mr. Jaeger there that day? A I don't remember.

Q You do not? A No, sir. 10

Q Who else was in there that day? A I don't think there was anyone else present.

Q Now, then, we have got two conversations that you had with Mr. Hannan; the first at about the 3rd day of April—the first was about April 3rd, 1915, and that day Mr. Hannan said he had some property that he could sell him and took him over to the map; is that right? A Yes, sir.

Q Did he say whose property it was? A No, sir.

Q You are sure that he said, "I have got some property"? A Yes, sir. 20

Q He did not say whether it was his own property or somebody else's? A I don't know anything about it.

Q And about two days later he came in and then he told Mr. Jaeger he would not trust him? A That is it.

Q And Jaeger laughed at him? A Yes, sir.

Q When was the next time you heard them talk? A I did not hear it, only Mr. Hannan offered him once \$500.00 profit.

Q When was that? A Sometime at the end of April or July or June. 30

Q Was it the date of this check that we offered in evidence? A I don't know.

Q Did he offer a check on that day? A I don't recollect.

Q Did you hear Mr. Jaeger say to him, "You put one over on me, Hannan"? A I cannot recollect that.

Q What did he say about Mr. Hannan charging him too much? A I don't remember.

Q Did you hear him say it was against the law? A The way Mr. Jaeger expressed himself to Mr. Hannan—he said, "You have been working for two parties"—After the contract was drawn—after everything was over. 40

Q You said you heard a talk between him and Mr. Jaeger at that time? A I heard Mr. Hannan offer Mr. Jaeger \$500.00 profit.

Q When was that? A I don't remember the date.

*Stephen Spitz, cross.*

Q Wasn't that because Mr. Jaeger found fault and said, "You put one over on me, and now I want my money back"? A I imagine that was before the contract was drawn.

Q He offered him \$500.00 for his bargain, did he, before the deed was drawn? A Yes, sir.

10 Q Did you know that Mr. Hannan owned the contract for this very property at that time? A No, sir; I did not know anything about it.

Q You did not know that? A No, sir.

Q Don't you know when he offered this profit, that Mr. Jaeger already had the foundation wall of his property built? A I did not know anything about it.

Q Haven't you been swearing right along all the afternoon what took place before and what took place after the contract was drawn?

20 *Mr. Walscheid.* Objected to.

A I heard today about those things.

Q What date was this contract drawn? A I don't know, I don't remember.

Q I will ask you again—you heard this first conversation when you paid your rent on the 3rd of April; and the next was two days later; and when was the next one? A That was a few days after, I imagine, maybe at the end of the last week in April or the first week in May Mr. Hannan offered him \$500.00 profit on the property.

30 Q I would like you to use the exact words that Mr. Hannan used when he told Mr. Jaeger that he had some property to show him; now, use the exact words.

*Mr. Walscheid.* I object to that.

A I could not recollect.

Adjourned to a future day to be fixed by the Court.

*Michael J. Carney, direct.*

IN CHANCERY OF NEW JERSEY.

BETWEEN

H. J. JAEGER COMPANY, a corporation,

*Complainant,*

*and*

JOHN M. HANNAN,

*Defendant.*

*On Bill, &c.*

*Testimony.*

10

Transcript of testimony taken in the above-entitled cause, at the Chancery Chambers, Jersey City, New Jersey, on the twenty-sixth day of November, 1917, before HON. VIVIAN M. LEWIS, Vice-Chancellor.

Appearance as before noted.

20

MICHAEL J. CARNEY, sworn in behalf of the defendant, testified as follows:

*Direct examination* by Mr. Walscheid.

Q Mr. Carney, where do you live? A 58 Eleventh street, Hoboken.

Q Where are you employed? A The Boulevard Commissioners of the County of Hudson.

Q Are you here in response to a subpoena to the Clerk of the Boulevard Commission in regard to permits? A Yes, sir. 30

Q Are those matters in your charge in that office? A The permits are in my charge.

Q Have you a permit issued to Mr. Jaeger, Mr. H. J. Jaeger, in a book? A Yes, sir, the stub is here.

Q Is that the original book relating to these permits? A Yes, sir.

Q Turn to that permit or stub. A Yes, sir.

Q What page is that? A 716.

*Mr. Walscheid.* I offer that permit in evidence. 40

*Mr. Weller.* I object to it on the ground that it does not show anything. We only said we had the foundation up, and that shows that we had the permit to lay building material on the street to drive over a sidewalk.

*Michael J. Carney, direct.*

*By the Court.*

Q June 12, 1915, isn't it? A Yes, sir.

*The Court.* I will receive it under the objection to it on the ground that it is immaterial and irrelevant; I will receive it now.

10

*Further direct.*

Q Kindly read the whole permit as you have it there? A "No. 716, June 12, 1915, granted to Herman J. Jaeger, resident 88 Sterling avenue, Weehawken; location, Boulevard and Baldwin avenue, Weehawken; building material, stone \$5.00, carting over sidewalks, \$3.00." \$8.00 on the left-hand side, and then the total \$8.00 on the other.

20

Q Now, when you issue a permit, you give a piece of paper to the man who receives it? A Yes, sir; he gets the original permit, which is practically a duplicate of this.

Q What does it say; have you a copy of one of the permits? A Yes, sir; here it is; the permit will read "Boulevard Commissioners of of the County of Hudson, New Jersey—Court House, Newark Avenue, Jersey City— 1913. Permission is hereby given to

to the surface of the sidewalk or right of way of the Hudson Boulevard or branch road at for the purpose of issued for days; charge for this permit dollars Secretary.

30

"This permit is renewable for 30 days at this office"—

Q You issued such a permit to Mr. Jaeger? A Yes, sir; he got it.

Q Before issuing it did you view the premises? A Yes, sir.

Q Do you usually do that before issuing the permit? A Yes, sir.

Q You know the location of these premises now? A Yes, sir.

40

*By the Court.*

Q Do you keep a copy of the permit? A Yes, sir.

Q Does the permit attached to the stub go out the same day as the stub is dated? A Yes, sir, we mail it with it, or deliver it personally.

*Michael J. Carney, cross.*

*Further direct.*

Q At the time you viewed these premises at the time you granted the permit, had any work been done on it? A They were just starting to excavate; that is, they were starting over the sidewalk; there were trucks going in and out there, and I came along and asked him if he had a permit and he said "No," and I went up to the office and turned it in and they sent it down. 10

Q Then you saw the premises just before the permit was granted? A Yes, sir.

Q On this day? A Yes, sir.

Q What is the date? A June 12th.

Q And on that day they had just started to excavate? A Yes, sir.

Q They did not excavate before then? A It might have been a day before. 20

Q On the 12th you found that situation? A Yes, sir.

Q And demanded that they get a permit? A Yes, sir.

*Cross examination by Mr. Weller.*

Q Had there been any permit issued to Mr. Jaeger or the Jaeger Company before that date? A Not to my knowledge.

Q Have you looked through the book to find out? A Yes, sir.

Q Does the book show any other permit? A No, sir.

Q Isn't it a fact that there are two roads come to a point there, what is known as the Old Bull Ferry road and the Boulevard? A Below there, not right at that point. 30

*Mr. Walscheid.* I have a map here.

Q Point out Jaeger's factory, please, where is that located? A It must be about in here (indicating).

Q Where are the Shippen street steps? A Here.

*The Court.* Is this man qualified to testify on this map?

*The Witness.* I never saw it before, but I know the location. 40

Q Mr. Jaeger's factory is just between the Boulevard and the Bull Ferry road or Park avenue? A Yes, sir.

Q It does not run along the Boulevard, but it runs along Park avenue? A It runs along the Boulevard, too.

*Michael J. Carney, cross.*

Q Here is Park avenue; that is running straight down the hill, the other road diverging towards it; where is the factory?

A Along the Bull's Ferry road or down along the Boulevard, on both streets; the walls of the Jaeger factory are right on the Boulevard.

10 Q And also right up on a straight line with Park avenue? A I don't know.

Q On Park avenue it runs in a slanting direction? A I don't know.

Q I mean on the Boulevard it slants? A The Boulevard there has a turn coming around there.

Q Now, do you say that they were just commencing on the 12th day of June? A Yes, sir, just about.

20 Q What do you mean by that? A I go along there possibly now like today I might go along there; from there up to Fifth or Sixth street, Union Hill or West New York, and walk up around there; and then tomorrow I might start from West Hoboken at the transfer station and walk up that way.

Q But when you first noticed that they were at work on the building, whom did you see working there? A They were driving over the sidewalk with—

Q I did not ask you that; I asked you whom you saw working there? A I don't know who the man was; there was some man there; I asked him—

30 Q What was this man doing? A He seemed to be the foreman; they were digging out; they were cutting out that part of the sidewalk.

Q How long was that before the 12th of June? A It was on the 12th.

Q How much excavating had been done there before that time? A They had just started.

Q Don't you know that the wall was partly up, and that we have got checks—

40 *Mr. Walscheid.* That is objected to.

*The Court.* Strike it out.

Q Don't you know the wall was partly up, and don't you know the excavation was done on the 12th of June? A No, sir.

Q Some of it was done? A I could not tell you.

*Henry W. Drury, direct.*

Q Why not? A I did not inspect the building; I just saw they were driving over the Boulevard sidewalk; that is all I was supposed to look at.

Q Is there a sidewalk along that side of the factory now?

A Yes, sir.

Q Right along that side of the factory? A Yes, sir. 10

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

Q How much work was done on that day you were there?

A At the most they could not have worked more than a day.

Q What day were you there to inspect? A On June 12th.

Q You went there and issued the permit on the same day?

A Yes, sir.

Q Let me see that permit once more; how many permits did you issue to the Jaeger Company all told? A That I could not tell you; there was more than one.

Q Wasn't there one before this? A Not to my knowledge. 20

Q When was the other one issued? A That I could not tell you without looking at the record.

*Re-direct examination by Mr. Walscheid.*

Q Do you know of your own knowledge whether or not, where this building was then being erected, it was possible to drive up over the Boulevard branch road—I mean the elevation of the Bull's Ferry road, also known as the branch road; how does that compare with the elevation of the Boulevard at that point? A It is away higher. 30

Q About how many feet higher? A I should judge about 25 to 30 feet.

Q And the building which is erected faces with its ground floor on the Boulevard? A Yes, sir.

HENRY W. DRURY, sworn in behalf of the defendant, testified as follows:

*Direct examination by Mr. Walscheid.*

Q Where do you live? A 64 Second street, Weehawken. 40

Q You are here in response to a subpoena to produce certain records of the Hackensack Water Company? A Yes, sir.

Q Did you issue any permit for the use of water upon property in Weehawken near the junction of the Hudson Boulevard and the Bull's Ferry road to Herman J. Jaeger or any-

*George Riegler, direct.*

one for him? A Permission was issued for connection to be made at that point for that property, which I have here.

Q What is the date of your first permit? A July 3rd the permit was issued.

10 Q Is that the first permit you have? A That is the first and only one.

Q What is that for? A That is for a water connection to be made to the property known as a 12x2 patent connection.

Q Is that the permit which you issued to a builder who is about to use water in construction of walls? A The permit is issued to the plumber, who acts for the builder.

Q You don't usually issue them to the builder? A Not direct to the builder.

*Mr. Walscheid.* I offer this permit in evidence.

20 *Cross examination* by Mr. Weller.

Q That permit was issued to William F. Borg? A Yes, sir.

GEORGE RIEGLER, sworn in behalf of the defendant, testified as follows:

*Direct examination* by Mr. Walscheid.

Q Where do you live? A 107 Jefferson street, Weehawken.

Q What is your business? A Builder.

30 Q Did you do any building for Mr. Jaeger or the Jaeger Company? A For the Jaeger Company.

Q Did you do the building on the premises located to connect at the junction of the branch road on the Bull's Ferry road of the Hudson Boulevard? A Yes, sir.

Q What work did you do there? A Foundation work.

Q From whom did you draw your material for that foundation work? A Thomas Henry, George Bertram.

Q Mr. Henry delivered the first material to you? A Yes, sir.

40 Q Do you know when you started that work? A Started the work July 7th.

Q Started your foundation work July 7th? A Yes, sir.

Q Of what year? A 1915.

Q That is the foundation walls for that building?

*Mr. Weller.* I object to that as leading.

*Thomas Carroll, direct.*

Q What do you mean by starting the foundation of that on July 7th? A That was the first day I got the first material.

Q You could not start it without the material? A No, sir.

*Cross examination by Mr. Weller.*

Q Did anyone work on that job before you did? A Yes, 10  
sir; the diggers.

Q Who were they? A I don't know.

RALPH BERNHARDT, sworn on behalf of the defendant, testified as follows:

*Direct examination by Mr. Walscheid.*

Q What is your address? A 95 Jefferson street, Weehawken.

Q Where are you employed? A I am employed by Thomas 20  
Henry.

Q What business is he in? A Masons' building material.

Q Did you supply any material to Mr. Riegler for foundation work on the premises located at the junction of the Hudson Boulevard branch road and the Bull's Ferry road? A Yes, 30  
sir.

Q Refer to your books and tell us when you did deliver the first material. A July 6, 1915.

Q And what did you then deliver? A Cement on that day.

*Cross examination by Mr. Weller.*

Q You did not deliver any stones there, did you? A No, 30  
sir.

Q Who did deliver the stones there? A I could not say.

THOMAS CARROLL, sworn in behalf of the defendant, testified as follows:

*Direct examination by Mr. Walscheid.*

Q Where do you live? A 14 West 19th street, Weehawken. 40

Q What position do you hold in the township government of Weehawken? A Clerk of the township.

Q As such are you in charge of the permits which are issued for street openings for the use of the sidewalks of the township? A Yes, sir.

*Thomas Carroll, direct.*

Q Have you a record of those permits with you? A I have the record of the stub.

Q Have you a record of any permit issued to H. J. Jaeger, or Herman Jaeger or the Jaeger Company in the summer of 1915? A The permits issued to some contractors who were  
10 doing work at that time.

Q Find those records. A Here they are.

Q I turn to Permit 486, granted to August Kleinke. A Yes, sir.

Q Address West Hoboken, expires in 90 days, to place building material on Park avenue, E. S., Block 35, dated August 20, 1915; that is the reading on your stub, is it? A Yes, sir.

Q Was that the first permit issued for that property? A I think there was one issued prior to that, a sidewalk permit—

Q The stub that you refer to now is stub 173, granted to  
20 H. Jaeger, address Weehawken, expires in 30 days, to cross sidewalk with wagon at Park avenue, East Side, Block 34, for water connection, July 6, 1915, dated July 6, 1915; is that the first permit that was issued for the premises? A That is the first one I find on record, and I have searched for them.

Q You know the premises where the H. J. Jaeger Company lamp works are now located? A Yes, sir.

Q And do these two permits apply to those premises? A Yes, sir.

Q Do you know the layout of the land there; the physical  
30 layout? A Yes, sir; it is land that is of peculiar formation.

Q What is the elevation of the Bull's Ferry road as compared with the elevation of the Boulevard on the other side? A Bull's Ferry road is a great deal higher.

Q How much higher would you say that it is? A From 15 to 20 feet.

Q Would it be physically possible to excavate for a cellar upon the premises upon which the Jaeger factory is now located and cart that material out over to Park avenue on Bull's Ferry road? A I believe that would be impossible.

Q Was there ever a permit granted for carting over your  
40 sidewalk on Park avenue? A No, sir.

Q The Bull's Ferry road, or Park avenue, as it is now called, at the point of this Jaeger property, has that a stone wall? A Yes, sir; there is a wall there, I believe, built to protect that land from the county road.

*Thomas Carroll, cross.*

Q And that wall is still there as it stood before the building was erected? A I don't recall.

*Cross examination by Mr. Weller.*

Q You do know that there is no wall between the Town Hall where you are employed and the old Jaeger factory? A There is no wall opposite the Town Hall. 10

Q And there is none in front of the new Jaeger factory south, I believe—

*Mr. Walscheid.* We are not talking about the new Jaeger factory—the old Jaeger factory—

Q You know the two factories are there? A Yes, sir.

Q There is no stone wall in front of the old factory, is there? A No, sir.

Q And there is none between the new factory and Park avenue, is there? A I believe part of the wall had to be removed to construct the new factory. 20

Q Well, it was removed—the whole length of it? A There was a portion of it removed, I believe.

Q How high is the first story of the old Jaeger factory, do you know? A I should judge about 12 or 15 feet from the surface of the Boulevard, east.

Q You mean Park avenue, don't you? A No, sir, from the Boulevard east.

Q You mean it is elevated 12 feet from that? A The height of the first story. 30

Q And do you know whether, when they were building the old factory, any material was taken down from Park avenue to the factory? A There was material on the street on the Park avenue side, but whether the material was carried from there down on to the other section of the building, I don't know.

Q At the time you gave this water permit the excavation had all been done, hadn't it? A The permit issued, 173, to obstruct sidewalk was for the purpose of making water connection.

Q That was on July 6th? A Yes, sir. 40

Q The excavation had all been done before that? A Well, it might; I am not positive of that.

*John Hannan, direct.*

JOHN HANNAN, sworn in behalf of the defendant, testified as follows:

*Direct examination* by Mr. Walscheid.

Q You are the defendant in this case? A Yes, sir.

Q Where do you live? A 55 Highwood terrace, Weehawken,  
10 New Jersey.

Q What business are you in? A The real estate business.

Q How long have you been in the real estate business? A  
About 22 years.

Q Do you hold any position at the present time?

*Mr. Weller.* Objected to as incompetent, irrelevant and immaterial.

*The Court.* Proceed.

A Yes, I hold the position of under-sheriff of Hudson County.  
20

Q Have you held any other positions in this State? A Prior to that, I was the Deputy Supreme Court Clerk of New Jersey; and prior to that, I was Assessor of Taxes of Weehawken for 14 years.

Q Did you ever become personally acquainted with Mr. Von Moschzisker? A Yes, sir; I was personally acquainted with him.

Q When did you become personally acquainted with him? A When I was Assessor of Taxes at Weehawken.

Q What position, if any, did he hold at that time? A He  
30 was the land and tax agent of the Erie Railroad.

Q And as a result of your acquaintance with him at that time, did you—

*Mr. Weller.* I do not like to object, but I think this is irregular and out of order; it is incompetent and immaterial as the case stands now.

*The Court.* Well, there is something in the case about his inability to deal directly with Von Moschzisker because of trouble. I will allow it.

Q Did your relations become unfriendly? A I really think they did; Mr. Von Moschzisker and I had an argument about the assessment on the Erie Railroad property in Weehawken, and we entered into a personal argument, and I had an argument with Mr. Von Moschzisker with reference to the valuation of the Erie Railroad property.  
40

*John Hannan, direct.*

Q You say that argument became a personal matter between you? A Yes, sir.

*The Court.* Strike that out.

Q Describe the argument? A We were talking about the assessed values of the railroad property, and he said that I did not know what I was talking about, and I proved to him that I did know what I was talking about in reference to values. 10

*The Court.* Strike that out.

Q After this quarrel—

*Mr. Weller.* I object to that.

Q After this discussion, did you and Mr. Von Moschzisker thereafter greet each other in a friendly way? A No, sir.

*By the Court.* 20

Q Did you ever meet him again? A Yes, sir.

Q What happened when you met him? A I did not speak to him.

Q Did he speak to you? A No, sir.

*Further direct.*

Q Now, do you know that Mr. Von Moschzisker afterwards severed his connection with the Erie Railroad and became connected with the Pennsylvania Railroad real estate department? A Yes, sir. 30

*The Court.* That appears from the other testimony.

Q And in the spring of 1915 did you have knowledge of the fact that Mr. Von Moschzisker was then connected with the Pennsylvania Railroad real estate department? A Yes, sir.

Q Did you have knowledge as to what position he held in that department? A Yes, sir.

Q What was his position? A The land and taxation of the Pennsylvania Railroad Company.

Q This property which was sold to the H. J. Jaeger Company is that shown upon this map? A Yes, sir. 40

Q What is that map? A The assessment map of the Township of Weehawken.

Q Is that an official or is that your copy? A This is the official copy used by me as the Assessor of Taxes.

*John Hannan, direct.*

Q Will you indicate the property upon that map? A The property is known as Plot B in Block 35 of the assessment map of the Township of Weehawken.

Q Indicate upon that map the present Boulevard? A The Boulevard is situated on the east side of Plot B.

10 Q Shown upon this map as Weehawken Branch of Hudson Boulevard? A Yes, sir.

Q And the other road to the west of the property, what is that called? A It is called now Park avenue—formerly the Bull Ferry—

Q Now, what is the difference in the elevation between the frontage on Plot B on the Boulevard, and the frontage on Plot B on Park avenue at about the middle point of that plot? A About 20 to 25 feet; the elevation is about 20 to 25 feet above the branch of the Hudson Boulevard.

20 Q Have you measured it yourself? A No, sir.

Q Where do you live? A I live about half a mile from it.

Q How long have you known the property? A Since boyhood; I was born about three blocks away from there; I have lived there all my life.

Q What is elevated, and above what at that point? A Park avenue is elevated about 20 feet above the Weehawken Branch.

Q And when this building was commenced, what was there that separated Park avenue from the plot; was there anything that separated it there—anything erected? A A stone wall.

30 Q And how high above the sidewalk did that stone wall run? A I don't just recall how high the wall was, but there was a wall there.

Q Upon which portion of the plot was the first of the two Jaeger buildings erected? A On the North end.

Q On the most northerly half? A Yes, sir.

Q Is that the half which has no frontage on Park avenue? A No frontage on Park avenue.

Q You do know Mr. Jaeger, don't you? A Yes, sir.

40 Q And how long have you known Mr. Jaeger? A I have known Mr. Jaeger about eight years.

Q When you first met him did he then live in Weehawken? A No, sir.

Q When you first met him you were then in the real estate business? A Yes, sir.

*John Hannan, direct.*

Q And did you then have any dealings with him in the real estate line?

*Mr. Weller.* I object, on the ground that it is incompetent, irrelevant and immaterial.

*The Court.* This arises out of a real estate transaction; the objection will be overruled. I will allow it. 10

Q (Question read.) A I met him in the course of my official duty as assessor of taxes; he was located in business on Gregory avenue in Weehawken Heights, and he said he was interested in getting a home in Weehawken, and he asked me if I had any property to offer to him for sale; I told him that I had, and he said he would like to meet me some day, and I told him—

*Mr. Weller.* I object to this, if your Honor please.

*The Court.* The objection is overruled. 20

A I told him I would be glad to take him out that afternoon, or that day, and he said that he did not have the time to go that day because he was going to New York; I asked him what part of New York he was going to, and he said, "Up town," and I said, "If you are going towards 43rd street ferry, the property I want to show you is in that direction, and I have a horse and carriage, and I will drive you to the ferry, and I will show you some property which I think will be desirable for you to look at"; and I left from his factory at Gregory avenue and I drove towards 42nd street ferry. 30

Q You drove him to the property that you wanted to show him? A Yes, sir.

Q Did you then show him those properties? A I showed him property.

Q Did you discuss prices with him? A He asked me what the property could be purchased for, and I told him the prices of the different properties that I had shown him.

Q Did you also discuss commissions with him? A No, sir; there was no question of commissions.

