

New Jersey Court of Errors and Appeals.

EDWARD W. MARTIN,

Plaintiff and Respondent,

vs.

ALBERT F. BALDWIN,

Defendant and Appellant.

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On Appeal.

BRIEF FOR DEFENDANT-APPELLANT

The appeal in this case brings up for review a judgment rendered against the defendant in favor of the plaintiff, in the Supreme Court (Essex Circuit) on April 28, 1916, before Hon. Nelson Y. Dungan, and a jury, for the sum of \$4,509.91 damages, besides costs. 20

The suit was brought for damages for deceit or fraud growing out of a real estate transaction, whereby the plaintiff exchanged some land in West Orange, Essex County, for a second bond and mortgage of \$3,000 on a house and lot in Montclair, such mortgage being second and subsequent to a Building and Loan mortgage of \$5,000. (Contract, Case pp. 165-167), and was to be made by one James Henderson to P. Frank Stone (the other party to the agreement of sale), and to be assigned by Stone to the plaintiff (Martin), as per said contract for exchange. 30

The suit was brought against Albert F. Baldwin and P. Frank Stone, the said Baldwin being alleged in the complaint as being the agent for Stone. On the trial, a non-suit was entered as to Stone and judgment went only against Baldwin. False representations made by 40

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Baldwin as to the responsibility of the bondsman, Hendrickson, upon which the plaintiff alleged he acted, to his loss, were the basis of the suit.

After the contract of exchange was consummated, and Martin received the \$3,000 mortgage, he assigned the same to Theo. McCurdy Marsh (Case p. 197), and guaranteed its payment (Case p. 168). Later, the mortgaged premises were conveyed by Hendrickson to Marsh (Case p. 199) at which time Marsh wrote to
 10 Hendrickson a letter (Case p. 82) in which he said that he understood from Baldwin that Hendrickson was unable to meet the payment of the bond and mortgage when it came due and offered a deed to save foreclosure expenses, and that, "In accepting this deed, I do not intend, however, to release you in any way from your obligations to me under the bond and mortgage, but merely to facilitate the collection of the money due." (Case p. 83).

Subsequently, the Building and Loan mortgage of
 20 \$5,000 was foreclosed and the \$3,000 was cut out (Case p. 26). Hendrickson did not pay any part of the principal or interest of the \$3,000 mortgage (Case p. 26).

The Court permitted testimony of other payments claimed to be made by Martin after securing the \$3,000 mortgage and assigning it to Marsh as follows:

	Agents' commissions	\$100.00
	Search on Montclair property	59.10
	Building and Loan dues on first	
30	mortgage	400.00
	Taxes on morgaged premises	138.28

The balance of the sum making up the verdict of the jury was divided as follows:

	Balance due from Martin to Marsh	
	on his guaranty of mortgage....	\$2,400.00
	Interest on same.....	396.00
	Payments made by Martin to Marsh	
	on account of principal and inter-	
40	est of \$3,000 mortgage.....	766.00

Interest on all of the above pay-
ments made by Martin..... 195.53

(See charge of Court, Case pp. 162 and 163).

The alleged false representations made by Baldwin to Martin as to Hendrickson's responsibility, as alleged in the complaint are the following (Case p. 3 and 4):

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"That the said Albert F. Baldwin stated to this plaintiff that the bond and mortgage of \$3,000 was to be a second mortgage, subsequent and inferior only to a first mortgage of \$5,000, held by the Improved Building and Loan Association of Newark, a corporation; that the property embraced and more particularly described in said mortgage was worth the sum of \$11,000.00, and stated that P. Frank Stone, his client, had purchased the said premises from the Fairchild-Baldwin Company, a corporation of New Jersey, with 20
which the said Albert F. Baldwin was connected and associated, for the sum of \$11,000, which he had paid in cash, less the amount due upon the first mortgage aforementioned in the sum of \$5,000 given to the Improved Building and Loan Association of Newark, covering the said premises; that the said James Hendrickson was a responsible person, in business for himself, and could easily and readily pay the carrying charges of the Montclair property and make the payments aforementioned, and further that the said James 30
Hendrickson had done considerable work for the Fairchild-Baldwin Company, a corporation of New Jersey, and that the said James Hendrickson was in receipt of monies through the usual course of his business, which was of more than sufficient volume and amount to enable him to meet with ease the payments called for by the first mortgage and the second mortgage to be executed and delivered by him, covering the said premises, and also the accruing taxes and other charges in carrying the said premises and the building there- 40

on; and further that the said James Hendrickson had purchased the said premises for the purpose of a home and residence and that he intended to live in and occupy the same."

Martin's testimony as to the same matters (Case p. 15) is as follows:—

Q. What else did he say?

A. Then I said that I would not want to do it altogether on the strength of the property, because of the closeness of the equity with the value, and I wanted to know something about Hendrickson; and then he told me these things, that Hendrickson was a man in business; that he had known him for sometime; that he was engaged frequently doing work for the Fairchild-Baldwin Company; that he was responsible; had sufficient means to buy the house; and he had elected to make the payments on the mortgage \$150 quarterly, as he wanted to get it paid off as quick as he could; that the mortgage would run for two years, and at the end of that time it would be paid in full.

Q. Did he say anything as to the purpose that Hendrickson would put the house to?

A. As his own residence; that he would live there.

Q. Did he state what Mr. Hendrickson's business was?

A. That he was a plumber; in business.

Q. Did he mention anything with reference to his income?

A. That he had an income sufficient; that he knew, because he knew of the man's affairs; that he had an income sufficient, not only to pay the quarterly payments, but to carry the property, pay the charges, building and loan, and that he was aware of the fact, and knew it.

Q. Was there anything else said at that time?

A. Well, those were the—that was the general trend of the conversation.

Q. Well, after this conversation did you enter into an agreement?

A. I did.

Q. Did these statements have anything to do with you so entering into the agreement?

A. Absolutely.

Q. In what way?

A. Had I believed them to be false, or had I not believed them, I would not have signed that agreement.

Baldwin's testimony as to what took place on the day in question is as follows (Case pp. 126, etc.):—

Q. Now, what was the first time you came in contact with Mr. Martin personally regarding this deal for the Montclair property 10

A. On the day I went up to Mr. Devine's office.

Q. And you went to Mr. Devine's office in East Orange

A. Yes, sir.

Q. Did you take anything with you that day, or, what did you go in?

A. Went up in an automobile.

Q. Were you sent, or did you go voluntarily? 20

A. My brother, Clifton Baldwin, sent me up.

Q. Your brother is how many years older than you?

A. Seven years older.

Q. Do you remember what time of day it was you got there?

A. I think it was in the morning, Judge; I am not sure; I am pretty certain it was in the morning.

Q. You got there, and when you went into Mr. Devine's office who did you find there?

A. Mr. Devine and Mr. Martin were in the back office talking, and I waited out front for them until they came out. 30

Q. How long did you wait for them before they came out?

A. I guess they were talking together five or ten minutes.

Q. After Mr. Devine and Mr. Martin came out of the back office into the front office what was said, if anything, by any of you three people at the time?

A. Well, Mr. Devine asked me if I would be good 40

enough to run Mr. Martin to Montclair, as he was busy, and I told him I was there for that purpose.

Q. Had you up to that time taken any part in the negotiations between Mr. Devine and your office regarding this deal that Mr. Martin was interested in?

A. No, Judge.

Q. Who went with you in the automobile from Devine's office to Montclair.

A. Just Mr. Martin.

10 Q. No one else?

A. No one else.

Q. And did you and Mr. Martin talk on the way there?

A. Mr. Martin talked quite a little to me on the way there.

Q. Well, you and he had a conversation?

A. Yes.

Q. Do you remember what the conversation was on the way there?

20 A. Why, on the way there Mr. Martin opened up the conversation by asking me how old I was; I told him I was twenty-one, and he told me he had started in the real estate business, and was making such a success of it he had bought out this agency and general brokerage business in Roseville, and was conducting that as well as buying and selling of large apartment houses; and he told me of wonderful opportunities there were for a young man in the real estate business; told me he hoped in future to work into
30 other things, and possibly gradually work over to New York, or some other city, where there were opportunities.

Q. How long did it take you to run from Fell & Devine's office over to the Lexington avenue place in Montclair?

A. Possibly ten or fifteen minutes.

Q. When you and Mr. Martin got to the Montclair house what did you do?

40 A. Why, Mr. Martin examined the property with me, and asked me what I thought the value of it was.

Well, at the time I didn't really feel competent to—

Q. What did you say to him?

A. Why, I told him I thought he was a better judge of that, and get his views on it, but all I could tell him was that the Fairchild-Baldwin Company had paid \$10,000 for the property in exchange with Mr. Wakeman.

Q. Was that so?

A. Yes, I believe it to be so, Judge.

Q. What else did he say about the property, and its value?

A. Well, he laughed at me when I said \$10,000, and said, "Don't you think you are a little high, Baldwin?" I said, "Mr. Martin, I don't know as much as you do about real estate, but I should think if the Fairchild-Baldwin Company paid \$10,000 for it they ought to know what they were doing." "Well," he says, "I would not consider it worth \$10,000 in my way of thinking."

Q. Did he say what he would consider it worth? 20

A. He told me the property in his way of estimation would certainly be worth the amount of the two mortgages.

Q. And what two mortgages do you refer to?

A. The \$5,000 B. & L., and \$3,000 second.

Q. Did you at that time, or on the way back, have a talk with Mr. Martin about Mr. Hendrickson?

A. Oh, yes; he mentioned the bondsman, who the bondsman was, or who he was going to be. I told Mr. Martin the mortgage bond was not drawn up as yet; and Mr. Martin asked me as to the honesty of the man, and as to his business. All I could tell him was— 30

Q. What did you tell him?

A. I told him the man was a plumber working for Fairchild-Baldwin Company, and Real Securities Investment Company; and I had seen him in the office on different occasions.

Q. Did you say to Mr. Martin anything about whether Mr. Hendrickson was going to live there, or not? 40

A. I believe I did, sir.

Q. What did you say?

A. I told him—he asked me what Mr. Hendrickson intended to do; I told him Mr. Hendrickson told me he was going to live in the house.

Q. Had Mr. Hendrickson told you that?

A. He had.

Q. Did you at any time, from the time you left Mr. Devine's office on that occasion, and on the trip to
10 Montclair, or at the building, or on the trip back to Montclair, did you say to Mr. Martin that Hendrickson, in addition to giving a \$3,000 mortgage, had also, or was going to pay \$3,000 in cash for the property?

A. No, Judge, I never said that.

Q. Did you at any time on that day, or any other day, say to Mr. Martin that Hendrickson had paid \$11,000 in cash to the Fairchild-Baldwin Company for the property?

A. No, Judge.

20 Q. Did you say that Mr. Stone had paid \$11,000 in cash to the Fairchild-Baldwin Company for the property?

A. I did not, Judge.

Q. Did you say that Hendrickson was a responsible man?

A. No, Judge.

Q. Did you say to Mr. Martin that from all you knew of Hendrickson, or words to that effect, that he was well able to pay the building and loan mortgage
30 installments, and the interest on the second mortgage, and the taxes, and to carry the property?

A. Mr. Martin did not go into that with me, Judge.

Q. Did you say that to him?

A. No.

Q. Did you say to Mr. Martin that in your opinion the property was worth \$11,000?

A. I did not, Judge.

Q. Did Mr. Martin make any request to you on that occasion with regard to having somebody guarantee the bond and mortgage that Hendrickson was to
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make?

A. Well, he asked me about Stone, and said he didn't know Stone, but wondered if his guarantee was good and if he would guarantee the mortgage, if not, would the Fairchild-Baldwin Company go on the bond behind Stone; and I told Martin he would have to look to the property for his value, and neither Mr. Stone or the Fairchild-Baldwin Company would guarantee the mortgage in any detail.

Q. Did Mr. Martin ask you what you knew, or words to that effect, of Hendrickson's responsibility? 10

A. I don't know that, Judge. He asked me about Hendrickson, and whether he was good, and I invited Mr. Martin to look up Hendrickson.

Q. What did you say about looking up Hendrickson?

A. I just told him he could see him any day, he was in the office off and on, and he was privileged to talk to him and satisfy himself.

Martin's own estimate of the value of the mortgaged premises was that they were worth at least \$8,000, or the amount of the \$5,000 first mortgage and \$3,000 second mortgage. This value he placed on the property after inspecting the premises himself, and without regard to Baldwin's valuation of the property (Case p. 29). 20

The foregoing is a statement of the case as taken most strongly against the defendant.

The grounds of appeal will be taken up separately, as follows:— 30

I.

The following question was overruled:—

To the witness Edward W. Martin: "When you said a moment ago that Albert Baldwin did not say to you that Stone had paid \$11,000 in cash for that property, were you speaking the truth?"

In Case page 30, lines 15, etc., the following question was put to and answered by Martin:— 40

Q. Didn't he (Baldwin) tell you, Mr. Martin, that it was Stone that had paid \$11,000, and not Hendrickson?

A. No, sir, he did not.

In Case, page 31, at the top of the page, Martin gave testimony in variance with this statement, and the above question was put to him for the purpose of testing his credibility as between the two questions and answers, as to whether when he replied to the
10 first question he was speaking the truth.

It is respectfully submitted it is not only not objectionable, but entirely proper to make such inquiry from a witness who is under a close examination, and for the purpose of determining whether the statement was made knowingly or through inadvertence.

II.

The following question was overruled:—

To the witness, Edward W. Martin: "So that the
20 real estate men did not put one over on you, did they?"

This question is not argumentative, but was an inquiry of the witness as to whether the real estate men had taken advantage of him, it being shown that being in the real estate business himself, and thirty-one years of age, he was smart enough to outwit other real estate men in the same line of business by settling with them so far as his commission was concerned, on the basis of \$100 instead of \$150, which was the usual commission for the services rendered.

30 This question was for the purpose of bringing before the jury the fact that while Martin claimed to have been taken advantage of by Baldwin, who was much younger and much less experienced than he, that when Martin was tested against other real estate men, he was able to meet them successfully on their own ground. It is urged that this question was proper and should have been allowed.

III.

40 To the witness, Theodore McC. Marsh: "I notice,

Mr. Marsh, on Exhibit P20, which is the mortgage in question, that it appears to have been offered in evidence and marked Exhibit D2 in a foreclosure suit?

"And that was the foreclosure suit of the building and loan association?"

"You proved this mortgage yourself in this foreclosure proceeding, I presume?"

"And the decree—?"

This question was excluded. The importance of the question as explained at the bottom of page 89 and at the top of 90 was to determine what amount was decreed by the Court of Chancery to be due on this mortgage if Mr. Marsh, who was a Counsellor-at-Law, knew. This was a proper cross examination in view of his previous testimony regarding the amount due on the mortgage. 10

IV.

The following question was admitted:

"To the witness, Albert F. Baldwin: "Then the 20 property was actually Mr. Stone's wasn't it?"

This question called for an answer which would amount to a conclusion of law as to the title of real estate, and was not proper cross examination.

V.

The Court refused to non-suit the plaintiff's case against the defendant.

The alleged misrepresentations may be grouped under two heads, first, misrepresentations as to the value of the property, and, second, misrepresentations as to the responsibility of the bondsman, and the amount that he paid for it. On the first head, that is, alleged allegations as to the value of the property, we submit that the testimony shows that Martin did not rely upon those statements in deciding whether he would or would not make the deal. He stated in his evidence that he had formed his own opinion as to the value of that property, and that regardless of the statements of Baldwin either that \$11,000 was 30 40

paid for the property, or that in Baldwin's opinion the property was worth \$11,000 or \$12,000, he decided for himself in his own opinion that those statements represented an excessive value, and that after he had gone there and looked over the property thoroughly, going all through it, he decided that the property was worth at least the amount of the mortgages, and, therefore, that in his opinion the property was worth at least \$8,000; and the evidence shows that Martin acted, not on the statements made by Albert Baldwin as to the property, or the cost of the property, but upon his own estimate that it was worth the amount of the mortgage.

Secondly, on the question of the responsibility of Hendrickson. The evidence shows that Baldwin told Martin what he knew about Hendrickson, that he was a plumber, that he was a man that did work for the Fairchild Baldwin Company, that he did steady work, that he was going to live there in that house, and that he was responsible and well able to carry the property, or words to that effect. We submit that his statement of the information that he had, or his knowledge of Hendrickson, constituted the basis for what came afterwards, namely, that he was responsible, and well able to carry the property; that his statement that he was responsible, and well able to carry the property, was simply a statement of Baldwin's conclusions; and before making the statement of his conclusions on Hendrickson's responsibility, he laid before Martin his statements of what he knew about Hendrickson, and then stated substantially this, "In my opinion, he is a responsible man, and well able to carry the property."

He might have drawn a wrong conclusion, but Martin was put in possession of all facts from which he could draw his opinion as to whether Baldwin's opinion was correct. Furthermore, regardless of the fact whether these statements were false or not, the case showed that Martin got something that was of the value of \$3,000. All the evidence showed that the property was worth \$8,000; shows that the mortgage was worth \$3,000.

The motion for non-suit should have prevailed.

VI. AND VIII.

The sixth and eighth grounds of appeal concern the materiality of the misrepresentations. They are as follows:—

6. The Court refused to admit in evidence a contract between Fairchild-Baldwin Company and James M. Wakeman, dated December 16, 1912, the purpose of it being to show that the premises, No. 18 Lexington Avenue, Montclair, were taken in by them on a trade with Wakeman at the price of \$10,000.

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8. The Court refused to charge the jury as follows:

“If you find that the property was worth \$8,000 or more, or was worth the amount of the two mortgages, then the matter of misrepresentation is not important, if the plaintiff got a mortgage worth \$3,000.”

For a misrepresentation to be actionable, it must of course be material.

“The representation must be material; that is, it must relate to some matter so substantial and important as to influence the action of the party to whom the representation is made.”

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20 Cyc 23.

“Whether the misrepresentation made was material is ordinarily a question of fact for the jury; and it is to be observed that the question to be submitted is not whether the representations were deemed by the party to be material *but whether they were material in fact*. But materiality may be so plain that the Court should decide it as a matter of law.”

20 Cyc 125.

If this statement is true, and it is respectfully submitted that it is not open to dispute, then it would be immaterial that the property had been represented by the defendant to have been sold for \$11,000, if in fact the property was worth that sum. The jury should have had the opportunity to consider whether the price of \$10,000, at which figure the property was valued in the contract which was excluded, was such a material variation from the alleged price of \$11,000 as to have influenced the plaintiff in arriving at his de-

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cision. But the jury was deprived of the chance to consider this phase of the situation by the rejection of this evidence, which, it is respectfully contended, might have had an important bearing on the verdict in this case.

This same element of materiality applies with equal force to the eighth ground of appeal. It must be borne in mind that this mortgage was not a commodity which might have been sold by the plaintiff at a profit, or something which would increase in value. It could never be more than its face value, that is the principal and interest due on it. It might conceivably be worth less than its face value but no combination of circumstances could make it worth more. It is therefore urged that the alleged value of the mortgage is immaterial, if, in fact, the property upon which the mortgage was given was worth as much as the mortgages upon it (including plaintiff's assigned mortgage) or more. That it was worth at least as much is admitted by the plaintiff Case p. 29, line 30, et seq.:

“Q. And what was your estimate of the value of the property?”

“A. That it was worth—it was worth the mortgages at least.

“Q. \$8,000?”

“A. Yes, sir.”

No attempt was made by the plaintiff to show the actual value of the property. There is no evidence in the case to show that the property was not actually worth \$11,000. The contract mentioned in the Sixth Ground and which the Court excluded would be evidence bearing on that point and hence the materiality or immateriality of the representation.

VII. AND IX.

The Court refused to charge the jury as follows:

“7. If the jury believe from the evidence that Albert F. Baldwin was not the person who had charge of the matter for Mr. Stone, as his agent, but that the statements alleged to have been made by him were made, if

at all, when he was taking Mr. Martin to Montclair to show him the property under orders from his superior in the Fairchild-Baldwin Company, he cannot be held liable in this action."

The Court charged the jury as follows:

"9. But where there exists between the parties some relation whereby the purchaser, being ignorant of the fact, is justified in placing trust and confidence in the honesty and superior knowledge of the person making the representation, or where, in the absence of any particular relation, special confidence is placed in the person making such representations on account of his peculiar knowledge, and the purchaser's ignorance, the purchaser may, without further investigation, rely on the statements of such person. Therefore the rule imposing upon a purchaser the duty to investigate as to the truth of the statements made to him concerning the property in question, has no application to representations made by third persons as to the credit, solvency, and so forth, of another. In cases of this character the position of the parties is not antagonistic, but somewhat confidential, therefore, if this representation was of such a character, and was made under such circumstances as to justify its belief by a reasonably prudent man, plaintiff being ignorant of the truth, and acting upon the representations to his injury, a recovery may be had, although the plaintiff might, by the exercise of diligence, have ascertained the insolvency of the person recommended; and defendant will not be heard to say that he is a person on whose word the plaintiff had no right to rely."

The complaint represents Baldwin as the agent for Stone (par. 3, Case page 2), and also that Stone and Baldwin were partners in the profits of the transaction (par. 16, Case page 7). There is absolutely no evidence of any sharing in profits by the two persons named. The only evidence on plaintiff's part of agency is found (Case p. 21), where Martin testified that Stone told him that he left all details of the transaction with Baldwin. The defendant's (Case

p. 103 and 126) evidence was that he was sent to Fell & Devine's office by the Fairchild-Baldwin Company, in whose employ he was, to drive Martin to Montclair to show the property. Stone testified that his agent was the Fairchild-Baldwin Company (Case pp. 115, 116 and 121).

Clifton D. Baldwin, a member of the Fairchild-Baldwin Company, testified (Case p. 102), that Martin had called at his office about a week before the contract was closed and discussed its details.

In view of the Court's charge as extracted in the Ninth Ground of appeal, it is respectfully urged that if Baldwin was not the person who had charge of the matter for Stone, the jury was entitled to have that matter brought before it for consideration, in considering whether or not Martin was justified in placing trust and confidence in the honesty and superior knowledge of the person making the representation, and that the failure of the Court to charge as requested was error harmful to the defendant.

X. AND XII.

The Tenth and Twelfth Grounds deal with the measure of damages to be applied in this case. The Court below held—erroneously, it is insisted—as follows, as is stated in the Tenth Ground:—

“In such a case as this, a case of fraud, the measure of the plaintiff's damage, if he is entitled to recover, would be the amount of his loss caused by the fraud, or, in other words, damages adequate to the injury which he has sustained. There cannot be any compromise verdict in this case. The plaintiff is entitled to all the damages which he has sustained, or he is not entitled to any of them. If he has been defrauded by the defendant in this case, then, as I have already stated, he is entitled to receive at your hands the amount of the loss caused by the fraud; and if he has not been defrauded by the defendant, then he is not entitled to anything.”