Q Proceed; what next happened? A During that day— 40

Q What did he say about that property during that day? A He said he would let me hear from him—that when he would be ready to purchase he would call to take the matter up with me; then I heard that he had purchased in that section—purchased some of the property—

*John Hannan, direct.*

*Mr. Weller.* Objected to.

*By the Court.*

Q Do you know what property he bought? A Yes, sir.

10 Q Where was it? A On Jefferson street and Hauxhurst avenue; I showed him property in that neighborhood, and this particular piece of property I had shown him.

Q Had you given him a price on it? A Yes, sir; it was taken at that time.

*Further direct.*

Q Did you meet him after that and have any talk with him about what he had done in thus buying that property without coming to consult you?

*Mr. Weller.* Objected to.

20 Q Did you afterwards have any conversation; did you, after you learned that he had bought this property, have any talk with Mr. Jaeger about the property, yes, or no—about the property which he had then bought? A I met him later on, and I asked him how it was that he did not come—

*Mr. Weller.* Objected to.

Q You did have a talk with him? A Yes, sir.

30 Q How long afterwards; how long after you learned that he had bought this property on Jefferson street? A It was not a very long time afterwards; I don't just recall how soon; but it was after he purchased the property a short time.

Q What did you say to him at that time in relation to his purchase of that property? A I asked him how it was that he did not come back and see me in reference to purchasing that property; and he said he had forgotten all about me.

Q Did you meet Mr. Jaeger in relation to Plot B upon this map, the property in question? A Yes, sir.

Q When did you first meet him in relation to that property?  
A On April 3rd.

40 Q Of what year? A 1915.

Q Where did you then meet him? A In Spitz's Cafe.

Q How do you know it was April 3, 1915? A I went over there to collect my rent from Mr. Spitz, who was a tenant of mine.

*John Hannan, direct.*

Q At that time had you already started negotiations for the purchase of this property? A Yes, sir.

Q And when had you started those negotiations? A Some-time in March—you have a letter there—March 23, 1915.

Q Now, on March 23, 1915, when you started with your negotiations for this property, did you know anything about H. J. Jaeger in connection with the property? A I did not. 10

Q Had you at that time talked to him about it? A I did not.

Q What did you intend doing with the property when you started negotiations? A I intended to develop it—put small houses on it.

Q On March 23rd what did you do? A I had Mr. Newshaler telephone to Mr. Von Moschzisker's office, and he asked over the 'phone how much he wanted for the property, and after the telephone communication he told us to put it in writing, and we wrote a letter, and this is a copy of it. 20

*Mr. Walscheid.* Have you the letter?

*Mr. Weller.* Here it is.

Q Is that the letter which you then had Mr. Newshaler write? A Yes, sir.

*Mr. Walscheid.* I now offer it in evidence.

Marked "Exhibit W. A. 1."

Q Why did you not telephone to Mr. Von Moschzisker directly or write him under your own name at that time? A Because I was afraid that I might not be able to secure the property on account of the difference that Mr. Von Moschzisker and I had had when he was the land and tax agent of the Erie Railroad Company. 30

Q Did you receive a reply to that letter? A Yes, sir.

Q Is that the reply? A Yes, sir.

Q And was that map annexed to it? A There was one like it; that is not the map.

Q There was such a map annexed to the letter? A Yes, sir.

Q As there is now annexed to it? A Yes, sir. 40

*Mr. Walscheid.* I offer in evidence the letter.

Marked "Exhibit W. A. 2."

*Mr. Walscheid.* This offer to purchase under date of March 23, reads as follows: (reading "Exhibit W. A. 1").

*John Hannan, direct.*

Now, the reply under date of March 24th is as follows: (reading "Exhibit W. A. 2").

10 Now, the bill as originally filed sets forth that Mr. Jaeger started his negotiations on or about April 1, 1915, after this transaction had started; thereafter Mr. Weller served upon us interrogatories, and in those interrogatories he admitted those dates. Thereupon he moves to amend his bill by placing the time when these transactions started between Jaeger and Hannan at some time prior to March 24, on the ground that the minutes of the corporation show that the purchase had been authorized prior to that time; then we went through the minutes and could not find any such record.

*Mr. Weller.* We did find the minute authorizing the purchase, and that is why I amended.

20 *Further direct.*

Q So that on March 24, 1915, you knew that you could buy this property for \$2,500? A Yes, sir.

30 Q Now, when you met Mr. Jaeger for the first time on April 3, 1915, tell us what transpired between you. A Mr. Jaeger asked me if I had a factory site, that he wanted to build a new factory, because he could not use the property that he had belonging to himself situated on the Hackensack plank road in the rear of a house that he had facing Park avenue—the property that Mr. Jaeger owned ran from Park avenue back to the Hackensack plank road, and he was going to put the property on the back of the property, but he told me it was too expensive, and he wanted to get another site. I told him that I thought I had something that would probably interest him, and I brought him into my office.

Q Where was your office? A Adjoining Union street and Park avenue—adjoining the cafe where I met him by chance—

40 Q What transpired in the office? A I showed him this map and described from this map about how large the plot of ground was, and he said that if it was as large as I told him, that he could use it if there were no restrictions as to the building line; the biggest part of the property in this section is restricted, where you have to build so many feet back from your building line, and I left my office and went down to the property and he looked at it and he said that the location was ideal and that he

*John Hannan, direct.*

would like to get a chance to look at it later on. He looked at that property probably the next day; I don't know; but on the following Monday he telephoned to me and he said that he could use that property and wanted to know—

Q What day of the week was the third day? A I think it was on a Saturday, if I am not mistaken. 10

Q Proceed. A And the following Monday he telephoned to me and told me that he could use this property and wanted to know how much I would sell the property for, and I told him I would sell him the property for \$4,000, and he told me the price was too high, and he offered me \$3,000; I told him I would not accept \$3,000 for the property. I met him a few days after that in Spitz's cafe, and he wanted to know if I would consider less than \$4,000; and I told him "No," and he said, "Why, you don't own this property?" and I said, "What difference does it make to you who owns the property?" and he said, "Why cannot we make a deal and you buy that property for me?" and I said, "No," that I would not have any business dealings with him; I said, "The last time you and I attempted to do business you forgot all about me; you are too absent-minded to suit me, that only way I will do business with you is in writing;" and after another little discussion— 20

Q Was Mr. Spitz present when that conversation took place? A Yes, sir.

Q Where, in relation to the bar of that cafe, was this conversation? A Facing Park avenue. 30

Q Was it at the bar? A At the end of the bar; Mr. Spitz was serving us with a drink.

Q Proceed. A And later on in the evening he wanted to know if I would not consider a split between \$3,000 and \$4,000, and I told him, "No"; and we did not get any further that night; he offered me \$3,500 for the property.

Q Now, in your dealings with Mr. Jaeger did he ever tell you that he was buying this property for the corporation? A No, sir; I was doing business with Mr. Jaeger, and the contract was made out to Mr. Jaeger. 40

Q Did you know of the existence of the H. J. Jaeger Company prior to the delivery of the deed for this property? A I knew that there was an H. J. Jaeger Company.

Q When did you find that out? A I don't just recall when I found that out.

*John Hannan, direct.*

Q Well, in relation to the time when the contract was signed, was it before or after that? A It was when the deed was delivered—

Q Up to that time did you know whether there was an H. J. Jaeger Company? A No, sir; I did not.

10 Q Proceed from the point where I interrupted you—he offered you \$3,500, you say? A Yes, sir.

Q What did you do in the meanwhile? A I was waiting for an answer from Mr. Von Moschzisker.

Q Had you made an offer to him? A Yes, sir.

Q Outside of the \$2,000—you first made him an offer of \$2,000? A Yes, sir.

Q After you received the answer from Von Moschzisker, what next did you do in relation to buying the property? A Mr. Newshaler made the offer to him, and I authorized him to split  
20 the difference between \$2,000 and \$2,500, to split the difference between those sums.

Q And Mr. Newshaler did do that by offering \$2,250? A Yes, sir.

Q After having made that offer what next did you hear from that end in relation to this property? A Mr. Von Moschzisker accepted it.

Q Then what did you do? A I made arrangements with Mr. Frankenstein to represent me in taking title—having the contract signed.

30 Q Do you know when, in relation to the date when the contract was signed, April 14, 1915, how long before that you authorized Mr. Frankenstein to represent you? A Some time before that, because we had made arrangements—some time during March—I don't just recall the date—I had made arrangements with Mr. Frankenstein to advance me the money to carry on the entire transaction.

Q Tell us about that arrangement. A I asked Mr. Frankenstein if he could advance me a sufficient amount of money to buy the property, and Mr. Frankenstein said that he could by my  
40 giving him my note.

*Mr. Weller.* Objected to as hearsay.

*The Court.* Objection overruled.

*Mr. Walscheid.* This is a part of the *res gestae* in this case.

*John Hannan, direct.*

A Mr. Frankenstein said he would handle it and I should pay him, I think, \$150.

Q He is the man you gave the note to? A Yes, sir; and he discounted it, and I think the Trust Company—the People's Safe Deposit—what is now the Trust Company of New Jersey, they discounted the note.

10

Q When you finally purchased the property at \$2,250, whose check was it purchased with? A Mr. Frankenstein's.

Q And that was on April 14th—I refer now to “Exhibit C. 7”—was it? A Yes, sir.

Q Now, when that transaction—now when that check was issued, tell us what you know about the happenings of that day?

A I asked Mr. Frankenstein to go over and pay Mr. Von Moschzisker the 10% of the purchase price and to take title, or to take the contract in the name of himself or somebody that would be agreeable to him, and he brought somebody over; I never saw the gentleman until the day he came in this court room, Mr. Rubens—Mr. Gorrell turned out to be a married man and was not living with his wife, and Mr. Frankenstein substituted Mr. Rubens.

20

*Mr. Walscheid.* I am producing the original which comes from the possession of the Pennsylvania Railroad; Mr. Weller produces it. Your Honor will note that on the 14th, on the very day the endorsement is on that contract—transferring it from Gorrell to Rubens.

30

Q Did you have any communication with Mr. Frankenstein on the 14th? A Verbal.

Q And how did you have the communication? A I told him to go over to the Pennsylvania Railroad to Mr. Von Moschzisker, and pay him a deposit.

Q And did you have any report from him on that day? A Not that day; it was the following day.

Q Did you have any telephone report from him? A Oh, in the afternoon, after he had got the contract signed he telephoned over to me that Mr. Von Moschzisker had accepted the \$225, and then I telephoned—

40

Q Just accepted the \$225; what about the contract? A He signed the contract.

Q And he had the contract signed? A I just telephoned to Mr. Jaeger from Mr. Frankenstein's office and asked Mr.

*John Hannan, direct.*

10 Jaeger if he was still interested in purchasing the property, and he said he was, and I asked him if he would split the difference between \$3,500 and \$4,000, and he said "No, that the best he would do would be to pay me \$3,600," and I agreed to sell the property to him for \$3,600, and he made arrangements; he told me that he would sign up a contract that afternoon in Mr. Burke's office; so I told Mr. Frankenstein to go to Mr. Burke's office and have the contract signed at Mr. Burke's office for Mr. Jaeger for the purchase price of \$3,600.

Q That was after Mr. Frankenstein had reported to you that Mr. Von Moschzisker had accepted the \$225 and had reported to you that he had the contract? A Yes, sir.

Q Then afterwards did Mr. Frankenstein give you a copy of the contract purporting to be signed by Mr. Jaeger? A Yes, sir.

20 Q And is that the copy which he gave you? A Yes, sir.

Q And that is dated April 14th? A Yes, sir.

Q When did you receive that contract in relation to April 14th? A I got that in a day or a few days afterwards at Mr. Frankenstein's office; Mr. Frankenstein left the contract with Mr. Burke, and Mr. Burke sent the money the next day to Mr. Frankenstein; he did not get the money on April 14th; he got the money the following day.

Q You only received this contract back after the 14th? A Yes, sir.

30

*Mr. Walscheid.* I offer this contract in evidence.

Marked "Exhibit W. A. 3."

Q This copy is signed only by Herman J. Jaeger? A Yes, sir.

Q According to the contract the deed was to be delivered on the first day of June, 1915; that is right, isn't it? A Yes, sir.

Q Was the deed delivered on the first day of June? A No, sir.

40 Q Now, between the first day of June and the time of the signing of the contract, did you see Mr. Jaeger? A Yes, sir.

Q Did anything happen between you? A He was after me all the time, telling me that he would like to get the deed as soon as possible; that time meant a whole lot to him as he was being pressed to get a new factory, he was crowded in the place

*John Hannan, direct.*

he was in, and he wanted to get the factory started as soon as possible.

Q Did you go down to his place of business after the contract was signed? A Yes, sir.

Q And when was that? A Just around the first part of April or the first part of June. 10

Q Did you see him there then? A No, sir.

Q Did you leave any card there? A Yes, sir.

Q What was on that card? A That everything was O. K. and would be ready Tuesday night.

Q What Tuesday night are you referring to in this card? I show you the card marked "Exhibit C. 4"; is that the card which you left? A Yes, sir.

Q It is marked "Everything O. K.; will see you Tuesday night"? A Yes, sir. 20

Q To what dates does that refer? A The first of June of 1915.

Q Was the first of June, 1915, on a Tuesday? A Yes, sir.

Q Did you see him on that Tuesday night? A I did; yes, sir.

Q And were the papers then ready? A No, sir.

Q Why not? A They had not come back from the proper authorities of the Pennsylvania Railroad and it had to be postponed.

Q And was it postponed on that Tuesday night? A Yes, sir.

Q To when? A To the date when it was finally closed. 30

Q Which appears to be the 10th of June, 1915? A Yes, sir.

Q Now, at that time that it was postponed, did Mr. Jaeger come to you in relation to the postponement? A Mr. Jaeger came to me—I think it was after that—it was the following day—

Q On June 2nd? A Yes, sir.

Q And what transpired between you on June 2nd? A He said something about not getting the title at the time of the contract, the 1st of June; I told him I was sorry I had sold him the property, that I would have liked to have had it back, as I could sell it and get more money for it; and he said, "Why, you are only joking"; and I said, "I am not joking, and as a proof of that I will give you \$500.00 profit"; and I drew a check for his deposit. 40

Q What did he say about taking that? A He said, "All right"—

*John Hannan, direct.*

*Mr. Weller.* I object to that; I don't see how Mr. Hannan could make evidence for himself; I object to it as incompetent, irrelevant and immaterial.

*The Court.* I will allow it.

Q You then drew those two checks? A Yes, sir.

10 Q Now, what are the two checks that you drew? A One for \$360.00 and one for \$500.00.

Q What did the \$360.00 represent? A It represented his deposit that he paid.

Q What did the \$500.00 represent? A The profit.

Q And did you tender him those checks? A Yes, sir.

Q Did he take them? A He refused them then.

Q Then what did you do with them? A I put them back in my desk.

20 Q With the signatures mutilated? A Yes, sir.

*Mr. Walscheid.* I offer these two checks.

*Mr. Weller.* Objected to.

*The Court.* The objection is overruled.

Marked "Exhibit W. A. 4" and "Exhibit W. A. 5."

*Mr. Walscheid.* I also offer in evidence the book containing Mr. Hannan's stubs, and particularly stub 3262, corresponding to check No. 3262, heretofore marked "W. A. 5," and stub No. 3263, corresponding to check No. 3263, heretofore offered in evidence as "Exhibit W. A. 4."

30 *Mr. Weller.* Objected to on the ground that they are incompetent, irrelevant and immaterial, and self-serving.

Marked "Exhibit W. A. 6" and "Exhibit W. A. 7."

Q The secretary of the H. J. Jaeger Company has testified that this card, "Exhibit C. 4," was left with him; do you know whether it was left with him or not? A Yes, sir.

Q Did you know this gentleman personally at this time? A No, sir.

40 Q You did not know that he was the secretary of the H. J. Jaeger Company? A I never met the gentleman before; I just found him in the office there.

Q You are sure that referred to Tuesday, June 1st, 1915? A Yes, sir, positive.

Q Did you ever become the agent of Herman J. Jaeger for the purpose of buying for him the property in question?

*John Hannan, direct.*

*Mr. Weller.* Objected to as calling for a conclusion.

*The Court.* Objection sustained.

Q When you bought the property, with whose money was the property bought, Mr. Hannan? A My money.

Q And it is made payable to George Frankenstein? A Yes, sir. 10

Q That is dated June 9, is it? A Yes, sir.

Q 1915? A Yes, sir.

Q And it is made payable to George Frankenstein? A Yes, sir.

Q And by George Frankenstein indorsed, "Certified check for \$2,000?" A Yes, sir.

Q Now, was there a note discounted for the purpose of taking up this property? A Yes, sir; there was.

Q How many notes were then discounted? A Two or three—that is, there was one note for ten days, and at the expiration of ten days it was renewed and then— 20

*Mr. Weller.* Would you mind giving the date of the first one.

Q Your book does not show the record of those renewals? A No, sir.

Q They were in Mr. Frankenstein's account? A Yes, sir.

Q When did you take up the note which was thus discounted for the purpose of enabling you to buy this property? A Well, on May 17 I received \$10,000.

Q You received \$10,000? A Yes, sir. 30

Q And did you deposit that \$10,000 in your account? A Yes, sir; when the note became due I told Mr. Frankenstein not to renew the note; that there was no need of paying any interest, as I was then in a position to carry on the transaction.

Q You had never drawn any money on that note, had you? A No, sir.

Q It was then placed to your credit pending the settlement of the contract? A Yes, sir.

Q Then, on May 17, when you received the \$10,000, you did not renew the note? A No, sir. 40

Q And after that you gave him the \$2,000 on June 9th out of your own deposit? A Yes, sir.

Q Now, did you ever have a conversation with Mr. Jaeger subsequent to the time when he took title to this property, as to the value of the property which he had purchased, yes or no—

*John Hannan, cross.*

from you? A After he had taken title—he told me that he was well satisfied with the property; that he had got a bargain, and I had a cigar with him.

Q Did you also discuss with him at that time the profit which had been made? A By him—

10 Q No, on that transaction? A He knew that; he saw that in the deed.

Q Did he say anything to you about it in that conversation or any other conversation? A Why, he said that he was satisfied with the profit that I had made, but he said that he was going to sue me for the difference, because it was not going to cost him anything to sue me; that if he won he would get half of it and his attorney would get the other half.

*By the Court.*

20 Q Any further conversation? A No, sir.

*Further direct.*

Q Did you have any subsequent one? A We were joking about it after that; I don't just recall; we had a great many conversations about the property since; in fact, only recently we were talking about it, and he said that he did not care how the thing turned out; it was not going to cost him anything.

*Cross examination by Mr. Weller.*

30 Q Mr. Hannan, you spoke about some trouble between you and Mr. Von Moschzisker; tell us just what that trouble was. A There was a pier belonging to the Erie Railroad Company that was not assessed by the State Board of Assessors, and I told Mr. Von Moschzisker that that pier was subject to taxation, and he told me that it was not under my supervision, that it was under the supervision of the State Board of Assessors.

Q Where was that pier? A In Weehawken.

Q Whereabouts? A In Weehawken.

Q Where was it located? A At the Erie Railroad property there—just south of Baldwin avenue, on the Hudson River.

40 Q Proceed. A I told him the property was subject to taxation by the State Board of Assessors, and that it did not appear in the report; and he told me to mind my own business; and I told him that was my business; that I was elected by the people of the Township of Weehawken to see the property was properly assessed, and he said that it was not under my supervision, and I should mind my own business, and I then took the matter up

*John Hannan, cross.*

with the State Board of Assessors and saw that that property was assessed.

Q When was this? A When I was the assessor; that was about 1900 or 1901, along there.

Q Ten or fifteen years before this last transaction? A Yes, sir.

Q Was that all the talk you and Mr. Von Moschzisker had about the pier? A Yes, sir; we entered into an argument. 10

Q But that is all the argument you had—just what you have stated? A Yes, sir.

Q Where was it you met him after that when you did not speak to him? A When I was over to the Pennsylvania Railroad office at Cortlandt and West street, after he had succeeded Mr. Hulme, who was the sub-agent here in New York; I was employed by the Pennsylvania Railroad Company, and I had received a letter from Mr. Hulme telling me my services were no longer required—that the work had been completed, and I could not quite understand the letter, and I went over to find out from Mr. Hulme why my services were discontinued. 20

Q What services were they? A I was buying the right of way for the Pennsylvania Railroad Company through Weehawken for their tunnel. Mr. Von Moschzisker had succeeded Mr. Hulme, and when I went into the office I asked for Mr. Hulme, and the man at the desk told me that Mr. Hulme was now in Philadelphia; and Mr. Von Moschzisker came out, and I looked at him and he looked at me, and I did not talk and neither did he, and he went on about his business. 30

Q Why didn't you speak to him? A I did not feel that it was to me to speak to him, any more than it was up to him; why didn't he speak to me? The gentleman at the desk told me that was the man who had succeeded Mr. Hulme in the New York position, and I said, "Then I don't think it is necessary for me to ask Mr. Hulme any further explanation as to why I am no longer connected with the Pennsylvania Railroad Company"; I said, "That explains it," and I went out.

Q You took it for granted that Mr. Von Moschzisker was an enemy of yours because of the talk about the pier that you have talked about? A I figured that that led up to his not being friendly. 40

Q Those are all the words that ever passed between you; he told you it was not under your supervision? A That is all I

*John Hannan, cross.*

can remember now; I got excited, probably, and said a lot of things that I don't recall.

Q You don't recall a word you said? A I do not recall; I know that led into the argument between us, and he told me I could mind my own business.

10 Q And those were all the words he used to you, that he thought you should mind your own business? A That is all I can remember now.

Q And he only presumed that it was under the supervision of the State Board of Assessors? A It was under their supervision.

Q Didn't you say he told you it was under their supervision? A I knew that without his telling me.

Q Then why did you assess it? A I did not assess it; I saw that the State Board of Assessors assessed it.

20 Q You reported it to the State Board of Assessors? A Yes, sir; I reported it to him first.

Q To whom? A To Mr. Von Moschzisker.

Q You reported to him that it had not been assessed? A Yes, sir.

Q And that is all the trouble you have had, and that was fifteen years ago. Now, between that time and this hadn't you had dealings with Mr. Von Moschzisker? A No, sir.

Q Hadn't you had correspondence with him? A Not personally.

30 Q Did you have someone else always do your correspondence? A I do not recall having any correspondence outside of this one.

Q Did you have any telephone correspondence with Mr. Von Moschzisker? A With his office—on this transaction.

Q But before this— A No, sir.

Q Now, the next subject you took up was your talk with Mr. Jaeger about selling him something to live in, privately; you say you took him out with a horse and wagon? A Yes, sir.

Q You were going in that direction, were you? A Yes, sir.

Q And where did you start from? A From his factory on Gregory avenue.

40 Q Where did you go? A We went north along Gregory avenue and we turned west into Hackensack avenue, and we went north on Pleasant avenue to Jefferson street, and I drove him around through Hauxhurst Park.

Q How many properties did you show him at that time? A I showed him the section in general.

*John Hannan, cross.*

Q And then what? A And then we went from there over through the Boulevard, up the Boulevard and passed along the Boulevard where you live, and up to Fourth street and down Fourth street to the ferry.

Q You did not get out and examine any particular property at that time? A No, sir. 10

Q You did not show him any of the houses? A No, sir; it was not any particular house; it was the land in general, because he said he was not familiar with that section; and after I had driven him around he said he liked the section very much, and that when he was ready to buy that he would call and get in touch with me and go into matters more fully.

Q Then you had entered into no contract with him to purchase for him? A No, sir.

Q And when he purchased the property he purchased it from your cousin, Mr. Rock? A Yes, sir. 20

Q That is the property he purchased for his residence? A No, sir; when I went through this section it was a newly developed section, and he liked it, and he said he would either buy a piece of land and build his own home on it or buy a building already constructed; when I brought him to that section this particular piece of land was owned by the Hauxhurst Land Company, and I showed him the property that could be purchased, mentioning the price of the pieces that I showed him, and this particular lot of land; he afterwards purchased the building from my cousin. 30

Q He purchased the building afterwards? A Yes, sir.

Q When you showed it to him it was vacant land? A Yes, sir.

Q How many years before he purchased the flat house from Mr. Rock did you show him this vacant land? A Possibly a year before.

Q When you were there, there was no house on this land? A That is right.

Q Therefore, you made up your mind that he should not do you out of your commission on this present transaction as a result of your experience with him in the other? A He did not have the chance. 40

Q Why did you tell all that story about driving him around and taking him to 42nd street ferry if you were not connecting it in this way? A You asked me what connection I had with

*John Hannan, cross.*

him, and I am telling you the connections I had with him; that is the first time I met Mr. Jaeger.

Q Why did you tell that story about the property that he purchased before? A That was the way we met, and that was under the conditions we met.

10 Q Didn't you say or intimate that you were afraid he would do you out of your commission on this transaction? A I never talked with Mr. Jaeger about commissions on this transaction.

Q Then why did you put in this kind of testimony?

*Mr. Walscheid.* I put the testimony in.

*The Court.* He did not put it in; it was given in the testimony in his case.

*Mr. Weller.* But he sat here and heard it.

*The Court.* Of course, the Court will infer what the object of the offer was.

20

Q Now, you wrote a letter over to Mr. Von Moschzisker on March, 1915? A Mr. Newshaler wrote the letter.

Q But you signed Mr. Newshaler's name? A Yes, sir.

Q You signed Mr. Newshaler's name? A Yes, sir.

Q Let me see that letter. A Here it is.

Q You say, "I am authorized by my client to offer you \$2,000 cash"; what client was that that authorized you to offer \$2,000 cash? A Mr. Newshaler signed that letter; he was speaking for me.

30

Q Did you sign it? A Yes, sir; I signed Mr. Newshaler's name to it.

Q Then it was you that was writing, wasn't it? A I wrote the letter and Mr. Newshaler authorized me to sign the letter; Mr. Newshaler was acting for me.

Q And who was the client that you were speaking about that offered you \$2,000? A Mr. Newshaler was representing me in the transaction, and I am the man that wanted to buy the property.

40

Q And you wanted to pay \$2,000 for the property? A Yes, sir.

Q When was the first conversation you ever had with Mr. Jaeger about buying this property? A April 3rd.

Q How do you fix that date as April 3rd? A The time that Mr. Spitz paid me the rent.

*John Hannan, cross.*

Q What did Mr. Jaeger say to you on that day? A He asked me if I had a piece of property that he could use for a factory site.

Q Had you come to any terms with the Manor Real Estate and Investment Company at that time? A No, sir.

Q You did not know just how much this could be bought for at that time? A Yes, sir. 10

Q How much could it be bought for—did you know on the 3rd of April? A \$2,500.

Q You knew that? A Yes, sir.

Q You did not own the property at that time? A No, sir.

Q You did not tell Mr. Jaeger it could be bought for \$2,500? A No, sir.

Q You did not tell him that you owned it? A No, sir.

Q Why not? A It was none of his business. 20

Q Did you tell him the railroad company owned it? A No, sir.

Q What did you suppose he came to you for? A He accidentally met me in the saloon.

Q Why did you suppose he spoke to you? A I don't know why he spoke to me.

Q Wasn't he trying to purchase this property? A No, sir; I was the one that suggested it.

Q Didn't he want a property on which to build the factory? A Yes, sir. 30

Q He told you that? A Yes, sir.

Q You told him you knew a property that would suit him? A Yes, sir.

Q You did not tell him whom the property belonged to? A No, sir.

Q Did he tell you to get it as cheaply as you could? A No, sir.

Q What did he say about that? A Nothing.

Q When was the first that anything was said about the price of the property? A After he told me that the property would suit him. 40

Q When was that? A The following Monday.

Q That was April 5th, wasn't it? A About then.

Q He told you the property would suit him? A Yes, sir.

*John Hannan, cross.*

Q Did he tell you how much he would give? A He asked me how much I wanted, and I told him \$4,000.

Q You told him you wanted \$4,000 for it? A Yes, sir.

Q And you did not tell him whom it belonged to? A No, sir.

10 Q He said it was too much? A Yes, sir.

Q When was it that you came to these terms? A What terms?

Q For how much it could be purchased? A When I got a telephone message from my lawyer.

Q When was that? A On the date that the contract was signed by Mr. Gorrell, April 14th.

Q What did you say to him then? A I telephoned from Mr. Frankenstein's office, and asked him if he was still interested in the property, and he said "Yes." I asked him if he would  
20 split the difference between \$3,500 and \$4,000, and he said "No," that the best he would give was \$3,600, and after talking on the 'phone for a few moments, I decided to let him have it for \$3,600; that was after I bought it—

Q That he signed the contract? A Yes, sir.

Q When the contract was signed, why didn't you have the railroad company and Mr. Jaeger make a contract together? A I wanted to get the property—I did not care whether I sold it to Mr. Jaeger or not.

Q Don't you know that property has been for sale for years and years? A I sold the property to the Pennsylvania Railroad when I was purchasing the right of way for the tunnel; that was  
30 prior to 1905.

Q Don't you know that from 1905 to the present time the Pennsylvania Railroad Company has been trying to sell it? A No, sir.

Q When was it first for sale? A I don't know; I can tell you when I first found out it was for sale; that was about three years ago.

Q At what price was it for sale then? A I did not know  
40 the price.

Q You never tried to find out the price, did you? A Mr. McDermott, of West Hoboken, asked me to put a price on the property.

Q Did you do so? A Yes, sir.

Q When? A At that time.

*John Hannan, cross.*

Q How much? A \$2,500.

Q Tell me again what was your first conversation with Mr. Jaeger.

*The Court.* That is repetition.

Q When did you say you first knew of the existence of the H. J. Jaeger Company? A I did not know anything about it until the H. J. Jaeger Company had taken title to the property. 10

Q You said you had been down to their factory? A Down to Mr. Jaeger's office.

Q Don't you know that the name "H. J. Jaeger Company" was on the door? A I did not notice it.

Q In large gold letters? A I did not notice it.

Q You said something that you were afraid you would not be able to obtain the title to the property; when was that?

*Mr. Walscheid.* When was what? When he said it? 20

*Mr. Weller.* Let me see the other letter—the copy (question withdrawn).

Q You say you did know on April 3rd that this property could be bought for \$2,500? A Yes, sir.

Q You did not tell that to Mr. Jaeger? A No, sir.

Q Well, you knew he wanted to purchase it? A I did not know that he wanted to purchase this—I was trying to sell it to him; I started to try to sell it to him.

Q When was it he said, "You don't own that property?" A After the 5th, between the 5th and some future date—a few days after that I met him in the store, and he said I did not own the property. 30

Q What did you say? A I told him it did not make any difference to him who owned the property; I said "I am in a position to sell it to you?"

Q You admitted you did not own the property then? A Yes, sir.

Q And that you were in a position to sell it to him? A I told him that I could sell him the property. 40

Q Well, that was several days before you had had the contract entered into? A I had been negotiating for it, and it was several days before the contract was signed.

Q And that is the reason that you took the property in that way, is it; that you took it in your name—took it in the name

*John Hannan, cross.*

of your agent; what is the reason you took it in the name of your agent? A I started to negotiate; I was afraid I would not be able to get the property if Mr. Von Moschzisker found that it was I who was interested in securing it.

Q Is that the reason? A Yes, sir.

Q Don't you always do business in just that same way?

10 A What way?

Q Getting the title when you find anyone wants to buy property—to take it in the name of some dummy and then sell it at a big price? A No, sir; I sold the property for your own residence.

Q My residence? A Yes, sir.

Q That is the first time I knew that. Haven't you done that right along with other people? A No, sir; I have not.

Q Isn't it a fact that there were ten or eleven lots along  
20 Park avenue that you advertised and took an option to purchase the property in the name of a bootblack? A No, sir.

Q Didn't you take eleven lots for \$1,000 each and get an option in the name of a bootblack? A No, sir.

Q And did not try to sell that property to the Township of Weehawken for the purpose of a library for \$2,500 a lot? A No, sir.

Q And didn't you get a lot of real estate men— A Can you show me one single transaction?

*By the Court.*

30 Q You received no commission whatsoever from Mr. Jaeger, did you? A I received no commission of any kind.

*Further cross.*

Q Did your agent, Mr. Rubens, get title to this property—the deed? A Yes, sir.

Q Why didn't you have the deed that was taken from the Manor Real Estate Trust Company on the 8th of June made directly to Mr. Jaeger? A If you will notice in the contract, if I remember rightly, it says that the contract will be cancelled  
40 at the discretion of the company and no damages could be collected from the railroad company, and their money could be refunded, and I did not want to take any chance until such time as I got the deed from the Pennsylvania Railroad Company.

Q Why didn't you take the deed from the railroad company directly to Mr. Jaeger, instead of letting it go through Mr.

*John Hannan, cross.*

Rubens, and then another deed to Mr. Jaeger? A I have just explained that.

Q Don't you know that is not an explanation?

*The Court.* Strike that question out.

Q When the deed came, why didn't you take the deed in the name of Jaeger instead of Rubens? A I have already explained that. 10

Q What is the explanation? A The contract (referring to "Exhibit D. 7"); the contract gives the real estate people the right to cancel this contract and refund the money to Mr. Gorrell.

Q But when it came time to pass the deed, if they had signed the deed to Mr. Jaeger, they could not have cancelled that deed? A Who signed the deed to Jaeger? You are talking about taking the deed from the real estate company; Jaeger did not get the deed then. 20

Q Did not a deed come directly from the Manor Real Estate Company to Mr. Rubens? A Yes, sir.

Q Why didn't you have that go directly to Mr. Jaeger? A What difference did it make?

Q It made a difference of recording one deed, didn't it? A I was not interested in that.

Q Isn't it a fact that you did not want to show your hand in the matter? A How do you mean? 30

Q Show that you were the real purchaser? A Mr. Jaeger knew that all the time; Mr. Jaeger knew I was not the owner of record.

Q Did he know who was the owner of record? A Yes, sir; he told me.

Q What did he say? A I presume he knew who the owner of record was when he told me that I was not the owner of record.

Q Why did you have all these communications with him; you knew he had a lawyer since the first contract was signed, didn't you? 40

*Mr. Walscheid.* Objected to.

*The Court.* I think that is entirely immaterial.

*Mr. Weller.* I think it is very important.

*John Hannan, cross.*

Q Up until the 14th day of April, Mr. Jaeger had no lawyer?  
A No, sir.

Q Then, of course, you had to communicate directly with Mr. Jaeger or Mr. Jaeger's company; on the 14th of April when the contract was signed it appears that Mr. Burke was  
10 counsel; I want to know why did you have all this communication with him, with Mr. Jaeger, when you say you went down and left the card at his office, if Mr. Burke was handling his matters?

A Mr. Jaeger was anxious to get title before the first of June, if possible, because he was being pressed to get a new factory on account of business.

Q He told you that he was pressed? A Yes, sir.

Q And that he was very much pressed? A Yes, sir.

Q Why couldn't you have communicated with him by calling  
20 up Mr. Burke, who lived on the hill at West Hoboken? A He has an office in West Hoboken.

Q You could communicate with him either day or night?  
A Yes, sir.

Q If Mr. Burke was in the office, why should you go down to Jaeger's and leave that little card? A Because Mr. Jaeger was the one that was bothering me; I was not interested any further after the contract was signed.

Q You knew Mr. Jaeger could not close the contract until his attorney was ready to close the contract?

30 *Mr. Walscheid.* Objected to as calling for a conclusion.

Q Why did you ask Mr. Frankenstein to finance this transaction? A Because I did not have the money.

Q But you say you got the money on the 17th of May? A Yes, sir.

Q Why didn't you then right away repay Mr. Frankenstein and finance it from that time on? A That's what I did.

Q Did not Frankenstein pay the money after the 17th of May; wasn't this land paid for by his check? A It was paid by  
40 my check to Frankenstein, and Mr. Frankenstein paid his check to the railroad company.

Q Then on June 9th Mr. Frankenstein did finance it by paying out to the railroad company the \$2,000, didn't he?

*Mr. Walscheid.* Objected to as a conclusion.

*John Hannan, cross.*

A I gave Mr. Frankenstein a certified check for \$2,000, and Mr. Frankenstein gave his check to the railroad company.

*Mr. Weller.* They appear to be on the same date, but I understood Mr. Frankenstein to swear, and I am quite sure that he did produce a check here that was dated on the 8th, because the deed was made on the 8th; all the testimony shows that the deed went to Mr. Rubens on the 8th; it is dated on the 8th; have you got a copy of the deed? 10

*Mr. Walscheid.* The deed to Rubens and the deed from Rubens were turned over to Mr. Burke at the same time; the deed to Rubens from the Manor Real Estate and Trust Company was not produced by Mr. Burke.

Q On this little card, when you took it down to the office, you say "Everything O. K." What was O. K.? A The passing of the title. 20

Q What was the date of this O. K. card? A Prior to June 1st.

Q You don't know the date of it? A No, sir.

Q Well, everything was not O. K. up to June 8th, was it? A The title was to be passed on June 1st, and I was informed that everything would be all right, and I so informed Mr. Jaeger.

Q Through that card? A Yes, sir.

Q And it turned out that everything was not all O. K.? A Yes, sir. 30

*The Court.* You have been all over that.

Q Now, when Mr. Jaeger came there and had the talk with you on June 1st, you say it was June 1st, I believe, that he came and talked to you? A June 2nd.

Q What did he come there for? A We happened to meet in the cafe; it was customary for him to go there pretty nearly every evening.

Q And what was the conversation? A He said, "Why didn't you pass title yesterday, Mr. Hannan?" and I said, "We did not get the title from the Pennsylvania Railroad," and I said "They have a contract that you cannot force them, you must let them take their time"; and he said, "Well, I would like to be able to get the thing as soon as possible"; and I said, "So would I, but you need not worry, I could have sold 40

*John Hannan, cross.*

it and made more money"; and he said, "You can have it back"; and I said, "All right, come into the office"; he said, "Are you bluffing?" and I said, "No"; and we went in the office, and I wrote out a check, and he handed the check back to me.

Q Had you told him at that time how much you paid for it?

10 A No, sir.

Q You had led him to believe up to that time that you had paid \$3,600? A I had not mentioned anything about the price.

Q You had not told him whose property it was? A No, sir.

Q You had not told him how much you had paid for it? A No, sir.

Q Then when you put "Everything is O. K." on there, you meant that the title was O. K.? A I meant that the transaction would be closed that night.

20 Q You did not know anything more about it than you had known in the past? A I had telephoned; Mr. Jaeger was constantly telephoning to me, and I telephoned to find out when the deed would be ready—to find out if the deed would be ready for June 1st, and I was informed that the deed would be ready, and then I left word at Mr. Jaeger's office that everything would be O. K.

Q Who had informed you that the deed would be ready? A Somebody from the office in New York.

30 Q Do you know who it was? A No, sir; it came by telephone; it was in answer to a telephone call.

Q Then you left that card there saying that it was O. K. on June 1st? A I don't recall the date.

Q Can you recall within four or five days of the date? A I don't recall the date.

Q It might have been then in April, just as they say; isn't it a fact that it was so? A It was not before the contract was signed.

Q Can you tell the date when it was? A It was back before the first of June.

40 Q How long before the first of June? A I don't recall; Mr. Jaeger was very anxious to get the title.

Q Cannot you tell anywhere near the date; cannot you tell within ten or twenty days? A I don't imagine it was so far back as ten or twenty before the first; it must have been close to the first of June.

*John Hannan, cross.*

Q When did you first hear that the Board of Directors of the Manor Real Estate Investment Company had passed on the question as to whether the title was to be given to Rubens or not? A I don't know when Mr. Frankenstein heard from the Manor Company as to when the title would be passed.

Q Were you not in communication with Mr. Frankenstein all the time? A No, sir. 10

Q You only lived a few blocks away? A The office is about twelve or fourteen blocks away.

Q And you are connected by telephone? A Yes, sir.

Q Don't you know the board of the Manor Real Estate and Investment Company passed upon that on the 3rd of May?

A If they did, they would not pass the title.

Q No—did they pass as to whether it was to be sold to Rubens or not? A I don't know. 20

Q Do you know why the title was held up so long? A I have not the slightest idea.

Q Did you ever find out from the Manor Real Estate and Investment Company why the title was being held up? A No, sir.

Q You wrote on that card that "It is all O. K.?" A Yes, sir.

Q What was O. K.? A The passing of the title.

Q Why did you put that on there for if you did not know anything about it? A Because Mr. Frankenstein had told me that they would be ready to pass title on the first. 30

Q You had seen the contract before that time? A Yes, sir.

Q You knew the contract provided it was to be passed on June 1st? A Yes, sir; and I knew they had a right to turn back the money if they wanted to, and not pass it.

Q Well, you put that O. K. on that card? A Yes, sir.

Q To assure Mr. Jaeger that the title would be passed on the first of June? A Yes, sir.

Q When you had not heard anything about it since what Frankenstein had told you? A No, sir.

Q And you don't know what Frankenstein had heard? A Frankenstein told me that everything would be all right; I presume he did. 40

Q When did he tell you that? A Prior to June 1st.

Q Did you ever see any communication between Frankenstein and the Manor Real Estate Company? A No, sir.

*John Hannan, cross.*

*Mr. Weller.* Have you a copy of the answer in Chancery? I ask to look at it a minute. (Looks at it.)

Q You say you have been a real estate agent for twenty years? A Twenty-two years.

Q You had an office at that time—April 3rd that you speak of, 1915? A Yes, sir.

Q You had your name on the window? A Yes, sir.

Q You had the words "Real Estate Agent" there? A No, sir.

Q What did you have? A "John M. Hannan."

Q Did you have any cards with your name on showing your business? A Yes, sir.

Q Real estate agent? A Real estate.

Q After Mr. Rubens had that contract assigned to him did you tell Mr. Jaeger that the land belonged to Mr. Rubens? A No, sir.

Q Were you asked these questions and did you answer as follows: "Ques. Who is Charles A. Rubens, to whom said lands were conveyed, and who conveyed said lands to the H. J. Jaeger Company? Ans. I don't know." That was November 15, 1916; didn't you know who he was at all? A No, sir.

Q Mr. Frankenstein had not told you who he was? A No, sir.

Q Well, you knew he was your agent, holding the property for you? A Mr. Frankenstein was my attorney and acting for me.

Q You were also asked this question: "Ques. Where does said Charles A. Rubens live now?" and you answered, "I do not know"? A I don't even know now.

Q Did you try to find out before answering these interrogatories, from Mr. Frankenstein, where he lived and who he was?

*Mr. Walscheid.* Objected to as immaterial.

Q You were also asked this question: "Ques. If the said Charles A. Rubens paid any consideration for said lands, how did he pay it, by money or check?" and you answered: "Paid none." How did you know that? A I paid the money myself.

Q You were asked: "When was the consideration paid to the Manor Real Estate and Trust Company?" and you answered, "I do not know." Didn't you know at that time? A No, sir; I did not know.

*John Hannan, cross.*

Q You did not know on the 16th of November, 1916, when the Manor Real Estate and Trust Company had been paid?

A I did not know.

Q Well, you had paid Mr. Frankenstein on the 9th day of June, 1915? A Yes, sir.

Q Didn't you know that he had paid the Manor Real Estate and Trust Company one day before? A I knew I gave my money to Mr. Frankenstein, and I did not know when Mr. Frankenstein gave it to the Manor Real Estate and Trust Company. 10

Q Yet you claimed it was your transaction? A He was acting for me; yes, sir.

Q You were asked: "How was it paid, by money or check?" and you answered, "I do not know." Didn't you know? A No, sir.

Q Hadn't he shown you the check that he paid? A No, sir. 20

Q He had given two checks at that time? A Who?

Q Mr. Frankenstein, he had given one for the \$225, and the other one for the balance, hadn't he? A I did not know that then.

Q When did you find that out? A When I started to get my case ready.

Q You were asked: "Where was it paid?" and you answered: "I do not know." A I did not know.

*Mr. Weller.* I want to call my client, who is away, and two or three other witnesses, and I shall be ready to argue it at the next hearing. 30

Adjourned to a day to fixed.

*Proceedings.*

IN CHANCERY OF NEW JERSEY.

10	<p><i>Between</i></p> <p>H. J. JAEGER COMPANY, a corporation, <i>Complainant,</i></p> <p style="text-align: center;"><i>and</i></p> <p>JOHN M. HANNAN, <i>Defendant.</i></p>	}	<i>On Bill, &amp;c.</i>
----	--	---	-------------------------

20 Transcript of proceedings taken in the above entitled cause, at the Chancery Chambers, Jersey City, New Jersey, on the second day of May, 1918, before HON. VIVIAN M. LEWIS, Vice-Chancellor.

*The Court.* I understand Mr. Walscheid is engaged in the trial of a cause in the Supreme Court in Essex County, and, therefore, cannot be present. Of course, Mr. Weller will be allowed his costs for the day, unless Mr. Walscheid can show me some reason to the contrary on the 13th of May, 1918, when I will fix another day for you.

Adjourned.

30

40

*F. A. Von Moschizisker, direct.*

IN CHANCERY OF NEW JERSEY.

*Between*

H. J. JAEGER COMPANY,

*Complainant,*

*and*

JOHN M. HANNAN,

*Defendant.*

*On Bill, &c.*

10

Continuation of the taking of testimony in the above-entitled cause before Hon. Vivian M. Lewis, at the Chancery Chambers, Jersey City, N. J., on June 18, 1918.

Appearances:

Weller & Lichtenstein, Esqs., for the complainant.

20

J. Emil Walscheid, Esq., for defendant.

REBUTTAL.

F. A. VON MOSCHZISKER, sworn for complainant in rebuttal.

*Direct examination* by Mr. Weller.

Q (*By the Court.*) In what connection do you serve the Pennsylvania Railroad? A Agent of the real estate department.

30

Q (*By Mr. Weller.*) You were such agent in 1915? A Yes, sir.

Q How long had you been agent? A 1905.

Q Do you know Mr. Hannan, the defendant in this case? A Yes, sir.

Q Did you ever have any trouble with Mr. Hannan? A No, sir.

Q In 1905 did you assist him in getting any position? A I think prior to 1905 I recommended Mr. Hannan to the Pennsylvania Railroad for the purpose of buying land, when they were building a tunnel; that was before my connection with the road.

40

Q You know the piece of property that was sold to Mr. Jaeger of the H. J. Jaeger Company? A Yes, sir.

*F. A. Von Moschizisker, cross.*

Q How long had that been in the market for sale? A A number of years.