The matter is quite fully discussed in a note in Vol.

8 L. R. A. (N. S.) page 804, which considers the different rules adopted in different jurisdictions. The first rule measures the damages by the difference between the actual value and the represented value. The second fixes the damage at the difference between the actual and the paid value. This is the rule which the note states to be followed in the Federal Courts and New Jersey.

The subject is further discussed in Vol. 8, L. R. A. (N. S.) page 806, as follows:—

“As already stated, the first rule, fixing the amount of damages as the difference between the actual value of the property and its value had the representations in reference to it been true, is the rule adopted and followed by the majority of the courts. 10

“The rule first mentioned—that is, the difference between the actual value and the represented value where the representations complained of referred to the value, condition, or quality of real estate—has been applied in 20

Connecticut:—

Gustafson v. Rustemeyer, 70 Conn. 125, 39 L. R. A. 644, 66 Am. St. Rep. 92, 39 Atl. 104.

Florida:—

Williams v. McFadden, 23 Fla. 143, 11 Am. St. Rep. 345, 1 So. 618.

Illinois:—

Johnston v. Benney, 5 Ill. App. 601;

Cox v. Gerkin, 38 Ill. App. 340;

Tate v. Watts, 42 Ill. App. 103;

Van Velsor v. Seeberger, 59 Ill. App. 322; 30

Haldeman v. Schub, 109 Ill. App. 259;

Drew v. Beall, 62 Ill. 164.

Iowa:—

Gates v. Reynolds, 13 Iowa, 1; Moberly V. Alexander, 19 Iowa, 162.

Kansas:—

Speed v. Hillingsworth, 54, Kan. 436, Pac. 496.

Missouri:—

Brownlee v. Hewitt, 1 Mo. App. 360; 40

Anslyn v. Frank, 8 Mo. App. 242;
 Shinnabarger v. Shelton, 41 Mo. App. 147;
 Caldwell v. Henry, 76 Mo. 254.

New York:—

Ettlinger v. Weil, 184 N. Y. 179, 77 N. E. 31 (rental income).

North Dakota:—

Fargo Gas & Coke Co. v. Fargo Gas & Electric Co.
 4 N. D. 219, 37 L. R. A. 593, 59 N. W. 1066 (condition
 10 and earning capacity).

Ohio:—

Linerode v. Rasmussen, 63 Ohio St. 545, 59 N. E.
 220 (representing that land contained valuable vein
 of coal).

Utah:—

Hecht v. Metzler, 14 Utah, 408, 60 Am. St. Rep. 906.
 48 Pac. 37 (rental value and condition).

Vermont:—

Shanks v. Whitney, 66 Vt. 405 29 Atl. 367 (repre-
 20 sentation that mortgage on property could be extend-
 ed, and that a valid claim for injury to said property
 existed against the city).

Wisconsin:—

Krause v. Busacker, 105, Wis. 350, 81 N. W. 406
 (condition of dam).

As already stated, many authorities hold that the
 measure of damages in actions for false representations
 as to the value, condition, or quality of real estate is
 30 the difference between the actual value of the property
 and the amount paid for it. This rule has been applied
 in the following cases:—

Federal:—

Kell v. Trenchard, 73 C. C. A. 202, 142 Fed. 16.
 Rockefeller v. Merrit, 35 L. R. A. 633, 22 C. C. A.
 606, 40 U. S. App. 666, 76 Feb. 909;
 Matlock v. Reppy, 47 Ark. 148, 14 S. W. 546.

Minnesota:—

40 Mountain v. Day, 91 Minn. 249, 97, N. W. 883.

Missouri:—

Thompson v. Newell, 118 Mo. App. 405, 94 S. W. 557.

Nebraska:—

Markel v. Moudy, 13 Neb. 322, 14 N. W. 409.

New Jersey:—

Crater v. Binninger, 33 N. J. L. 513, 97 Am. Dec. 737.

Pennsylvania:—

Rice v. Olin, 79, Pa. 391.

“In this case the action was for damages because of misrepresentations as to the amount and kind of timber on the land sold, together with the kind and quality of the land. The measure of damages was held to be the difference between what the defrauded vendee agreed to give and what the land was actually worth.”

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The following statements are to be found in 38 L. R. A. (N. S.) page 465:—

“By the weight of authority the measure of damages which a person is generally entitled to recover in an action for deceit in the exchange of property is the difference between the actual value of the property received in the exchange and its value had it been as represented, and the measure of recovery is not affected by the question whether the property parted with by the plaintiff was worth more or less than the property received. As shown in the note referred to, this is also the general rule of damages to which a person is entitled who has been deceived in the purchase of property, although, as shown in such note, there is a minority rule, as well as some exceptions to the general rule. The general rule referred to is asserted and applied in *Barbour v. Flick*, 126 Cal. 628, 59 Pac. 122, in a deceit action for fraud in the exchange of lands; the character of the misrepresentations is not mentioned, however.”

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“The theory of the class of cases already considered is that, although the action of deceit is in tort, yet the measure of damages recoverable by the plaintiff is not

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what he lost or what he was defrauded of by the false statements of which he complains, but is the difference between the value of what he actually received, and what he would have received had the property been as represented. In other words, the plaintiff is entitled to recover as damages loss of profits, and he is entitled to have considered in this form of action, and to receive compensation for, the loss of his bargain. If the action was in form *ex contractu* this rule of damages could hardly be questioned. In this connection it is proper to note that in one of the cases referred to (*Page v. Johnston*, 205 Mass. 274, 91 N. E. 214) the action was in form *ex contractu*. This distinction is pointed out in another line of cases, less in number, which refuse to apply this rule of damages, but hold that in a deceit action the plaintiff is entitled to recover only what he lost in the transaction,—the difference in value between what he parted with and what he received; and it is denied that he is entitled to have considered loss of profits or loss of his bargain,—the difference between the actual value of what he received, and the value of the property received had it been as represented.

“Thus, in *Rockefeller v. Merritt*, 35, L. R. A. 633, 22, C. C. A. 608, 40 U. S. App. 666, 76 Feb. 909, a deceit action for false representation in an exchange of stock in one corporation for stock in another, it is said that the true measure of damages suffered by one who is fraudulently induced to make a contract of sale, purchase, or exchange of property is the difference between the actual value of that which he parts with, and the actual value of that which he receives under the contract. It is the loss which he has sustained, and not the profits which he might have made by the transaction. It excludes all speculation, and is limited to compensation. The Court says that the disregard of this rule results in a recovery of damages violative of the fundamental principles by which damages are measured in actions of this character. ‘One of these is that such damages must be merely compensatory, and must

not be speculative. The defendant was bound to make good to the plaintiff the actual loss which the latter had sustained by reason of his misrepresentations, but he was not required to pay him his estimated or expected prices' for the property received."

The Rule is laid down in 20 Cyc., page 132, et seq., as follows:

"It has been frequently laid down that in an action based on fraud in the sale or exchange of property, if plaintiff retains the title and does not offer to rescind, the measure of damages is the difference between the actual value of the property at the time of the sale or exchange and what it would have been worth had it been as represented or what its value was represented to be. . . . On the other hand there are a great number of cases in which the rule is stated to be that the measure of damages is the difference between the value of the thing purchased and the price paid, or in case of an exchange, the difference between the value of what the injured party was fraudulently induced to part with and the value of what he got."

But in this case whichever rule were adopted the result would be the same, since the value of this mortgage would remain at \$3,000 and interest, whether the property were worth \$11,000 or only the value of the mortgages. Assuming that the jury believed the plaintiff's statement to be true, then the result of his representations was that instead of receiving a mortgage worth \$3,000 he received a mortgage worth nothing. According to both of the above stated rules, the most that his damage could be would be \$3,000, and possibly interest.

In the case of *Duffy v. McKenna*, 82 N. J. L. 62, the Court, discussing the measure of damages, said:

"On discovery of the fraud, Duffy might have tendered back the receipts and sued for the return of his money as money had and received to his use. This, however, he did not do, but retained the receipt without paying in the balance called for thereby until it was made worthless by an enforced sale of his privileges thereunder in the following January; and his present suit is for the damage

done him by the false representations. The rule of damages in such case as laid down by the Court of Errors and appeals, is that the damage is the difference between the price paid by the purchaser and the Real value of the property that he has acquired. *Crater v. Binninger*, 4 *Vroom*, 513, 516; and the time as of which this difference is to be ascertained is when the fraud ceased to be operative."

If this statement is correct, and appears to be the latest
10 judicial utterance in this State on the measure of damages in fraud cases, then the measure of damages at the most would be \$3,000 and interest.

In any event, the following rule is clearly established:

"The damages must be such as may fairly be supposed to have entered into the contemplation of the parties when they made the contract, that is, must be such as might naturally be expected to follow its violation."

13 Cyc. 52.

Case Note, 3 L. R. A. 587 gives the following many
20 authorities in support of this proposition:

"In an action upon contract, only such damages are recoverable as are the natural and proximate consequence of the breach. These include direct damages, and such as the parties contemplated would be likely to result from a breach when the contract was made."

"Damages which arise upon the direct, necessary and the immediate effect of the breach are always recoverable; or those which ensue in the ordinary course of things, considering the particular nature and subject matter of
30 the contract."

"The rule first stated in *Hadley v. Bazendale*, 9 Exch. 314, for ascertaining damages which are recoverable for breach of contract, that they be such as arise 'naturally, i. e., according to the usual course of things from such breach of contract itself,' has been universally assented to."

Griffin v. Colver, 16 N. Y. 490; *W. U. Teleg. Co. Graham*, 1 Colo. 230;

Sanders v. Stuart, L. R. I. C. P. Div. 326; *Great*
40 *Western R. Co. v. Redmayne* L. R. I. C. P. 32;

Masterton v. Brooklyn, 7 Hill, 61 ;
 Cuddy v. Major, 12 Mich. 368 ;
 Johnson v. Mathews, 5 Kan. 118 ;
 Lasrence v. Wardwell, 6 Barb. 423 ;
 Portman v. Middleton, 4 C. B. N. S. 322 ;
 Gee v. Lancashire & Y. R. Co., 6 Hurlst. & N. 211 ;
 Hales v. London & N. W. R. Co., 4 Best & S. 66 ;
 Travis v. Duffau, 20 Tex. 49 ; Tox. v. Harding, 7
 Cush. 516 ;

1 Sutherland, damages, p. 84." 10

There were elements of damage introduced in this case, approved by the court, and allowed by the jury which it is urged were too remote properly to be considered, and not the natural and proximate result of the alleged fraud. These were the items of \$100 to Fell & Devine for Commissions, \$59.10 to Raymond, Mountain, Van Blarcom and Marsh for search, five installments to the Building & Loan Association, holding the first mortgage, aggregating \$400, taxes amounting to \$138.28 and interest on these payments. 20

All these payments made to the Building & Loan Association and for taxes, were made after the conveyance by Hendrickson to Marsh (September 24, 1913, Case p. 199), before which time it was known that Hendrickson was not able to meet the mortgage (Case p. 82).

These payments were not the natural and probable result of the transaction. In the ordinary contemplation of the parties they would not have been foreseen. The most that the defendant could have supposed would happen to the plaintiff as the result of these representations would be the loss of the principal and interest of this mortgage. He could not have foreseen that the plaintiff would make voluntary and altogether unnecessary payments or installments to the Building & Loan Association and also taxes, when there was not the slightest obligation on his part to do so. He was not the owner of the property, nor had he bought it in to protect himself. If he really believed until June, 1915, that the mortgagor was a responsible party, as he says, he would not have made these payments in the spring of 1914. There was no rea- 40

son why he should make these payments, and that he would do so cannot fairly be said to have been in the contemplation of the parties at the time these statements were made.

XI, XIII and XIV.

11. The verdict was against the clear weight of the evidence.
13. The verdict should have been in favor of the defendant.
14. The plaintiff made out no cause establishing a cause of action against the defendant.

These objections to the verdict of the jury are covered in the argument on the other points.

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For the foregoing reasons it is urged that the decision of the lower court should be reversed and a new trial granted. It is further insisted that the measure of damages was incorrectly stated, and that the verdict was excessive in that it included items too remote to be allowed.

HOWE & DAVIS,
Counsel for Defendant.

New Jersey Court of Errors and Appeals

EDWARD W. MARTIN,
Plaintiff and Respondent,

vs.

ALBERT F. BALDWIN,
Defendant and Appellant.

*Action at
Law.*

*On Appeal
from the
Supreme
Court.*

BRIEF FOR PLAINTIFF-RESPONDENT.

Brief of Jacob L. Newman and Benjamin Newman for Plaintiff and Respondent.

This was an action instituted in the New Jersey Supreme Court by Edward W. Martin against Albert F. Baldwin and P. Frank Stone to recover damages resulting from a conspiracy on behalf of the defendants Albert F. Baldwin and P. Frank Stone to cheat and defraud the plaintiff by false and fraudulent representations, and also because of the false and fraudulent representations made by Albert F. Baldwin to the plaintiff, Edward W. Martin, inducing him, the said Martin, to purchase a certain bond and second mortgage of \$3,000, covering a house and lot on Lexington avenue, Montclair, N. J., in exchange for certain lots hereinafter described, which bond and mortgage was valueless and resulted in a loss to the plaintiff of \$4,509.91.

The case was tried at the Essex Circuit of the Supreme Court before Nelson Y. Dungan, on April 28th, 1916, and the jury rendered a verdict against the defendant, Albert F. Baldwin, and in favor of the plaintiff, for \$4,509.91 damages, and costs of suit, and from said verdict of the jury an appeal is taken to the New Jersey Court of Errors and Ap-

peals. A judgment of non-suit, on motion of the defendants, was, at the end of the case, directed in favor of the defendant, P. Frank Stone, who is no longer a party to the proceedings, because there was not sufficient evidence to prove the conspiracy.

The facts in this case are, briefly, as follows:

Edward W. Martin who had just started to engage in the real estate business, was about to become the owner of two certain tracts of land consisting of three lots, 150 feet front by 150 feet in depth, situate on the easterly side of Gregory avenue, in the Town of West Orange, County of Essex and State of New Jersey, which lots he desired to sell or exchange. The plaintiff, Edward W. Martin, notified various real estate agents of his desire to sell or exchange said lots, and, as a result of a telephone conversation with Fell & Devine, real estate agents, in which they stated that they had someone they thought might be interested in the property, plaintiff went to their office and there first met Albert F. Baldwin, the defendant.

Albert F. Baldwin, the defendant, stated to the plaintiff, that he represented a client, P. Frank Stone, who was the owner of a one family frame house located on Lexington avenue, Montclair, N. J.; that P. Frank Stone was about to sell the property owned by him to one, James Hendrickson for \$11,000, in cash; and, as part of the consideration for said sale, P. Frank Stone was to procure a purchase money mortgage of \$3,000 at six per cent. for two years on said property, which was second in priority to a building and loan mortgage of \$5,000; and Albert F. Baldwin suggested that his client P. Frank Stone would accept a deed of conveyance for the lots in West Orange from the plaintiff, Edward W. Martin, in exchange for the \$3,000 mortgage and bond which P. Frank Stone was about to obtain from James Hendrickson as part of the purchase money for said conveyance.

The said Albert F. Baldwin informed Edward W. Martin that said property was purchased by James Hendrickson for \$11,000 in cash and that the said property had been accepted by the said P. Frank Stone at a valuation of \$11,000 in an exchange; that James Hendrickson was engaged in the plumbing business and was a perfectly responsible business man; that the said James Hendrickson did work for the Fairchild-Baldwin Co., with which the said defendant, Albert F. Baldwin was connected, and that he knew James Hendrickson was in receipt of a sufficient income to pay the building and loan dues and interest on the prior mortgage of \$5,000 and that James Hendrickson's purchase money mortgage of \$3,000 would contain a clause that \$150 should be paid on account thereof each and every three months, and the balance of the mortgage was to be paid July 1, 1915, with interest at six per cent. per annum; that James Hendrickson made this suggestion and was anxious that the mortgage be an installment one as his financial standing would permit him, the said James Hendrickson, to pay these quarterly installments in addition to the principal and interest on the building and loan mortgage, and also the carrying charges on the property.

At the time the above statements were made as to the financial responsibility of James Hendrickson, Albert F. Baldwin knew that James Hendrickson was doing odd jobs of the most menial character, and was an irresponsible, humble laboring man, as the evidence clearly proved.

The above conversation between Albert F. Baldwin, the defendant, and Edward W. Martin, the plaintiff, occurred either in the office of Fell & Devine, or while the parties were proceeding in an automobile to examine and view the house on Lexington avenue, Montclair, N. J., Albert F. Baldwin

and P. Frank Stone both being thoroughly familiar with the lots in West Orange owned by Edward W. Martin, according to Albert F. Baldwin's statement to the plaintiff Edward W. Martin.

The parties went to Montclair and examined the house on Lexington avenue and, at that time, Edward W. Martin, who had not had a great deal of experience in the real estate business, stated that he had serious doubts whether there was sufficient equity in the property. Albert F. Baldwin then stated to Edward W. Martin (see State of the Case, page 15, line 18, etc.) :

“Q What was said then?

A. I commented on the fact that a first mortgage of \$5,000, a second of \$3,000, the total, it would seem to me, was a very big proportion of the value, and I could not see much equity over those two mortgages. Mr. Baldwin told me I must be mistaken, if someone would pay \$11,000 for it.

Q Did he say who had paid \$11,000?

A This Mr. Hendrickson.

Q What else did he say?

A Then I said that I would not want to do it altogether on the strength of the property, because of the closeness of the equity with the value, and I wanted to know something about Hendrickson; and then he told me these things, that Hendrickson was a man in business; that he had known him for some time; that he was engaged frequently doing work for the Fairchild-Baldwin Company; that he was responsible; had sufficient means to buy the house; and he had elected to make the payments on the mortgage \$150 quarterly, as he wanted to get it paid off as quick as he could; that the mortgage would run for two years, and at the end of that time it would be paid in full.”

Albert F. Baldwin reiterated the fact that he was personally and intimately acquainted with James Hendrickson and said that James Hendrickson was a responsible man; that James Hendrickson had purchased the property for a home and residence, and that James Hendrickson intended to occupy same; that James Hendrickson was able to pay the building and loan dues and interest, and the up-keep of the property, and that there would be paid on account of the mortgage \$150 every three months, viz., \$600 per year, which meant additional protection and larger equity in the property. Albert F. Baldwin also represented that the bond and mortgage to be executed and delivered by James Hendrickson would be a valid and subsisting mortgage and would be given for a full and ample consideration, and that the bond of James Hendrickson was good. That, thereupon, relying upon the representations that James Hendrickson was a responsible man, that he was a business man, that his bond was good, and that James Hendrickson was in receipt of an income from the Fairchild-Baldwin Co., and other sources sufficient to take care of the building and loan dues and interest, and could also take care of the quarterly payments of \$150 each, or \$600 per year, mentioned in the mortgage, that James Hendrickson had paid \$11,000 in cash for the property, and that the property had been accepted by P. Frank Stone at a valuation of \$11,000 in exchange, and that said \$3,000 mortgage was given for a full and ample consideration, Edward W. Martin and Susan his wife, on the 24th day of July, 1913, entered into an agreement for the sale of property with P. Frank Stone, relying upon the truth of the representations above made, which agreement it is particularly noted, contained a clause which reads as follows (see Exhibit P. 1, p. 165) :

"It is agreed that the title to the premises covered by said mortgage and the bond accompanying the same is held in fee simple by James Hendrickson, and that same is free and clear from all encumbrances excepting said \$5,000 mortgage and said second mortgage of \$3,000. Also that the maker of the said \$3,000 mortgage is the same person who is now the owner of said premises or will be the owner at the time this agreement is performed."

Also the clause,

"Said mortgage of \$3,000 to contain the usual thirty day interest default clause and sixty day tax clause with installments of principal payable \$150 every three months from the date hereof."

The Fairchild-Baldwin Co., acquired title to said property by

"Deed from James M. Wakeman and wife to Fairchild-Baldwin Co., dated December 23, 1912, recorded in book S. 51 of deeds for Essex County, p. 336 (see p. 174)."

And that Fairchild-Baldwin Co. made a

"Deed to P. Frank Stone, dated July 21, 1913, recorded in Book C. 53 of deeds for Essex County on page 373 (see p. 179)."

That the deed from the Fairchild-Baldwin Co., to P. Frank Stone is dated three days prior to the actual date of the agreement between Edward W. Martin and wife and P. Frank Stone.

That a conveyance of the lots on Gregory avenue, West Orange, N. J., in question was made by

"Deed from Edward W. Martin and wife to P. Frank Stone, dated August 15, 1913, recorded in Book Z. 52 of deeds for Essex County, page 523 (see p. 202)."

The mortgage in question (see p. 186), which was

dated July 25, 1913, in the consummation of the agreement was, by deed of assignment, assigned by

P. Frank Stone to Edward W. Martin on the 9th day of August, 1913, and recorded on August 22, 1913, in book No. 112 of Assignments, page 536 (see p. 195)."

After said agreement had been executed and performed, according to its terms, said

"Mortgage of \$3,000 made by James Hendrickson and wife to P. Frank Stone was, by deed of assignment, assigned by Edward W. Martin to Theodore McCurdy Marsh on the 22nd day of August, 1913, recorded in Book 112 of Assignments, page 537 (see p. 197),"

and was purchased by said Theodore McCurdy Marsh. Edward W. Martin, of course, realizing and relying on the fact that he assumed no risk in guaranteeing the mortgage, as he has been informed that James Hendrickson was a reliable and responsible man, and that said property was purchased for \$11,000 in cash, guaranteed the payment thereof with interest, and an

"Agreement was entered into on the 22nd day of August, 1913, by which Mr. Marsh was to receive, and Mr. Martin was to sell, the mortgage in question, the payment of which principal and interest was guaranteed by Mr. Martin (see Exhibit P. 2, p. 168)."

It was, however, ascertained that the mortgage first drawn was improperly prepared and did not contain the clause that \$150 was to be paid off every three months. This apparent mistake was rectified and a new mortgage executed (see p. 190), in accordance with the previous arrangement between Edward W. Martin, the plaintiff, and Theodore McCurdy Marsh.