Q You say you never had any trouble with Mr. Hannan whatever? A None that I have any recollection of.

Q If he had applied to you in his own name to buy this land that Mr. Jaeger bought, or rather that Mr. Gorrell contracted to buy, and afterwards was bought by Mr. Jaeger—

*Mr. Walscheid.* That is objected to as calling for a conclusion.

*The Court.* Objection will be sustained.

Q You say the land was for sale right along? A Yes, sir.

Q Was it advertised? A There were signs on the land.

Q Did you ever meet Mr. Hannan and refuse to speak to him?

A Not that I know of.

Q Did you ever have a quarrel with him? A No, sir.

Q Did you ever tell him to mind his own business? A I cannot answer that; Mr. Hannan was at one time an assessor, and he had under his jurisdiction property that I had charge of in my capacity as real estate agent of the Erie, and we may have differed as to the assessed valuation of property.

Q In what way did you differ so much that you quarreled about it?

*Mr. Walscheid.* Objected to as immaterial.

*The Court.* Objection sustained.

Q Did you quarrel? A I have no recollection of having quarreled with Mr. Hannan.

*Cross examination by Mr. Walscheid.*

Q You say there were signs on this property? A Yes, sir.

Q Those signs told anyone who passed by as to whom the property belonged? A The signs stated that the property was for sale, and had my name on it.

Q And gave your address where you might be found? A Yes, sir.

Q And what address was given? A Pennsylvania Station, New York City.

Q At the time that these negotiations for this property began—I mean the negotiations which terminated in the sale to this man Gorrell—you received numerous telephone calls, didn't you, in

*F. A. Von Moschizisker, cross.*

relation to the property? A Well, I have rather a large office and a number of employees.

Q And you have since that time taken the trouble to investigate whether you did receive such telephone calls? A No, sir; I have not.

Q Didn't you furnish Mr. Weller with data— A I furnished 10 him with a letter and I furnished him with the contract.

Q Didn't you furnish him with a list of the telephone calls received in connection with this matter? A No, sir.

Q You furnished him with a list of any telephone calls? A I allowed counsel to look at my correspondence.

Q You allowed him to look through the telephone calls that you had received? A We do not keep a record of telephone calls.

Q Don't you keep slips? A No, sir; slips are placed on my 20 desk when a call comes in and they are then torn up and thrown up in the waste paper basket.

Q Do you or don't you know that in this case some of these slips were preserved? A I have no knowledge of it.

Q Did you have any recollection of receiving any telephone calls from Mr. Jaeger in connection with this— A No, sir; I have no recollection of receiving any calls from Mr. Jaeger.

Q You say you had no trouble with Mr. Hannan? A I have no recollection of any trouble with him.

Q That does not mean that you did not have? 30

*Mr. Weller.* I object to that.

Q Then, you don't say that you did not have? A Well, I can say this, that I never had trouble with Mr. Hannan; I may have had a difference of opinion.

Q And, of course, you never had any wordy quarrels with him? A No, sir.

Q But you did have differences of opinion with him, and you had one rather pronounced difference of opinion as to whether or not a certain dock of the Erie should be assessed by him or should be omitted from his assessment, when he was tax assessor of Weehawken. A Very probably so. 40

Q I suppose your recollection as to that has gone? A Yes, sir; I had no definite recollection of that.

*Herman J. Jaeger, direct.*

Q How long is it since you were connected with the Erie? A Not since 1905, when I went with the Pennsylvania Railroad I was with the Erie for sixteen years.

*Re-direct examination by Mr. Weller.*

10 Q Was it before or after 1905 that you recommended Mr. Hannan? A It was before 1905; before I went with the Pennsylvania Railroad Company.

Q Or was it before 1901? A That I could not tell you.

HERMAN J. JAEGER, sworn in rebuttal.

*Direct examination by Mr. Weller.*

20 Q Mr. Jaeger, Mr. Hannan has sworn that you told him that you were going on with the case because it did not cost you anything—that your attorneys were doing it fifty-fifty; did you tell him that? A No, sir.

Q What did you tell him about that, if anything? A I never told him anything in that line; I told him when he got me agitated that I would spend any amount of money to win this case, that I did not care what it costs me.

Q He has testified to trying to buy the property back from you—(I objected to it, but your Honor allowed that to go in.)

A He never tried to buy it back.

Q Did he offer you checks? A No, sir.

30 *Mr. Walscheid.* Objected to as not proper rebuttal; this is thoroughly covered.

*The Court.* I will note your objection to it.

Q Did Mr. Hannan ever ask you not to go to the railroad company?

*Mr. Walscheid.* Objected to as not proper rebuttal. There is no such testimony in the case; I have just completed reading the testimony.

*The Court.* Strike it out, then.

40 Q Did you know that this property belonged to the railroad company, to the Pennsylvania Railroad, or their real estate company; did you know that when you commenced negotiations with Mr. Hannan? A Yes, sir; I knew it belonged to the Pennsylvania Railroad Company.

*Herman J. Jaeger, direct.*

Q Did you speak to Mr. Hannan about it? A He told me it belonged to the Pennsylvania Railroad Company.

Q Did he tell you whether or not you should go to the Pennsylvania Railroad Company?

*Mr. Walscheid.* Objected to.

*The Court.* Objection overruled.

10

A He told me if I interfered to try to get this property I would not be able to get it, for the reason that he had the inside on it.

Q Did he say anything about red tape?

*Mr. Walscheid.* Objected to as leading.

*The Court.* Objection is sustained.

Q (*By the Court.*) What did he say about anything in regard to red tape? A That he had the pull, of getting this property from the Pennsylvania Railroad, and that there was quite a lot of red tape to get it through.

20

Q (*Further direct.*) When did you start doing work on this property? A I started to dig trenches on the property in May.

Q In April or May? A Some time in May.

Q I show you a check.

*The Court.* Are you calling him now for the purpose of rebuttal?

*Mr. Weller.* Yes, sir.

*The Court.* That is not rebuttal.

30

*Mr. Walscheid.* We brought the officials to show that no permits were issued until after June 15th.

*Mr. Weller.* That is just exactly what I want to rebut.

*Mr. Walscheid.* If Mr. Weller wants to re-try this case, that is another proposition.

Q Was it necessary for you to get any permits?

*Mr. Walscheid.* Objected to.

40

Q Was it necessary for you to get any permits to dig trenches on your property, or did you get any? A No, sir; I did not get any.

*Mr. Walscheid.* He did not, but his contractors did.

*Herman J. Jaeger, cross.*

Q I show you check bearing date May 13th, I think it is, 1915, for \$50; what was that for? Do you remember? A That is for digging trenches.

*Mr. Walscheid.* Objected to on the ground that it is not proper rebuttal.

10 *The Court.* Objection overruled. Whose check is it?

*Mr. Weller.* H. J. Jaeger's check.

Q Why did you draw that money?

*Mr. Walscheid.* I object.

Q Why did you draw it in that way? A I drew that for cash to pay all the laborers for digging the trench; that money was drawn at that time for paying off the laborers.

*Cross examination by Mr. Walscheid.*

20 Q How do you know it was drawn for that purpose? A I am pretty sure it was.

Q How do you know? A Because the books may show it.

Q You have not looked at the books? A No, sir.

Q And the body of that check is not in your handwriting, is it? A No, sir.

Q Only the signature is yours? A Yes, sir.

Q At the bottom of the check? A Yes, sir.

Q And the endorsement on it is not yours either, is it? A No, sir.

30 Q What is your wife's Christian name? A Maude is the daughter.

Q Whose writing is that on the back? A It looks like Maude Jaeger's writing; she is my daughter.

Q You don't know her writing? A It looks like her writing; I am no expert.

Q Who was the contractor doing the excavating? A Kopone.

Q And he had a written contract with you, didn't he? A No, sir.

40 Q To do the excavating? A No, sir; not for excavating, but for digging trenches.

Q You saw this Kopone digging the trenches? A Yes, sir; we paid them in cash to the men that were working.

Q What do you mean by the digging of trenches? A We dug trenches.

*Herman J. Jaeger, re-direct.*

Q For what? A To lay out our plans for the foundation—

Q I am talking about the trenches; you dug the trenches when? A In May.

Q Confine yourself to those trenches. A To lay out our lines for the foundation and also furthermore to find out whether there was rock. 10

Q So that you made test holes in May? A We dug trenches to find out, and for the testing at the same time, in order to find out where would be the best place to lay out our foundation.

Q And the material that came out of those trenches, where was that deposited? A It was just thrown over on the side.

Q It remained on the land which you were buying? A Yes, sir.

Q And that is all you did in May? A Yes, sir, at that time.

Q And you saw Kopone on that work? A I hired his men to do that work. 20

Q Did you hire the men, man by man? A He gave me the privilege of hiring the men, and I paid them the price of \$3.00 a day.

Q How many men did you have? A Two men.

Q How many days did they take to dig these trenches? A They must have dug there about ten or twelve days.

Q Don't you know? A Around ten or twelve days.

*Re-direct examination by Mr. Weller.*

Q Now, you had an architect there; who was your architect? A We had two architects, Berger and McCann, that were engaged, and Harmon, the surveyor. 30

*The Court.* What is this?

*Mr. Weller.* This is rebuttal.

Q You spoke of Harmon; is this the check that was given Harmon? A Yes, sir.

*Mr. Weller.* I offer now a check dated April 17, 1915, Thomas J. Harmon, for \$12, signed by Herman J. Jaeger. 40

Q This was for surveying the property, wasn't it? A Surveying the lay-out for the factory, by Mr. Grauer.

*Mr. Walscheid.* I withdraw the objection.

*Herman J. Jaeger, re-direct.*

Q When did you employ Mr. Grauer? A In the early part of April.

Q I show you check for Richard Beyer for \$33. A That is for surveying the whole property which the company purchased.

(Marked Exhibit Well 2, 3, 4.)

10 Q Did you enter into a contract with Mr. Grauer to do this work for you? A Yes, sir.

Q Written? A I really don't know.

Q You gave him a certain percentage, did you? A Yes, sir.

*Mr. Walscheid.* Objected to as immaterial.

Objection withdrawn.

Q (*By Mr. Walscheid.*) This is for architect's services—Mr. Grauer? A Yes, sir.

20 *Mr. Walscheid.* It is admitted that Mr. Grauer, the architect, started to draw his plans and specifications in April, 1916.

*Mr. Weller.* Have you got the contract that was offered in evidence, the contract between—it was offered in evidence here—

*Mr. Walscheid.* Yes.

*Mr. Weller.* And the original contract between the Manor Real Estate and Investment Company and Gorrell?

30 *Mr. Walscheid.* This is the original. I put it in evidence.

*Mr. Weller.* That is our case, then.

REST ALL.

*Answers to Interrogatories.*

**ANSWERS TO INTERROGATORIES.**

IN CHANCERY OF NEW JERSEY.

*Between*

H. J. JAEGER COMPANY, a corporation,  
*Complainant,*

*and*

JOHN M. HANNAN,

*Defendant.*

*On Bill, etc.*

*Answers to  
Interrogatories.*

10

*To Messrs. Weller & Lichtenstein, Solicitors of Complainant:*  
Dear Sirs:

20

TAKE NOTICE, that the following are the answers of the defendant, John M. Hannan, to the interrogatories served on the 6th day of November, 1916.

1. Where were you employed by the complainant or Herman J. Jaeger, to purchase for the complainant, or Herman J. Jaeger, the lands described in the bill of complaint filed herein?

Answer. No.

2. If the answer to the last interrogatory be in the affirmative, when were you so employed, giving the earliest date you were spoken to about such purchase?

3. If the answer to the first interrogatory be in the affirmative, by whom were you spoken to about such purchase?

4. When, if at all, did you commence negotiations for the purchase of said lands from the Manor Real Estate Company?

Answer. March 23rd, 1915.

5. If you negotiated for the purchase of said lands, with what agent of said Manor Real Estate and Trust Company did you negotiate, giving his full name and address?

40

Answer. F. A. Von Moschzisker, Penn. R. R. Station, New York City.

*Answers to Interrogatories.*

6. Who is Charles A. Rubens, to whom said lands were conveyed, and who conveyed said lands to the H. J. Jaeger Company?

Answer. I do not know.

7. Where did the said Charles A. Rubens live at that time?

10 Answer. I do not know.

8. Where does said Charles A. Rubens live now?

Answer. I do not know.

9. What occupation or business was the said Charles A. Rubens engaged in at the time he purchased said lands?

Answer. I do not know.

10. Where was the business of the said Charles A. Rubens located?

20 Answer. I do not know.

11. How much, if you know, was paid to the Manor Real Estate and Trust Company for said lands?

Answer. \$2,250 less 5% for commission.

12. Is it not a fact that the money to the Manor Real Estate and Trust Company was paid by the moneys received from the H. J. Jaeger Company, through Herman J. Jaeger?

Answer. No.

13. Is it not a fact that the said Charles A. Rubens never paid any of his own money for the purchase of said lands?

30 Answer. Yes.

14. If the said Charles A. Rubens paid any consideration for said lands, how did he pay it, by money or check?

Answer. Paid none.

15. When was the consideration paid to the Manor Real Estate and Trust Company?

Answer. I do not know.

16. How was it paid, by money or check?

40 Answer. I do not know.

17. By whom was it paid?

Answer. George Frankenstein.

18. Where was it paid?

Answer. I do not know.

*Answers to Interrogatories.*

19. What agent of the Manor Real Estate and Trust Company received it?

Answer. I do not know.

Respectfully,

J. EMIL WALSCHEID,  
*Solicitor for Defendant.*

10

Dated, November 15th, 1916.

STATE OF NEW JERSEY, }  
COUNTY OF HUDSON. } *ss.*

JOHN M. HANNAN, of full age, being duly sworn on his oath according to law, says that he is the defendant in the suit in which the foregoing interrogatories and answer thereto are made, and that he is familiar with the case, and that the facts set out in the said answers and the statements made therein are true to the best of his knowledge, as he verily believes.

20

JOHN M. HANNAN.

Sworn and subscribed to before me,  
this 15th day of November, 1916.

HENRY VOGLER,  
*Master in Chancery of New Jersey.*

Service of the within answers to interrogatories is hereby acknowledged this 16th day of November, 1916.

30

WELLER & LICHTENSTEIN,  
*Solicitors of Complainant.*

40

*Exhibits.***EXHIBIT C. 1.**

Articles of Incorporation of H. J. Jaeger Company (not printed).

10

**EXHIBIT C. 2.**

Agreement for sale of property dated April 14, 1915, made between Charles A. Rubens and Herman J. Jaeger, being the same as contract printed as Exhibit W. A. 3.

**EXHIBIT C. 3.**

Deed by Manor Real Estate and Trust Company to Rubens (not printed).

20

**EXHIBIT C. 4.**

This exhibit was a card which contained the following inscription:

“Everything O. K. Will see you Tuesday night.”

(Signed) Hannan.

**EXHIBIT C. 5.**

30 Receipt for \$360 (not printed).

**EXHIBIT C. 6.**

Check for \$360 (not printed).

**EXHIBIT C. 7.**

40 The MANOR REAL ESTATE AND TRUST COMPANY has, through William A. Moncure, its Assistant Real Estate Agent, agreed, subject to the approval of its Board of Directors, to sell to Charles E. Gorrell an irregular shaped lot of land at the distance of sixty-five feet from the junction of the southeasterly line of Branch (or Bulls Ferry) Road with the Northwesterly side of Hudson County Boulevard, in Weehawken Township, Hudson

*Exhibits.*

County, New Jersey, extending 226.68 feet along said Branch Road and 420.94 feet along said Boulevard, as shown in red outline on the plan hereto attached and made a part hereof (being the same premises which Benjamin W. Carskaddon and wife, by deed dated the 22nd day of September, 1904, and recorded in said County in Book 894 of Deeds, page 8 &c, granted and conveyed unto the said Manor Real Estate and Trust Company in fee, subject to the railroad and tunnel rights granted by the said Benjamin W. Carskaddon and wife to The Pennsylvania, New Jersey and New York Railroad Company, by deed dated the 21st day of September, 1904, and recorded in said County in Book 894 of Deeds, page 5 &c., said land to be fully described in the deed hereinafter provided for, for the price or sum of Two thousand two hundred and fifty dollars, of which the sum of Two hundred and Twenty-five Dollars has this day been paid on account, the receipt of which is hereby acknowledged, and the balance or sum of Two Thousand and Twenty-five Dollars is to be paid in cash or by certified check, upon the delivery of a deed containing a covenant of special warranty conveying said land to said Charles E. Gorrell in fee, clear of liens and encumbrances, except the aforesaid railroad and tunnel rights to which said sale is subject. And also subject to the right of the New York Telephone Company, its successors and assigns, to forever maintain and repair the twelve duct multiple tile subway for telephone wires, under and across said land, as now constructed.

10

20

30

The said deed is to be delivered and settlement to be made therefor at the office of F. A. vonMoschzisker, Pennsylvania Station, New York City, on a day to be mutually agreed upon within thirty days after the approval of said sale by said Board, and in the event of the failure of said Charles E. Gorrell to make settlement at the time and place so fixed the said sum of Two Hundred and Twenty-five Dollars so paid on account will be retained by said Manor Real Estate and Trust Company as liquidated damages, and said Charles E. Gorrell shall thenceforth have no interest or claim whatsoever in said land.

40

It being understood and agreed that the said Manor Real Estate and Trust Company will notify the said Charles E. Gorrell by letter sent by registered United States Mail to his address given below of the approval of the said sale by the said Board within ten days after such approval shall have been

*Exhibits.*

given; but in the event of the failure of said Board to approve said sale or should the said Manor Real Estate and Trust Company be unable to convey good title to said land (subject as aforesaid) the said sum of Two Hundred and Twenty-five Dollars so paid on account will be returned to the said Charles E. Gorrell and this writing shall thereupon become null and void as though it had never been written.

Dated the fourteenth day of April, 1915.

Manor Real Estate and Trust Company,

By

William A. Moncure,  
Assistant Real Estate Agent.

Witness W. J. Forrast

20-

Charles E. Gorrell,  
(address) 60—4th Street,  
Weehawken, N. J.

ASSIGNMENT ENDORSED ON CONTRACT.

For and in consideration of one dollar, I hereby assign all my right, title and interest to the within contract to Charles A. Rubens of 212 Clinton Ave., West Hoboken, N. J. and authorize and request the Manor R. E. & Trust Co. to execute and deliver the deed therein referred to, to the said Charles A. Rubens upon his complying with the conditions of said contract.

Dated April 14/15.

Charles E. Gorrell.

Witness:

George Frankenstein,  
Edgar A. Smith.

40

*Exhibits.***EXHIBIT C. 7.**

Town of Union, N. J. April 14, 1915. No.  
 THE TRUST COMPANY OF NEW JERSEY 55-198  
 Pay to the order of myself—————\$225 00/100  
 Two Hundred twenty-five 00/100—————Dollars.  
 (Signed) George Frankenstein. 10  
 Certified for Maker April 14, 1915  
 R. Sievert,  
 Asst. Treas.

## Endorsed:

George Frankenstein.  
 The Pennsylvania Railroad Company,  
 J. F. Fahnestock,  
 Treasurer.

20

**EXHIBIT D. 4½.**

John M. Hannan  
 Weehawken, N. J.

Hoboken, June 9, 1915 No. 4687  
 HOBOKEN TRUST COMPANY  
 Pay to the order of George Frankenstein—\$2000.00  
 Two Thousand Dollars —————Dollars.  
 (Signed) John M. Hannan. 30  
 Certified June 9, 1915  
 A. J. Blauken,  
 Teller.

## Endorsed:

George Frankenstein.

40

*Exhibits.***EXHIBIT D. 5½**George Frankenstein  
Counsellor at Law

Town of Union, N. J. June 9th, 1915 No. 2370

10

THE TRUST COMPANY OF NEW JERSEY  
Town of Union BranchPay to the order of Manor Real Estate & Trust Co.  
\$2025 00/100 Two Thousand twenty five 00/100 Dollars.

(Signed) George Frankenstein.

Certified for Maker June 9, 1915

R. Sievert,  
Ass't Treas.

Endorsed:

20

Pay to the order of the Pennsylvania Railroad Co.  
Manor Real Estate and Trust Co.J. Wanzandt,  
Assistant Treasurer.

Pay to the order of

Central National Bank, Phila.

The Pennsylvania Railroad Company,

J. F. Fahnestock,  
Treasurer.

30

**EXHIBIT D. 6½**George Frankenstein  
Counsellor at Law

Town of Union, N. J. June 11, 1915 No. 2371.

THE TRUST COMPANY OF NEW JERSEY  
Town of Union BranchPay to the order of John M. Hannan \$3185 31/100  
Thirty one hundred Eighty-five 31/100—Dollars.

(Signed) George Frankenstein.

40

Endorsed:

John M. Hannan.

*Exhibits.*

**EXHIBIT W. A. 1.**

Union Hill, N. J., March 23, 1915.

Mr. F. A. VonMoschzisker,  
General Real Estate Mgr., Penn. R. R.,  
Pennsylvania Station, N. Y.

10

Dear Sir:—

On this date I telephoned to your office and inquired about plot B block 35 Assessment Map, Weehawken, for information as to whether the property is for sale and was informed that same was in the market at a price of \$3000.00. This price I consider too high. I am authorized by my client to offer \$2000.00 cash, providing there is no restrictions against the property only the easement of the Pennsylvania Tunnel. The commission that I will expect in case of sale will be five per cent. In making your reply I would appreciate a sketch of property showing exact measurements.

20

A prompt reply will be appreciated by

Very truly yours,

L. Neuscheler.

**EXHIBIT W. A. 2.**

Pennsylvania Station,

New York City, March 24th, 1915.

30

Weehawken, N. J.—Sale of property on Hudson Boulevard and Bulls Ferry Road.

Mr. L. Neuscheler,  
c/o John H. Schuster, Inc.,  
133 Park Avenue, Union Hill, N. J.

Dear Sir:

Replying to your favor of March 23rd, 1915, offering \$2000.00 for above property:

40

I beg to advise that the property is free and clear, only subject to easement of the Penna. Tunnel and Terminal R. R. Co.'s tunnel. Said property is assessed for \$2000.00 and while we do not consider that a price at which it is held, to wit, \$3000. is too high for property located as this is, and having a double frontage,

*Exhibits.*

if your client will offer \$2,500 cash I will recommend the acceptance of that offer.

I enclose blueprint showing the property in question, the part thereof subject to tunnel easement being indicated in yellow on said print.