On or about the 23rd day of September, 1913, just

one month and fifteen days after the assignment of mortgage, by P. Frank Stone to the plaintiff Edward W. Martin, and before any installment of principal or interest had accrued on the mortgage now held by Theodore McCurdy Marsh, and prior to but a single default in the building and loan mortgage, if any, the defendant, Albert F. Baldwin called at the office of Theodore McCurdy Marsh and stated to him that James Hendrickson had failed to pay the building and loan dues and interest and would not be in a position to pay the quarterly installments on the second mortgage; that James Hendrickson was financially embarrassed, but perhaps it would only be temporary. He then, subsequently, offered to deed the property to Theodore McCurdy Marsh to save foreclosure expenses and suggested Mr. Marsh take the same to save himself annoyance and difficulty, and that James Hendrickson would then subsequently repay Mr. Marsh what it would cost to carry the property, with interest. After some conversation between Edward W. Martin and Theodore McCurdy Marsh, and as a result thereof, a

“Deed was delivered from James Hendrickson to Theodore McCurdy Marsh, dated September 24, 1913, and recorded on October 4, 1913, in book E. 53 of deeds for Essex County on page 566 (see p. 199).”

covering said property in Montclair, N. J., with the distinct understanding it would not release James Hendrickson in any way from his liability upon the bond; and this was not only verbally and distinctly understood between the parties, but when Albert F. Baldwin brought the deed from James Hendrickson and wife and delivered it to Theodore McCurdy Marsh, he, the said Marsh, wrote a letter dated October 3, 1913, to James Hendrickson embodying this understanding, and delivered it to Albert F. Bald-

win (see p. 82), a portion of which said letter is as follows:

“In accepting this deed, I do not intend, however, to release you in any way from your obligations to me under the bond and mortgage, but merely to facilitate the collection of the money due.”

None of the parties up to this time, nor until two years after the transaction had been closed, ever saw or spoke to James Hendrickson, who was purposely concealed from the parties in interest.

Edward W. Martin also had an understanding with Theodore McCurdy Marsh, by which Mr. Marsh held Mr. Martin strictly to his guarantee.

Edward W. Martin then immediately endeavored to ascertain the real truth. *It took him nearly two years to locate James Hendrickson, and it was established by clear evidence that James Hendrickson was a man of no financial responsibility and his bond was worthless and valueless; that he was a poor laborer who had been doing odd jobs for the Fairchild-Baldwin Co., and who apparently had no interest in the piece of property in question located on Lexington avenue, Montclair, N. J.; that he was a mere dummy in the transaction; that James Hendrickson had never paid \$11,000 for said property, nor a single penny therefor; that the mortgage of \$3,000 which James Hendrickson had executed to P. Frank Stone was absolutely without consideration and had no validity; that James Hendrickson was paid \$25.00 by the Fairchild-Baldwin Co., at the request of Albert F. Baldwin, for his services in agreeing to sign the bond and mortgage; that Albert F. Baldwin induced James Hendrickson to put on a good suit of clothes and a decent hat, and go up to the property on one or two occasions and act as if he were the owner thereof (see p. 53, l. 28, &c.); that James Hendrickson never intended to occupy*

the property himself, nor for his own home; that James Hendrickson knew nothing concerning the building and loan mortgage, and had no interest in the transaction whatsoever.

James Hendrickson and wife, in addition to signing the mortgage, signed the deed (at the request of Albert F. Baldwin) to Theodore McCurdy Marsh and had no interest in the transaction whatsoever.

It was proven that P. Frank Stone was a half brother of Albert F. Baldwin, they both having the same mother; that P. Frank Stone was not in the real estate business, and was a mere dummy that Albert F. Baldwin used in his transactions; that said P. Frank Stone was a photographer in Plainfield, N. J., and that he knew nothing about the transaction and was not at all interested therein; that he never saw the property; that he had had several real estate deals with the Fairchild-Baldwin Co., and with Albert F. Baldwin, and that "He got his and the Fairchild-Baldwin Co. crowd got theirs" (see State of the Case, pp. 84-85), and that everything was all right; that he had never seen James Hendrickson.

That shortly after the deal herein set forth had been closed, Edward W. Martin met a totally disinterested witness by the name of Oscar S. Ritter, on Broad street this city, and that Mr. Ritter informed him (Mr. Martin) that Albert F. Baldwin had stated to him that he had stolen the lots in West Orange from Mr. Martin, and that he chuckled with glee that he had gotten away with the transaction.

As part and parcel of the fraud and deceit, it was established that the original owner of the property on Lexington avenue, Montclair, N. J., was the Fairchild-Baldwin Co., by which concern Albert F. Baldwin is employed as a salesman.

That P. Frank Stone, to whom the Fairchild-Baldwin Co., made a deed for said property, is a half-brother of Albert F. Baldwin.

That William S. Fairchild is the president of the Fairchild-Baldwin Co., and uncle of Albert F. Baldwin and Clifton D. Baldwin.

That Clifton D. Baldwin is the secretary and treasurer of said Fairchild-Baldwin Co., and a brother of defendant Albert F. Baldwin.

That Albert B. Baldwin, who is the vice-president of the Fairchild-Baldwin Co., is the father of Albert F. Baldwin and Clifton D. Baldwin.

That James Hendrickson, to whom Albert F. Baldwin made a deed for said property, was the same as P. Frank Stone, a dummy in the transaction, who made the mortgage of \$3,000 to P. Frank Stone without consideration. That the mortgage was subsequently foreclosed and Edward W. Martin lost the value of the mortgage, and various other expenditures in his endeavors to save the mortgage, which amount was proved to be \$4,509.91, the amount hereinbefore set forth, and the amount at which the jury assessed damages which amount was undisputed, as the evidence clearly demonstrates.

Examining the grounds of appeal in sequence we find:

I.

The plaintiff, Edward W. Martin, was asked, on cross examination: "When you said a moment ago that Albert Baldwin did not say to you that Stone had paid \$11,000.00 in cash for that property, were you speaking the truth?" On objection by the plaintiffs' attorney the question was overruled.

This line of cross examination is clearly objectionable, for:

"Cross examination tending to establish the falsity, whether intentional or otherwise, of the witness' statements on his examination in chief is proper; but the question should not be framed so as to reflect on the character of the witness, *and it has*

been held improper to ask the witness whether certain testimony given by him was true, or if a certain portion of his testimony is as truthful as the balance." 40 Cyc., 2493.

In *Frankel vs. Wolf*, 7 Misc. (N. Y.), 190, 27 N. Y. Suppl., 328, which was a suit for commissions, the court excluded upon cross examination the following question: "When you said before that he said that he would give you five per cent. commission, you told something that was not true?" The court holds that no error was made in excluding this question. "Whether the witness' testimony was true or not was properly for the determination of the court." (Trial without a jury.)

In *Rains vs. State*, 88 Ala., 91, 7 So., 315, defendant's counsel asked: "Is what you say about that as true as everything else you have testified in this case?" The court sustained an objection to this question.

The court in its opinion says: "We know of no rule of law which requires or authorizes a witness to institute a comparison between the truthfulness of different parts of his testimony. All should be truthful, and equally truthful, if the witness observes his oath; and it is for the jury to determine to what extent they will believe or disbelieve his testimony. The question was properly disallowed as being immaterial, in the aspect in which it was sought to have the witness answer."

We respectfully submit that the above statement quoted from Cyc. is a true statement of the law on the question, and that the same is therefore clearly objectionable.

II.

The following question on cross examination of the plaintiff was overruled: "So that the real estate men did not put one over on you, did they?" It should be noted that the plaintiff had just entered the real estate business and had been engaged therein for only about six months (State of the Case p. 13, l. 8), and as to the appellant's contention as to the plaintiff's business ability to reduce the commission paid by him in closing this transaction from \$150 to \$100, it would seem that this was surely to the disadvantage of the defendant, and that the answer of the plaintiff in (State of Case on top of p. 37), which lead up to the question overruled and now under discussion, is conclusive, "Well, I am a business man; after all I have some knowledge of business."

The question appears to be clearly argumentative, and it calls for an opinion and "Cross examination whose apparent object is merely to prejudice the jury against the witness without bringing out anything legitimate affecting his credibility should not be permitted." 40 Cyc., 2488-9.

III.

The purposes of the question overruled were, as stated by the appellant's counsel at the trial (State of Case, pp. 89, 90), to ascertain whether the mortgage was offered in evidence in the foreclosure suit, in what way it figures in the same, whether it got into the decree, or not, and whether Mr. Marsh, plaintiff's witness, knew the amount that was decreed to be due by the Court of Chancery on this mortgage (Exhibit P. 20).

It is significant to note, at this time, that no evidence was offered to dispute the amount either paid on the mortgage by the plaintiff or the balance

claimed to be due by the plaintiff to Mr. Marsh, on his guarantee.

The witness, on his direct examination, was not asked with regard to the decree. A cross examination is limited to matters brought out on the direct examination.

State vs. Brady, 71 Law, on page 361.

State vs. Zeilman, 75 Law, on page 363.

The question, if it had been answered, was prejudicial to the defendant, as tending to show a denial of merger, it being set up by the defendant as an affirmative defense (State of Case, p. 10, second defense), that the conveyance of the Lexington avenue, Montclair, premises to Mr. Marsh, the holder of the second mortgage by assignment, merged the mortgage with the title. The answer stating that the witness had proved his mortgage in the foreclosure suit of the first mortgage and had obtained a decree in that case, would surely show that his intentions were never to extinguish the mortgage by accepting a conveyance of the premises.

And it is further respectfully submitted that the amount of the decree was not in issue, unless as a matter of affirmative defense, but there was no effort by the defendant to introduce the decree in evidence, or at any time to object to the amount of the damage of the plaintiff.

IV.

A question directed to ascertain who was the owner of the piece of property in question, does not call for a conclusion of law, but for a statement of fact. The witness was surely not prejudiced by the answer that the property actually belonged to Mr. Stone, and not to him. There was a non-suit entered in favor of the defendant, Stone, and consequently the conspiracy charged in the first count of the plaintiff, fell.

V.

With respect to the court's refusal to non-suit the plaintiff's case against the defendant appellant, we respectfully submit that the contention of the defendant in his proof, with respect to the first head, under which he groups the misrepresentations, namely, "1. Misrepresentations as to the value of the property," is erroneous. There is no allegation in the complaint that the fraud was committed in stating that the property was worth eleven thousand dollars or less. The fraud upon which this action is based, in part, is a statement that James Hendrickson paid eleven thousand dollars for the property by paying three thousand dollars in cash, three thousand dollars by executing and delivering the second mortgage in question, and five thousand dollars by taking the property subject to the first mortgage in that sum.

There is a substantial difference between the representation as to the value of the property and the absolute statement that James Hendrickson paid eleven thousand dollars for the property (State of Case, p. 15, ll. 11 and 19 to 26).

"The false statement of a fact constitutes actionable fraud.

"The distinction is to be sharply drawn between the expression of an opinion as to a subject of which knowledge, in its strict sense, cannot be had, and the statement of a fact, false within the knowledge of the party who makes it.

"If the vendor says 'the price is very low and as reasonable as he can afford to take,' it is mere commendation of his goods, or, as some of the cases say, 'dealers' talk,' and the rule *caveat emptor* applies. But if the vendor says, 'that is the customary price, the price he charges others, and that A and B and C, who are in the same business, are selling at that price,' he states a fact, and if he knowingly misrep-

resents, he is guilty of a fraud which is actionable." *Conlan vs. Roemer*, 52 Law, on pages 57, 58.

In *Thompson vs. Koewing*, 79 Law, on page 246, the court says, "The statements of the defendant that the land covered by the \$90,000 mortgage was worth \$120,000 at a fair market value and would bring that sum at a fair sale in the market, may be regarded as mere expressions of opinion within the case of *Conlan vs. Roemer*, 23 Vroom, 53; but the statement on which such expressions were based, viz., that the property had cost the sum of \$120,000, was a statement of a fact as of the knowledge of the defendant, and hence was well pleaded, whether its falsity consisted in the untruth as a fact or in the untruth of the defendant's affirmation of his knowledge of its truth as a fact." *Cummings vs. Cass*, Id., 77.

See also *Kohl vs. Taylor*, 62 Wash., 678, 114 Pac., 874, L. R. A., N. S., 35-174, also note the above case on "Fraud; false statement as to the cost, selling or market price of property, or as to offers therefor."

Nor was this a purchase or exchange of real estate, as the defendant appellant would have us assume. The plaintiff was buying a bond of three thousand dollars, secured by a mortgage and the question of the value of the real estate would only be material with respect to the collateral of the bond, because the bond is the primary obligation. The misrepresentations, upon which this action is based, are the misrepresentations as to the price Mr. Hendrickson paid for the property, his responsibility, the fact that he was going to reside on the property and had purchased the same for a home and residence, that the bond and mortgage represented three thousand dollars actually due to Mr. Stone, that the execution of the bond and mortgage was *bona fide* and not made for the purpose of com-

mitting a fraud upon the plaintiff and the further continuing fraud, when the deed for the property was tendered to Mr. Marsh, with the express proviso that Mr. Marsh would agree to reconvey title, if Hendrickson, in the course of a month or so, should get into such financial condition, that he should wish to occupy the property. The proof submitted in support of the above facts, the testimony of Hendrickson that he received twenty-five dollars for acting in this matter and the testimony of his wife, clearly raise such a question of fact as to the fraud and misrepresentations, as to clearly entitle the same to be submitted to the jury. The elements of fraud as defined by the court in its charge, were clearly proved by the plaintiff.

In *Byard vs. Holmes*, 34 Law, on page 296, the elements of fraud are stated as being "that the plaintiff must allege, with reasonable certainty, and be prepared to prove, at least three things: 1. That the defendant made some representation to the plaintiff, meaning that he should act upon it. 2. That such representation was false, and that the defendant, when he made it, knew it to be false. 3. That the plaintiff, believing such representation to be true, acted upon it, and was thereby injured."

VI.

The sixth ground of appeal concerns the refusal by the court to permit the offer in evidence of an agreement made between the Fairchild-Baldwin Co. former owner of the Montclair property, and one, John M. Wakeman, dated December, 1912, the same being offered for the purpose of showing that the Montclair property "were taken in by them (Fairchild-Baldwin Co.) on a trade with Wakeman at the price of ten thousand dollars." The court, in sustaining the objection to this offer, states (State

of Case, p. 147, ll. 18 to 23). "There appears to be no suggestion of misrepresentation on the part of the defendants or either of them, as to the price, which the Fairchild-Baldwin Co. paid for the property; that price seems not to be at issue in the case. I will sustain the objection." As stated before, the plaintiff was purchasing a bond and mortgage and not buying real estate, nor is the defendant being charged with misrepresentations of value, but is charged with misrepresentations as to the price paid. We submit that, for the reasons quoted by the court, this offer to introduce the evidence was properly overruled.

VII.

The court refused to charge the jury as follows:

"7. If the jury believe from the evidence that Albert F. Baldwin was not the person who had charge of the matter for Mr. Stone, as his agent, but that the statements alleged to have been made by him were made, if at all, when he was taking Mr. Martin to Montclair to show him the property under orders from his superior in the Fairchild-Baldwin Company, he cannot be held liable in this action."

Evidently the question involved in this ground of appeal is the liability of an agent for fraudulent and deceitful misrepresentations to a third party. At least, although the appellant does not discuss this in his brief, the request to charge was framed for that purpose.

An agent is liable to a third party "for injury resulting from his misfeasance or malfeasance, meaning by these terms the breach of a duty owed to third persons generally, independent of the particular duties imposed by his agency. Accordingly an agent may be held liable in damages to third persons for conversion, fraud and deceit, and even for

negligence. In an action against an agent by a third person for misfeasance or malfeasance it is no defense that he acted as agent or by the authority or direction of another, for no one can lawfully authorize the commission of a tort; nor is it a defense that the agent himself received no benefit from his wrong, or that he has paid over the proceeds of his wrong to his principal, or is liable to the latter therefor." 31 Cyc., 1560-1563.

"An agent or a factor or broker is of course liable for his own frauds." 20 Cyc., 85.

VIII.

We submit that for the reasons set forth under V, namely, that the plaintiff did not allege as part of his fraud a misrepresentation as to value, but as to the amount paid by Hendrickson for the property, and the further reason that the plaintiff was purchasing a bond and mortgage and not a parcel of real estate, that this request to charge was properly refused.

We dispute the statement in defendant's brief that "This mortgage was not a commodity which might have been sold at a profit" (appellant's brief, p. 14, ll. 8 to 10). This bond and mortgage bore interest at six per cent. There are thousands of bonds sold at a price above par yielding less than six per cent. If Hendrickson's bond had been as it was represented, the possibility of the bond and mortgage being sold at above its face value is not so remote or vague as the appellant means us to assume, and this applies more clearly to the bond and mortgage in controversy, as part of the principal of the same was payable every three months.

IX.

The court's charge, "But where there exists between parties some relation whereby the purchaser, being ignorant of the fact, is justified in placing trust and confidence in the honesty and superior knowledge of the person making the representation, or where, in the absence of any particular relation, special confidence is placed in the person making such representation on account of his peculiar knowledge, and the purchaser's ignorance, the purchaser may, without further investigation rely on the statements of such person," is taken from 20 Cyc., 60 (6).

The balance of the charge of this ground of appeal is 20 Cyc., 77 (C).

The appellant contends in his brief that it was material as to who employed the defendant. We submit that this is immaterial.

In *Turner vs. Kuehne*, 70 N. J. Eq., 61, bottom p. 69, the court says: "A party who has perpetrated a fraud upon another, through the forms of law or otherwise, can not be permitted to set up, as a defense to his fraud, that the defrauded party ought to have discovered the fraud and protected himself or herself against it at the time. It does not alter the character or effect of the fraud that it was successful, and that the defrauded party might have protected himself or herself against it, and failed, either through oversight, positive neglect or otherwise, to do so, and in my judgment no estoppel arises out of such failure."

X. AND XII.

These two grounds of appeal deal with the measure of damages.

We find no fault with the rule as to the measure of damages expressed by the defendant in his brief, but the same has no application to the case at bar.

If the plaintiff had purchased real estate, then the rule cited by the defendant in his brief, namely the difference between the actual value of the property (possessed by the plaintiff) and the amount paid for it would be pertinent to the inquiry.

But in the case under consideration the bond and mortgage which were the articles which the plaintiff accepted upon the false and fraudulent representation made by the defendant have no value whatsoever. Therefore, where the thing itself has no value the plaintiff is entitled to be put in the same position as if he had not parted with his money upon the false and fraudulent representation by the defendant and which induced him to purchase the thing which has no value.

The damages of the plaintiff are properly divided into three parts:

1. They are the expenses of the plaintiff in closing the deal.

Agent's commissions	\$100.00	
Search and services re-closing the agreement	59.10	\$159.10

2. The principal and interest paid and accrued on the bond and mortgage, as follows:

Still due on Martin guaranty to Marsh	2,400.00	
Interest on same	396.00	
Payments made by Martin to Marsh on account of principal and interest of bond and mortgage	766.00	3,562.00

3. The sums paid out by the plaintiff after the delivery of the deed to Marsh, as follows:
Sums paid to the Building and

Loan mortgagee for principal and interest on account there- of	450.00	
One fine thereon (1st month)...	5.00	
Taxes and other municipal charges	138.28	
Interest on these items and all items under 1.....	195.53	788.81
		<hr/>
		\$4,509.91

It is significant to note at this time that at the trial no objection was raised as to the various items of damage, as they were proved at the trial, nor to the exhibits offered to prove the same, nor to the itemizing of the various items by the trial court in its charge to the jury (State of Case, pp. 162-63), excepting the general objection to that portion of the court's charge under ground X of appeal.

This objection was accordingly not specific.

We assume that there is no dispute as to the court's charge with respect to a compromise verdict.

The statement of the court then objected to is: "In such a case as this, a case of fraud, the measure of the plaintiff's damage, if he is entitled to recover, would be the amount of his loss caused by the fraud, or, in other words, damages adequate to the injury which he has sustained" (State of Case, p. 161, ll. 33 to 40).

In stating the above the court was substantially quoting 20 Cyc., 130, which reads as follows: "The general rule of damages in cases of fraud is that the party defrauded is entitled to recover the amount of the loss caused by the fraud of the other party, or, as it has been expressed, plaintiff is entitled to recover damages adequate to the injury which he has sustained. Plaintiff can recover the entire amount of his loss occasioned by the fraud, but the recovery must be limited to the actual loss

sustained by reason of the fraud. The expense incurred by the plaintiff on account of the false representations may be the proper measure of damages to be recovered."

As we have heretofore reiterated, the fraud committed was in the purchase of a bond and a second mortgage by the plaintiff through the fraudulent misrepresentations of the defendant. This was not the purchase of real estate. There is no denial that the bond of Hendrickson was worthless. The expenses under 1 above of the plaintiff incurred in closing the matter and in searching the title and for broker's commissions were brought about by the execution of the agreement, which agreement was made because of the fraudulent misrepresentations. The loss to the plaintiff of the amount of the mortgage and interest is directly attributable thereto. The above are jury questions and were so found.

As to the damages under 3 above, they were brought about by the continuing fraudulent misrepresentations of the defendant. He told the plaintiff's witness, Mr. Marsh, that Hendrickson, the dummy, "Was at that time in hard luck" (State of Case, p. 77, l. 15); "If I (Marsh) wouldn't take it (the deed) then I wouldn't get it, and that he would put me to all the expense incidental to a foreclosure case and make as much trouble as possible, if I did not accept the deed" (State of Case, p. 79, ll. 22 to 25)—"He (defendant) insisted that I take the deed, and at the same time that I should write a letter to Mr. Hendrickson which would state that he would agree to rent the property to Mr. Hendrickson if in the course of a month or so Mr. Hendrickson should get into such financial condition that he should wish to take the property" (State of Case, p. 79, ll. 27 to 33). The letter given by Mr. Marsh to the defendant (Exhibit, P. 22, p. 82), the receipt of which was acknowledged by the defend-

ant (State of Case, p. 134, l. 17), is conclusive as to the above facts. They were not true and the defendant knew them to be false. These continuing fraudulent misrepresentations lead the plaintiff to take title through Mr. Marsh and in an effort to minimize the defendant's damage, although he did not know of the fraud at the time that had been committed upon him, the plaintiff made the payments set forth under 3. Surely the defendant has no cause to complain, nor can he say that it was not through his direct fraud that the plaintiff lost these sums of money.

This case seems to us to be parallel to a purchase of stock by the plaintiff through the defendant's fraudulent misrepresentations, and in the holding of said stocks the plaintiff was compelled to pay a stock assessment levied. Surely the payment of such stock assessment would be the proximate result of the defendant's fraud and part of the plaintiff's damage.

A careful examination of the defendant's brief on page 21, line 22, which reads as follows:

"But in this case whichever rule were adopted the result would be the same, since the value of this mortgage would remain at \$3,000 and interest, whether the property were worth \$11,000 or only the value of the mortgages. Assuming that the jury believed the plaintiff's statement to be true, then the result of his representations was that instead of receiving a mortgage worth \$3,000 he received a mortgage worth nothing. According to both of the above stated rules, the most that his damage could be would be \$3,000 and possibly interest" would seem to indicate that after a thorough discussion of the entire matter, the only point that the defendant asserts is that the damages were excessive, but an examination of the evidence and the

charge of the trial court will indicate that no objection was made to the items of damage and the same are truly sustained by the evidence.

The leading case upon the subject in this State, and cited by the defendant in his brief is *Crater vs. Binninger*, 33 N. J. L., 513.