10 Your prompt attention in this matter will be appreciated.

Yours truly,

F. A. Von Moschzisker,  
Agent.

**EXHIBIT W. A. 3.**

20 ARTICLES OF AGREEMENT, made the fourteenth day of April in the year of Our Lord One Thousand Nine Hundred and fifteen, Between CHARLES A. RUBENS, of the Town of West Hoboken, in the County of Hudson and State of New Jersey, party of the first part: and HERMAN J. JAEGER, of the Township of Weehawken in the County of Hudson and State of New Jersey, party of the second part:

30 WITNESSETH, That the said party of the first part, for and in consideration of the sum of Thirty-six Hundred Dollars, to be paid and satisfied as hereinafter mentioned, and also in consideration of the covenants and agreements hereinafter mentioned, made and entered into by the said party of the second part, doth agree to and with the said party of the second part, that he, the said party of the first part, will well and sufficiently convey to the said party of the second part, his heirs and assigns, by Deed of Warranty, free from all encumbrances, except as hereinafter mentioned, on or before the first day of June, next ensuing the date hereof, all that lot, tract, or parcel of land and premises hereinafter particularly described, situate, lying and being in the Township of Weehawken, in the County of Hudson, and State of New Jersey, which is described on a diagram attached to duplicate original contract. (Being the same premises  
40 which Benjamin W. Carskaddon and wife, by deed dated the twenty-second day of September, 1904, recorded in Book 894 of Deeds, page 8 &c., conveyed to the Manor Real Estate and Trust Company, subject to the railroad and tunnel rights granted by the said Benjamin W. Carskaddon and wife to the Pennsylvania, New Jersey & New York Railroad Company, by deed dated September

*Exhibits.*

twenty-first, 1904, recorded in Book 894 of Deeds, page 5 &c.) The said land to be fully described in the deed, subject, however, to the aforesaid Railroad and Tunnel rights, and also subject to the rights of the New York Telephone Company, its successors and assigns, to maintain and repair a twelve duct multiple tiled subway for telephone wires under and across said land as now constructed.

10

AND the said party of the second part, for his heirs, executors and administrators, doth covenant, promise and agree to and with the said party of the first part, his heirs, executors and administrators and assigns, that he, the said party of the second part, will pay and satisfy, or cause to be paid and satisfied, unto the said party of the first part, the said sum of THIRTY-SIX HUNDRED DOLLARS, as and for the purchase money of the foregoing described land and premises, in the following manner, that is to say: Three Hundred and Sixty Dollars, upon the execution and delivery of this agreement, the receipt whereof is hereby acknowledged. Thirty-two hundred and forty Dollars, in cash, upon the delivery of the said deed.

20

AND IT IS FURTHER AGREED, by the parties to these presents, that the said party of the second part, his heirs and assigns, may enter into and upon the said land and premises on the first day of June, next ensuing the date hereof, and from thence take the rents, issues and profits to his and their use.

AND IT IS FURTHER AGREED, by the parties hereto, that the said Deed shall be delivered and received at the office of George Frankenstein, 136 Fourth Street, Town of Union, N. J., between the hours of ten in the forenoon and three o'clock in the afternoon on the said first day of June, next ensuing the date hereof.

30

IN WITNESS WHEREOF, the said parties have hereunto interchangeably set their hands and seals the day and year first above Mentioned.

..... (L. s.)  
(Signed) HERMAN J. JAEGER, (L. s.)

Signed, sealed and delivered in the presence of

40

as to Jaeger,  
Wm. F. Burke.

*Exhibits.***EXHIBIT W. A. 4.**

John M. Hannan,  
Weehawken, New Jersey.

Town of Union, N. J., June 2nd, 1915. No. 3263  
First National Bank.

10 Pay to the order of Herman J. Jaeger  
Three Hundred & Sixty # Dollars  
\$360 00/100 (Signature torn off.)

**EXHIBIT W. A. 5.**

John M. Hannan,  
Weehawken, New Jersey.

Town of Union, N. J., June 2, 1915. No. 3262  
First National Bank.

20 Pay to the order of Herman J. Jaeger  
\$500 00/100 (Signature torn off.)  
Five Hundred # Dollars

**EXHIBITS W. A. 6 AND W. A. 7.**

Copy of Stubs in Check Book.

	Date June 2, 1915.	No. 3261	
	First National Bank, Town of Union,		
30	for note. New note 4300 for 3 mo.		4500
		No. 3262	
	Date June 2, 1915.		
	Herman J. Jaeger		
	Cancelled.		500
		No. 3263	
	Date June 2, 1915		
	Herman J. Jaeger		
40	Cancelled.		360
		No. 3264	
	Date June 14, 1915.		
	J. M. Hannan		
	for Fairfield Expense.		50

*Exhibits.***EXHIBIT WELL 2.**

THE FIRST NATIONAL BANK OF HOBOKEN.  
Payable through the New York Clearing House.

Hoboken, N. J., April 17, 1915. No. 1299  
Pay to the order of Thomas J. Hannan \$12 00/100 10  
Twelve 00/100 Dollars

H. J. JAEGER CO.  
(Signed) Herman J. Jaeger,  
Pres't & Treas'r.

Endorsed:  
Thos. J. Hannan.

**EXHIBIT WELL 3.**

THE FIRST NATIONAL BANK OF HOBOKEN.  
Payable through the New York Clearing House.

Hoboken, N. J., May 13, 1915. No. 1328  
Pay to the order of Cash \$50 00/100  
Fifty 00/100 Dollars

H. J. JAEGER CO.  
Herman J. Jaeger,  
Pres't & Treas'r.

Endorsed:  
M. Jaeger.

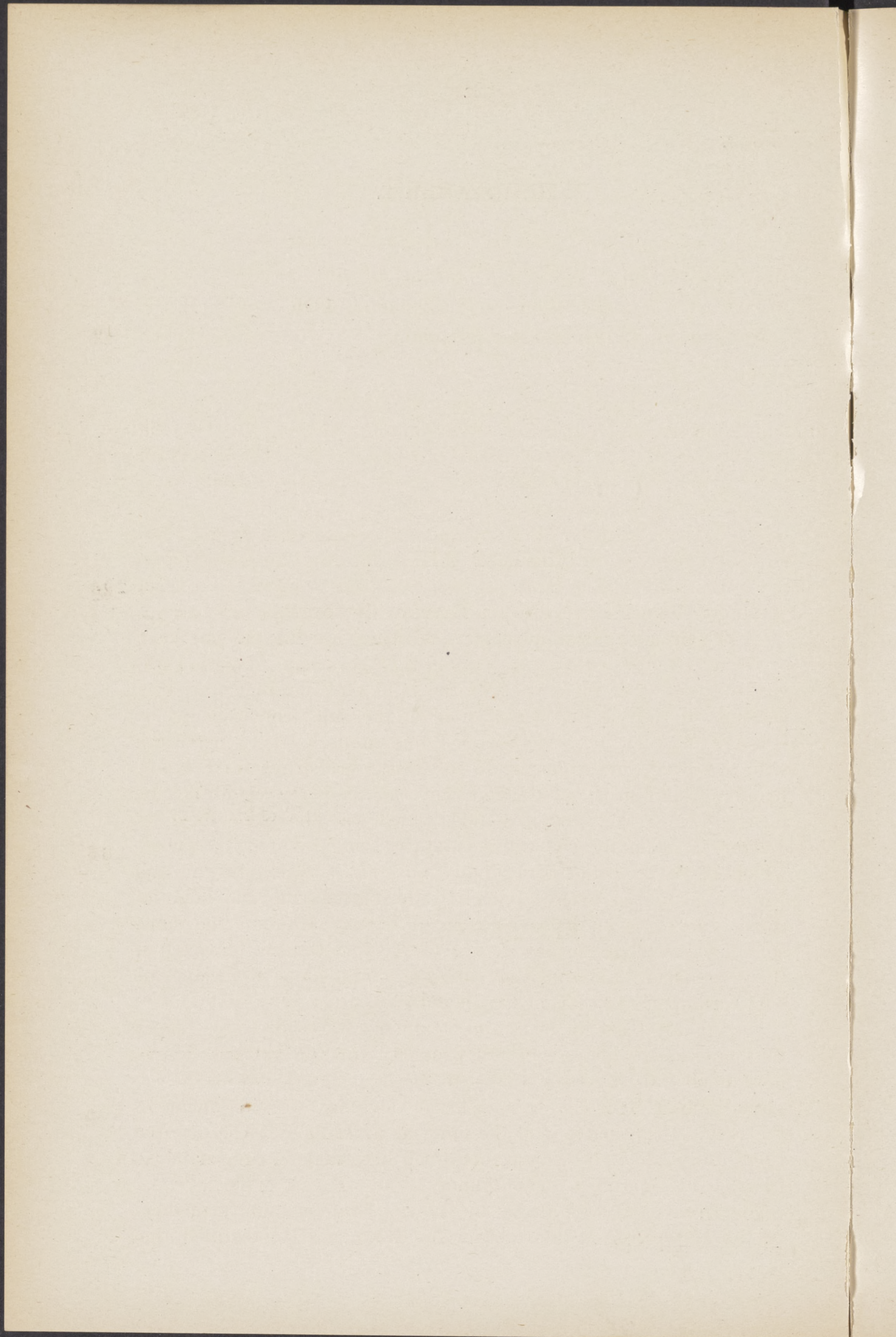
**EXHIBIT WELL 4.**

THE FIRST NATIONAL BANK OF HOBOKEN.  
Payable through the New York Clearing House.

Hoboken, N. J., June 9, 1915. No. 1361  
Pay to the Order of Richard Beyer \$33 00/100  
Thirty-three 00/100 Dollars 40

H. J. JAEGER CO.  
(Signed) Herman J. Jaeger,  
Pres't & Treas'r.

Endorsed:  
Richard Beyer.



*Opinion of Vice-Chancellor.*

**MEMORANDUM.**

Filed August 1, 1919.

On bill, pleadings and proofs in open court.  
Messrs. Weller and Lichtenstein for complainant.

Mr. J. Emil Walscheid for defendant.

10

LEWIS, V. C.

The bill was filed by the complainant, a body corporate, against the defendant, to compel him to account for and pay over to the complainant the difference between what he paid for a certain piece of land in Weehawken, New Jersey, and the amount paid to him for it by the complainant.

The defendant, John M. Hannan, was a real estate agent. Mr. H. J. Jaeger was the president of H. J. Jaeger Lamp Company, the complainant. The lamp company desired to purchase a tract of land upon which to erect a factory. By appropriate resolutions the president was authorized to negotiate for the purchase of the tract in question. He claims that he arranged with Hannan to treat with the owner of the land and obtain it for him, Hannan to receive his commission on the sale from the owner. Hannan, in turn, arranged with Louis Menscheler to negotiate with the owner, and told him to collect the brokerage for himself. Hannan then informed Jaeger that the property could not be purchased for the sum of \$2,000, which was the price fixed by Jaeger, and finally the purchase price was inflated to \$3,600, which is the consideration finally passing between Jaeger and Hannan. As the price advanced, however, during the negotiations, Jaeger (who had also agreed to pay Hannan the same commission which the owner was to pay), withdrew his part of the commission and said that Hannan would have to receive his entire compensation from the owner.

20

30

During all these negotiations Hannan represented to Jaeger that he was unable to get the property for the various figures mentioned, ranging from \$2,000 to the final figure of \$3,600.

The Manor Real Estate and Trust Company was the owner of the land. It agreed to sell the land, as a result of these negotiations, for \$2,250. The agreement was first taken in the name of Charles E. Gorrell, a mere dummy.

0

The agreement was drawn by George Frankenstein, a member of the Bar of this State, acting for Hannan. He testified that

*Opinion of Vice-Chancellor.*

later on he learned that Gorrell was married and that there would be difficulty in obtaining his wife's signature to a deed, and so the contract with the Manor Real Estate and Trust Company for the sale of this land was assigned to Charles A. Rubens, to whom the deed for the property was given by the Real Estate Company. The consideration passing to the Real Estate Com-  
 10 pany was \$2,250. There was considerable delay in closing the transaction, due, doubtless, to the maneuvering thus employed; but finally, on June 10, 1915, title passed to Rubens from the Real Estate Company, and then Rubens executed the deed to the H. J. Jaeger Company, the consideration for which was \$3,600.

Frankenstein was paid \$150 for his services by Hannan.

Complainant, claiming to be the real party in interest, and for whom H. J. Jaeger, its president, simply acted as its agent in this transaction, now seeks an accounting from Hannan to the  
 20 extent that Hannan received unjust profits in this transaction, at the expense of the party whose interests he was bound to protect, unless full disclosure was made and assented to by the complainant.

*Loudenslager v. Weedbury Heights Land Co.*, 58 N. J. Eq. 556.

It seems equally clear that the burden of establishing the fiduciary relationship is upon the complainant.

I think there is ample evidence in this case, direct and positive, with strong corroborating facts and atmosphere, to establish the  
 30 fact that Hannan, through his relations with Jaeger, was acting as the agent for the complainant, and that while so acting in negotiating the purchase of the land in question, maneuvered and manipulated a sale from the owner, to a dummy, and then resold to his principal at a profit. The exact amount of this profit is not disclosed by the proofs, but when ascertained by a proper accounting, the defendant should be decreed to pay that amount to the complainant.

If it is necessary to bring in Herman J. Jaeger as a party complainant in order to make the record technically correct for the  
 40 granting of the relief stated, an order will be made on application to make such an amendment.

The only doubt in my mind is whether complainant has not an adequate remedy at law, either for damages or an action in

*Final Decree.*

*quasi* contract against Hannan to recover the amount of Hannan's profit.

*Dickinsen v. Updike*, 49 Atl. 712.

But I am satisfied, after consideration, that the relief here sought is of a clear equitable nature, and that a decree in accordance herewith should be made.

I will so advise.

10

**DECREE.**

Filed December 24, 1919.

"This cause coming on to be heard in the presence of Weller & Lichtenstein, solicitors for the complainant, and J. Emil Walscheid, Esq., solicitor for the defendant; and it appearing to the Court that by virtue of a certain agreement made by and between the said complainant, the H. J. Jaeger Company, a body corporate, and the defendant, John M. Hannan, on or about the 1st day of May, 1915, he, the said John M. Hannan, became the agent of the complainant to purchase for it certain lands and premises, a description of which is fully set out in the bill of complaint filed herein; that the said complainant informed the said defendant that it wished to buy said lands through him from the Manor Real Estate & Investment Co., in whose name the title to the property then stood, and offered to pay the sum of \$2,000 for the same; and thereafter the said H. J. Jaeger Company informed the said John M. Hannan that it would pay for the purchase of said premises the sum of \$2,250; that thereafter said John M. Hannan informed the said complainant that the lowest price for which the said lands could be purchased from the Manor Real Estate & Investment Company was \$3,600, and believing and relying upon the said defendant's statement, the said complainant purchased the said property for \$3,600 on or about the 10th day of June, 1915; that after the said complainant had informed the said defendant, his agent, of his willingness to pay the Manor Real Estate and Investment Company \$2,250, the said defendant did maneuver and manipulate a sale of the said land from the said Manor Real Estate and Investment Company to a

20

30

40

*Final Decree.*

10 dummy, who thereafter resold said lands to the complainant for \$3,600 as aforesaid, although the defendant only paid to the said Manor Real Estate & Investment Company the sum of \$2,250, and did not inform the said complainant that the property could be purchased for the sum of \$2,250, and thereby made a profit of \$1,350, by such maneuvering and manipulation; all of which was concealed from the complainant contrary to the duty owing from the said defendant to the complainant; and the Court being of the opinion that the complainant is entitled to a decree in favor of the said complainant and against the said defendant for the said sum of \$1,350, and interest thereon from the said 10th day of June, 1915, as prayed for by the bill of complaint, together with costs of suit to be taxed;"

20 "It Is, on this 22nd day of December, 1919, on motion of Weller & Lichtenstein, solicitors for the complainant, ORDERED, ADJUDGED AND DECREED that the said defendant, John M. Hannan, on or before thirty days from the service of a certified copy of this decree on him, pay to the complainant the sum of \$1,350, aforesaid, together with interest thereon at the rate of 6% per annum from the 10th day of June, 1915, together with the costs of this suit to be taxed."

"And it is further ORDERED, ADJUDGED AND DECREED that the complainant may be at liberty to apply to this Court for execution in the event that the said sum is not paid, and for further directions as it may be advised."

30 "And it is further ORDERED, ADJUDGED AND DECREED that the said defendant do further pay to the complainant, or its solicitors, the costs of this suit to be taxed, and also the sum of \$200, which is hereby ADJUDGED AND DECREED to be a reasonable counsel fee for the counsel of said complainant; and that the said complainant do have execution for said costs and counsel fee according to the practice of this Court."

E. R. WALKER,  
C.

40 Respectfully advised:

VIVIAN M. LEWIS.

## New Jersey Court of Errors and Appeals

H. J. JAEGER COMPANY,  
Complainant-Respondent,

vs.

JOHN M. HANNAN,  
Defendant-Appellant.

10

On Bill, etc.  
On Appeal.

### Statement of Facts.

20

This appeal is taken from a decision rendered by Vice Chancellor Lewis, which decision is reported in 108 At., 1. We adopt the concise statement of facts therein given.

The bill was filed by the complainant, a body corporate, against the defendant, to compel him to account for and pay over to the complainant the difference between what he paid for a certain piece of land in Weehawken, New Jersey, and the amount paid to him for it by the complainant.

30

The defendant, John M. Hannan, was a real estate agent. Mr. H. J. Jaeger was the president of H. J. Jaeger Lamp Company, the complainant. The lamp company desired to purchase a tract of land upon which to erect a factory. By appropriate resolutions the president was authorized to negotiate for the purchase of the tract in question. He claims that he arranged with Hannan to treat with the owner of the land and obtain it for him, Hannan to receive his commission on the sale from

40

the owner. Hannan, in turn, arranged with Louis Neuscheler to negotiate with the owner, and told him to collect the brokerage for himself. Hannan then informed Jaeger that the property could not be purchased for the sum of \$2,000, which was the price fixed by Jaeger, and finally the purchase price was inflated to \$3,600, which is the consideration finally passing between Jaeger and Hannan. As the price advanced, however, during the negotiations, Jaeger (who had also agreed to pay Hannan the same commission which the owner was to pay), withdrew his part of the commission and said that Hannan would have to receive his entire compensation from the owner.

During all these negotiations Hannan represented to Jaeger that he was unable to get the property for the various figures mentioned, ranging from \$2,000 to the final figure of \$3,600.

The Manor Real Estate and Trust Company, was the owner of the land. It agreed to sell the land, as a result of these negotiations, for \$2,250. The agreement was first taken in the name of Charles E. Gorrell, a mere dummy.

The agreement was drawn by George Frankenstein, a member of the Bar of this State, acting for Hannan. He testified that later on he learned that Gorrell was married and that there would be difficulty in obtaining his wife's signature to a deed, and so the contract with the Manor Real Estate and Trust Company for the sale of this land was assigned to Charles A. Rubens, to whom the deed for the property was given by the Real Estate Company. The consideration passing to the Real Estate Company was \$2,250. There was considerable delay in closing the transaction, due, doubtless, to the maneuvering thus employed; but finally, on June 10, 1915, title passed to Rubens from the Real Estate Company, and then Rubens

executed the deed to the H. J. Jaeger Company, the consideration for which was \$3,600.

### POINT 1.

#### **The defendant was the agent of the complainant.**

10

Herman J. Jaeger, the president of the complainant company testified (page 16, lines 29 to 38) after stating the circumstances under which he met the defendant, a real estate broker:

“Q. Where is that? A. In Shuster’s real estate office, next door to the cafe; he showed me the map and figured out that there were more feet to this property than I thought there were. He told me then that he could get that property for me, that it was for sale, and he asked me to make an offer; I made him an offer of \$2,000, and he told me that that was rather a small amount of money for commission, whereupon I told him I would give him a commission equal to the one he was getting.” And on page 17, lines 1 to 22 he further testified:

20

“Q. Now, then, you made him an offer of \$2,000? A. Yes, sir.

30

Q. What was the next thing that happened? A. He told me he would see what he could do, and let me know. In about four days or so, I believe, I met him again, and he told me the price that I offered was too small and he could not do anything for me, and would not I give him a better offer, and I then offered \$2,500.00, and I told him in that case if he got it any cheaper than \$2,500, the difference would be divided between us; he said, ‘All right, I will

40

10 let you know in a day or so'; I met him again in a day or two, and he told me if I could not do a little better, and I made an offer of \$2,700.00. I believe, or \$2,800.00 and told him that there was no commission on my part at that time, I think; so he told me he would see me again in a few days, when he told me that the property could not be bought for that price that I offered, and I said, 'What is the matter?' and he said, 'Well, they have made an offer to sell it for \$4,000.00; the best thing you can get it for'; and I told him I would let him know the next day, after some talk.

Q. Did you let him know the next day? A. The next day I met him in my office, I believe, and I offered \$3,600.00, and I told him there was no commission or anything on my part.

20 Q. Did you tell him that was the highest you would go? A. Yes, sir, and no higher, and he said he would let me know the next day, I believe—I believe the next day he would let me know."

Mr. Hannan testified that he was a real estate broker and had been in such business for 22 years (page 82, line 12), that he had had former dealings with Mr. Jaeger as real estate broker (page 30 85, lines 1 to 30) as to his relation with the complainant in the deal here sued on, he testified (page 88, lines 24 to 36):

40 "Q. Now, when you met Mr. Jaeger for the first time on April 3, 1915, tell us what transpired between you. A. Mr. Jaeger asked me if I had a factory site, that he wanted to build a new factory, because he could not use the property that he had belonging to himself situated on the Hackensack Plank Road in the rear of a house that he had facing Park

Avenue—the property that Mr. Jaeger owned ran from Park Avenue back to the Hackensack plank road, and he was going to put the property on the back of the property, but he told me it was too expensive, and he wanted to get another site. I told him that I thought I had something that would probably interest him, and I brought him into my office.”

10

It is apparent that there is but little dispute between the parties as to the controlling facts involved.

The facts then as testified to by both the complainant and defendant present a buyer conferring with a real estate agent as to the purchase of real estate.

After this conference, March 23, 1915, the defendant using L. Neuscheler's name (the reason for using Neuscheler's name is explained by defendant on page 100, lines 20 to 25) wrote the manager of the owner of the property Mr. Von Moschzisker. A copy of the letter is set out on page 129.

20

That letter clearly shows that it was written after a conference with Mr. Jaeger and pursuant to his employment as broker by the complainant. The letter recites in part, “I am authorized by my client to offer \$2,000 cash, providing there is no restriction against the property” (page 16, line 34) Mr. Jaeger had offered \$2,000 for the property and as the letter specified that the property should have no restrictions, it is evident that the proposed purchaser wanted the property for a factory or a like purpose. Just as Jaeger had informed Hannan, the purpose of purchasing was to erect a factory (page 101, line 2), and the letter clearly contradicts the claim of the defendant that the letter was written prior to the conference between Jaeger and himself and for the purpose of purchasing the property upon which to build dwellings.

30

40

Property to be used for dwellings would be enhanced in value by restrictions, but in the letter, the provision was that there were to be no restrictions.

10 The reason given by the defendant for purchasing this property in the name of a dummy which he says was owing to trouble between him and the manager of the owner, is too shallow and absurd to need comment. But the manager when called, testified that there had been no trouble (page 114, line 20).

No—the desperate situation required heroic (?) relief and he was attempting to give it by the aid of an “Air pump.”

20 “There is no particular mode required in which an agency must be created, and it is immaterial what terms are used and by what name the transaction is called, provided an appointment as agent results; and the relation may be formed either by express contract between the parties, or by a contract implied in fact” 2 Corpus Juris, page 434.

30 In *Lindley vs. Keim*, 54 N. J. Eq., 418, Justice Magie, held that an agent’s authority could be established by proof of circumstances from which such agency may be reasonably inferred as well as by proof that authority was expressly conferred.

The defendant contends that there was no agency because the principal *made an offer for the property* to the defendant.

The defendant, when the offer was made, was not the owner. There were several talks as to the commission that the defendant was to receive (page 16 line 38; page 17 line 18; page 17 line 29).