In this case, the estimate of damage was made on the basis of the original outlay of the plaintiff and a subsequent advance of \$500. The court's charge was "that the proper measure of damages was the entire loss sustained by the plaintiff in this transaction, into which he was inveigled by the fraud of the defendant." This was held to be good, although the judgment was reversed on the ground that no allowance was made for an interest in some land still held by the plaintiff and a part of the transaction.

The court says, on page 517, "The rule to be applied in cases of this character (fraud and deceit), is, that the defendant is responsible for those results, injurious to the plaintiff, which must be presumed to have been within his contemplation at the time of the commission of the fraud. When the defendant unlawfully enticed the plaintiff into his speculation, he was aware that the plaintiff would put at risk such sums as he might commit to the venture. With this knowledge, by false pretences, he drew the plaintiff in. On what principle is it, then, that the wrong-doer is not to be made to answer for the loss which he must have foreseen as probable, and which would not have happened without his fault? I think, clearly, these damages are not too remote. They would be embraced even within the rule by which damages are admeasured in cases of contracts. This latter rule is thus carefully defined in *Headley vs. Barendale*, Exch., 341, viz. 'Where two parties have made a contract, which one of them has broken, the damages which

the other party ought to receive, in respect of such breach, should be such as may fairly be considered either arising naturally, *i. e.*, according to the usual course of things, from such breach of contract itself, or such as may reasonably be supposed to have been in the contemplation of both parties at the time they made the contract, as the probable result of the breach of it.' This case is the leading one on the subject, and, in a series of recent decisions, has been sanctioned and followed."

Woodyer vs. G. W. R. Co., L. R., 2 C. B., 318; *Mullett vs. Mason*, L. R., 1 C. B., 557; *Cary vs. Thames Iron Works*, L. R., 3 Q. B., 181; L. R., 6 E. Q. C., 405; *Portman vs. Middleton*, 4 C. B. (N. S.), 322; *Bramley vs. Chesterton*, 2 *Id.*, 592; *Hamilton vs. McPherson*, 28 N. Y., 76; *Taffin vs. Colver*, 16 N. Y., 494; *Abbott vs. Gatch*, 13 Md., 314.

And the court further says, on page 518, "The test is, that those results are proximate which the wrong-doer, from his position, must have contemplated as the probable consequence of his fraud or breach of contract. Thus, to use an illustration of the civilians, if one should sell timber, which should be used to prop up a building, and, by reason of imperfection in such timber, the building should fall and be destroyed, the seller even though he acted fraudulently in the sale, would not be liable beyond the difference in value between good timber and that sold. Under these circumstances, the falling of the building would be regarded in law as a consequence too remote. But if, on the other hand, the timber was sold by a carpenter, for the express purpose of propping up such building, then he would be answerable for all the damage to the building, resulting from his deceitful representations. The ground of these opposite results is, that in the former case, the falling of the building would be too remote, as a consequence of the fraud, because

such consequence could not be supposed to have been within the contemplation of the wrong-doer. And that, in the latter case, the same casualty would be deemed a consequence proximate to the fraud from the fact that he must be presumed to have regarded such an event likely to follow the act which he did." The above rule was followed in *Wakeman vs. Illingsworth*, 40 N. J. L., 431; *Smith vs. Duffy*, 57 N. J. L., 679; *Duffy vs. McKenna*, 82 N. J. L., 62.

Applying the rule in the above case most favorably for the defendant, we find that the plaintiff had a bond, which was worthless (State of Case, on p. 57, ll. 12, 13). As previously stated, there is no attempt to deny this. Let us assume that the mortgage, to begin with, and subsequently, the title which the plaintiff obtained, were worth something, however slight, and that the defendant was entitled to credit therefor. But when the plaintiff discovered the fraud, which was when he found Hendrickson, about two years later, the mortgage and the plaintiff's title to the premises had been wiped out by the foreclosure of the first mortgage on the property. Accordingly, at the time of the trial, the bond and mortgage were valueless and the defendant was entitled to no allowance therefor.

This seems to be the point involved in the case of *Smith vs. Duffy, supra*, and the case of *Duffy vs. McKenna, supra*. In the case of *Smith vs. Duffy, supra*, the court says, page 690, "The defendant must have expected, when he made his fraudulent representations, that the plaintiff would probably retain the stock so long as he believed the representation to be true. The plaintiff did so retain it until the company failed, and during all that time the deceit practiced upon him was effective in controlling his conduct. The loss, therefore, actually resulting from the fraud, and which must be pre-

sumed to have been within the contemplation of the defendant, was the difference between the plaintiff's investment and the value of the stock after the fraud ceased to be operative—that is, after the failure of the company. In the ascertainment of this difference, the market price of the stock at the time of the sale, or during the year succeeding, or at any time before the failure, was of no importance.”

We submit then, that the full amount of damage claimed by the plaintiff, and amounting to the sum of \$4,505.91, were all the results of the fraudulent misrepresentations on the part of the defendant, and that the damages were entirely within the contemplation of the parties hereto and were the logical consequences of the defendant's fraud.

XI, XIII AND XLV.

These grounds of appeal have been covered in the others and are therefore not argued and with all respect for our adversary the grounds of appeal have no substantial merits and are merely interposed for the purpose of delaying the plaintiff in the enforcement of the verdict obtained by him after a complete and careful consideration of all the evidence by a jury and who received a lucid, concise, and accurate statement of the law by the learned trial judge applicable to the facts in the case.

It is respectfully submitted and urged with great vigor, that the verdict rendered by the jury is consonant with rules of justice and is in harmony with greater weight of the evidence and that the damages are only fair and adequate and not excessive in any respect.

A most outrageous and unconscionable fraud was perpetrated upon the plaintiff by the defendant, the discovery of which was made after two years of un-

remitting labor and the expenditure of considerable time and money and that shrewd, cunning and crafty device by which the plaintiff was actually defrauded of said sum of money, was laid bare and presented to a jury who heard this "round unvarnished tale delivered," saw the witnesses, heard the testimony, examined the documents and rendered a verdict which is absolutely unassailable either from the viewpoint of law or of fact and is therefore urged that in complete accord with the legal principles which have been uniformly upheld in this State and in the interests of justice and equity, the verdict should be upheld, the appeal dismissed and the judgment of the Supreme Court affirmed.

Respectfully submitted,

BENJAMIN NEWMAN,
Attorney of Plaintiff and Respondent.

JACOB L. NEWMAN,
Of Counsel.

November Term, 1916.



INDEX

Summons	1
Complaint	2
Answer	10
<i>Reply</i> Testimony and Plaintiff's Witnesses.	12
Edward W. Martin, Direct.	12
" " " Cross	27
" " " Re-direct	48
" " " Re-cross	50
James Hendrickson, Direct.	51
" " Cross	57
" " Re-direct	70
" " Re-cross	70
Margaret Hendrickson, Direct.	72
Theo. McC. Marsh, Direct.	75
" " " Cross	86
" " " Re-direct	72
" " " Re-direct	92
" " " Cross	96
Motion for non-suit.	97
Testimony—Defendant's Witness.	101
Clifton Baldwin, Direct.	101
" " Cross	108
" " Re-direct	113
" " Re-cross	114
P. Frank Stone, Direct.	114
" " " Cross	119
" " " Re-direct	125
Albert F. Baldwin, Direct.	125
" " " Cross	134
" " " Re-direct	144
Fred. W. Romine, Direct.	145
" " " Cross	146

REBUTTAL

Edward W. Martin, Direct.	147
Theo. McC. Marsh, Direct.	149
James S. Hendrickson, Direct.	150
William S. Fairchild, Direct.	150

DECISION IN NON-SUIT

Court's Charge.....	151
Requests to Charge.....	164
Exceptions to Charge.....	164
Postea (printed out of place).	

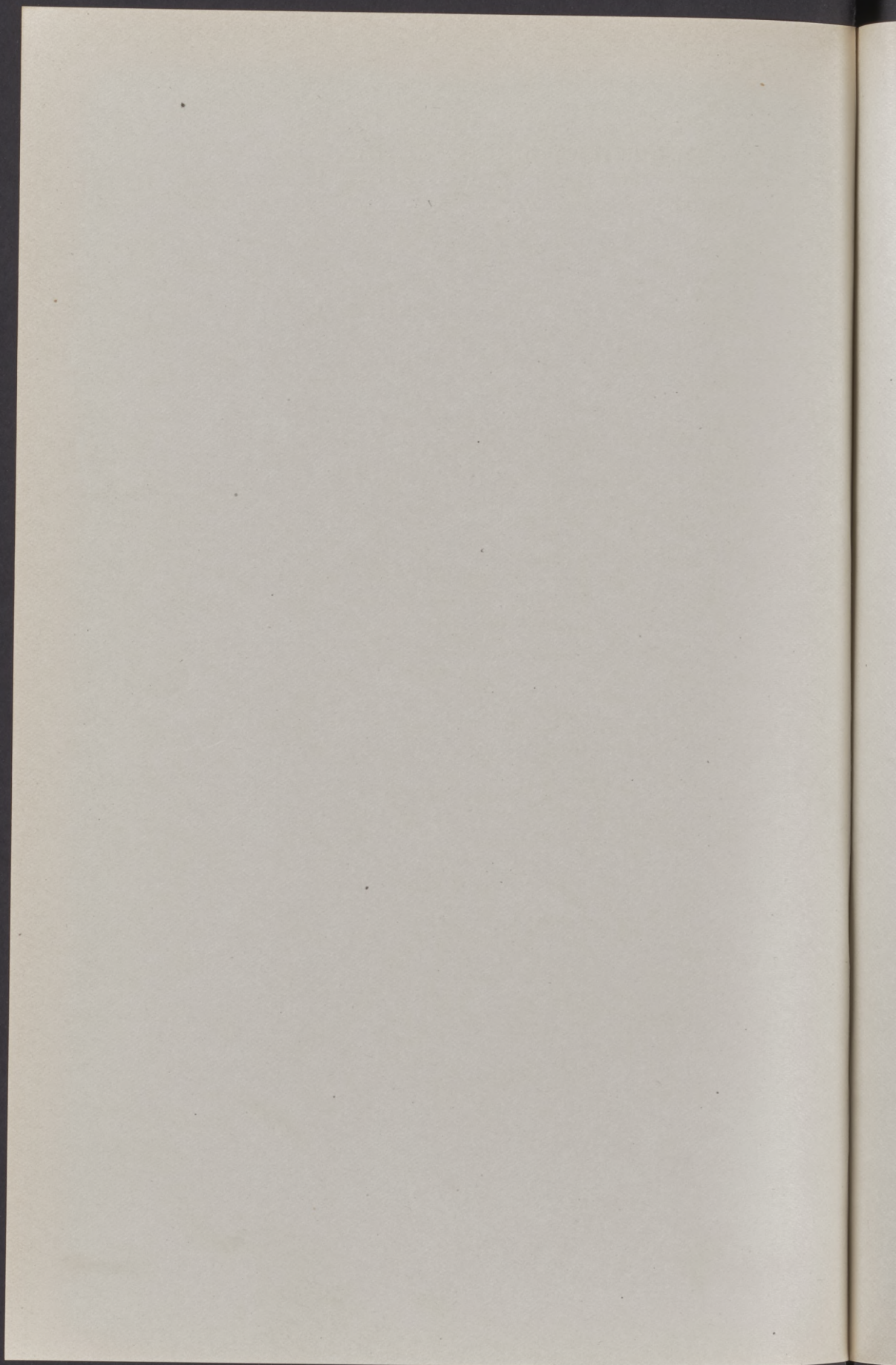
EXHIBITS

Agreement	P 1	165
Assignment, Martin to Marsh.....	P 2	168
Check for \$100.....	P 3	170
Bill for \$62.00.....	P 4	170
Check for \$165.00.....	P 5	171
" " \$245.00	P 6	171
" " \$ 50.00	P 7	171
" " \$ 50.00	P 8	171
" " \$ 50.00	P 9	172
" " \$192.75	P10	172
" " \$105.00	P11	172
" " \$250.00	P12	172
" " \$223.00	P13	172
" " \$138.28	P14	173
Receipt from Fell & Devine.....	P15	174
Letter, Marsh to Martin.....	P16	26
Enclosure in same.....	P17	26
Letter, Marsh to Martin.....	P18	27
Deed, Hendrickson to Marsh.....	P19	74
Mortgage, Hendrickson to Stone.....	P20	75
Bond, " " " 	P21	75
Letter, Marsh to Hendrickson.....	P22	82

Exhibit not numbered including the following papers:

Deed, Wakeman to Fairchild-Baldwin Co.....	174
Mortgage, Fairchild-Baldwin Co. to Improved B. & L.....	178
Deed, Fairchild-Baldwin Co. to Stone.....	179
Deed, Stone to Hendrickson.....	182
Mortgage, Hendrickson to Stone.....	186
" " " " 	190

Assignment, Stone to Martin.....	195
" Martin to Marsh.....	197
Deed, Hendrickson to Marsh.....	199
" Martin to Stone.....	202



New Jersey Supreme Court

EDWARD W. MARTIN

vs.

ALBERT F. BALDWIN AND
P. FRANK STONE

Action at Law.

Summons.

10

*The State of New Jersey to Albert F. Baldwin and P.
Frank Stone:*

(L. S.) You are summoned to answer the annexed
complaint of Edward W. Martin in an
action at law, in the Supreme Court, and
take notice that unless you file your answer
to said complaint with the Clerk of
the Supreme Court, at Trenton, within twenty days after
service upon you of this writ and annexed complaint, the
plaintiff may proceed in the suit and judgment may be
entered against you. 20

WITNESS: William S. Gummere, Chief Justice of
the Supreme Court, at Trenton, this seventeenth day of
June, Nineteen Hundred and Fifteen.

30

WM. C. GEBHARDT, Clerk.

Hahn & Newman, Attorneys.

NEW JERSEY SUPREME COURT

EDWARD W. MARTIN

vs.

ALBERT F. BALDWIN AND

10 P. FRANK STONE

*Action at Law.**Complaint.*

Edward W. Martin, residing at No. 18 South Clinton in the City of East Orange, County of Essex and State of New Jersey, says:

First Count:

1: Plaintiff, at the times hereinafter mentioned, *was engaged in the real estate business* at No. 18 Bathgate
20 Place, in the City of Newark, County of Essex, State of New Jersey.

2: In July, 1913, at Newark aforesaid, the defendants conspired and agreed together to cheat and defraud this plaintiff as they might be able to deceive him by false and deceitful arts and practices as hereinafter stated.

3: In pursuance of their said agreement to conspire, the defendant, Albert F. Baldwin, came to this plaintiff and met him at the offices of Fell & Devine, real estate agents, at their offices located in the City of East Orange,
30 County and State aforesaid. That the said Albert F. Baldwin told this plaintiff that he represented a client named P. Frank Stone, who was about to sell a piece of property owned by him, and as part of the consideration was to receive a bond and mortgage in the sum of \$3,000, which he desired to sell, and that he, the said Albert F. Baldwin believed that he could sell the same for the consideration that the said plaintiff would convey to his client, the said P. Frank Stone, two certain tracts of land located on
40 Orange, County and State aforesaid, and more particu-

larly hereinafter referred to and described, and informed this plaintiff at the same time that the said bond and mortgage was to be a purchase money bond and mortgage, covering a tract of land located on the east side of Lexington Avenue, in the Town of Montclair, on which was erected a one-family frame dwelling; that the person who was about to execute and deliver the said bond and mortgage to the said P. Frank Stone, had, in addition to the said bond and mortgage, in purchasing the said premises, agreed to pay to the said P. Frank Stone a considerable sum of money in cash. 10

4: That the said Albert F. Baldwin stated to this plaintiff that the bond and mortgage of \$3,000 was to be a second mortgage, subsequent and inferior only to a first mortgage of \$5,000, held by the Improved Building & Loan Association of Newark, a corporation; that the property embraced and more particularly described in said mortgage was worth the sum of \$11,000.00, and stated that P. Frank Stone, his client, had purchased the said premises from the Fairchild Baldwin Company, a corporation of New Jersey, with which the said Albert F. Baldwin was connected and associated, for the sum of \$11,000, which he had paid in cash, less the amount due upon the first mortgage aforementioned in the sum of \$5,000 given to the Improved Building & Loan Association of Newark, covering the said premises. 20

5: That the conversations set forth in Paragraphs 3 and 4 were made at the offices of Fell & Devine aforementioned, and while the said parties were on their way to Montclair to examine the Lexington Avenue premises; that the said Albert F. Baldwin stated to this plaintiff that the said premises were to be owned by a man named James Hendrickson, said person being the person who was about to execute the bond and mortgage to the said P. Frank Stone; that the said James Hendrickson was a responsible business man; that he was engaged in the plumbing business and that he could well afford to pay the building and loan association the sum of Fifty Dollars per month, as set forth in the terms of the said mortgage 30

to the Improved Building and Loan Association of Newark; that besides, the said James Hendrickson had agreed to pay the said second bond and mortgage, which bond and mortgage is the one that he proposed to sell to this plaintiff as follows: \$150 every three months from the date of said bond and mortgage, and the balance due on said bond and mortgage to mature on July 1, 1915. The said Albert F. Baldwin further stated that the said James Hendrickson was a responsible merchant, and the said
10 James Hendrickson intended to pay the mortgage off on its due date aforementioned, and to comply with the terms therein set forth, and that the terms in said bond and mortgage were made at the suggestion and request of the said James Hendrickson.

6: That the said Albert F. Baldwin stated and represented to this plaintiff that the said bond and mortgage in the sum of Three Thousand Dollars, made and executed, or to be made and executed by the said James Hendrickson to the said P. Frank Stone represented the sum of
20 Three Thousand Dollars due from the said James Hendrickson to the said P. Frank Stone; that the said bond and mortgage were given for a good and valuable consideration and for the full consideration of Three Thousand Dollars; that the said bond and mortgage were not fraudulent and that there was no adverse equity or claim or demand of whatsoever kind or nature affecting the same in any manner whatsoever.

7: That plaintiff and the said Albert F. Baldwin,
30 executor of the said property in Montclair, and that the said Albert F. Baldwin thereupon again stated to the said plaintiff that the said James Hendrickson was a responsible person, in business for himself, and could easily and readily pay the carrying charges of the Montclair property and make the payments aforementioned, and further that the said James Hendrickson had done considerable work for the Fairchild-Baldwin Company, a corporation of New Jersey, and that the said James Hendrickson was in receipt of
40 monies through the usual course of his business, which

was of more than sufficient volume and amount to enable him to meet with ease the payments called for by the first mortgage and the second mortgage to be executed and delivered by him, covering the said premises, and also the accruing taxes and other charges in carrying the said premises and the building thereon; and further that the said James Hendrickson had purchased the said premises for the purpose of a home and residence, and that he intended to live in and occupy the same.

8: That shortly after said conversations and representations made to the said plaintiff, the said Albert F. Baldwin drew up an agreement which he gave this plaintiff, and that acting and relying upon the said representations, the said plaintiff and Susan H. Martin, his wife, entered into said agreement with the said P. Frank Stone, a copy of which agreement is hereunto annexed and made a part hereof. 10

9: That acting and relying upon the said representations and statements, the said plaintiff, on or about 20 August 15, 1913, consummated said agreement, and obtained possession, by assignment of the said bond and mortgage, and that he thereupon conveyed to the said P. Frank Stone the two tracts of land and premises more particularly described in said agreement, and being the consideration for the purchase by the said plaintiff of the said bond and mortgage.

10: That the said plaintiff sold and assigned the said bond and mortgage to one Theodore McCurdy Marsh, and guaranteed and became surety for the payment of the said bond and mortgage to the said Theodore McCurdy Marsh, in case of the default or failure of the maker of said bond and mortgage to pay the same. 30

11: That subsequent to the execution and consummation of said agreement, with the defendant, P. Frank Stone, the defendant, Albert F. Baldwin, came to the said Theodore McCurdy Marsh, and stated that James Hendrickson, the mortgagor, and the owner of the Montclair premises, had met with serious business reverses 40

and had suffered considerable losses, and found it impossible to meet the payments on the first mortgage, and would be unable to meet the payments falling due or accruing on the second mortgage now held by the said Theodore McCurdy Marsh, and that this condition of the said James Hendrickson would continue for some time, and stated that it would be best for the said Theodore McCurdy Marsh to accept a deed to said premises rather than to go to the expense, trouble and
10 annoyance of foreclosing his bond and mortgage, and thereupon tendered to the said Theodore McCurdy Marsh a deed voluntarily of his own free will and without requesting any consideration in payment of said deed, or in payment to the said James Hendrickson of the premises covered by the bond and mortgage aforementioned, provided, however, that the said Theodore McCurdy Marsh would make an agreement in writing to reconvey the premises described in said deed within two or three months if so requested by the said James Hendrickson,
20 as his condition might be temporary.

12: That the said Theodore McCurdy Marsh informed the said Albert F. Baldwin that it would be necessary for him to confer with the plaintiff, which he did, and further that if the said Theodore McCurdy Marsh took title to the lands and premises described in the said Three Thousand Dollar bond and mortgage, that he would not thereby waive any claims or demands that he might have against the said James Hendrickson or any other person, and that he would take the deed merely and solely for the
30 purpose of saving the expense of a foreclosure suit; and that thereupon the said Albert F. Baldwin agreed to the said terms and conditions stated by the said Theodore McCurdy Marsh, and thereupon the said Theodore McCurdy Marsh took title to the said premises, and on or about the same day conveyed the same to this plaintiff.

13: That the said James Hendrickson at the times aforementioned, and at all times thereafter, was not a responsible business man. That the said James Hendrick-
40 son never paid anything for the premises described in

the bond and mortgage sold to this plaintiff; that instead of paying anything for the same, he received the sum of Twenty-Five Dollars from the said defendants for his services in negotiating the sale of the said bond and mortgage to the plaintiff; that he was in fact used as a "dummy," and that the said P. Frank Stone and Albert F. Baldwin were the principals of the said transaction, the said James Hendrickson being their agent.

14: That the said James Hendrickson never occupied said premises; that he saw them only once, and never intended to live in the same. 10

14a: That the said bond and mortgage of Three Thousand Dollars did not represent the sum of Three Thousand Dollars; that the same was false and fraudulent; that there was no consideration given by the said James Hendrickson to the said P. Frank Stone, for the same, or by the said P. Frank Stone to the said James Hendrickson for the same, and that the said bond and mortgage did not represent the sum of Three Thousand Dollars due from the said James Hendrickson to the said P. Frank Stone. 20

15: That all the representations and statements made by the said Albert F. Baldwin were made fraudulently and falsely, and with intent to deceive the said plaintiff and the said Theodore McCurdy Marsh.