40 We know of no custom or practice that an owner charges a commission for selling his own land.

Then what was the relation between the defendant and the complainant? It must have been that of principal and agent.

The defendant says in his brief that a broker is primarily the agent of the party who first employs him. We find no fault with this principle of law. We feel confident that the record demonstrates that the defendant was first employed by the complainant. The defendant saw a "For sale" sign on the property and concluded after Jaeger had talked with him that this property was suitable. There is not a single line of evidence that prior to the talk he had with Jaeger he was the agent of the owner of the property in any sense. Like most broker transactions they learn what particular property a customer wants and they seek to get such property. Just what occurred here. 10

Defendant suggests in his brief a novel proposition, that his employment by Jaeger as agent was dishonest, and, therefore, being dishonest, no legal agency was established; and he cites the often cited case of Illingworth vs. De Mott, 59 N. J. Eq., 12. To plead the weakness of one's own client as a defense suggests how desperate must be their ground. That defendant was guilty of gross deception to his principal the record fully shows, but we do not think that a dual agency when known constitutes dishonesty. 20 30

Defendant's brief states that "Jaeger knowing or believing Hannan to be the agent of the owner, made an offer through him, and then tried to bribe him by offering a double commission." This statement is wholly unjustified by the record and contrary to every circumstance connected with the transaction.

The defendant in his brief wishes to stress the point that he was the agent of the owner of the 40

land. But where is the evidence that any such relation existed? Surely the letter written by defendant through Neuscheler (page 129) does not suggest any such relation. If the defendant was the agent of the Railroad Company in the sale of the land would it have been necessary to use the name of a dummy in writing to his principal?

10 *If he was the agent of the owner, would he have used the expressions contained in that letter.*

"Union Hill, N. J.,  
March 23, 1915.

Mr. F. A. VONMOSCHZISKER,  
General Real Estate Mgr., Penn. R. R.,  
Pennsylvania Station, N. Y.

20 Dear sir:

On this date I telephoned to your office and inquired about plot B block 35 Assessment Map, Weehawken, for information as to whether the property is for sale and was informed that same was in the market at a price of \$3000.00. This price I consider too high. I am authorized by my client to offer \$2000.00 cash, providing there is no restrictions against the property only the easement of the Pennsylvania Tunnel. The commission that I will expect in case of sale will be five per cent. In making your reply, I would appreciate a sketch of property showing exact measurements.

30

A prompt reply will be appreciated by

Very truly yours,

L. NEUSCHELER."

40

The defendant admits he wrote that letter and why he used Mr. Neuscheler's name (page 100 lines 20 to 25).

Defendant also insists "That the complainant cannot take advantage of any breach of trust on the part of Hannan," because the president of the corporation-complainant, did not tell the defendant that he was buying the property for the corporation and that his silence in not telling for whom he was buying constituted a fraud on the defendant. 10

Stated then, it is this: A corporation which acts through another, as it necessarily must, is to be denied relief if its servant fails to inform a third person with whom it is dealing, that the servant is so acting, and a failure to do so permits the corporation to be taken advantage of (using defendant's language as stated in brief) "By any breach of trust on the part of Hannan." 20

Such a contention offends every sense of right and equity. But we find fault with the basis for such an argument in that it is contrary to the facts as revealed by the evidence.

But admitting the facts to be, as implied by defendant, where is there any fraud in a corporation president's failure to tell an agent that he wishes the property not for himself but for the corporation? Where is there any injury possible? 30

Defendant argues at some length in his brief that as he was to get a commission from the owner of the land that it relieved him of any obligation of fidelity to the complainant. But the payment of commission does not effect the relationship one iota. We generally find the commission being paid by the principal. But payment of the commission by the principal before a fiduciary relation is created is neither necessary nor essential. 40

Peculiarly is this true where as here the agent after learning that the principal wishes to buy property, buys that property himself through an admitted third person and then sells it to his principal at a sum greatly in excess of what he paid for it.

10 The learned Vice Chancellor who tried this case below, quite properly said in his decision (page 134 lines 28 to 35) :

20 "I think there is ample evidence in this case, direct and positive, with strong corroborating facts and atmosphere, to establish the fact that Hannan, through his relations with Jaeger, was acting as the agent for the complainant, and that while so acting in negotiating the purchase of the land in question, manouvered and manipulated a sale from the owner, to a dummy, and then resold to his principal at a profit."

## POINT 2.

### **Real estate agent must account to principal for secret profits.**

30 We have, we believe, shown elsewhere conclusively that the defendant was the agent of the complainant in the purchase of the land. Having established such relation, the cases are harmonious in holding the agent liable for all secret profits.

In Porter vs. Woodruff, 36 N. J. Eq., 174, an agent was authorized to sell certain stock at a stated sum. The agent bought the stock in his wife's name. He did not tell the principal that he intended to purchase the stock for himself. The  
40 defendant's wife had no beneficial interest in the

transaction; she paid no part of the purchase money and received no part of the proceeds of sale.

Vice Chancellor Van Fleet said at pages 178, 179 and 180:

“I am throughly persuaded that he concealed from her the fact that he intended to buy for the purpose of inducing her to sell, believing that if he told her he intended to become the purchaser himself, she would at once refuse to sell.” Ibid., page 178. 10

“The legal principle to be applied in deciding whether the defendant can successfully resist the complainant’s claim, is too firmly established to warrant even the most astute and courageous counsel in attempting to overthrow it or to narrow its scope. The general interests of justice and the safety of those who are compelled to repose confidence in others alike demand that the courts shall always inflexibly maintain that great and salutary rule which declares that an agent employed to sell cannot make himself the purchaser, nor, if employed to purchase, can he be himself the seller. The moment he ceases to be the representative of his employer and places himself in a position towards his principal where his interests may come in conflict with those of his principal, no matter how fair his conduct may be in the particular transaction, that moment he ceases to be that which his service requires and his duty to his principal demands. He is no longer an agent but an umpire; he ceases to be the champion of one of the contestants in the game of bargain, and sets himself up as a judge to decide, between his principal and himself, what is just and fair. The reason of the rule is apparent; ow- 20 30 40

ing to the selfishness and greed of our nature, there must, in the great mass of the transactions of mankind, be a strong and almost ineradicable antagonism between the interests of the seller and the buyer, and universal experience has shown that the average man will not, where his interests are brought in conflict with those of his employer, look upon his employer's interests as more important and entitled to more protection than his own."

10

"In such cases the courts do not stop to inquire whether an agent has obtained an advantage or not, or whether his conduct has been fraudulent or not, when the fact is established that he has attempted to assume two distinct and opposite characters in the same transaction, in one of which he acted for himself and in the other pretended to act for another person, and to have secured for each the same measure of advantage that would have been obtained if each had been represented by a disinterested and loyal representative, they do not pause to speculate concerning the merits of the transaction, whether the agent has been able so far to curb his natural greed as to take no advantage, but they at once pronounce the transaction void because it is against public policy. The salutary object of the principle is not to compel restitution in case fraud has been committed or an unjust advantage has been gained, but to elevate the agent to a position where he cannot be tempted to betray his principal."

20

30

Ibid, pages 179-180.

"The trustee"—and here, I think, it should be said that the persons referred to are not

40

simply those who are strictly entitled to be called trustees, but the term is used in its most comprehensive sense, and *intended to embrace all persons who act in a representative capacity, whether, according to exact nomenclature, they are styled agents, factors, executors, administrators or trustees*—"the trustee is not prevented from bidding for property which he himself sells, on the ground simply of a supposition of actual fraud, but because the law has established, *as an inflexible rule, applicable to every emergency*, that he shall not place himself in a situation in which he will be tempted to take advantage of his *cestui que trust*. This is a wise public regulation, intended to protect a species of property which otherwise would be constantly exposed to peculiar hazard. The trustee, therefore, must submit to this regulation, and if he does an act in violation of it, no matter how pure his intention may be, such act is voidable at the instance of the person whom he represents."

10

20

Ibid, pages 180-181.

In *Loundenslager vs. Woodbury H. L. Co.*, 58 N. J. Eq., 556, where an agent was employed to purchase certain lands at an agreed commission, the principal and agent with others thereafter organized a corporation to buy the same lands from the principal, and it was held to be the duty of the agent to impart to the corporation his agreement for compensation as well as the prices named in the options, and that the agent was liable to the corporation for all profits made by him as agent where he did not do so.

30

40

**POINT 3.**

**The decree properly found that defendant made a secret profit of \$1350.**

10 Defendant complains that the expense of his attempt to cover up his wrongful conduct should be deducted. We think not.

There was no necessity for the engagement of Attorney Frankenstein only as it was required in a scheme to defraud his principal. He was nothing but a tool used by a faithless agent in carrying out his forbidden conduct.

We are not familiar with any principle, and learned counsel has cited none, which permits a wrong-doer to charge, upon discovery, the expense of his wrongful acts.

20

**We respectfully submit that the decree below should be affirmed.**

Respectfully submitted,

WELLER & LICHTENSTEIN,

Solicitors for and of  
Counsel with Complainant.

30

31118

40

## New Jersey Court of Errors and Appeals

*Between*

H. J. JAEGER COMPANY,  
*Complainant-Respondent,*

*and*

JOHN M. HANNAN,  
*Defendant-Appellant.*

*On Appeal  
from Chancery.*

### BRIEF FOR DEFENDANT-APPELLANT.

#### Statement.

The H. J. Jaeger Company, complainant below, filed its bill, alleging that, "on or about the first day of April, 1915" (p. 6. f. 10) it was desirous of purchasing the parcel of land described in said bill; that John M. Hannan, defendant below, "was in the business of and holding himself out as a real estate agent" (p. 7, f. 20); that complainant "authorized and empowered Herman J. Jaeger, one of its officers, to act for and in its behalf in negotiating for the purchase of said land, and to make a contract for the purchase thereof *in his own name* for the use and benefit of the company, the title to said lands, when purchased, to be taken in its name" (p. 7, f. 20); that the said Herman J. Jaeger, on or about said *first day of April, 1915*, "employed said John M. Hannan to act for it and in its behalf as its agent and representative in negotiating for the purchase of said real estate for it at the lowest price at which the same would be obtained; the said John M. Hannan then and there agreeing to use his best efforts to obtain the same at the lowest price possible" for complainant (p. 7, f. 30); that thereafter Hannan said the lands belonged to Charles A. Rubens and could not be purchased for less than \$3,600; that complainant purchased said land at \$3,600, and that defendant *made a secret profit*.

The defendant by his answer denied that he was the agent of the complainant and that he had told complainant that the lands belonged to Charles A. Rubens.

The hearing of the cause resulted in a decree in favor of the complainant for \$1,350 and interest from June 10th, 1915, from which decree this appeal is taken.

## POINT I.

The defendant was not engaged by complainant to procure for it the lands described in the bill of complaint nor is there any relation between complainant and defendant upon which the complaint can be based.

The equity upon which complainant bases his claim to a decree in this case is the right of a principal to compel his agent to account for profits secretly derived by the agent in the course of the transaction of the business of the principal. It therefore becomes essential to complainant's case that the defendant *really was* the agent of the complainant in the transaction under review.

The complainant in its bill charges (p. 7, ff. 20-40) that:

“On or about the *first day of April, 1915*, your orator, *through* the said Herman J. Jaeger, *employed* said John M. Hannan *to act for it and in its behalf*, as *its agent and representative to negotiate* for the purchase of said real estate *for it*, at the *lowest price* at which it could be obtained; the said John M. Hannan then and there *agreeing* to use his best efforts to obtain the same *at the lowest price possible* for your orator.”

The learned Vice-Chancellor found for the complainant upon the foregoing allegation and it is the earnest contention of the defendant that in this there was error.

The evidence—all of the evidence—upon which this contract of employment is predicated, set out in narrative form, is as follows:

The property involved in the suit, prior to the sale of the same to complainant, belonged to The Manor Real Estate and Trust Company, the real estate holding company of the Pennsylvania Railroad Company. Prior to such sale *it had been on the market for a number of years* and there were signs on the land stating that the property was for sale by F. A. Von Moschzisker, Real Estate Agent, Pennsylvania Station, New York City (p. 114).

Jaeger, the president of complainant, says:

I knew of this property through a man named Rock *before* defendant call it to my attention (p. 16, f. 10) and *believed it to be too small for my purposes* (p. 16, f. 10). I, at that time, believed (p. 16, f. 10), in fact, *knew* it belonged to the Pennsylvania Railroad Company (p. 30, f. 20). I met the defendant *by accident* (p. 16, f. 10) in a cafe; and *defendant* called *my* attention to the fact that *he* had some property; that *he* knew a property, which *he* told me would be large enough, and *took me* next

door into his real estate office *to show me* the map (p. 16, f. 20). *That was about the middle of March, 1915.* He showed me the map and figured out that there were more feet to this property than I thought there were, then told me that he could get that property for me, that it was for sale, and he asked me to make an offer, and I made him (Hannan) an offer of \$2,000, and Hannan told me that *that* (i. e., the \$2,000) was rather a small amount of money for commission. Whereupon I told him I would give him a commission equal to the one he was getting (p. 16, f. 30). He told me he was getting a commission from the Pennsylvania Railroad Company for selling the property (p. 16, f. 40). When I made him the offer of \$2,000 he told me he would see what he could do and let me know. In about four days or so, I believe, I met him again, and he told me the price that I offered was too small, and that he could not do anything for me, and would I not give him a better offer, and I then offered \$2,500, and I told him in that case, if he got it any cheaper than \$2,500, the difference would be divided between us; he said, "All right, I will let you know in a day or so"; I met him again in a day or so and he told me, if I could not do a little better, and I made him an offer of \$2,700, I believe, or \$2,800, and told him that there was no commission on my part at that time, I think; so he told me he would see me again in a few days, when he told me that the property could not be bought for that price that I offered and I said, "What is the matter?" and he said, "Well, they have made an offer to sell it for \$4,000; the best thing you can get it for," and I told him I would let him know the next day. The next day I offered \$3,600, and I told him that there was no commission or anything on my part and that that was the highest I would go. The next day I found a card in my office (p. 17) in Mr. Hannan's handwriting which read "Everything O. K. Will see you Tuesday night. Hannan." I saw him on Tuesday night and he told me the property is mine and that he would make out a contract. I referred him to Mr. Burke, who was my attorney, for that part. I signed the contract to take the property in Mr. Burke's office and had a paper made out to protect my \$360 deposit (Exhibit C. 5), a paper signed by defendant Hannan and his attorney Frankenstein, guaranteeing the return of the deposit if title should fail. (This paper has not been printed because it was not furnished to defendant by complainant, although requested.) (p. 18.) At all times, I knew Hannan was a real estate agent (p. 21, f. 40), and that he was working for commissions the same

as every other real estate man does (p. 22, ff. 1-10). I finally agreed with Mr. Hannan to pay \$3,600 for this property, and that Mr. Hannan was to receive no commission from me, I knowing or believing that he was receiving commissions from the other side (p. 25, ff. 20-40). I knew, at the time when the balance (of purchase price) was paid, that Mr. Hannan was to get a commission from the Pennsylvania Railroad, the same as any broker would that acts for you, although he had not said that he was going to get a commission from the other side (p. 26, ff. 1-20). When he showed me the map, I told him that the property was large enough for the factory (p. 28, f. 40), then he asked me to make an offer on it (p. 29, f. 1). He wanted me to make an offer, and I made an offer of \$2,000 and he said that he would see what he could do for me, and he told me that the commissions on \$2,000 was rather small. He did not tell me what his commission was to be (p. 29, f. 40). I told him I would give him the same commission that he got from the other side, the difference (p. 30, f. 1).

I knew the property belonged to the Pennsylvania Railroad Company, but I had no transactions with them (p. 30, f. 20). After the \$2,000 offer he called on me again and told me *could I not do any better than \$2,000*. He wanted me to make another offer, so I made another offer of \$2,500. I offered \$2,500, and if he got it any cheaper than that, that I would split the difference between what he gets it for less money than \$2,500. There was no mention about commissions (p. 20, f. 40). I would go him fifty-fifty; if \$2,400 was paid for the property, naturally there would be \$100 to be split up between us. I did this because I was trying to get the property for \$2,000. I said, "I offer you \$2,500" (p. 31, ff. 10-18). Then he came back again and said, "I cannot get that property for that price, cannot you make a better offer?" I made another offer of \$2,700 or \$2,800, and said if I buy it at this offer, I will pay no commissions (p. 31, f. 30.)

Assuming that the foregoing testimony is all true, it is my serious contention that it cannot support a finding that defendant was the agent of complainant.

The complainant comes into court charging that the defendant was its agent to purchase the property at the lowest price possible; that defendant fraudulently made a secret profit and thereby violated his trust. The complainant, if it succeeds at all, must succeed upon this theory of the case, because it is the only theory upon which the suit is brought and because it is the only

theory upon which equity will take cognizance of its claim and grant relief by giving to it *the profits* made in the transaction.

*Illingsworth v. DeMott*, 59 N. J. E 8; aff'd 61 N. J. E. 672.

If Hannan was *not* the agent of complainant and made a secret profit, complainant cannot complain, unless Hannan made false representations which induced complainant to buy, and in that event complainant has an ample remedy for the deceit by its action at law and equity will not ordinarily grant relief, but if it does accept jurisdiction because of the fraud, the recovery must be for unliquidated damages, and such damages would be assessed upon a theory entirely different from that followed in this case.

This is *not* the ordinary case where one seeking real estate goes to an expert in that line and makes an *express* agreement, hiring the services of the expert for compensation fixed and agreed upon and then allows that expert as agent to buy at the best price. This is *not* the case where the principal trusts the agent to fix the price, buys at the price fixed by the agent and is deceived by the agent. Jaeger did not seek out Hannan to employ him to purchase this or any other property. He met him by accident in a cafe. Jaeger had then already seen the property in question; he knew it belonged to Pennsylvania R. R. Co.; it had signs on it telling him so; it had been shown to him by another agent named Rock, and he, Jaeger, thought it was too small. Hannan showed him it was large enough and asked him, Jaeger, to make an offer for it. Why should Hannan ask Jaeger to make him an offer for this property if Hannan then intended to act as agent for Jaeger in purchasing the site? Why should Jaeger respond by making Hannan an offer of \$2,000.00, if he, Jaeger, intended that Hannan should act as his agent in purchasing the property? Why did Jaeger not then and there say to Hannan, "No, I will not make you an offer for the property, but if you will buy this property for me as my agent at the best price obtainable," or, "if you will buy this property for me as my agent for \$2,000.00, I will pay you a commission of 5%," or "I will pay you a commission." If he had done this, and Hannan had agreed, the question of agency would have been settled, but instead he meets Hannan's request for an offer, by making an offer to pay \$2,000.00, and when Hannan tells him that the offer of \$2,000.00 is not enough to cover his commission, Jaeger says, "I will give you a commission as big as you are getting from the Pennsylvania Railroad Company" (p. 16, ff. 30-40). When

Jaeger first met Hannan he *knew* that the property belonged to the Pennsylvania Railroad Company (p. 30, f. 20), and he also *knew*, if he is to be believed, *that Hannan represented and was the agent of the Pennsylvania Railroad, in asking him, Jaeger, to make an offer for the property* (p. 16, f. 40). Jaeger never dealt with the Pennsylvania Railroad directly in connection with this property. Giving full effect to the testimony of Jaeger as to the first meeting between Hannan and himself, Hannan was the agent of the Pennsylvania Railroad.

A broker is primarily the agent of the party who *first* employs him.

19 Cyc. 191;

*Illingsworth v. DeMott*, 59 N. J. E. 8, p. 12.

And the subsequent *dishonest* employment for the purchaser could not be either a legal or equitable basis for declaring the prior legal agency for the seller revoked, and the subsequent dishonest agency established as the legal agency.

*Illingsworth v. DeMott*, 59 N. J. E. 8, p. 12.

According to Jaeger, the fact then was that Hannan, as the agent of the owner of the property, for the purpose of its sale, approached Jaeger, intent upon selling the land, and *requested* Jaeger to make to him, *as agent of the land owner*, an offer, and Jaeger, *knowing or believing Hannan to be the agent of the owner*, for the purpose of such sale, *made an offer* to the owner through him, and then tried to *bribe* the owner's agent into becoming *his confederate* in a conspiracy to obtain the property at *his own price*, by telling him, the agent, that he will *double the commission which the agent is to get from the owner in event of sale*.

Jaeger is supposed to know, and undoubtedly did know, that it was wrong for him to offer to the agent of the Pennsylvania Railroad, unbeknown to his principal, *an additional commission* to induce that agent to induce his principal to part with the property for \$2,000.00.

Under the circumstances set out in the testimony of Jaeger, Hannan *could not* take a commission from Jaeger.

*Kuntz v. Tonncle*, 80 N. J. E. 373.

And Jaeger in making the proposition to double Hannan's commission was as guilty of wrongdoing as Hannan would have been had he accepted.

*Kuntz v. Tonnele*, 80 N. J. E. 373;

*Sternberger v. Young*, 73 N. J. E. 586.

But Hannan did *not* then agree to act for Jaeger. If we believe Jaeger, he said he would see *what he could do*, and came back and asked Jaeger, "to make him a better offer" (p. 17, f. 10), and Jaeger, *still believing him the agent of the Pennsylvania Railroad*, said, "I offer you \$2,500.00, and if you *get it any cheaper* than \$2,500.00, the difference between \$2,500.00 and the price paid *will be divided between us.*"

If there was any doubt about what Jaeger meant when he offered to double Hannan's commission, that doubt is dispelled when he offered \$2,500.00, and sent Hannan out *to get the property* from his principal at a cheaper price, and offered to split the difference. He was plainly tampering with the agent of the seller. But Hannan again came back and said, "Make me a better offer," and Jaeger, still believing he was dealing with the agent of the Pennsylvania Railroad, said: "I make you an offer of \$2,700.00 (or \$2,800.00), *but there will be no commission on my part,*" and Hannan, still not satisfied, again came back, and Jaeger, *still believing he was dealing with the agent of the Pennsylvania Railroad*, said: "I will offer you \$3,600.00, *but there is no commission or anything on my part* (p. 17), and this last offer, according to Jaeger, was accepted by Hannan, when he wrote, "Everything O. K. Will see you Tuesday night. Hannan" (p. 18, f. 10). Jaeger says: "*I finally agreed with Mr. Hannan to pay \$3,600.00 for this property, Mr. Hannan to receive no commission from me, I knowing or believing that he was receiving commission from the other side*" (p. 25, f. 30).

It is the insistent of the defendant that the foregoing testimony of Jaeger, as to the agreement finally arrived at, establishes that Hannan was *not* engaged by complainant or by Jaeger, its president, as its agent, to *procure* or buy the property in question at the lowest price possible, or at any other price over which Hannan had control, and further that it establishes the fact that Hannan did not stand in *any* fiduciary relation to the complainant in purchasing this property.

When Jaeger finally said to Hannan, "I will buy this property for \$3,600.00, but I will pay you no commissions, you must get your commissions from the other side," *he* was fixing the price, and was acting *adversely* to Hannan. By thus fixing the price, he destroyed all discretionary powers of Hannan in the premises. He took from Hannan all opportunity of making a secret profit. He made an ordinary messenger out of Hannan to convey to the owner the price *he* was willing to pay for the

property, independent of who obtained the money. He knew that Hannan was in the real estate business and that he was earning his living out of real estate transactions. He did not *request* Hannan to act as his agent without compensation, and had no right to expect that Hannan would render gratuitous services for him, nor did he believe that Hannan was acting without compensation.