15a: That the said P. Frank Stone knew of the said statements and representations of the said Albert F. Baldwin and knew that the same were false and fraudulent, and were made for the express purpose of inducing the said plaintiff to enter into said agreement; that the said P. Frank Stone knew that the said bond and mortgage of Three Thousand Dollars given to him by the said James Hendrickson was false and fraudulent in fact, and that same was made for no consideration, and made for the express purpose of inducing the said plaintiff to enter into said agreement. 30

16: That the said P. Frank Stone and the said Albert F. Baldwin were partners in the profits of said trans- 40

action, and that they both conspired to cheat and defraud the said plaintiff.

17: That the said plaintiff was ignorant of the conspiracy of the said defendants, and of the intent to deceive and defraud him, and was deceived and defrauded by them.

18: That the two tracts of land located on Gregory Avenue and conveyed by the plaintiff to the said defendant, P. Frank Stone, as consideration for the conveyance and assignment by him of the said bond and mortgage, was obtained by the said defendants for, and applied to the common benefit and use of all of the said defendants.

19: That the plaintiff believed all of the above representations to be true, and that he acted upon them, and was thereby deceived and injured.

Second Count:

1: The plaintiff repeats Paragraph 1 of the first count.

2: In July, 1913, at Newark, aforesaid, the defendant, Albert F. Baldwin, came to this plaintiff and met him at the offices of Fell & Divine, real estate agents, at their offices located in the City of East Orange, County and State aforesaid. That the said Albert F. Baldwin told this plaintiff that he represented a client named P. Frank Stone, who was about to sell a piece of property owned by him, and as part of the consideration was to receive a bond and mortgage in the sum of \$3,000, which he desired to sell, and that he, the said Albert F. Baldwin believed that he could sell the same for the consideration that the said plaintiff would convey to his client, the said P. Frank Stone, two certain tracts of land located on the east side of Gregory Avenue, in the Town of West Orange, County and State aforesaid, and more particularly hereinafter referred to and described, and informed this plaintiff at the same time that the said bond and mortgage was to be a purchase money bond and mortgage, covering a tract of land located on the east side of Lexington Avenue, in the Town of Montclair, on which was

erected a one-family frame dwelling; that the person who was about to execute and deliver the said bond and mortgage to the said P. Frank Stone, had, in addition to the said bond and mortgage, in purchasing the said premises, agreed to pay to the said P. Frank Stone a considerable sum of money in cash.

3: The plaintiff repeats Paragraphs 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 14a and 15 of the first count of the complaint.

10

4: That the said plaintiff was ignorant of the intent to deceive and defraud him by the said Albert F. Baldwin, and was deceived and defrauded by him.

5: Plaintiff repeats Paragraph 19 of the first count of the complaint.

Plaintiff claims as damages \$10,000.00.

HAHN & NEWMAN,
Attorneys of Plaintiff.

20

NEW JERSEY SUPREME COURT

EDWARD W. MARTIN, <i>Plaintiff,</i> vs. ALBERT F. BALDWIN AND 10 P. FRANK STONE, <i>Defendants.</i>	}	<i>Action at Law.</i> <i>Answer.</i>
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Defendants, Albert F. Baldwin, residing in West Orange, Essex County, New Jersey, and P. Frank Stone, residing in Plainfield, Union County, New Jersey, say that:

1. They deny the allegations of the first count.
- 20 2. They admit the conveyance of the said premises to Theodore McCurdy Marsh or to the plaintiff, but deny that there was any understanding or agreement at the time, that the said Marsh or the said plaintiff took the deed merely for the purpose of saving foreclosure expenses, and without waiving any claims or demands that the plaintiff or said Marsh might have against said Hendrickson or these defendants.
3. They deny the allegations of the second count.

30

DEFENSES

First Defense. The defendants did not make the allegations or perform the acts constituting the alleged conspiracy set out in the bill of complaint.

Second Defense. The conveyance of the mortgaged premises to said Marsh or the plaintiff was made and accepted in full payment and satisfaction of the said bond and said mortgage.

- 40 Third Defense. The said plaintiff has not suffered

NEW JERSEY SUPREME COURT

 EDWARD W. MARTIN,

vs.

ALBERT P. BALDWIN *et al.*

10 Transcript of shorthand notes of testimony, and so forth, taken in the above stated cause, upon the trial thereof, at the Court House, Newark, N. J., April 27, 1916.

Before Hon. Nelson Y. Dungan, Judge, and a Jury.

Hahn & Newman, and Jacob L. Newman for plaintiff.

Howe & Davis for defendants.

Jury drawn and sworn.

20 Mr. Newman opens for the plaintiff.

Mr. Davis opens for the defendants.

MR. DAVIS. On the opening of counsel I ask for a nonsuit against the defendant Stone. There has been absolutely nothing to connect him with Albert P. Baldwin.

THE COURT. The motion will be denied.

30 An exception to this ruling is noted by the defendants as ground of appeal.

EDWARD W. MARTIN sworn for the plaintiff.

DIRECT EXAMINATION by Mr. Newman.

Q. Mr. Martin, your full name, please?

A. Edward W.

Q. And where do you now reside?

A. In East Orange.

Q. In the month of July, 1913, where did you reside?

A. In Newark.

40 Q. What place, what street?

A. In an apartment known as the Myrtle apartment, Myrtle avenue and Warren street.

Q. Did you formerly live at 18 Bathgate place?

A. No; I had a place of business there.

Q. What business were you engaged in in July, 1913?

A. In the real estate business.

Q. How long had you been in that business?

A. As a business, perhaps six months; but prior to that I had been in the coffee and tea business, and, perhaps for a year, I don't believe more than that, I had then made two or three deals in that time. 10

Q. Did you own some property, or were you about to become the owner of some property in West Orange?

A. Yes.

Q. In that month?

A. Yes.

Q. Where was that property located?

A. On the east side of Gregory avenue in the Town of West Orange.

Q. What did it consist of? 20

A. Three lots with a frontage of 50 feet, and a depth of 150 each, making a frontage of 150 by a depth of 150.

Q. Was the street a paved street?

A. Macadam street with all the improvements through.

Q. Did you make an offer to sell those lots, or exchange them?

A. Yes.

Q. Through whom did you make the offer?

A. Through the various brokers, some in Newark and some in East Orange. I listed it with all. 30

Q. And do you recall which broker it was that brought about a deal?

A. Yes; a firm now out of existence, but then Fell & Devine of East Orange.

Q. How did you come to go to the office of Fell & Devine?

A. Simply in my duties, or in the work of listing it with the various brokers of East Orange.

Q. Well, did you hear from Fell & Devine? 40

- A. Yes, I did. Mr. Devine called me up and said—
Objected to.
- Q. Don't tell us what he said. What did you do?
- A. I went to his office.
- Q. Who did you meet there?
- A. I met Mr. Devine.
- Q. Anyone else?
- A. Not that time.
- Q. Don't tell us what Mr. Devine said at this time.
- 10 When did you next go there?
- A. The next morning.
- Q. Who did you meet on that occasion?
- A. Albert Baldwin.
- Q. And what talk did you have with him with regard to the property? First, I might ask you, who was present at this conversation?
- A. Mr. Baldwin, myself and Mr. Devine.
- Q. And what was said on that occasion?
- A. It was in regard to the proposition that had been
- 20 made through Mr. Devine for which that meeting was made, to inspect a house in Montclair on which there was going to be, or was, a \$3,000 mortgage. The proposition was to exchange this mortgage for my land.
- Q. Now, what was said with reference to the lots, first, in West Orange?
- A. That it would be not necessary to go there; that Mr. Baldwin—
- Mr. Davis. One minute. By whom?
- Q. Who said that, Mr. Martin. Who said that that
- 30 you are about to tell, that it would not be necessary to go there?
- A. It was when we were going to go to look at the two properties. Mr. Baldwin said it wasn't necessary to go to the West Orange property, that he knew it.
- Q. How did you go to the Montclair property?
- A. In Mr. Baldwin's machine.
- Q. Mr. Baldwin and you were there together?
- A. Yes.
- Q. Were you alone?
- 40 A. We were alone after we left Mr. Devine's office.

Q. Was that all that was said about the West Orange property?

A. That was all, yes.

Q. What was said with reference to the Montclair property?

A. That it was a one-family house, that it was about to be sold by a Mr. Stone, whose name was mentioned then, to another person whose name was mentioned as Mr. Hendrickson; that Mr. Hendrickson was buying the house for his residence; that he was going to live in it, and paid \$11,000 for it. Then we went to look at the house. 10

Q. Who said that?

A. Albert Baldwin.

Q. When you got up to the house was there anything more said at that time, on your way?

A. After we had gone through the house, yes.

Q. What was said then?

A. I commented on the fact that a first mortgage of \$5,000, a second of \$3,000, the total, it would seem to me, was a very big proportion of the value, and I could not see much equity over those two mortgages. Mr. Baldwin told me I must be mistaken, if someone would pay \$11,000 for it. 20

Q. Did he say who had paid \$11,000?

A. This Mr. Hendrickson.

Q. What else did he say?

A. Then I said that I would not want to do it altogether on the strength of the property, because of the closeness of the equity with the value, and I wanted to know something about Hendrickson; and then he told me these things, that Hendrickson was a man in business; that he had known him for sometime; that he was engaged frequently doing work for the Fairchild Baldwin Company; that he was responsible; had sufficient means to buy the house; and he had elected to make the payments on the mortgage \$150 quarterly, as he wanted to get it paid off as quick as he could; that the mortgage would run for two years, and at the end of that time it would be paid in full. 30 40

Q. Did he say anything as to the purpose that Hendrickson would put the house to?

A. As his own residence; that he would live there.

Q. Did he state what Mr. Henrickson's business was?

A. That he was a plumber; in business.

Q. Did he mention anything with reference to his income?

A. That he had an income sufficient; that he knew, because he knew of the man's affairs; that he had an
10 income sufficient, not only to pay the quarterly payments, but to carry the property, pay the charges, building and loan, and that he was aware of the fact, and knew it.

Q. Was there anything else said at that time?

A. Well, those were the—that was the general trend of the conversation.

Q. Well, after this conversation did you enter into an agreement?

A. I did.

Q. Did these statements have anything to do with you
20 entering into the agreement?

A. Absolutely.

Q. In what way?

A. Had I believed them to be false, or had I not believed them, I would not have signed that agreement.

Q. Well, believing them to be true, you signed this agreement which I show you?

A. Yes, I did.

MR. NEWMAN. I offer that in evidence, this
30 agreement.

Said agreement marked Ex. P1.

Q. Mr. Martin, after you had entered into that agreement, was it performed?

A. Yes.

Q. And the mortgage was duly assigned to you, was it?

A. Yes.

MR. NEWMAN. By consent of counsel we have taken from the records certain instruments that I
40 desire now to offer in evidence; perhaps this would

be found a convenient a time as any. I first offer in evidence a deed dated the 23rd day of December, 1912, made by James K. Wakeman, and Jessie I., his wife, to Fairchild & Baldwin & Company, a corporation, for the lots on the east side of Lexington avenue in Montclair, which deed is recorded on the 31st day of December, 1912, in Book S 51 of Deeds for said county.

Next, a mortgage made by the Fairchild Baldwin Company to the Improved Building & Loan Association, of \$5,000, covering the same premises on Lexington avenue, Montclair; that is dated the 10th day of June, 1913, and recorded in the office of the Register of Essex County, on June 23rd, in Book I 31, page 213. 10

Next, a deed made on the 21st day of July, 1913, from Fairchild Baldwin Company, a corporation, to P. Frank Stone, for the property in Montclair on the east side of Lexington avenue, which premises are conveyed subject to the building and loan mortgage of \$5,000. This deed is recorded on the 29th day of July, 1913, in Book C 53 of Deeds for Essex county, on page 375. 20

Next, a deed dated the 25th day of July, 1913, made by P. Frank Stone and Emma R., his wife, to James Hendrickson, for \$1, being the premises on the east side of Lexington avenue in Montclair, and conveying them subject to the building and loan mortgage of \$5,000, which deed is recorded on the 2d day of August, in Book I 53, page 98. 30

Next, a mortgage made on the 25th day of July, 1913, by James Hendrickson, to P. Frank Stone, for \$3,000, covering the premises on Lexington avenue. That mortgage is recorded on the 2d day of August, 1913, in Book G 31 of Mortgages for Essex county, page 544. That mortgage was subsequently cancelled on the 19th day of August, 1913.

Q. Mr. Martin, why was that mortgage which was originally made, cancelled of record?

A. Because it was not in keeping with the agreement; 40

It was drawn for one year, instead of two, and provided for no installment payments on the mortgage.

Q. And then was there a new mortgage in substitution of that mortgage made and executed?

A. Yes.

Q. And assigned to you?

A. Yes.

MR. NEWMAN. The next instrument is a mortgage dated the 25th day of July, 1913, made by James Hendrickson and Margaret, his wife, to P. Frank Stone. That mortgage covers the property in Lexington avenue, Montclair, and is for \$3,000, and contains a clause that \$150 was payable on October 25, 1913, and \$150 should be paid every three months thereafter, and the balance remaining due on the principle to be paid on or before the 25th day of July, 1915. The mortgage is for six per cent. interest payable semi-annually. This mortgage was recorded on the 9th day of August, 1913, in Book M 31, of mortgages for said county, page 456.

Then there is an assignment from P. Frank Stone to Edward W. Martin, dated August 9, 1913, which assigns the mortgage made by James Hendrickson on the 25th day of July, 1913, on lands in the Town of Montclair, for \$3,000, which refers to the mortgage, or designates that mortgage to be the mortgage known as M 31 on page 456.

Q. Now, Mr. Martin, after you had received that mortgage what did you do with it?

A. I assigned it to Mr. Marsh.

Q. Theodore McCurdy Marsh?

A. Yes.

Q. Was that by a written assignment?

A. Yes.

MR. NEWMAN. I offer in evidence the assignment from Edward W. Martin to Theodore McCurdy Marsh, dated August 22, 1913.

Q. At the same time that you assigned this mortgage to Theodore McCurdy Marsh did you enter into any arrangement with him concerning the same?

A. Yes.

Q. I show you a paper writing dated the 22d day of August, 1913, and ask you whether that is signed by you and Theodore McCurdy Marsh?

A. Yes.

Q. There being no subscribing witness to the instrument?

A. Yes.

MR. NEWMAN. I want to offer that in evidence. 10
Same marked Ex. P2.

Q. Now, after the delivery of the assignment to Mr. Marsh, and the delivery of this guarantee agreement, when did you next hear about the matter?

A. Some time over a month.

Q. Yes, and from whom did you hear?

A. From Mr. Marsh.

Q. And as a result of your interview with Mr. Marsh do you know whether Mr. Marsh received a deed for this property? 20

A. Yes.

Q. Well, after Mr. Marsh had received the deed for the property did he at that time, as a result of an interview with you, deliver a letter to Mr. Baldwin?

A. Yes.

Q. Did you see Mr. Baldwin subsequent to this time? Did you see Mr. Baldwin subsequent to this time with regard to this letter? Did you speak to Mr. Baldwin about it?

A. No. 30

Q. Is your information with regard to the letter only what Mr. Marsh told you?

A. And from a copy of the letter which Mr. Marsh sent to me.

Q. Now, then, Mr. Martin, after this deed was delivered to Theodore McCurdy Marsh, did you make an investigation of this matter?

A. Yes, sir.

Q. Did you, as a result of your investigation, find Mr. Hendrickson? 40

A. I did not find him; I found out about him.

Q. Did you subsequently locate him?

A. Eventually.

Q. How long a period did it take before you located him?

A. About two years.

Q. And did you up to that time that you located him, had you ever seen James Hendrickson?

A. No.

10 Q. Did you subsequently locate Mr. P. Frank Stone?

A. Yes.

Q. And up to the time you located him had you ever seen him?

A. No.

Q. Where did you locate him?

A. I found him where he had always been, in business in Bloomfield.

Q. Did you speak to him?

A. I did.

20 Q. Can you fix the time when that was?

A. I believe it was in June of last year.

Q. That would be June, 1915?

A. Yes.

Q. And who was with you at that time?

A. Mr. Theodore McCurdy Marsh, and Mr. Benjamin Newman.

Q. And what did you say to Mr. Stone and what did he say to you on that occasion?

30 A. I told him we had come down to find out, and get a truthful statement from him as to his implication, or his connection, with this transaction, that we had facts, and we wished to courteously give him an opportunity to clear up his end of it, and we thought he was entitled to that courtesy from us, and if he wished to avail himself of it we were there for that purpose. He said he would not talk to us, he said, "I thought that matter had all been forgotten." He told us this in response to our question, that he had never seen this property, that he had never seen James Hendrickson, and the same thing that you used in your address to the jury.

40

MR. DAVIS. I move that that be stricken out.

THE COURT. It will be stricken out.

WITNESS. He said he had many such transactions with the Fairchild Baldwin Company, and that in them he got his, and they got theirs. I pressed him to clearly, manly, state the facts in the case, because we knew them, but he refused to do so.

Q. Did he at that interview, or any other interview, state to you what his relationship was to Mr. Baldwin?

A. That he was a half brother of Mr. Albert Baldwin. 10

Q. Did he on that occasion say anything as to in whose charge this transaction had been left?

A. He said he had left all the matters and all the details of it with Mr. Albert P. Baldwin.

MR. NEWMAN. I desire to offer in evidence also in connection with this stipulation the deed dated the 15th day of August, 1913, between Edward W. Martin and Susan H., his wife, to P. Frank Stone, for \$1, good and valuable consideration, of a tract of land in the Town of West Orange, or rather, two tracts of land, being three lots, aggregating 150 feet front and 150 depth, recorded on the 26th of August, 1913, in Book Z 52 of Deeds for Essex county. 20

Q. Mr. Martin, after you had, or Mr. Marsh had, received a deed for this property, did you make any payments in connection with the transaction?

A. Yes.

Q. I show you a check on the City Trust Company of \$100 to the order of Fell & Devine, and ask you what that represents? 30

A. It represents his commission on the transaction.

Said check offered in evidence and marked Ex. P3.

Q. I show you a bill dated August 20, 1913, from Raymond Mountain, Van Blarcom & Marsh, and ask you what that bill represents?

A. The bill represents fees for search of the title of the property in Montclair on which this mortgage was given. 40

Q. I see the bill is for \$62, how much of that is for searching on this transaction?

A. \$59.10.

Q. \$59.10 was what you paid in this transaction?

A. Yes.

Said bill offered in evidence and marked Ex. P4.

10 Q. I show you a check No. 359, on the City Trust Company, dated November 12, 1913, and made to the Improved Building & Loan Association, for \$165, and ask you what payment that represents?

A. That represents the payment of three months' dues on this house in Montclair.

Q. Will you state the month?

A. The month of September, October and November, together with fines for the three months.

Q. Now, is the entire check properly chargeable against them, or only part of it?

20 A. I would say only for the month of September, because conveyance had been made to Mr. Marsh during that month.

Q. So that would be \$155?

A. \$155.

Said check offered in evidence and marked Ex. P5.

Q. I show you a check No. 411, dated December 3, 1913, payable to Theodore McCurdy Marsh, for \$245, and ask you what that represents?

30 A. In that sum there is represented the first installment payment, together with interest on this \$3,000 mortgage.

Q. The first installment payment being how much?

A. \$150, with interest computed, whatever it would be, on three months on the \$3,000.

Q. That would be \$45?

A. Yes, sir.

Q. So this check represents a payment of \$195 for this transaction?

A. Yes.

Said check offered in evidence and marked Ex. P6.

40 Q. I show you a check dated December 9, 1913, for

\$50, to the Improved Building & Loan Association, and ask you what that represents?

A. That was December dues on the mortgage on that house.

Said check offered in evidence and marked Ex. P7.

Q. I show you a check No. 216 on the Liberty Trust Company, dated January 13, 1914, to the order of the Improved Building & Loan Association, for \$50, and ask you what that represents?

10

A. January dues of the building and loan.

Said check offered in evidence and marked Ex. P8.

Q. I show you a check No. 524, dated February 10, 1914, to the Improved Building & Loan Association, for \$50, on the City Trust Company, and ask you what that represents?

A. February dues to the building and loan.

Said check offered in evidence and marked Ex. P9.

Q. I show you a check dated February 21, 1914, No. 537, to Theodore McCurdy Marsh, for \$192.75, on the City Trust Company, and ask you what that represents?

20

A. Represents the second installment payment on the mortgage, with the interest.

Q. Do you recall where that interest was up to?

A. It would be up to the six months from the date of the mortgage.

Q. The mortgage was dated July 25th, then that would be January 25th?

A. January 25th.

30

Said check offered in evidence and marked Ex. P10.

Q. I show you a check No. 543, dated April 14, 1914, to the Improved Building & Loan Association, for \$105, and ask you what that check represents?

A. March and April dues on this mortgage.

Q. What is the \$5?

A. \$5 fine for not having paid Marsh in March.

Said check offered in evidence and marked Ex. P11.

MR. DAVIS. Should not that be \$100?

40

MR. NEWMAN. That should probably be \$100.

Q. I show you a check No. 602 to the Improved Building & Loan Association, dated May 12, 1914, for \$250. That check bears an annotation on its face which says \$200 on account of the Woodside, and on account of Lexington \$50. What does that check represent?

A. Represents May dues of the building and loan.

Q. Of how much?

A. Of \$50.

10 Said check offered in evidence and marked Ex. P12.

Q. I show you a check No. 632, dated June 2, 1914, made to Theodore McCurdy Marsh, in the sum of \$223, and ask you what that check represents?

A. That represents the third payment, or, included in that is the third payment of the installment on that mortgage, together with the interest.

Q. That was an installment of \$150.

A. Yes.

Q. And interest of \$40?

20 A. Yes, would be thereabouts.

Q. Interest from January 25th to April 25th, according to your own memorandum written by you?

A. Yes.

Said check offered in evidence and marked Ex. P13.

Q. Did you make any additional payments on account of the principal of the mortgage?

A. Yes, I made a further payment.

30 Q. Refreshing your recollection with the memorandum that you have made, when was that payment made, and of how much?

A. That payment was made in September, and was for \$150, with the interest that had accrued.

Q. And how much was the interest?

A. \$38.25.

Q. [By Mr. Davis.] The date?

A. September 8th.

Q. 19—what?

A. 1914, yes, sir.

40 Q. [By Mr. Newman.] I show you a check No. 3024

on the Merchants National Bank, of \$138.25, made to the order of Howard A. Sigler, collector, and made to you by Hahn & Newman, and ask you what that check represents?

A. That represents the taxes on this house in Montclair for the year 1913.

Q. And that was paid to the town collector as the check denotes?

A. Yes.

Said check offered in evidence and marked Ex. P14,¹⁰ together with the bill and memorandum attached thereto.

Q. There was still due on the face of the mortgage \$2,400, was there?

A. Yes.

Q. Did you, Mr. Martin, at my suggestion, calculate the interest on the mortgage from July 25, 1913, to April 25, 1916?

A. Yes.

Q. How much did you find that to be? That is on the \$2,400, is it?

A. Yes, sir. \$396.

Q. Did you calculate the interest on the other expenditures from their respective dates of expenditure, to April 25, 1916?

A. Yes, sir.

Q. How much did you find that to be?

A. \$195.53.

RECESS

Q. Mr. Martin, you never received any rents, issues, or profits from this property at all, did you?

A. No, sir.

Q. The mortgage in question, of \$3,000, was that subsequently foreclosed?

A. Yes.

MR. NEWMAN. I withdraw the question and put it in another way.

Q. Was the mortgage of the building and loan subsequently foreclosed?

A. Yes, the building and loan mortgage was foreclosed.

Q. But the \$3,000 mortgage was cut out?

A. Yes, sir.

Q. I want to show you a receipt that I desire to offer in evidence, which is simply a repetition in a certain sense, dated August 5, 1913, from Fell & Devine, which shows
10 a receipt of \$100 by Fell & Devine?

A. Yes.

Said receipt is offered in evidence and marked Ex. P15.

Q. Now, Mr. Martin, did Mr. Hendrickson, or anyone on his behalf, ever pay you anything on account of this mortgage?

A. No, sir.

Q. Or pay any interest?

20 A. No, sir.

Q. Now, Mr. Martin, I show you a letter dated September 24, 1913, directed to you from Theodore McCurdy Marsh, and ask you whether you received that letter?

A. I did, yes.

Said letter marked Ex. P16 for identification.

Q. I show you another letter from Theodore McCurdy Marsh directed to you dated October 3, 1913, and ask you whether you received that letter from Mr. Marsh?

A. Yes.

30 Q. That letter speaks of an enclosure, does it not?

A. Yes.

Q. I show you a piece of yellow paper purporting to be the enclosure in that communication, bearing the same date, directed to James Hendrickson, and ask you whether that was the enclosure that came in that letter?

A. Yes, sir, it was.

MR. NEWMAN. I ask that they be marked together for identification.

40 Same marked Ex. P17 for identification.

MR. NEWMAN. Will you produce the original of the letter of October 3d, directed to James Hendrickson to Theodore McCurdy Marsh, and delivered to Mr. Baldwin?

MR. DAVIS. This is the first intimation I have had that we are supposed to represent Hendrickson. We have not the letter.

Q. I show you a letter dated October 7, 1913, directed to you, by Theodore McCurdy Marsh, and ask you whether you received such a letter from Mr. Marsh? 10

A. Yes.

Said letter marked Ex. P18 for identification.

CROSS EXAMINATION by Mr. Davis.

Q. Mr. Martin, what is your age, please?

A. Thirty-four.

Q. So that in July, 1913, you were thirty-one or thirty-two? 20

A. Thirty-one.

Q. And how long before that was it that you began to engage in the real estate business?

A. I purchased a property, I think, in February of 1911, I bought the house that I lived in.

Q. And from February, 1911, down to July, 1913, you had several transactions, did you not, in real estate?

A. There was one year elapsed before I had any, and that would bring it down to February or March, 1912, and from that until the time of this matter, perhaps I had 30 three or four, I just don't remember.

Q. Were they trades, or straight out and out sales?

A. They may have been both.

Q. And, in about February, 1912, you started to deal in real estate as a business?

A. I did not intend it so at that time, but it devolved finally into that.

Q. In July, 1913, you were in the real estate business, weren't you?

A. Yes, sir. 40

Q. That is at the time of this transaction you were engaged in the real estate business?

A. Yes, sir.

Q. And by that do you mean the buying and selling of real estate for others, or for yourself?

A. In the capacity of both; it was my intention, though, to confine myself to my own operation.

Q. That is buying and selling and trading on your own account?

10 A. Yes, sir.

Q. And your practice was, was it not, when you entered into a deal of buying, selling or trading, to go and inspect the property that was involved?

A. Yes.

Q. You did that in this case, didn't you?

A. Yes, sir.

Q. How full an inspection, Mr. Martin, do you say you made of this Montclair property, before you entered into contract with Mr. Stone?

20 A. It was the inspection I made on the trip I spoke of in which Mr. Baldwin and I went to this house in Montclair, saw the surrounding property, saw the ground, and went through the house.

Q. And to what extent did you go through the house?

A. Went through it altogether.

Q. Was this the first transaction you had had with Mr. Albert Baldwin?

A. Yes.

30 Q. You have never had any real estate transaction with him before?

A. No. I don't think so, I don't think I did.

Q. And when he mentioned to you that somebody had paid \$11,000 for that property, did that agree with your estimate of the value of the property?

A. It seemed excessive.

Q. So that in your opinion at that time you thought the figure named was excessive?

A. I did.

40 Q. Then you thought at that time, your opinion was, that he was overstating the value of that property to you?

A. Yes, sir.

Q. And you came to that conclusion on the first trip you made to the Montclair property in company with Mr. Baldwin, is that right?

A. Yes, sir.

Q. Therefore, Mr. Martin, you did not at all rely on Mr. Baldwin's statement on the value of that property in going into this deal, did you?

A. I did.

Q. You did? 10

A. Yes, sir.

Q. Although you believed that his statement of it was excessive?

A. Excessive for what I would buy it for cash, or for what I thought it was worth.

Q. You found this house, when you got up there, to be vacant, didn't you?

A. Yes, sir.

Q. And you found it a house on a good sized lot, and a pretty good street? 20

A. Yes, sir.

Q. And you found it a house of old-fashioned design, and probably twenty-five or thirty years old, didn't you?

A. Yes.

Q. And to what other sources did you go for estimate on the value of that property other than Mr. Baldwin?

A. I went to none.

Q. Did you, as a real estate dealer, at that time, make an estimate of the value of the property?

A. As far as my intelligence would permit, yes. 30

Q. And what was your estimate of the value of the property?

A. That it was worth—it was worth the mortgages at least.

Q. \$8,000?

A. Yes, sir.

Q. In your opinion, in your own opinion, as a real estate dealer, and without relying on Mr. Baldwin's opinion at all, as to the value of that property, you appraised it at that time at \$8,000? 40

A. I did, but I was not buying the house, I was taking a mortgage.

Q. I don't want you to argue with me, Mr. Martin. You appraised it for the purpose of that transaction at \$8,000?

A. Yes, sir.

Q. Now you have stated to Mr. Newman on his direct examination that Albert Baldwin told you that Hendrickson was paying, or had paid, \$11,000 for that property; do you recall that statement?

A. Yes, sir.

Q. Did you believe that at the time he stated it?

A. I did, yes, sir.

Q. Didn't he tell you, Mr. Martin, that it was Stone that had paid \$11,000, and not Hendrickson?

A. No, sir, he did not.

Q. Don't you say in your complaint that he did tell you that Stone had paid \$11,000 for that property in cash?

A. Yes—not in cash. He said he had treated it so that it cost him \$11,000, and he was selling in, cashing in to Hendrickson for \$11,000.

Q. Did you understand my question?

A. I thought I did.

Q. My question was don't you say in your complaint that Baldwin told you on that occasion that Stone had paid \$11,000 in cash for that property?

A. Yes, because Hendrickson—Stone had paid that.

Q. What did you mean by saying a moment ago that Albert Baldwin had not told you that Stone had paid \$11,000?

A. That both parties had paid that; that Stone had got the property in a trade, and that he was cashing his trade in by means of this second sale to Hendrickson.

Q. Did not Albert Baldwin tell you at that time that Stone had paid \$11,000 in cash for that property to Fairchild Baldwin & Company?

A. By means of this trade that he spoke of.

Q. Did you hear what I asked you?

A. I understood it.

Q. In cash, that Stone had paid Fairchild Baldwin & Company in cash \$11,000?

A. I would not say in cash; that it cost him that in cash, but that is what it stood in, that he told me.

Q. Then you would not say that Baldwin told you that Stone had paid \$11,000 to Fairchild Baldwin Company?

A. That it cost him \$11,000.

Q. Did he say in cash paid by Stone to Fairchild Baldwin?

A. Whether he said in cash, or in cost; it was synonymous to me. 10

THE COURT. The answer will be stricken out.

Q. [Question read.]

A. He may have said that.

Q. Then what did you mean a moment ago, Mr. Martin, in saying that he did not say that?

A. I don't say he did not say that; I say—

Q. Do you understand my question?

A. Yes. 20

Q. What did you mean by saying a moment ago, in answer to my question, that he did not say that, and now you say that he may have said that. What did you mean by that?

A. I mean nothing other than this, that the house cost Hendrickson \$11,000, because he paid that for it, and the house stood Stone in \$11,000, and that by means of this second cash transaction with Hendrickson he was turning it in in cash, and turning his cost in, and getting his cash from Hendrickson. 30

Q. When you said a moment ago that Albert Baldwin did not say to you that Stone had paid \$11,000 in cash for that property, were you speaking the truth?

MR. NEWMAN. I object to the question.

THE COURT. I sustain the objection.

Q. Now, Mr. Martin, what did Albert Baldwin state to you about Hendrickson?

A. That he was a plumber, in business, that he had an established trade, that he was employed frequently by 40

Fairchild Baldwin, and that was how he could speak with knowledge of him, that he had bought this house to live in as his residence, that he had bought it for cash, and that he had elected to make the payments on the mortgage in this installment way, and that his bond was perfectly good.

Q. Now, did he say to you that his bond was perfectly good, or that Hendrickson was a responsible man?

A. Both.

10 Q. And did he tell you where Hendrickson lived?

A. No.

Q. Did you ask him?

A. I don't think I did.

Q. Did he tell you where Hendrickson's place of business was?

A. No.

Q. Did you ask him?

A. No.

Q. Did he tell you about any property that Hendrick-
20 son owned excepting this?

A. No.

Q. Did you ask him?

A. No.

Q. Did he tell you how much Hendrickson was worth?

A. No.

Q. He did not tell you whether he was worth \$1,000 or \$100,000?

30 A. He gave me the absolute impression on his knowledge it was in no uncertain tone, that Hendrickson was fully able to buy this house, that he had means sufficient to buy it, and that he was able to pay the building and loan payment, and that he was in other words, a man able to go into a house for \$50 a month building and loan, and pay the interest and taxes, and it would not interfere with his business in any way.

Q. [By the Court.] Are you telling what he said or your impression?

A. What he told me.

40 Q. [By Mr. Davis.] Did he tell you he was worth any specified sum of money?

A. No, he did not.

Q. Now, Mr. Martin, what investigation did you make, after hearing this from Albert Baldwin concerning Hendrickson, to find out whether what he told you was true, or not, about Hendrickson?

A. I did not make any.

Q. The time that was elapsing between the signing of the contract and the closing of the contract was about three weeks?

A. Yes, sir. 10

Q. And during that three weeks you made no investigation at all regarding Hendrickson?

A. No, sir.

Q. Did you, during that time, make any further investigation about the value of the property?

A. No.

Q. In the matter of this contract were you represented by counsel?

A. Yes.

Q. Mr. Theodore McCurdy Marsh? 20

A. No.

Q. Who was it?

A. Mr. Benjamin Newman, in the matter of the contract.

Q. And you had a search made on the property?

A. Yes, sir.

Q. By whom?

A. Mr. Marsh.

Q. And when was the exchange actually made? What day was it? 30

A. I don't know that I can just tell you the date, but it was some time in the middle of August.

Q. The date called for in the contract, I think, was August 15th, was it on that date?

A. No, I think there was an extension of two or three days, because of a faulty mortgage that was submitted.

Q. Then it was some time after the 15th of August?

A. For that reason, yes. 40

Q. And the mortgage that was on the property was objected to by you and your counsel?

A. Yes, sir.

Q. And a new one was executed?

A. Yes, sir.

Q. At the time you entered into this contract which has been offered in evidence I think, you knew that James Hendrickson either did not yet get title to the property in Montclair, or was about to get title to it?

10 A. Yes.

Q. And you also knew and were informed that the mortgage that you were to get was not yet executed, but was about to be executed?

A. Yes.

Q. And with regard to the lots that you were selling upon Gregory avenue, you yourself did not own those lots at the time you made the contract, did you?

A. No, not at that time.

Q. Those lots were in the name of your father-in-
20 law, weren't they?

A. No, sir.

Q. In whose name were they?

A. In the name of a man named Keene.

Q. It was not Wirtz?

A. No; Wirtz got them from Keene.

Q. Who is Wirtz?

A. Wirtz is my uncle, and Wirtz bought them with my money so that I could get the \$100 commission that Keene was giving for the sale of the lot.

30 Q. So that when the contract was entered into between you and Stone for this exchange you did not own these lots at all that you were contracting to sell?

A. Not as yet, no.

Q. And you had no contract for the purchase at all, did you?

A. Yes, contracts had been signed.

Q. In writing?

A. Yes, sir.

Q. Between you and Wirtz?

40 A. Yes, sir, between me and Wirtz.

Q. But the deeds for the lots came to you from Wirtz?

A. From Wirtz.

Q. Your uncle?

A. Yes.

Q. There was no contract signed between you and Wirtz for the deed of the lots to you at the time you made the contract to sell them to Stone, was there?

A. Not a contract in writing, no.

Q. Well, there was no contract in writing, was there? ¹⁰

A. No, sir, there was not. There was a contract between Wirtz and Keene which I controlled.

Q. But it was made that way so you could get your commission?

A. Yes, sir.

Q. Then you were pretty well up on real estate deals, weren't you?

A. That is not , nor is it unusual.

Q. But you were actually buying those lots yourself?

A. Yes, I was. ²⁰

Q. But you bought them in such a way as to make the seller believe he was selling them to somebody else, in order that you should get \$100 commission?

A. He had listed those lots with—

Q. Isn't that so?

A. Quite properly, yes; correct.

Q. Mr. Martin, before you got title to these lots at all in your own name, you placed them for sale or exchange, on the books of Fell & Devine?

A. Yes. ³⁰

Q. They were real estate dealers in East Orange, isn't that so?

A. Yes, sir.

Q. And it was Fell & Devine, real estate dealers in East Orange, that brought you and Mr. Baldwin together in the exchange?

A. Yes, sir.

Q. And you paid Fell & Devine \$100 for that?

A. Yes, sir.

Q. Now, Mr. Martin, why was it in this deal that you ⁴⁰

paid Fell & Devine \$100 for making the deal, that \$100 being more than the legal commission?

MR. NEWMAN. On what?

Q. On \$3,000.

THE COURT. What is the legal commission?

MR. DAVIS. Two and a half per cent.

THE COURT. Do you find any statute fixing the
10 commission?

MR. DAVIS. I understand the statute on buying and selling real estate is two and a half per cent.

THE COURT. I wish you would point it out to me.

Q. Isn't it customary, Mr. Martin, to use your real estate agent's commission on the sale of real estate at two and a half per cent., isn't it?

A. Yes, on improved property; five per cent. on
20 vacant.

Q. Five per cent. on vacant?

A. Yes.

Q. Where does that obtain?

A. Cuts them, that is all; I don't make it.

Q. Where is that the custom, that it is five per cent. on vacant property, and two and a half per cent. on improved?

A. That is a custom in all the suburbs; all around.

Q. In all the suburbs?

A. Yes, sir.
30

Q. Take the Oranges, for instance?

A. Yes, sir.

Q. You did not pay five per cent., did you?

A. I compromised, because it was a trade.

Q. And you compromised with the real estate agent on \$100?

A. Yes, sir.

Q. Instead of \$150. Well, you had, up to that time, progressed very well, hadn't you, in real estate knowl-
40 edge?

A. Well, I am a business man; after all, I have some knowledge of business.

Q. So that the real estate men did not put one over on you, did they?

Objected to.

THE COURT. Objection sustained.

Q. The lots that you were having for sale, Mr. Martin, were vacant?

A. Yes, sir. 10

Q. No revenue from them?

A. No.

Q. Now, you stated that those lots were on a street that had all the improvements, do you recall that?

A. I did.

Q. Don't you remember, Mr. Martin, that at the time this deal was made, that the property, and that the streets in front of these lots, was not curbed?

A. It is possible that that may be so.

Q. Well, what is the fact? 20

A. I think you are correct. Other than that, however, improvements was through, sidewalks, sewer, water and gas.

Q. How do you know that they had sewer, water and gas?

A. Well, I had been informed so, and I know that there are houses along there.

Q. Is that all, you were informed?

A. Well, there were houses occupied by people who would not be satisfied without improvements. 30

Q. How do you know they were lighted by gas, and sewers, and did not have cesspools?

A. Well, I know that whole section was, because I owned property right in the back of it.

Q. Did you live in a house there?

A. No, sir.

Q. Then the statement that you made that this street had all the improvements was based upon information you got from someone else?

A. Information that is correct. 40

Q. Information that you got from someone else?

A. Yes.

Q. Isn't it a fact, Mr. Martin, that the only improvement in this street, so far as the roadbed was concerned, was the macadam in the center of the street?

A. No, there were sidewalks.

Q. Isn't it a fact that there were no gutters there, no paved streets?

10 A. The gutters, but the curbing, I acknowledge, when you refresh my recollection there was no curbing there.

Q. So you acknowledge, now, that there was no curbing, and no paved gutters?

A. Well, it is not customary; the macadam is sufficient.

Q. No matter what the custom is, is not that the fact?

A. Yes, I will admit that; no curb gutters; yes.

Q. Are you also willing to acknowledge, with regard to these lots, that only one side of this street was flagged?

A. Yes.

20 Q. Then, Mr. Martin, you are quite mistaken, were you not, when you said the streets had all the improvements?

A. No, I was not, excepting in regard to the curbing.

Q. And the guttering?

A. And the guttering.

Q. And the flagging on one side?

A. No; it is on my side the street, was all improved.

Q. But the other side was unflagged?

30 A. The other side was not, no.

Q. How long after you came back from Montclair was it before this contract was prepared?

A. Perhaps the next day.

Q. And before you signed it you submitted it to your attorney?

A. Yes.

Q. Do you remember, Mr. Martin, whether it was your counsel that drew this document, or Mr. Baldwin?

A. It was Mr. Baldwin who drew it.

40 Q. And I notice a number of interlineations and addi-

tions in pen and ink, will you kindly look at them and say if they are in your handwriting, or someone else?

A. They are in Mr. Newman's handwriting.

Q. Mr. Newman was your attorney?

A. Yes, sir.

Q. Mr. Benjamin Newman?

A. Yes, sir.

Q. Not Mr. Jacob Newman?

A. No.

Q. And on the first page there are initials on the left-hand margin, will you kindly look and see if those initials are made by you? 10

A. Yes, they are.

Q. Indicating interlineations that you approved?

A. Yes.

Q. Where was the contract signed by you, Mr. Martin?

A. I believe I personally signed it in Mr. Newman's office.

Q. Had it been already signed by Mr. Stone, or was it signed by him afterwards? 20

A. It was signed by him afterwards, I am quite sure, I won't state absolutely, but I think afterwards.

Q. Do you recall whether or not the only talk you had with Albert Baldwin, leading up to the consummation of this contract, was that one talk that you went by automobile to Montclair; was that the only talk you had?

A. That was the only talk that would have anything to do with the question whether there would be a contract or not. 30

Q. Well, was not that the only talk you had with him previous to the signing the contract, about the contract?

A. Yes, that was all.

Q. Do you recall in that talk, when the question of the bond and mortgage of \$3,000 was mentioned, asking Albert Baldwin if Mr. Stone would guarantee the bond and mortgage?

A. I don't recall asking the question, and yet I may have asked it, because it would be a perfectly proper question. 40

Q. It would be a question that would have arisen in your mind?

A. Yes, sir.

Q. And do you remember asking Albert Baldwin on that occasion whether Fairchild Baldwin Company would guarantee the bond and mortgage?

A. I am sure I did not ask that, because I did not connect them with the transaction.

10 Q. Didn't you connect Albert Baldwin with the Fairchild Baldwin Company at that time?

A. He represented himself as acting as broker for P. Frank Stone.

Q. But did you not know he was connected with the Fairchild Baldwin Company?

A. Yes, sir.

Q. In this conversation did not Albert Baldwin tell you in answer to a question by you, that Stone would not guarantee the bond and mortgage, but that you would have to investigate Hendrickson for yourself?

20 A. He did not.

Q. Did he not tell you that Stone would not guarantee the bond and mortgage?

A. He may have said that, if I asked the question, but I cannot say that I ever asked him, or that he answered me; but he did not say anything about my having to look up Hendrickson myself.

Q. Well, now, it did occur to you, did it not, to get someone to guarantee this bond and mortgage, if you could?

30 A. If I asked the question, then it occurred to me, and it may have occurred to me.

Q. And it occurred to you because you knew nothing about Hendrickson yourself at all, isn't that so?

A. That would be proper, yes.

Q. Now, at the time you went to Mr. Marsh, did you sell this bond and mortgage to him, or did you merely borrow on it?

A. No, I sold it.

Q. You sold it to him?

40 A. Yes.

Q. And, as I understand that paper, you sold it to him for \$2,600 or \$2,700?

A. For \$2,600.

Q. That is, you sold to Marsh this mortgage that you took at \$3,000, you sold to him for \$2,600?

A. Yes, sir.

Q. And you, you say, guaranteed the payment of it?

A. Yes, sir.

Q. At the time that you sold this mortgage to Mr. Marsh for \$2,600 did you, or did Mr. Marsh, so far as you know, investigate the responsibility of Hendrickson? 10

A. Neither of us did.

Q. Neither one?

A. No, sir.

Q. Was Mr. Baldwin present, or did he participate in any way in any representations that you made to Mr. Marsh at the time you sold this mortgage?

A. No, sir.

Q. The sale of the mortgage by you to Mr. Marsh was not influenced, so far as you know, by anything that Mr. Baldwin said to Mr. Marsh, any representation he made to Mr. Marsh? 20

A. No.

Q. You have said, Mr. Martin, that you had not seen Hendrickson, I think, for two years after this thing went through, that is, after July, 1913, until the summer of 1915, is that right?

A. Yes, sir.

Q. You had, as a matter of fact, called at his house before that, hadn't you?

A. I had called at places where he had lived. 30

Q. And you saw his wife?

A. Saw his wife once, yes, and made an appointment to see him, and the next day, in the meantime, they had moved, and I could not locate them.

Q. How soon after you had gotten this mortgage did you call on what you understood to be Mr. Hendrickson's residence, and have a talk with Mrs. Hendrickson?

A. I think it was at the time Mr. Baldwin came to Mr. Marsh with the deed. 40

- Q. Will you state just about when it was?
A. It was in September.
Q. September, 1913?
A. Yes, sir.
Q. When you called there did you go alone, or did someone go with you?
A. I went alone.
Q. You had a talk with Mrs. Hendrickson, didn't you?
A. Yes.
10 Q. And where was it that they were living at that time?
A. That was on Norfolk street.
Q. In Newark?
A. Yes, sir.
Q. Then did you go back again, and see Mrs. Hendrickson a second time?
A. I did not see her.
Q. But you went there again?
A. I went there to meet Mr. Hendrickson.
20 Q. How soon after that first visit?
A. The next day.
Q. And you saw neither Mr. Henrickson or Mrs. Hendrickson?
A. No sir.
Q. When did you try again?
A. I tried again, trying to locate where they had moved.
Q. Had they moved at that time?
A. They had moved, yes, sir.
30 Q. That is from one day to another?
A. They moved out over night, that very night.
Q. Where did they move to?
A. They moved to another place on Norfolk street, and I went there, and could not locate them; that is, they were not in.
Q. That is, you found where they lived, but they were not in?
A. Not in, no, sir.
Q. They moved from one place on Norfolk street to
40 another?