When he told Hannan that he would buy the property for \$3,600, but that there would be no commission for Hannan at that price, *he*, Jaeger, knowing or believing that Hannan was receiving commission from the other side, *discharged* Hannan from any relation of agency which existed between them, or which he thought existed between them. In doing so he was acting adversely to Hannan, in doing so he *warned* Hannan that he was then and there *cancelling any arrangements which had theretofore existed between them*, that he was now paying what *he* thought the property was worth and that Hannan would have to look elsewhere for his compensation in the premises, and Hannan, according to Jaeger, *agreed to deal with him upon the terms thus fixed by Jaeger*, and sold him the property upon the terms thus fixed.

If there were any illegal or secret profits under the arrangement as finally made, according to Jaeger's version, they do not belong to the complainant, but to the Pennsylvania Railroad, or to be exact, to its holding company, the Manor Real Estate and Trust Company.

The case is *not* one where an agent having been *first* employed by the purchaser, makes secret profits under a subsequent agreement with the seller or his broker. *In such a case*, all the illicit profits which he makes while under the first and *legal* employment, in the course of that employment, belong to the employer, under the rule settled both at law and in equity.

*Illingsworth v. DeMott*, 59 N. J. E. 8, p. 13.

If we accept Jaeger's story as true, then Jaeger *knew* throughout the negotiations that Hannan, so far from being his agent, was interested adversely to him, and controlled, or claimed to control, the price of the property, *as seller or for the seller*. He was understood to be the broker of the seller to be paid by the seller. Complainant, through Jaeger, during the negotiations did commission Hannan to communicate to the seller his offers of purchase, but this must, under the evidence, be considered, *not as an original employment* creating Hannan complainant's agent to pur-

chase, but as the *reply* or *answer* made by complainant through Hannan upon the seller's request for an offer on the property.

*Illingsworth v. DeMott*, 59 N. J. E. 8, p. 12; affirmed 61 N. J. E. 672.

Again, if complainant was willing to pay \$3,600.00 for this property without paying any commission, *knowing or believing that Hannan was being compensated by the other side*, how does the profit *injure* the complainant? He *expected* Hannan to make money out of the transaction and could have inquired of him how much he was getting, but he did not see fit to do so. *He was not interested.*

Again, if Hannan had been the agent of the Pennsylvania Railroad and had made his profit as the agent of the railroad company could complainant complain of the amount? Certainly not, because that is exactly what complainant expected and thought was happening, and if that is true, what difference does it make to complainant how defendant made his profit so long as he was not the agent of the complainant in the transaction.

A situation identical to the one before the Court was passed upon in the case of *Illingsworth v. DeMott*, 59, N. J. E. 8, affirmed on opinion below in 61 N. J. E. 672. In that case defendant, DeMott, controlled the price of certain stock to complainant, Illingsworth. He had sold some of the same stock to Illingsworth through the defendant Davett, who had in that transaction been the agent of the defendant DeMott. After this first transaction, Illingsworth, who wanted more of the stock, employed Davett to buy under an agreement for compensation for his services. Before the purchase involved in the suit, was, however, made, Davett, at Illingsworth's request, surrendered the agreement for compensation, and Illingsworth *himself fixed the price* at which he would buy the stock and gave Davett to understand that Davett was to receive all his compensation from the seller. Vice-Chancellor Emery, in speaking to this situation, said (p. 13):

"In the third place, I think that while complainant, in concluding the purchase, relied on Davett's assertion that DeMott, or the person for whom DeMott acted as selling broker, ultimately controlled the price, and was misled by Davett's representations and actions, as to Davett himself being the person who controlled the price, yet the entire evidence shows, as I conclude, that even if there was an agency to some extent assumed by Davett for the complainant in the transaction, the purchase as between complainant and Davett was upon the basis *that complainant was not expected to pay Davett any commission*

*or compensation for his services, but that Davett was to be compensated by DeMott. Illingsworth dealt for himself in relation to fixing the price, and himself received from Davett as part of the consideration to him on the purchase, the release of an option Davett held against him, which both parties then considered worth \$2,500.00. In the absence of sufficient explanation, the bargaining as to price by complainant, on the basis of Davett's giving him something, would seem to be conclusive that the relation of the parties at that time were adverse and not confidential. Unless Davett was to receive something from DeMott to compensate him for this surrender, there would seem to be no adequate reason or explanation of the surrender. And in reference to this surrender, the deception or fraud, if any was practiced on complainant, was in Davett's misleading him as to the amount he was to receive from DeMott as a compensation, and as to Davett's own control over the price, by his statements and conduct before the bargain was concluded, and by Davett's application to complainant subsequent to the bargain (which, when carried out, was worth over \$2,000.00 to him), to give him \$500 or \$1,000 for getting complainant the chance to purchase. If this be the correct view of the evidence, and complainant was not to compensate Davett for any services, but Davett was to receive his compensation from the other side, then the rule entitling the principal to recover the compensation so received, as being secret or illicit profits, does not apply, and the fact that the compensation to Davett was greater than complainant expected, does not make any part of the compensation complainant's money."*

And in the case at bar, Hannan also was required and did give complainant something by way of consideration for signing the contract to purchase, he gave a written guarantee protecting the deposit.

After termination of an agency for one person, a broker may act for another adversely interested without breach of trust to the former.

And, of course, he may act for himself under such circumstances.

*Richie v. Judd*, 137 Ill. 453; 27 N. J. E. 682.

And the agent is not liable for secret profits where the principal has expressly agreed to pay a certain price for the property, regardless of what it costs the agent.

2. C. J. 700, citing

*Anderson v. Weiser*, 24 Ia. 428.

The general rule as to loyalty does not apply to cases where no relation of trust or confidence exists between the parties.

2. C. J. 692.

I have, in dealing with this point, up to the present, treated the case as if complainant had fully established the facts upon which it relies to establish the agency claimed to exist between it and defendant Hannan, and have demurred to the sufficiency of that evidence to establish the agency. I do not wish to be understood, however, as conceding that complainant has established the facts it claims. The learned Vice-Chancellor who heard the case correctly held that "the burden of establishing the fiduciary relationship is upon the complainant and then found that complainant had sustained that burden" (p. 134, ff. 20-40). This Court, of course, has not had the benefit of seeing and hearing the witnesses and will not under ordinary circumstances reverse on the mere weight of evidence, but I do submit that the facts in this case will bear the full scrutiny of the Appellate Court, and that such scrutiny must lead to a reversal even though the demurrer to evidence heretofore argued is not well taken and for the following reasons:

There is no corroboration of the facts sworn to by Jaeger to establish the fiduciary relation. His testimony stands alone and his story is not only denied by the story of the defendant, but is met by an affirmative defense on the part of the defendant, which is corroborated by facts and circumstances.

Paragraphs 3 and 4 of the bill of complaint (p. 7, f. 20) alleges:

"At the time aforesaid (April 1, 1915) your orator authorized and empowered Herman J. Jaeger, one of its officers, to act for and in its behalf in negotiating for the purchase of said lands and to make a contract for the purchase thereof *in his own name*, for the use and benefit of the company; the title to the said lands, *when purchased*, to be taken *in its name*.

Thereupon and on or about said 1st day of April, 1915, your orator, through the said Herman J. Jaeger, employed said John M. Hannan, *to act for it and in its behalf as its agent* and representative, in negotiating for the purchase of said real estate for it at the lowest price at which the same could be obtained; the said John M. Hannan then and there agreeing to use his best efforts to obtain the same at the lowest price possible for your orator."

Herman J. Jaeger thereafter dealt with the defendant, but whatever dealings were had between these individuals the weight of the evidence and the probabilities are that Herman J. Jaeger did not disclose to the defendant *that he was acting as the agent of the complainant*, but allowed him and led him to believe that he, Jaeger, was *acting for himself*.

Hannan says that in his dealings with Jaeger, Jaeger did not tell him that he was buying the property for the corporation (p. 87, f. 10; p. 103, f. 10). He, Hannan, was doing business with Jaeger, and the contract was made out to Jaeger personally (Ex. W. A. 3; p. 130, f. 20). He, Hannan, did not know of the existence of the H. J. Jaeger Company up to the time when the deed was delivered (p. 103, f. 10).

And Jaeger, *after fencing with counsel for defendant*, for (p. 21, f. 40) a long time (see p. 26, f. 20; p. 28, fol. 20) finally said (p. 28, f. 20) that he don't believe he ever told Hannan *before he made* out the contract that he was buying the property for the Jaeger Company (p. 28, f. 20). And the contract was made out in Jaeger's name (Ex. W. A. 3; pp. 130-131).

It is evident from paragraph 3 of the bill of complaint that complainant in seeking property considered that it could strike a much more advantageous bargain if it *was not known* that it was attempting to buy. It intended to assume the role of a *secret* and *undisclosed* principal and therefore instructed Herman J. Jaeger to buy in his own name. And it is also evident that Herman J. Jaeger, in dealing with defendant, desired and led him to believe that he, Hannan, was dealing with Jaeger *personally*. There is no other way in which the taking of the contract in Jaeger's name and his failure to disclose all the facts to Hannan can be explained. Is not this plenary evidence of the absence of that fiduciary relation which complainant must establish?

Assuming, for the moment, that Hannan did become the agent of Herman J. Jaeger, the individual, for the purchase of this land, and thereby entered into a fiduciary relation with that *individual*, that he broke faith with that individual and by taking the *equitable* title to these lands in his dummy's name on April 14, 1915, became at that time constructive trustee of that title for Herman J. Jaeger, at the price at which Hannan bought, can a purchaser *from* Herman J. Jaeger, who in the meantime has acquired the equitable title from Hannan, his constructive trustee, at an illegally enhanced price, enforce for *its own benefit* the trust existing between these two parties, by collecting from the

defendant the illegal profits which he made out of the transaction? We contend not. There is no contract of agency between the parties, and without privity of contract there can be no *fiduciary relation*—at least not in a case like the one at bar.

“An undisclosed principal cannot claim the benefits of a contract:

- A. Where the third person has clearly expressed his intention to deal with the agent as principal;
- B. Where he has dealt with the agent on terms of *trust and confidence*;
- C. The nature of the contract is *fiduciary*.”

“The intention to deal *only* with the agent may be found in the recitals of a written contract, or in the negotiations attending an oral one. The intention may be further inferred, where it is *fiduciary*, or for *personal* skill or service.”

*Pollock on Contracts*, 6th Ed. 97;

*Eggleston v. Boardman*, 37 Mich. 14;

*Kelly v. Thuey*, 102 Mo. 522.

The defendant was in the real estate business. He made his living by buying and selling real estate either directly as principal or by earning commissions as agent. Any services rendered by him as agent in buying land required *personal service and personal skill*. He alone had the right to fix a value upon those services, and in fixing the value of them as agent to principal, he had a right to *know his principal* so that he might judge of his principal's character, credit and substance and might judge of the value of his personal skill and services to that principal in fixing a price upon those services. Herman J. Jaeger, if his story is to be believed, finally induced the defendant to render to *him* his personal skill and services without expectancy of reward from *him*, Jaeger. We have no right to assume that if Jaeger had disclosed to Hannan that Jaeger himself *was only an agent* acting for an undisclosed principal that Hannan would have agreed to serve that undisclosed principal upon the same terms, *or at all*.

The failure of Jaeger to disclose to Hannan that the H. J. Jaeger Company was his principal *constituted a fraud* upon Hannan, if he became an agent in the transaction.

*Lomerson v. Johnston*, 47 N. J. E. 312.

If either party to a transaction conceals some facts which are *material*, which are *within his own knowledge*, and which it is his duty to disclose, he is guilty of actual fraud.

Pom. Eq. Sect. 90, 3rd Ed.;

*Horton v. Handrill*, 41 Eq. 57, p. 62.

A duty to disclose exists when it expressly appears that either *one or each* of the parties, in entering into the contract or other transaction, expressly *reposes a trust and confidence in the other*, or else from the circumstances, or nature of the case of their dealings, or their position towards each other, such a trust or confidence is implied.

Pom Eq. Sect. 902, 3rd Ed.

*Kean v. James*, 39 Eq. 527, p. 541.

The effect of the concealment upon the transaction does not depend upon whether the result was injurious to Hannan. The contract is affected by the misconduct of Jaeger, the agent, from *consideration of public policy rather than of injury*.

*Young v. Hughes*, 32 Eq. 372, p. 384.

If Jaeger hired Hannan as the agent of the complainant, it was his duty to disclose the principal's name.

A duty to disclose exists in all those instances in which, wholly independent of the form, nature or object of the contract or other transaction, there is a *previous*, existing definite fiduciary relation between the parties, *so that the obligation of perfect good faith and complete disclosure always* arises from the existing relation of trust and confidence, and is necessarily impressed upon *any* transaction which takes place between such persons. Familiar examples are contracts and other transactions between a *principal and agent* and the like.

Pom. Eq. 902, 3rd Ed.

The identity of a party to a contract is material because "you have a right to the benefit you contemplate from the character, credit and substance of the party with whom you contract."

*Humble v. Hunter*, 12 Q. B. 310, 317;

*Boston Ice Co. v. Potter*, 123 Mass. 28;

*Arkansas, etc., Co. v. Belden Co.*, 127 U. S. 379.

We do not wish to be understood as claiming that complainant might not have, through Herman J. Jaeger, employed the defendant. We merely contend that the proof shows that *it did not do so*, that, on the contrary, it permitted and encouraged its agent *to deceive the defendant* into a belief that he was dealing with Jaeger *personally*; that Hannan, as a result, *did* deal with Jaeger *personally*, and that if those dealings really did bring about a fiduciary relation, it was a relation between the defendant and Herman J. Jaeger *personally*; that the complainant cannot take advantage of any breach of trust on the part of Hannan, arising out of such *personal* relation, or if it can, that *it* must be

*charged* with the fraudulent suppression of facts material to Hannan, which was practiced upon him by Jaeger. It cannot be, that these parties while exacting from Hannan the faithfulness of a fiduciary, have the right to hold him off *at arm's length*. They cannot expect good faith without bestowing it. They cannot expect trust without bestowing it, and the fact that they concealed the identity of the complainant is evidence that no fiduciary relation was contemplated or entered into.

The Vice-Chancellor who heard the case meets the objection that there is no privity of contract and that complainant cannot sue, by saying that Jaeger, may if necessary be brought in as party complainant to make the record technically correct (p. 134, f. 40). But such action will not *purge the situation of Jaeger's fraud* in concealing the principal. Jaeger cannot succeed *because his hands are not clean*.

The weight of all the evidence and the probabilities of the whole case are that the defendant was neither the agent of the complainant or of Herman J. Jaeger.

The defendant testified: "I first met Herman J. Jaeger in relation to the property on April 3rd, 1915, in Spitz's Cafe, when I went there to collect rent from Spitz (p. 86, f. 40). I had then already started negotiations for the purchase of this property. I had started these negotiations by letter on March 23rd, 1915, when I knew nothing about H. J. Jaeger in connection with the property. When I started these negotiations, I intended to develop the property by putting small houses upon it (p. 87, f. 10), and on March 24th, 1915, I knew that I could buy this property for \$2,500" (p. 88, f. 20).

If defendant knew on March 24th, 1915, that he could buy the property for \$2,500—and he did know this (Ex. W. A. 2, p. 129), he was under no duty to disclose that fact, and had a legal right to speculate and try to sell it to Jaeger. He had no right to represent himself as the owner of the property or to make any false representations concerning the same, *and there is no claims that he did*. It is true Jaeger claimed he was getting commission from the Pennsylvania R. R. Company (p. 16, f. 40), but he also said in reply to the Court that Hannan *had not told him* he was getting commission from the other side (p. 26, f. 20). No other representation is claimed to have been made by Hannan.

The defendant further testified: "On April 3rd, 1915 I met Jaeger in the cafe of Mr. Spitz; Jaeger was *not* then trying to buy *this* property. *It was I who then suggested it to him, and*

took him into my office and showed him the map and the size of the plot upon the map, and Jaeger then said that if it was as large as I then told him it was, that he could use it. The following Monday Jaeger telephoned me and asked me how much I would sell the property for, and I told him I would sell it for \$4,000 and that I would not accept \$3,000 for it. Jaeger met me a few days later in Spitz's Cafe and wanted to know if I would consider less than \$4,000, and when I said 'No,' the following colloquy ensued:

*Jaeger.* Why, you don't own this property.

*Hannan.* What difference does it make to you who owns the property?

*Jaeger.* Why cannot we make a deal and you buy that property for me?

*Hannan.* No; the last time you and I attempted to do business, you forgot all about me; you are too absent-minded to suit me; the only way I will do business with you is in writing."

Mr. Spitz was present when that conversation took place and later on in the evening Jaeger wanted to know if I would not consider a split between \$3,000 and \$4,000, and I told him "No," and we did not get any further that night (p. 89). He offered me \$3,500 for the property. I had through Mr. Neuscheler, on March 24th, 1915, made an offer of \$2,250 for the property to Mr. Von Moschjisker and was waiting for his answer. Mr. Von Moschjisker accepted this offer and I made arrangements with Mr. Frankenstein to represent me in taking title (p. 90). I had authorized Mr. Frankenstein to represent me some time before April 14th, 1915, the day upon which title was taken. I had authorized Mr. Frankenstein to advance me the money to carry on the entire transaction by giving him my note (p. 90). Mr. Frankenstein agreed to handle it for \$150. I gave him my note and he discounted it in what is now The Trust Company of New Jersey. When I finally purchased the property Mr. Frankenstein's check was used; that was on April 14th. *After* Mr. Frankenstein had the contract signed, I telephoned Mr. Jaeger from Mr. Frankenstein's office and asked Mr. Jaeger *if he was still interested in purchasing the property* (p. 91); he said he was, and I asked him if he would split the difference between \$3,500 and \$4,000 and he said "No," that the best he would do would be to pay \$3,600, and I there agreed to sell the property to him for \$3,600, and he told me he would sign up a contract that afternoon in Mr. Burke's offices, so I told Mr. Frankenstein

to go to Mr. Burke's office and have the contract signed for the purchase price of \$3,600 (p. 92).

Jaeger's story has heretofore been set out. Which of the two stories is true?

The Jaeger story is absolutely without corroboration. The burden of proof is upon Jaeger. There seems to be nothing in the Jaeger story or *in the manner in which he testified* to justify the Court in saying that Jaeger's story is true, and that of the defendant is perjury. On the other hand, there are some factors in the Jaeger story and many corroborating circumstances which point to the truthfulness of the Hannan story and support his claim that he was not Jaeger's agent, but an independent actor in the transaction.

The uncontradicted evidence shows that Hannan first negotiated for the property on *March 23rd, 1915*. Hannan then made an offer of two thousand dollars, and on March 24th, *knew* that he could have the property for \$2,500, and then made a *second* offer of \$2,250.

Hannan says he first met Jaeger in relation to the property April 3rd, 1915, at the cafe of one Spitz. *After he knew he could buy the property for \$2,500.*

Jaeger says he first met Hannan in relation to the property at the *Cafe of Spitz*.

Spitz corroborates Hannan that the first meeting between the two took place *on April 3rd, 1915*, and identifies that meeting *by relating the occurrences, including the trip to Hannan's office to inspect the map.*

The bill of complaint corroborates Hannan as *to the time of the first meeting*, when in paragraph 4 it says: "thereupon and on or about *said 1st day of April*, your orator, through the said Herman J. Jaeger, employed said John M. Hannan, etc."

Interrogatories were served upon Hannan and he disclosed his case before trial, and informed complainant that he first dealt for the property on March 23rd, 1915 (p. 121, ff. 20-30), and thereupon Jaeger *changed the date of the first meeting* and at the trial testified *positively* that he first met Hannan in connection with the transaction about the middle of March, 1915.

Burke was the attorney of Jaeger, and of the complainant in the transaction. Frankenstein, a reputable member of the Bar, *called as a witness for complainant*, testified *upon direct examination*, that Burke at the time Exhibit C. 5 was signed by Han-

nan *knew* that Hannan was *the real party interested and wanted Hannan and Frankenstein to sign the guarantee to secure the deposit* (p. 48, ff. 1-20). Burke, another reputable member of the Bar, called by complainant, *does not deny this*—in fact, his testimony corroborates that of Frankenstein—and the knowledge of Burke is the knowledge of Jaeger and of the complainant, and Hannan and Frankenstein actually *did* sign a guarantee protecting the deposit paid by Jaeger.

The weight of the evidence, therefore, establishes that Hannan first met Jaeger in relation to this land, *after he had offered to buy it for himself*, and after he knew the price at which he could buy it.

Jaeger did not *seek out* Hannan to *employ him* to purchase this or any other parcel of land. Hannan and Jaeger both testified that they met by *accident* in the cafe.

Jaeger when he first met Hannan *knew all about the property*. He knew it belonged to the railroad. The land had signs upon it, showing it to belong to the railroad. The land had been offered to Jaeger by a real estate agent named Rock and *Jaeger had rejected it because it was unsuitable*, before he met Hannan. Hannan *induced* Jaeger to consider the property. Hannan *requested* Jaeger to *make the offer*. You can hunt through the testimony of Jaeger and you will find that Hannan *is always* the moving spirit. *He* suggested that Jaeger make the offer. Nowhere in Jaeger's testimony will you find any language from which one can infer that *Jaeger requested Hannan* to make offers, or that he *authorized Hannan to act for him*, and the testimony of Jaeger, considered as a whole, is more in accord with the notion that Hannan was *trying to sell* to him the property in question, than it is with the notion that he, Jaeger, was authorizing Hannan to purchase the property for him as his agent. Thus Jaeger tried to *repel in Hannan* the notion that he, Hannan, was Jaeger's agent. *He warned him not to look to him, Jaeger, for compensation*. He bought the property for \$3,600 without paying any commission, knowing or believing that Hannan was being compensated by the other side, that he was the agent of the other side. He did not care *what Hannan received*, for Hannan had done nothing *for him*, which entitled him to compensation and he was sure to make this clear to Hannan, *whenever Hannan requested him to make another offer*.

Counsel for complainant lays stress upon the proposition that even gratuitous service would create a relation which would

compel the defendant to account. That is undoubtedly true, but there is no evidence in the case to support the proposition that gratuitous service were to be given. *Jaeger did not expect it.* He thought Hannan would be paid by the other side *and there is nothing to show that Hannan intended to render gratuitous services.*

In the final analysis, agency or no agency is a question of intention of the acting parties. There must be a meeting of the minds. The one must be intent to become the principal and the other must intend to become the agent.

2 Corpus Juris, pp. 433-435.

And after the events we search the facts in order to infer therefrom the contract of agency and its terms. If we in this case apply this test to the *warnings* to be found in Jaeger's testimony, that Hannan was *to receive no compensation from him for services rendered in the sale of the property at \$3,600*, the conclusion becomes irresistible that Jaeger *intended* that Hannan should understand that he was *not* Jaeger's agent and would have to look elsewhere for his compensation.

Again what is the meaning of Exhibit C. 5 in this case?

Exhibit C. 5 is a guarantee signed by Hannan and Frankenstein, his counsel, securing Jaeger against loss of the deposit paid by Jaeger to the dummy Rubens. The paper was drawn because Charles A. Rubens *had no title of record*. It was drawn at the request of Burke, counsel to Jaeger, when the deposit was paid. And Jaeger says he got it made out *to protect his deposit of \$360*.

Jaeger knew on April 14th that he was buying the property from Charles A. Rubens, whom he did not know and at the same time he knew that the property was going to be purchased from the Pennsylvania R. R.

It is Hannan's contention that *he* sold the property to Jaeger, that Jaeger knew *he*, Hannan, did not own it, and that he did not conceal anything from Jaeger. There can be no doubt that Burke, the lawyer for Jaeger, and Jaeger also knew *Rubens to be a dummy*. And Burke sought to protect Jaeger against this dummy and to do so took a *written guarantee from Hannan* (p. 56, f. 20). Hannan, if he were concealing his connection with the case or otherwise, certainly would not volunteer such protection. He was requested to sign it and did so. He was thus requested and did thus sign, because everybody in the transaction recognized the fact that *Hannan was the real vendor and not the agent of the complainant*.

Then, again, Jaeger knew *before* he closed his deal that Hannan had paid but \$2,250 for the property, for which Jaeger was paying \$3,600.

There was no attempt on Hannan's part to *conceal the fact that \$2,250 had been paid for the property. The true consideration was set forth in Rubens' deed.* Burke, Jaeger's lawyer, had the deed to Rubens and the deed from Rubens to the Jaeger Company, when only \$360 had been paid on account of the price and called Jaeger's attention to the consideration in the Rubens deed. At that time Burke had made an examination of the title to the property, and knew it to be in the Manor Real Estate and Trust Company. The deed to Rubens was therefore important. He immediately noticed it showed a consideration of \$2,250, while the Jaeger Company was to pay \$3,600. He noticed it before title was closed and immediately called it to the attention of his client (p. 56, ff. 1-10). *He wanted them to know it before they closed the title* (p. 56, f. 30). He talked it over with Herschman, and after that the money was paid to Frankenstein (p. 57, f. 10). *So that the Jaeger Company paid \$3,240 of the purchase price after Jaeger and his lawyer-secretary Herschman and his attorney Burke were fully apprised of the fact that the deed which Hannan had taken in his dummy's name had cost him but \$2,250.* How can such action be explained if Hannan really was the agent of Jaeger? Does it not cast doubt upon the story told by Jaeger? Does it not support the contention of Hannan that he was an independent dealer, *who did not even care if Jaeger took the property.* It is true, that Jaeger tries to excuse this phase of the transaction by claiming that he could not recede because he already had the *foundation of his new building up.* But this excuse *is a falschood. It is deliberate perjury.* No actual work was started upon the building *until June 12th* (p. 75, ff. 1-20), immediately after title had been acquired, and Riegler, *who built the foundations, did not start work until July 7th, 1915* (p. 79, ff. 1-10).

Would Hannan, if he really was Jaeger's agent, *openly show his hand by showing his purchase price and profit,* and would Jaeger close with him and knowingly and without objection pay him the profit if Hannan really was his agent to buy the property for him. Certainly not, and the only logical conclusion to be drawn from the situation is that Hannan was not an agent, and that the story of Jaeger is a falsehood.

Another piece of evidence which shows that Hannan was not an agent, but an independent vendor, is the evidence showing that Hannan on June 2nd, 1915, offered to Jaeger to *refund* to him his deposit *plus a profit of \$500* if he, Jaeger, would relinquish and rescind his bargain (pp. 93-94). Jaeger *does not deny this*; he merely *cannot remember* (p. 34). Hannan produces two checks under date of June 2nd, 1915, the one Exhibit W. A. 4 for \$360, the other Exhibit W. A. 5 for \$500, drawn by him to the order of Herman J. Jaeger, and in addition, *produces his check stub book, covering the period to show that these checks were drawn on June 2nd, in proper rotation from the book* (p. 132), and swears that on June 2nd he tendered these checks to Jaeger for an assignment of the Jaeger contract. He did this at a time when the closing of title was being delayed by the Railroad Company.

What right would Hannan have to talk to Jaeger *about giving him his money back*, plus a profit of \$500, if he were merely Jaeger's agent, and not a principal in the transaction. On the other hand, if Hannan really was openly a principal, and if Jaeger was pursuing him with requests for haste, and if Jaeger really had received a bargain from Hannan, what more reasonable than that Hannan should have said, "*I will give you your money back and a profit of \$500 if you will call the deal off.*"

Stress is laid by counsel for complainant upon the fact that Hannan in his letter of March 23, 1915, to the Railroad Company, offers \$2,000 and asks about restrictions, and it is ingenuously argued that since Jaeger testified that his first offer was \$2,000 and that he wanted property without restrictions, it shows that Hannan had Jaeger's offer in mind when he wrote the letter. Hannan, however, does not say that Jaeger's first offer was \$2,000. Hannan says he immediately asked Jaeger \$4,000 and that Jaeger immediately offered \$3,000, and when that sum was declined, offered \$3,500 and finally \$3,600.

So also it must not be forgotten that Jaeger when he testified had *Hannan's original letter to the Railroad Company in his possession* (p. 40, f. 30), and therefore could frame his testimony to produce just the result argued by counsel for complainant as a fact corroborative of his story. If Jaeger had told his story in ignorance of the contents of this letter, and the letter had thereafter been produced, the argument might have some probative value, but not otherwise.

I therefore respectfully submit, first, that the evidence adduced by the complainant of the fiduciary relation between Jaeger and the defendant does not carry the burden of proof, because Jaeger stands convicted of deliberate falsehood in his testimony about the foundation for the building, because Jaeger was not an honest witness, but tried to evade questions upon cross examination, because it is uncorroborated and unreasonable, and because the story of the defendant is corroborated and is entitled to at least the same weight as that given to the story of Jaeger, and secondly, that even though full credence be given to the story of Jaeger, it does not prove the fiduciary relations, necessary to the establishment of the agency and trust sought to be imposed upon the defendant.

## POINT II.

**No secret profit was made by the defendant out of the transaction involved in the suit.**

The complainant on April 14th, 1915, through its president, Herman C. Jaeger, and *in his name*, entered into a contract to purchase the lands involved in the suit from one Charles A. Rubens for the sum of \$3,600.00, on or before June 1st, 1915 (Ex. W. A. 3, p. 130), paying to the said Rubens \$360.00 on account of said purchase price by check (Ex. C. 6, p. 124, not printed) (p. 18, f. 30). The title to the property at the time was in the hands of the Manor Real Estate and Trust Company, which conveyed the same to the said Charles A. Rubens *for a stated consideration of two thousand two hundred and fifty (\$2,250.00) dollars* by deed acknowledged at Philadelphia, Pa., on June eighth (8th), recorded in Book 1204 of Deeds, page 388 for Hudson County on June 11th, 1915, at 9:28 A. M. (Exhibit C. 3, p. 15, ff. 1-20.) At the time the deposit of \$360 was paid, Jaeger had a paper made out to protect his \$360.00 deposit (Ex. C. 5, not printed, see p. 18, f. 30). He was buying the property from Charles A. Rubens, whom he did not know (p. 32, f. 40), while he knew that the property belonged to Pennsylvania R. R. Co. (p. 30, f. 20), and that Rubens was the party that had to give up the deed from the Pennsylvania Railroad, *and that that title had to be purchased from the Pennsylvania R. R.* (p. 36, ff. 1-10). Mr. William F. Burke was counsel to the Jaeger Company in this matter (p. 59, f. 20). When he saw the contract presented by Mr. Rubens (Ex. W. A. 3) he then knew that Rubens *was not a bona fide holder of this property* and for that reason exacted a guarantee by Mr. Frankenstein and Mr. Hannan, the defendant

(p. 56, f. 20). He had a talk with Mr. Jaeger and suggested *that they get someone to guarantee as to this money which he was paying* (p. 58, f. 20), and wanted Mr. Hannan and Mr. Frankenstein, his attorney, to sign Exhibit C. 5, the guarantee, and did get it signed by them (p. 58). On June 10th or June 11th, 1915, Mr. Frankenstein presented *two* deeds to Burke as counsel for Jaeger (p. 58, f. 40). Burke had examined the title to this property and had found it in the Manor Real Estate and Trust Company. One deed thus presented was from the Manor Real Estate and Trust Company to Rubens (Ex. C. 3, p. 15), and the other from Rubens to the Jaeger Company. Burke, as counsel for the Jaeger Company, *examined both deeds and noticed that the deed to Rubens showed a consideration of \$2,250.00, whereas the Jaeger Company was to pay \$3,600. He noticed that immediately and before the title was closed and called it to the attention of his clients who were there; called it to the attention of Mr. Jaeger and Mr. Herschman; he wanted them to know it before the title was closed, and he talked the matter over with Mr. Herschman and then closed the title and paid the money, \$3,240, over to Mr. Frankenstein* (p. 59). Before the money was paid he looked at the deeds, *saw the difference in the amount of the consideration, turned it (the deed) over to Mr. Herschman and there was some talk. Before the money was paid, he (Burke) certainly showed the deed to Mr. Herschman, and went over the deed himself* (p. 57). Mr. Herschman is a counsellor-at-law of the State of New York, and is secretary of complainant (p. 60, f. 30). Mr. Jaeger says that while the money, the purchase price, was lying on the table, Mr. Herschman read both deeds, and showed Jaeger that the price in the deed from the Pennsylvania Railroad to Rubens was given at \$2,250, and said, "They put one over on you," and Mr. Frankenstein and Mr. Burke were sitting there, and Mr. Frankenstein was counting the money, but Jaeger did not ask Frankenstein to give the money back to him, nor did he ask him to give back to him the difference between \$3,600 and \$2,250, and nobody asked Frankenstein to give back the difference (p. 37, ff. 1-30). Mr. Jaeger gives as his excuse for not asking his money back or not asking for the difference at that time that he had been building the foundation for his building upon the property before he got the deed (p. 37, ff. 10-20).

He says he started the foundation in May and when he got his deed the foundation was all built; it was all up (p. 38, f. 20). He says the foundation mason work was done by Reigler (p. 39, f. 10). The contract for the property to Jaeger, however, provides

that he was to have the right of entry upon the property *on June 1st, 1915* (p. 131, ff. 20-30), and Reigler, when called for the defendant, swears he did the foundation work for the Jaeger Company and that he started work on July 7th, 1915 (pp. 78-79), while the clerk in charge of permits to cross the boulevard and to store material thereon (the boulevard being one of two streets upon which the tract faces), swears that *the first work done upon the site was done on June 12, 1915* (after title was closed, or on June 11th), the day *after* the deed to the Jaeger Company is acknowledged, and that the *first* permit to cross said street or to store material thereon was granted June 12th, 1915 (p. 74, ff. 1-20), a day *after* complainant took title to the property; and the municipal clerk in charge of permits to cross Park avenue and to store material thereon—the other street upon which said plot faces—testifies that the first permit issued by him was on July 6th, 1915 (p. 80, f. 20).

The evidence therefore is clear, in fact, uncontradicted, that complainant took title from Rubens to the property on June 10th, or June 11th, 1915, paying \$3,600.00 for the same, *at all times knowing that Rubens was a dummy*, all times protected against loss through this dummy *by the guarantee signed by Frankenstein and the defendant Hannan*, and knowing before closing title that the person or persons standing behind the dummy Rubens had paid but \$2,250.00 for the property. *The complainant took the original contract to purchase from a dummy with knowledge of this fact and took title to the property with full knowledge of all of the essential facts in the case and of the profits being made.*

The Vice-Chancellor who heard the case found that the profits made in the transaction belonged to the complainant and cited *Londenslager v. Woodbury Heights Land Co.*, 58 N. J. E. 556. The case thus cited does not support the claim of the complainant *if the profit was disclosed to the complainant at the time the transaction was completed.* In the *Londenslager* case Mr. Justice Garrison, speaking for the Court of Errors, says:

“In the case of *Plagnemines Tropical Fruit Co. v. Buck*, 7 Dick. Ch. Rep. 219, Vice-Chancellor Green thus states the rule: ‘If at the time the actual purchase was made from White, Dr. Buck was a trustee, officer or agent of the company, he cannot be permitted to make any profit from the sale to the company \* \* \* and if he took a profit *without disclosure*, he cannot retain the same.’ And to this effect are all the cases.”

The test as laid down in the cases is, were the profits secret or was there disclosure? Did complainant assent to the profits with full knowledge of the facts? Was complainant deceived and injured by the act?

If the agent has openly and fairly dealt with the matter of the agency *on terms fixed by the principal*, the transaction will be upheld.

2 C. J. 693 and cases in note 21.

And where the principal with full knowledge of all the facts *fails to dissent*, the transaction will be upheld.

2 C. J. 693 and cases in note 22.

And where the principal *has not been deceived* by the acts and *has suffered no injury therefrom*, the transaction will be upheld.

2 C. J. 693 and cases in note 23.

The deceit practiced on the principal *in hiding the profit*, thus failing to give the principal *a chance to assent or dissent* to the profit, and the injury to the principal arising out of the taking of the profits, are the essentials of an action of this kind, and I submit that the evidence in this case does not disclose that the profit was secretly taken, on the contrary it was *openly taken* with full knowledge of complainant *and without dissent by complainant*; nor did the taking of the profit injure complainant, for complainant himself *had fixed the price at which the property was to be bought by it* and had taken from the alleged agent *all discretion as to price*; all chance to injure complainant so that there really was no reason why complainant should not assent to the payment of that price when the transaction finally was closed.

I therefore respectfully submit that there was no secret profit, that complainant was not injured by the taking of the profit and that complainant assented to the taking of the same.

### POINT III.

**The defendant is not indebted to the complainant in the amount fixed by the decree.**

The decree finds that complainant paid \$3,600 for the property (p. 135, f. 40), that defendant paid \$2,250 for the same "and thereby made a profit of \$1,350" (p. 136, f. 10), and orders defendant to pay the sum of \$1,350 with interest from June 10th, 1915, to complainant.

Complainant can only recover the profits made by defendant.

*Londenslager v. Woodbury Heights Land Co.*, 58 N. J. E. 556.

To take more than the profits made would constitute the infliction of a penalty.

The principle running through all the authorities upon this branch of the law rests not upon the imposition of a *penalty* for concealment, but upon the *single ground* that one in a fiduciary capacity will not be permitted to *retain a profit* inequitably obtained. This is the rule and the *exact measure* of the decree even in the case of a trustee who actually uses the company's money with which to make the proposed purchase.

*Londenslager v. Woodbury Heights Land Co.*, 58 N. J. E. 556, at p. 559, bottom.

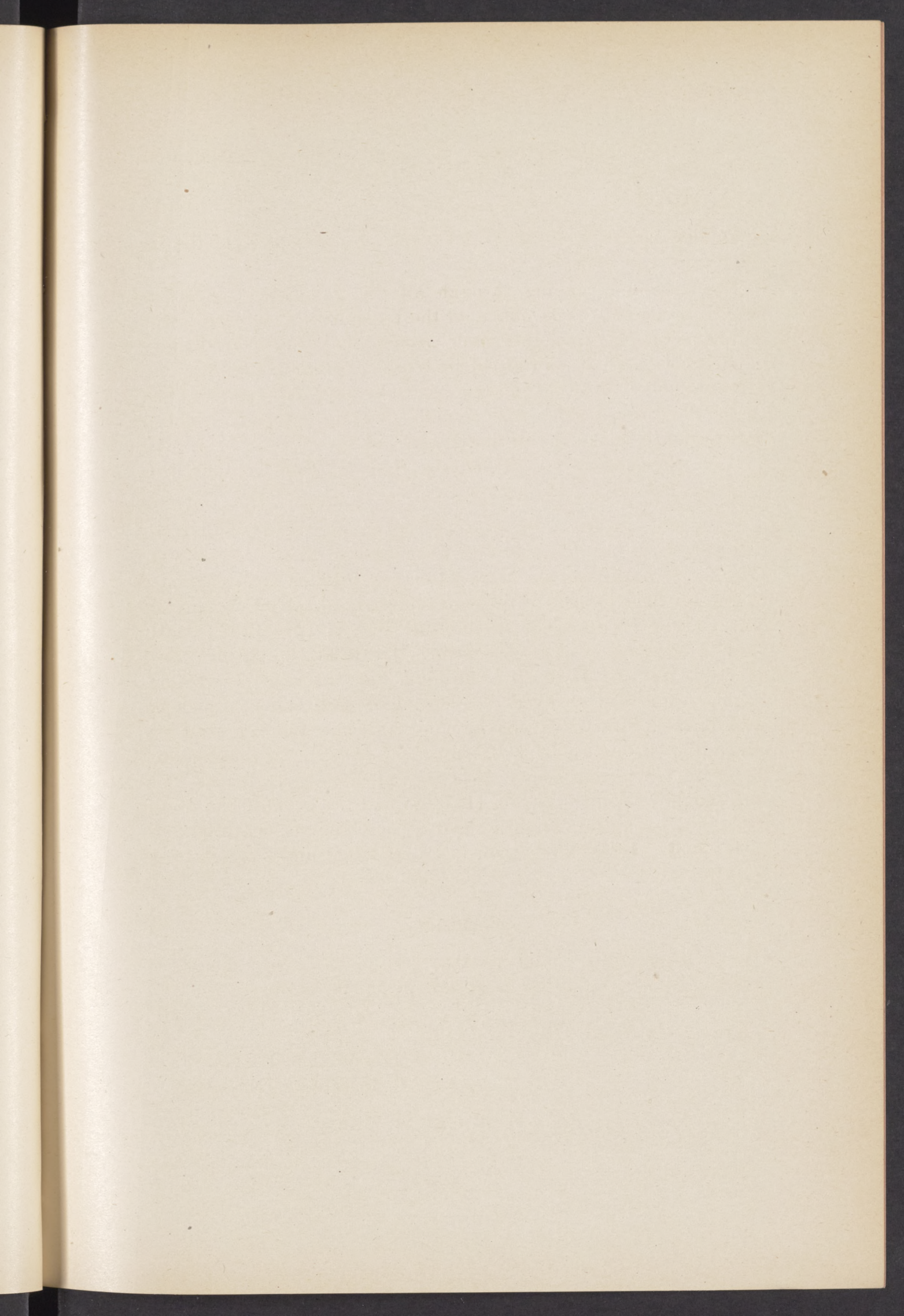
The profits in the transaction did not amount to \$1,350. Hannan agreed to pay his attorney Frankenstein \$150 (p. 91, f. 1). Frankenstein handled the transaction for Hannan and accounted to him for the proceeds of the consummation of the sale by giving him a check for \$3,185.31 (Exhibit D. 6½, p. 128; p. 47, f. 20). Frankenstein received at the closing of title \$3,240, but of which he paid Hannan \$3,185.31, retaining the difference of \$54.69. Frankenstein also received the deposit of \$360, out of which he paid himself \$250 advanced by him to secure the title and retained the difference of \$110 (p. 53, ff. 20-30). Frankenstein, therefore, received \$110 plus \$54.69, or \$164.69 (p. 54, f. 10). This sum should be deducted from \$1,350 to find the profit. The profit made by Hannan was \$1,185.31 and if complainant is entitled to a decree it should not be for more than \$1,185.31 and interest from June 10th, 1915.

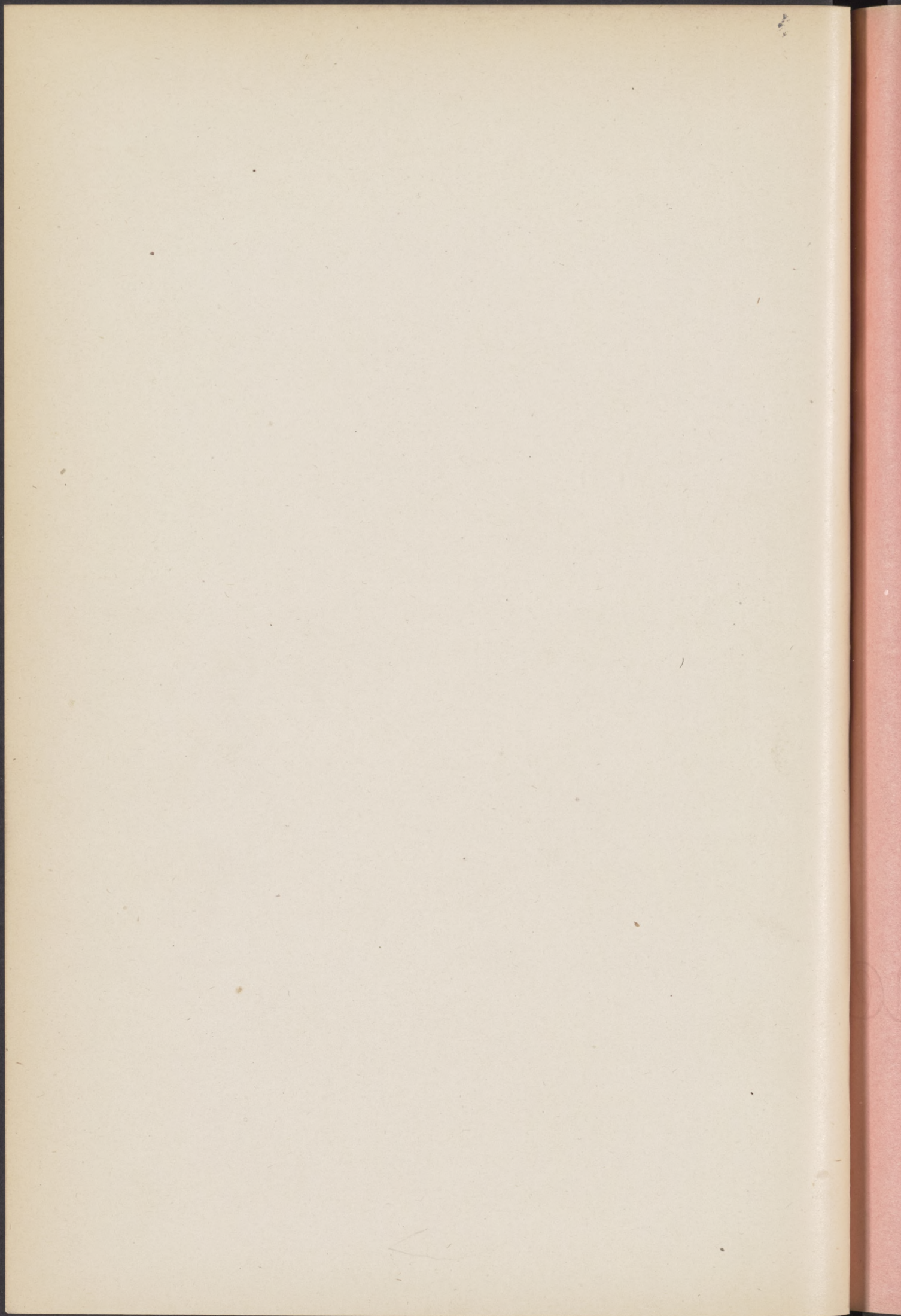
### Conclusion.

It is respectfully submitted that the decree below should be reversed and that the bill of complaint should be dismissed.

Respectfully submitted,

J. EMIL WALSCHEID,  
*Of Counsel with Defendant.*





W. & A. G.

1861

ad

South