A. Yes, sir.

Q. How far away?

A. About five blocks away.

Q. When did you try again?

A. I tried repeatedly, I never could catch them; I kept at it; never caught them, and then he moved, and I could not locate him at all.

Q. Then you finally did locate him, didn't you?

A. Yes, sir.

10

Q. When?

A. I located him last June.

Q. June, 1915?

A. Yes, sir.

Q. And where did you find him?

A. I found him in a flat house on Waverly avenue, in Newark.

Q. So you did find that the Hendricksons were residing, from July, 1913, down to 1915, at some place in the City of Newark?

20

A. Yes, sir; I don't say they did not live out of Newark in the year and a half I could not locate them.

Q. But you do not say they did live out of Newark?

A. No, sir, I do not say they did.

Q. Then you went down to Plainfield and talked with Mr. Stone?

A. Yes, sir.

Q. You had no difficulty in locating Mr. Stone, did you?

A. No, sir.

30

Q. You got his name out of the telephone book?

A. Yes, sir.

Q. Now, you telephoned to Mr. Stone before you went to see him, didn't you?

A. That day, yes, sir.

Q. And when you telephoned to Mr. Stone you did not give your name, did you?

A. No, sir, I did not.

Q. What name did you give him?

A. My middle name, Williams.

40

Q. When you telephoned Mr. Stone you told Mr. Stone this is Mr. Williams, didn't you?

A. Yes.

Q. When you went down to see Mr. Stone in Plainfield you told Mr. Stone that you were the gentleman that had telephoned, didn't you?

A. I told him that I gave him my middle name and that I was the gentleman who had telephoned.

10 Q. And that you had told him a name that was not your right name?

A. I did not give him my full name.

Q. And didn't he say to you after you had told him that you telephoned him in another name, that he did not want to have anything to do with a man who would not give his right name?

A. He did not.

Q. He did not? Why didn't you give him your right name?

20 A. Because every part of this transaction was known to us, his connection with it, and all, and I had suspected anyone who would do that, if I gave him my full name, that he would refuse to see us, or not be there when we came.

Q. You thought he would run away, or something?

A. Yes.

Q. And when you got there you found him a photographer of a good many years establishment, didn't you?

A. I didn't mean run away, I meant would be out.

30 Q. Why did you say "run away"?

A. I didn't say run away, you said run away.

Q. I said run away, and you said yes, didn't you?

A. I didn't catch the significance of your word; I meant he would be out.

Q. Then, when I used those words, you didn't understand them, did you?

Objected to.

Q. You found, when you got there, that Mr. Stone was a man who had his own business in Plainfield?

40 A. Yes.

Q. A business of photography that he was running himself?

A. Yes.

Q. What street did you find him on?

A. On the leading business street of the place; I don't recall the name of the street.

Q. Was his name outside?

A. I believe—yes, it was.

Q. You say, I think, Mr. Martin, that there is still due from you to Mr. Marsh \$2,400?

10

A. Yes, that you have not paid.

Q. That you have not paid?

A. No, sir.

Q. And the last time you made any payment to Mr. Marsh was how long ago?

A. September of last—September of 1914.

Q. September, 1914?

A. Yes.

Q. Did you or Mr. Marsh try to collect this bond and mortgage, or bond, from the maker of it?

20

A. We were not going to throw any more good money away.

Q. Please answer the question, did you?

A. No, we did not try to collect.

Q. You did not make any effort to collect the bond and mortgage at all from him?

A. No.

Q. And when you started your investigation to find out about Mr. Henrickson, you found out without any difficulty that he was a plumber, didn't you?

30

A. Oh, yes.

Q. And you found out at the time this deal was made, and for some time before and after that, he had been doing considerable plumbing work for Fairchild Baldwin?

A. How considerable that was, I don't know; it wasn't much; he had been doing some work for them.

Q. And you found he was a man that had no property of his own, didn't you?

A. No, he had no property.

Q. Isn't it the fact, Mr. Martin, that in this talk with

40

Albert Baldwin, leading up to this contract, that you knew that the statement of the value of the property, if he made any, of \$11,000, was excessive, and that you also stated the value of your property at an excessive amount?

A. I knew that his valuation was excessive, but I did not believe that my valuation was excessive, because the value per front foot would only be at the rate of \$20 for property in a good residential section, where the lots were
10 50 feet deeper than they are supposed to be.

Q. You had paid \$1,500 or \$1600 for your lot, hadn't you?

A. I had paid \$1,700 for them.

Q. And you got \$100 out of that?

A. Yes.

Q. For commission?

A. Yes, sir.

Q. So that the lot stood you in—

A. No, the net cost to me was \$1,700.

20 Q. Do you know a gentleman in Newark named F. W. Romaine, a real estate man?

A. I know him, yes.

Q. About this time having an office in the Fireman's building?

A. At that time I didn't know Mr. Romaine. It was some period after I knew Mr. Romaine.

Q. Do you remember a few weeks or a few months after this deal was put through in August, 1913, or in the summer of 1913, or in the fall of 1913, saying to
30 Mr. F. W. Romaine down in the Firemen's building in Newark that you had put one over on the Fairchild Baldwin crowd, and that you had handed them some vacant lots that stood you in about \$1,500 for a mortgage of \$3,000?

A. I didn't say any such thing.

Q. Did you say anything like that?

A. No, sir, I did not.

Q. Do you remember talking to Mr. Romaine about this transaction?

40 A. No, sir, because fully one month elapsed when I

saw—how could I boast of it? There would be only one month elapsed when this whole thing developed.

Q. You say you had no such conversation?

A. No, sir; I did not.

Q. Where is your office now?

A. 170 Broadway, New York City.

Q. You are still in the real estate business, are you not?

A. Yes, sir.

Q. Buying and selling for yourself? 10

A. Yes, sir.

Q. Not for others?

A. No, sir.

Q. Now, Mr. Martin, you say you did not rely on Albert Baldwin's statement as to the value of that property?

MR. NEWMAN. I object to the question.

THE COURT. He has said the contrary; he said that he did rely upon it.

Q. Do you say, Mr. Martin, that you did rely upon the statement of Albert Baldwin as to the value of that property, although you thought his estimate excessive? 20

A. Yes, sir.

Q. And when he gave you that value of \$11,000 you regarded that as his opinion as to the value of it, did you not?

A. State that question again, please.

Q. When he gave you that value of \$11,000 on that property you regarded that as his opinion of the value of that property? 30

A. Yes.

Q. And your opinion as to the value of it differed with his?

A. Yes.

Q. When he gave you the statement as to Hendrickson being a responsible man you regarded that as his opinion as to the worth of Hendrickson, did you not?

A. More than his opinion, it was his knowledge.

Q. And you, in talking with him, did not go into details at all as to the extent of his responsibility, did you? 40

A. I certainly did, to be sure that he was able to carry out his part of this contract.

Q. And he told you that he was?

A. Absolutely.

RE-DIRECT EXAMINATION.

Q. Mr. Martin, you not only regarded his statement of the value of the property as his opinion, but you also regarded it as a fact, did you not?

10 MR. DAVIS. I object to that as leading.

THE COURT. The objection is sustained.

Q. You regarded his statement as to the value of the property not only as his opinion, did you not—

MR. DAVIS. Objected to as leading.

THE COURT. I sustain the objection.

Q. Will you state why you accepted his statement, or his opinion—we will put it that way—as to the value
20 of the property?

MR. DAVIS. He has already gone over that.

THE COURT. The question may be answered.

A. Will you repeat the question?

Q. [Question read.]

A. Because there was no doubt of his opinion, because of what he said, based on two facts; one is that a purchaser paid \$11,000 for the property, which was one
30 motive, as he recited, and the second that the maker of this mortgage, and buyer of the property, was a responsible man.

Q. And what did he say as to what the buyer had paid for the property?

A. \$11,000.

Q. And it was upon that that you accepted this statement?

A. Yes.

Q. Why was it you did not make any investigation
40 concerning Henrickson?

A. The house I could see; where it was. In regard to Mr. Hendrickson, I believed Albert Baldwin to be a gentleman, I believed his word was the word of a gentleman and I could take it and believe it.

MR. DAVIS. I object to his belief going in on the record. I submit to the Court that the only pertinent things are what the party said, and he has already stated that he acted upon those statements. Now he is going into other lines which it is absolutely impossible for us to refute. 10

[Question and answer read.]

THE COURT. I think that is no lack of compliment to the defendant, so I will let it stand.

Q. And it was because you believed him, and accepted his statement, that you made no further investigation?

MR. DAVIS. Objected to as leading.

THE COURT. The objection is sustained. 20

Q. And while you had estimated in your own mind the value of the property at \$8,000, it was because you were reassured—

MR. DAVIS. I object to the form of the question.

THE COURT. Yes, it is bound to be leading when stated that way.

Q. Why was it, Mr. Martin, that, notwithstanding the fact that you estimated in your own mind the value of this property to be \$8,000, that you accepted his statement that it had cost \$11,000? 30

A. Because everybody does not buy with equal judgment, and we do not all buy at the bottom price.

Q. Have you secured Mr. Marsh for the balance of his money?

A. Yes, sir.

Q. And do you still owe it to him?

A. Yes.

Q. And do you expect to pay him?

A. I do. 40

Q. There has been some testimony with reference to the lots in West Orange on Gregory avenue. Were those lots listed on your books?

A. Yes.

Q. And you were then acting as a real estate agent?

A. Yes.

MR. DAVIS. I object to counsel leading the witness.

10 THE COURT. The question was leading.

MR. NEWMAN. I will withdraw it.

Q. Why were those lots listed with you?

A. Because I was conducting an office where there was a brokerage business done.

RE-CROSS EXAMINATION.

Q. Mr. Martin, I understood you, in answer to my questions on cross examination, to say that up to that
20 time, July, 1913, you had had all your real estate operations for yourself only. Was that correct; that you were not dealing for other people; that you were buying and selling for yourself?

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

Q. Well, what is the fact?

A. That I might, perchance, have done some brokerage business for others, but that my intention was to confine myself to my own operations.

Q. But you were doing a brokerage business, too?

30 A. Yes.

Q. Selling for others for commission?

A. Yes.

Q. And you have said, in answer to your own counsel, that Mr. Keene, the owner of these lots, had put them on your books for sale?

A. Yes, sir.

Q. And you say also that after Mr. Keene had put these lots on your books for sale that you, yourself, actually purchased them in the name of your uncle, and
40 charged your client a commission of \$100?

A. That I, myself, personally, not as a partner of Stillman & Martin, as the firm was then, Edward W. Martin, and not Stillman & Martin, purchased these lots through Mr. Wirtz.

Q. And you purchased them in the name of your uncle, so that the firm of which you were a member could collect from your client a commission of \$100?

A. It was simply another way of—

THE COURT. No, no.

10

Q. Is that so?

A. Yes, that would be so.

JAMES HENRICKSON sworn for the plaintiff.

DIRECT EXAMINATION by Mr. Newman.

Q. Where do you live?

A. 263 Waverly avenue.

Q. Newark?

A. Yes, sir.

Q. And during the summer of 1913 where were you 20 employed?

A. I was employed by the Fairchild Baldwin Company on odd jobs, such as jobs which they had given me to do by contract.

Q. Kind of general utility man, were you?

A. Well, no; they gave me jobs when they had the jobs for me to do. Such as stoppage of sewer lines, and repairing roofs at the Arcade building.

Q. Work of a similar character?

A. Well, no; that is all I done of that kind of work 30 for them.

Q. And you recall in the month of July, or August, 1913, having a talk with Albert P. Baldwin in his office?

A. I remember it, but I am not sure of that date.

Q. But in any event it was before you signed a bond and mortgage?

A. Oh, yes, yes.

Q. Now, who did you have any talk with?

A. Why, I was at Market and Broad, at the Fire Insurance building, and a gentleman had promised me some 40

work to do, and he had left me, so Mr. Albert Baldwin came up to me and asked me if I wanted to earn \$25; and I looked up at him and laughed at him; I said, "Why, yes," I said, "What is it, a job?" He said, "Yes," he said, "Come up in the office." I went up with him, and we had a talk about things, and he said he had some papers he would like me to write, or something on; so I said, "All right;" so he said that would be all, "I will see you again." So I didn't hear anything of it until—

10 Q. Just one moment. At that interview did he say anything to you else with regard to this? Do you recall anything else?

A. No, sir.

Q. Let me bring this to your mind; did he say anything about judgments?

A. No, sir.

Q. When did he speak about that?

A. Judgments?

Q. Whether you had any judgments.

20 Objected to.

A. Oh, well, that was the time afterwards, he asked me if I owned any real estate, or had judgments against me or will I ever have them; I told him no.

Q. After he asked you to sign a paper what happened then?

A. Well, I asked him, I said, "What is these papers for?" He said, "Well, that is all right, there will be nothing to it." That is all he told me.

Q. Well, did you go anywheres to sign the papers?

30 A. No; I think the papers was brought at my home in Norfolk street.

Q. Now, to refresh your memory I will show you the original bond and mortgage. Here is an original mortgage dated the 25th of July, 1913, and here is a bond with your signature, and this mortgage contains the signature of yourself and wife. Now, do you recollect where that was signed? Looking at the name of the man whose signature appears here, does that help you?

A. Yes. That was in Orange.

40 Q. It was before Thomas A. Davis?

A. Well, I don't know if that is the gentleman, but I don't remember him, because he didn't ask me anything; he asked me whether I was James Hendrickson.

Q. Who took you up there, do you remember that?

A. Mr. Albert Baldwin.

Q. How did he call for you?

A. In an automobile.

Q. Where were you living at that time?

A. On Lake street.

Q. And he took you from Lake street in Newark up 10
to Orange to an office where you signed this bond and mortgage?

A. Yes, sir, over a bank.

Q. Well, after you signed it, what did you receive for signing it?

A. Well, I didn't receive anything at that time, but I was told there would be a job for me at the Arcade building.

Q. Who told you that?

A. Why, Mr. Albert Baldwin, and I should put the 20
\$25 on with that job, amount to as much as I want to, but it was a small job, I guess, four or five dollars. I brought the bill in, and then they issued me a check on the Federal Trust Company for \$25.

Q. Issued you a check for \$25 for signing the bond and mortgage, and \$4 for your job?

A. Yes, sir.

Q. After you had signed the bond and mortgage did Mr. Baldwin say anything to you with reference to going up to the house? 30

A. What house? Yes. He told me that I should dress up and go to Montclair, Lexington avenue, and look at this property, pretend that I owned it.

Q. Did you go up there?

A. Yes, I went up there, because I was told so.

Q. And you dressed up, did you?

A. Yes, I dressed up.

Q. You saw the property on that occasion, then, didn't you?

A. Yes. 40

Q. What did you do up there when you saw the property?

A. Well, I went up there, was told to look at the property, and look around it. While looking at the property there was a lady passing, and she looked at me and said—

Q. Never mind that; you can't tell that. You had a conversation with her?

A. Yes.

10 Q. And is that the only occasion you ever looked at the property?

A. Yes, sir.

Q. Did you ever pay anything for the property?

A. No, sir.

Q. Did you ever have anything to do with the property?

A. No, sir.

Q. Did you ever intend to live up there?

20 A. No, sir.

Q. You owned no real estate?

A. No, sir.

Q. You were not in receipt of a very large income, were you?

A. No, only what I earned for Fairchild Baldwin, that was all.

Q. For odd jobs?

A. Yes, sir.

30 Q. Where did you live at this time? I think you said on Lake street. Am I right?

A. Yes, that is when I went to Orange.

Q. Did you pay any rent there at all?

40 A. Well, there was an agreement made, there was six steam boilers, and they had to be repaired, so the agreement was that I should repair these steam boilers, and put them in shape for the coming winter, so I didn't have a written agreement on it; so this man that owned the property, when I had given a bill for the work which I had done, why there was complaint made right away, stating it was too high.

Q. I don't want that; I want to know if you paid any rent at all for that place?

A. Oh, yes.

Q. What rent did you pay?

A. \$18.

Q. A month. Now you never saw Mr. Martin in this transaction at all, did you?

MR. DAVIS. I think counsel ought not to lead this witness, if your Honor please. 10

A. No, sir.

Q. When was the next time you ever signed any paper, do you remember that?

A. Why, it was in Norfolk street.

Q. You lived in Norfolk street?

A. Yes, sir, from Lake street.

Q. And who brought the paper up that time to have you sign?

A. Well, I think that Mr. Baldwin and Mr. Philips came together. 20

Q. And then you signed a deed to Theodore McCurdy Marsh, which is the paper I understand you do not remember the names, but that is your signature?

A. Yes.

Q. And that is your wife's signature?

A. Yes.

Q. And that is the paper you signed in the presence of Mr. Philips?

A. Yes.

Q. He is connected with the Fairchild Baldwin Company, is he? 30

A. Yes, sir.

Q. And who did you deliver that deed to?

A. Why, Mr. Baldwin took it back again after I signed it.

Q. Did he tell you what it was you were signing?

A. Well, he said, "Sign this paper;" I said, "What is this for?" He said, "It is for that piece of property." So I asked him, "Will this be all right?" He said, "Sure, there will be nothing to it." So I signed it. 40

Q. And you never had anything to do with the property, did you?

A. Why, no.

Q. Now, did you ever in your transaction—don't answer the question if it is objected to—see Mr. Marsh; did you ever see Mr. Marsh?

A. No, sir.

Q. Do you know this gentleman here?

A. I have seen his face somewhere.

10 Q. You don't know his name?

A. No, I don't.

Q. (Pointing to Mr. Theodore McCurdy Marsh.) Did you ever, have you ever, up to the time that you made this deed, we will say, seen Mr. Edward W. Martin?

A. No, sir.

Q. When was the first time you ever saw Edward W. Martin, as near as you can remember?

A. The time that I lived at the present address, at
20 Waverly avenue.

Q. About how long ago? Can you fix it a little more definite, Mr. Hendrickson?

A. It is quite some time ago.

Q. Well, was it about the summer of 1915?

A. Yes, I think it was, '15, something like that.

Q. Did you ever receive from the hands of Mr. Baldwin any letter directed to you from Mr. Marsh?

A. No, sir.

Q. Did you ever know there was such a letter written
30 to you?

A. No, sir.

Q. At the time you took this deed—or, I should say—at the time you made this mortgage, up to the time you made this deed, did you ever pay anything to Thomas A. Davis?

A. No, sir.

Q. Did you ever pay any building loan dues, or any charges on this property?

A. No, sir.

40 Q. Did you ever have any connection with this prop-

erty in any way, shape or form, except to sign these papers, and, on one occasion, to act as the owner?

A. Yes, sir, that was all.

Q. That was all you had to do. Mr. Hendrickson, were you in a position, in July, 1913, or at any time thereafter, to keep that property?

MR. DAVIS. I object, if your Honor please; that seems to call for a conclusion.

THE COURT. Yes. You may ask what his financial condition was. 10

Q. What was your financial condition?

A. I had none.

CROSS EXAMINATION by Mr. Davis.

Q. When was this that you say you had nothing?

A. Why, I never had anything.

Q. You had a business, didn't you?

A. Business? No, I never had a business. I worked for whoever gave me work. 20

Q. And you took contracts, did you?

A. Contracts? Well, not a big contract, because the party would have to pay for the material that I put in, because I didn't have the money.

Q. You take contracts for the doing of work, and perform those contracts, don't you?

A. Well, if a party wanted me to do work I would approach them, and if it amounted to \$20, \$25, \$50, I would tell them I haven't got the ready money to pay for the material, if they would buy the material I would do it for so much money. 30

Q. And you would contract the labor?

A. Yes, sir.

Q. And you say you did work for Fairchild Baldwin Company?

A. Yes, sir.

Q. What kind of work?

A. Plumbing work and pipe work.

Q. Did you do any electrical work?

A. No, sir. 40

Q. All plumbing?

A. Yes, sir.

Q. And for how long a period did you do work for them?

A. Oh, I worked for them off and on for a long while.

Q. Well, how many years?

A. Well, a couple of years.

Q. Do you remember when you began to work for them, and when you stopped?

10 A. I don't remember when I started to work for them, but I think I remember when I stopped, because I didn't get any more work for them until this business came up, and Mr. Philips told me I would have to be a licensed plumber to work for them hereafter; and I thought it kind of funny for him to make that remark to me, so I never got any more work for them.

Q. You did work for them two years, though?

A. Yes.

Q. Doing plumbing work. And it was after they told
20 you, or someone in their behalf told you, that you could not do any more for them, that you had your talk with Mr. Martin?

A. Mr. Martin? Oh, no; this was before I seen Mr. Martin.

Q. That is what I say; before you saw Mr. Martin?

A. Oh, yes, quite some—

Q. You talked with Mr. Martin about this matter after Fairchild Baldwin Company had let you go?

A. Well, yes, he came to see me.

30 Q. (By Mr. Newman.) By that you mean Mr. Martin?

A. Mr. Martin came after this affair.

Q. (By Mr. Davis.) Do you remember when it was that Albert Baldwin had his first talk with you about this Montclair property?

A. I think it was in the latter part of May, or June, I was approached by him.

Q. 1913?

A. '13, yes, I think it was.

40 Q. What part of June was it?

A. Well, I could not exactly tell you that.

Q. Well, it was in the latter part of May, or early part of June?

A. I think it was the latter part of May, or the early June.

Q. And was it in the month of June that he asked you to go up and look at the property?

A. Oh, no.

Q. When was that?

A. No; it was quite some time afterwards. He met me again and asked me to go up to Montclair. 10

Q. When was that?

A. Oh, well, that was—I think that was in June.

Q. Do you remember just about what part of June it was that he asked you—was that the time he told you to dress up and go up?

A. I think it was, yes; because he said he was going to have this put through, for me to go up.

Q. You did dress up, didn't you?

A. Yes. Well, I didn't dress up. I dressed up a little, yes. 20

Q. What did you do when you dressed up?

A. I changed my clothes that I am using now.

Q. You put on the clothes you are using now?

A. No, I put on little better clothes; but I wasn't dressed up, because I had a brown shirt on.

Q. You put on better clothes, you say, than you have on now?

A. Well, yes, a little.

Q. And you went up to Montclair? 30

A. Yes.

Q. What had Albert told you about the property before that? About the property, what it was.

A. I don't quite catch you.

Q. What had Albert Baldwin said to you about what the property consisted of before you dressed up and went to Montclair?

A. Didn't say anything at all, only said had a house on Lexington avenue; that was all.

Q. Did he tell you the number of it? 40

A. No, sir.

Q. Did he tell you how to get there?

A. Yes, sir.

Q. Did he tell you what kind of house it was?

A. No, sir.

Q. Did you go inside the house?

A. No, sir; looked in the window.

Q. And looked around the property?

A. Yes, sir.

10 Q. Did you go alone?

A. Yes, sir.

Q. Before you went up there on that visit had he said anything to you about—how long was it before you went up there on that visit that he had first mentioned the property to you?

A. It was quite a little while after.

Q. A couple of weeks?

A. Yes, about that, I guess it was.

Q. Do you think it was in the month of May?

20 A. No, that was in June.

Q. In June that you went up?

A. Because he hadn't put through this property yet.

Q. It was in June you went up, wasn't it?

A. Yes.

Q. Was it a couple of weeks before you went up that he first mentioned the property to you?

A. No, he mentioned the property to me first, told me I should go up there and look at it.

30 Q. See if you understand my question, Mr. Hendrickson. You say you went up there some time in June.

A. Yes.

Q. Now, I ask you, was it a couple of weeks before you went up that he first mentioned the property to you?

A. No, it was about ten days.

Q. Ten days?

A. Yes, about that, as close as I can get to it.

Q. Then it was around the 1st of June, or the latter part of May, wasn't it, that he first mentioned the property to you?

40 A. Yes, something like that.

Q. Can't you say, Mr. Hendrickson, with any degree of accuracy what time in June it was that you went up there?

A. Well, I could not, because I didn't have any memorandum of it; I judge about ten days; I am not sure.

Q. How do you know it was the month of June you went up there?

A. It was before the 15th of June, before the middle of the month, that is as far as I remember.

Q. Didn't he, or did he, at that time tell you that there was a \$5,000 mortgage on the property? 10

A. Yes, he told me there was \$5,000.

Q. And did he ask you to make a mortgage of \$3,000 on it?

A. Yes, I think he did.

Q. And did he also tell you that if you made the mortgage of \$3,000 on the property, in addition to the mortgage of \$5,000 that was already on it, that the party that owned it would turn it over to you?

A. Well, I didn't understand anything about that. 20

Q. Well, did he say that?

A. He told me on that line, yes, that he would turn it over to me.

Q. Now, when did he tell you that? Did he tell you that before you went up about the middle of June?

A. No, it was before that, because it hung fire for awhile, and he wasn't sure whether Mr. Martin was going to buy the property.

Q. Did he tell you that?

A. No, but he put me off—

Q. Just a minute. Did he tell you he wasn't sure that Mr. Martin was going to buy the property? 30

A. He told me he wasn't sure that Mr. Martin would buy the property, or not.

Q. Did he tell you that he wasn't sure that Mr. Martin would buy the property?

A. That is what I understood Mr. Baldwin to say; I understood him to say that.

Q. When did he tell you that?

A. I think that was in June. 40

Q. When he spoke to you the first time Mr. Hendrickson which you say was about ten days, I think, or two weeks, before you went up there, did he at the first talk mention you giving back a mortgage of \$3,000 on the property?

A. No, I don't remember him saying that.

Q. Did he mention you giving back a mortgage of \$3,000 on the property before you went there to look at it?

A. No, he didn't, no.

10 Q. And was it after you went up there to look at it that he mentioned you giving back the \$3,000?

A. No, he didn't mention mortgage being given.

Q. When did he first mention you giving a mortgage of \$3,000 on the property?

A. That was the time I think at the Norfolk street home he mentioned it.

Q. Now, with relation to the date, or the month, do you remember when that was that he first mentioned to you that you were to give a mortgage, make a mortgage,
20 of \$3,000 on the property?

A. I don't remember.

Q. Do you remember when he first told you there was a \$5,000 mortgage already on the property?

A. He told me there was a \$5,000 mortgage on it, yes.

Q. When did he tell you that?

A. That was at the time of the Norfolk street home.

Q. With regard to the month, was that in May, or June, or later?

A. I could not say what month that was in.

30 Q. Is it so that the first time he spoke to you about the property that he told you at that time that there was a \$5,000 mortgage on the property?

A. Yes, I think he did.

Q. And it was the first time that he spoke to you about the property that he told you that you were to make a mortgage for \$3,000 on the property?

A. Well, I told him I didn't know anything about a mortgage.

Q. I ask you whether it was the first time, the first
40 conversation you had with him?

A. He asked me two or three times.

Q. Mr. Hendrickson, I don't want to confuse you at all, I want to get at the facts. Was it the first time you had a conversation with him about this Montclair property, was it at that first conversation that he spoke to you about the \$5,000 mortgage, and about the \$3,000 mortgage?

A. Yes, I think it was at that time.

Q. With regard to the \$25 that you speak of, you say that you were told by Albert to add the \$25 on to a bill? 10

A. No, sir. Mr. Baldwin told me that he would give me \$25 to sign these papers, and that there would be a job at the Arcade building, Newark, Broad street, and then I understood it was the roof; he didn't mention what kind of work it was; so I went up there, and there was a stoppage in the sewer, and also to repair the gutter on the main line roof in front of the building. It didn't amount to very much money at all. I made out the bill that night and brought it down, I think the next day or the following day, and I got my money. 20

Q. Do you remember how much money you got?

A. Well, I think the bill amounted to \$4, \$5; it was a small bill; didn't amount to very high.

Q. The bill amounted to \$4 or \$5, and did you get cash, or check?

A. No, sir, got a check.

Q. And how large a check did you get for the bill?

A. Well, the check was made out for the \$25 and this little job. 30

Q. Well, was there a separate check of \$25?

A. No, sir.

Q. That is what I am getting at. How much was the amount of the check that you got at that time?

A. Well, speaking about the little job, I have forgotten how much the check was.

Q. You say the whole job amounted to \$4 or \$5?

A. About \$4 or \$5.

Q. And in getting the check there was added to that \$4 or \$5—\$25? 40

A. \$25.

Q. \$25?

A. Yes.

Q. So the check you got was either \$29 or \$30?

A. Well, something like that; might have been a few pennies over.

Q. Are you sure it was \$29 or \$30?

A. I am not sure, I couldn't say it was \$29 or \$30. Might have been a little over or less, you know. I am
 10 sure of receiving a check of that, a little more; I know I got this job, more than \$25, and this job added more on.

Q. And you are sure it was on the Arcade building?

A. That I done the job?

Q. Yes.

A. Yes.

Q. And you are sure that the check was for not less than \$29?

A. Well, might have been \$29 or a little over.

20 Q. But you are sure it was for not less than \$29?

A. Well, I won't say that at all.

Q. Well, you have said that, haven't you?

A. No. I said it might have been \$4 or \$5, or a little more or less.

Q. I am trying to get at, as nearly as I can, what you say the amount of that check was that you say you got. Now, are you sure that the check was either for \$29, or something more than \$29?

A. Well, that is impossible for me to answer.

30 Q. Are you sure it was not for \$28?

A. I couldn't say.

Q. Well, then, what will you say as to what the amount of the check was?

A. Well, the rough figuring, you know, I think it was around \$29 or \$30; it might have been a little less or a little more.

Q. Are you able to swear positively to this, that the work that you did on the Arcade building amounted to at least \$4?

40 A. Well, I couldn't swear to that.

Q. Well, now, what did it amount to, then, Mr. Hendrickson?

A. Because there was other work I did; either two and a half, three, three and a half, four.

Q. For the purpose of tracing this check that you say you got, won't you please state how much was the bill that you put in for your work on the Arcade building, and for which you say \$25 was added?

A. Well, I can't tell you, because I can't, that is all.

Q. Well, can you say this; can you say that the job amounted to more than \$2? 10

A. The job did amount to more than \$2.

Q. Then your bill was for over \$2?

A. My bill was for over \$2, yes.

Q. Was it for over \$3?

A. Yes, I think it was.

Q. Then that check was for at least \$28, or more, wasn't it?

A. Yes; as far as I remember. 20

Q. Well, you are sure of that, aren't you?

A. No, I am not sure.

Q. Now, can you tell us this: can you tell about when you got the check?

A. You see after I went to Orange, had the paper signed, I think it was a couple of days afterwards I went in Mr. Baldwin's office, and I got my check.

Q. Then it was some time in the month of July, was it?

A. I don't know what date it was we went to Orange.

Q. Will you say what month it was in? 30

A. I won't say positively it was in July, or not, I am not sure, but the wife has a little better memory than I am; she could tell you, no doubt.

Q. You say, though, it was within a few days after—

A. Yes, it was a few days after we came back from Orange.

Q. From my office?

A. Yes, to our home.

Q. To sign the mortgage.

A. Yes; he drove us home, and I went downtown. 40

BY THE COURT.

Q. At the time you signed the mortgage had you been to Montclair to look at the property?

A. No; it was afterwards I went to Montclair.

Q. After you signed the mortgage, or before you signed the mortgage?

A. It was afterwards; it was afterwards I signed the papers, because I was told to go there.

10 BY MR. DAVIS.

Q. Was it as much as a week after you signed the mortgage that you got this check?

A. Oh, no, it wasn't a week, no.

Q. About how many days was it after you signed the mortgage that you got the check?

A. It might have been one or two days, because it wasn't long, because I went down there and put in my bill.

Q. And do you say, can you say, what month it was in, whether it was the month of July?

20 A. That was right after we came down from your place.

Q. Was that in the month of July, 1913?

A. It was the month we went up to your place to sign the papers, yes.

Q. If that was in the month of July, 1913, you were mistaken, weren't you, when you said a short time ago that it was in the month of June that you went up to Montclair?

Q. Montclair?

30 Q. Yes.

A. In June?

Q. Yes.

A. I think I did go to Montclair in June.

Q. You think you did?

A. Yes.

Q. And you think you looked at the property in June, don't you?

A. I think June or July; I am not positive.

Q. Now, it is quite important, Mr. Hendrickson?

40 A. Yes, I know, but I can't remember.

Q. I don't know what is in your mind, but I ask you to kindly bear in mind the importance of your testimony.

MR. NEWMAN. I object to the comment of counsel.

MR. DAVIS. I will withdraw it.

Q. You recall, of course, the signing of the mortgage?

A. At your place, yes.

Q. At my office; and you recall getting the check, as you say?

10

A. Yes.

Q. Then you recall also, do you not, or do you, what is the fact, if the signing of the mortgage and the getting of the check were in the month of July, 1913, do you say now that you were up to Montclair in the month of June, and looked at the property on Lexington avenue?

A. Well, I am not sure if it was in June, or July, I am not positive.

Q. Well, are you sure of this, Mr. Hendrickson, are you sure that before you signed the mortgage, and before you got the check, that you were up to Montclair and looked at the property?

20

A. Well, I was at Montclair right after—No, I went to Montclair, and afterwards I received the check; that was a day or so after I was up in your office.

Q. Have you any difficulty in understanding my question?

A. No, I haven't.

Q. You understand them, don't you?

A. Yes, sure.

30

Q. I don't want to confuse you at all, but, assuming that you signed the mortgage in July, and that you got your check in July—

A. Yes.

Q. —1913—

A. Yes.

Q. —why have you any doubt that it was in June or July, that you were up to see the property in Montclair?

A. Because I am not sure if it was in June or July; I am not sure.

40

Q. Now, can you say this: If you received the check that you speak of in the month of July, was that the only check that you received from Fairchild Baldwin in the month of July?

A. Well, I didn't receive any work for them for quite some time before that.

Q. Before July?

A. Yes.

Q. But the check that you got at that time was the
10 only check that you received from Fairchild Baldwin in July?

A. Yes, sir.

Q. You are sure of that?

A. Yes, sir, positive, because I had no more work for them.

Q. Now, for the sake of refreshing your memory I show you a check dated August 29, 1913, for \$26.13 and ask you whether you are not mistaken as to the month, and whether that check of August is not the check that
20 you intend to refer to?

A. What is this rendered for Eighth avenue and Broad street?

Q. I am asking you to look at the check and say whether that is not the check that you intend to refer to as having been received by you after the signing of the mortgage?

A. I don't know what this check was for, because this work here that was on Eighth avenue and Broad street; I never done any work for them.

Q. You didn't?
30

A. No, sir.

Q. I am asking you, then, whether this check dated August 29, 1913, was the check that you have been referring to as having been received in July—

A. No, sir.

Q. It is not the check?

A. No, sir.

Q. You received from them another check in the month of July besides this. I say a check other than
40 this, in the month of July?

A. Yes. I know it wasn't long after I came down from your place of business that I went in the office of Fairchild Baldwin.

Q. From the time that you—well, from July, 1913, down to the present time, have you always lived in Newark?

A. Yes, sir.

Q. You are a married man?

A. Yes, sir.

Q. Family? 10

A. Yes, sir.

Q. Mr. Hendrickson, do you recall, and is it not a fact that at the time you and Albert Baldwin were talking about this property in Montclair, and you giving a \$3,000 mortgage on the property, that you said that you would probably go there to live?

A. No, sir.

Q. You know, of course, Clifford Baldwin?

A. I have seen the gentleman in the office of Mr. Fairchild. 20

Q. You know him very well?

A. I have seen him in the office lots of times.

Q. And you know he is Clifford Baldwin, a brother of Albert?

A. Well, I didn't know his name was Clifford; I used to address him as Mr. Baldwin.

Q. And didn't you say to him about the same time that you thought you would go up there and live in that house?

A. No, sir, I never said that. 30

Q. And didn't you say to him at that time either that you would raise some chickens there, or that there would be enough land there for you to raise chickens on, something like that?

A. I never spoke that way to the gentleman at all.

Q. Didn't you?

A. No, sir.

Q. Never said anything about chickens on that property at all?

A. No, because the property didn't belong to me. 40

Q. I mean at the time you were talking about it?

A. No, sir.

Q. Now, this last conversation that I refer to I ask you whether you made that statement to Clifford Baldwin, not Albert, but Clifford?

A. No, sir.

Q. When you went up to Montclair, Mr. Hendrickson, did you go up alone?

10 A. Yes, sir.

Q. Albert Baldwin didn't bring you up, did he?

A. No, sir.

Q. And nobody connected with the Fairchild Baldwin office brought you up there?

A. No, sir.

Q. How did you go, by trolley, or train?

A. Why, I went by trolley.

Q. From Newark to Montclair?

A. Yes, sir.

20 REDIRECT EXAMINATION.

Q. This mortgage which we have been talking about is dated the 25th of July, and apparently is acknowledged on the 8th of August, 1913; do you recall distinctly, or not, whether it was after you had been at Judge Davis's office that you went to the house in Montclair?

A. Yes, it was after that I signed the papers, because I was told to go up.

Q. After you signed the papers. That is all.

30 A. (Not answered.)

RECROSS EXAMINATION.

Q. Just a question relating to your last answer, Mr. Hendrickson. Counsel calls you attention to the fact that the acknowledgment on this mortgage is the 8th of August; that is, that is the day upon which the officer, who was myself, certified that you appeared before me, and acknowledge the—

40 MR. NEWMAN. Pardon me. There is no mort-

gage acknowledged in July. I don't want to confuse the witness.

MR. DAVIS. I am referring to the mortgage you just referred to.

Q. Was it after you signed the mortgage which is acknowledged on the 8th of August, 1913, that you received the money?

A. No, it was after I signed them papers at your office.

10

Q. Well, apparently you signed the papers.

MR. DAVIS. Have you got the first paper?

MR. NEWMAN. No, I haven't got it; it is here as acknowledged on the 25th of July.

Q. I think it is agreed between counsel, and appears from exhibits in the case, that you signed two mortgages, one apparently acknowledged on July 25, 1913, and the other acknowledged, or, we will say, signed on August 8, 1913; now was it after the signing of the mortgage the first time, or the signing of the first mortgage in July, 1913, that you got this money, or was it after the signing of the mortgage that you signed in August that you got this money?

20

A. As near as I can remember it was right after the papers was brought up at your office.

Q. I am telling you there were two sets, apparently, that you signed at the office, now which was it, the first, or second.

A. I think the first papers were signed at the Norfolk street house, and then thereafter we went to Orange, I think, and drew some papers in your office. That is as far as I remember it.

30

Q. Do you remember that you signed two sets of papers in my office, or only one?

A. No, I think only one.

Q. That is your recollection, is it?

A. I think there was only one.

Q. And can you say whether that signing was in August, or July?

40

A. I could not say.

Q. Then you are not able to say, are you, Mr. Hendrickson, that this money that you say you got, was after you signed the mortgage that was put in here as having been signed in July, or the mortgage that is put in here as having been signed in August?

A. Well, it was the time that I came to your place of business, I don't know if that was in July or June, I have forgotten now.

10 Q. (By the Court.) Do you remember signing two mortgages?

A. Two mortgages? I don't know what a mortgage is.

ADJOURNED TO APRIL 28, 1916.

SECOND DAY

Newark, N. J., April 28, 1916.

Continued pursuant to adjournment.

Appearances as before.

20 MARGARET HENDRICKSON sworn for the plaintiff.

DIRECT EXAMINATION by Mr. Newman.

Q. Where do you live?

A. 263 Waverly avenue.

Q. You are the wife of James Hendrickson?

A. Yes, sir.

Q. The gentleman who was on the stand yesterday?

A. Yes, sir.

30 Q. And you were his wife—when were you married to him? How long ago?

A. Near ten years ago.

Q. And do you recall signing some papers in this transaction that we have spoken about here?

A. Yes, sir.

Q. How many papers in all do you recall having signed?

A. Signed two.

Q. That is all you recall?

40 A. That is all.

Q. Can you tell me where you lived when the first paper was signed?

A. On Lake street.

Q. (By the Court.) When the first paper was signed?

A. Yes, in Lake street.

Q. (By Mr. Newman.) And where was the first paper signed?

A. In Orange.

Q. And who took you to Orange to sign it?

A. Mr. Baldwin. 10

Q. The gentleman seated next to Mr. Davis?

A. Yes.

Q. And how were you taken there?

A. In an automobile.

Q. And was your husband with you?

A. Yes, sir.

Q. Now, do you recall the fact that you signed the paper in the building above the bank?

A. Yes, sir.

Q. Was it signed in the presence of Judge Davis, do you remember? 20

A. Yes.

Q. Did you know what the paper was?

A. No, I didn't know.

Q. Do you remember the time when this was?

A. No, I couldn't just tell you that.

Q. Where do you recall signing the second paper with your husband?

A. On Norfolk street.

Q. And who was that in the presence of? 30

A. Mr. Philips and Mr. Baldwin.

Q. I show you a deed dated the 24th day of September, 1913, made by you and your husband to Theodore McCurdy Marsh, and witnessed by Mr. Philips?

A. Yes.

Q. That is the second paper as you recollect it, is it?

A. Yes, sir.

Q. And that is the one taken before Mr. Philips in Norfolk street?

A. Yes. 40

MR. NEWMAN. I offer in evidence a deed from James Hendrickson and Margaret, his wife to Theodore McCurdy Marsh dated September 24, 1913, and acknowledged on the 24th of September, 1913, before Theron A. Philips, Commissioner of Deeds of New Jersey, and recorded in Book D 53 of Deeds for Essex county on pages 556, 557.

Same marked Ex. P19.

Q. You have no distinct recollection, Mrs. Hendrick-
10 son, of signing an additional mortgage, have you?

A. No.

Q. All you remember is two papers?

A. That is all.

Q. There might, however, have been three?

A. Might have been, but all I remember signing is
two.

Q. I show you another paper and ask you whether
that is your signature, referring to the mortgage dated
July 25, 1913?

20 A. Yes.

MR. NEWMAN. Judge Davis, I call upon you
for the production of the cancelled mortgage.

MR. DAVIS. I haven't got it. My understand-
ing was that the certified copies put in evidence took
the place of the original.

THE COURT. Yes, that is true, but I suppose
what Mr. Newman wants to do is to show the wit-
ness the signature.

30 MR. DAVIS. It may be in the office. If you had
told me you wanted it. I don't know whether we
have it or not. But I haven't it here.

THE COURT. Who acknowledged this mort-
gage of July 25th?

MR. NEWMAN. Before Thomas A. Davis on
the 8th of August. That is the second mortgage,
as far as the record shows. Now I offer the original
mortgage made by James Hendrickson and wife to
40 P. Frank Stone dated July 25, 1913, signed by James

Hendrickson, and Margaret, his wife, and recorded in the Register's office of Essex county on the 9th of August, 1913, in Book M 31 of Mortgages, page 456.

Same marked Ex. P20.

MR. NEWMAN. I also offer in evidence the bond which accompanies the mortgage, bearing date the 25th of July, 1913, signed by James Hendrickson, in the penal sum of \$6,000, conditioned for the payment of \$3,000 in the following manner: \$150 on October 26, 1913, and \$150 every three months 10 thereafter, the balance of the principal to be paid on the 25th day of July, 1915, which bond is signed by James Hendrickson, and witnessed by Thomas A. Davis.

Same marked Ex. P21.

Q. Mrs. Hendrickson, do you recall your husband receiving \$25 for signing the mortgage?

A. I didn't know anything about that.

Q. You were not present?

A. No, sir. 20

Q. The only time you were present in these transactions was when your signature was required?

A. Yes.

Q. Did you ever expect to live in the property on Lexington avenue?

Objected to.

Objection sustained.

Q. Did you ever go up to see that property?

A. No, sir.

Q. Do you know where it is? 30

A. I don't know where the place is, even.

Not Cross Examined.

THEODORE McCURDY MARSH sworn for the plaintiff.

DIRECT EXAMINATION by Mr. Newman.

Q. Mr. Marsh, what is your profession?

A. Lawyer.

Q. And whom are you associated with? 40

A. The firm of Raymond, Mountain, VanBlarcom & Marsh.

Q. You know Mr. Edward W. Martin?

A. I do.

Q. Are you the Mr. Marsh we have been speaking of here as having purchased this mortgage in question?

A. I am.

Q. And at the time you purchased this mortgage was an agreement executed between you and Mr. Martin?

10 A. There was.

Q. And is this the agreement, marked P2, that was signed by you?

A. Yes.

Q. Refreshing your memory from this assignment, when was this mortgage assigned to you?

A. The 22nd day of August, 1913.

Q. And that was the same day as this agreement was signed, was it not?

A. Well, I haven't the agreement before me to fix
20 the date.

Q. (Showing witness paper.) I will show you the agreement.

A. Same day.

Q. Now, did you ever know James Hendrickson?

A. At the time of that transaction, no.

Q. When did you first know him?

A. In the year 1915.

Q. When did you ever hear of James Hendrickson's connection with this transaction, the first time?

30 A. Well, I heard of it through the transaction, as being the bondsman on the bond and mortgage that were to be sold to me, in the summer of 1913.

Q. When did you next hear anything about this transaction after you had taken the assignment of the mortgage?

A. September, 1913.

Q. And whom did you hear from?

A. Mr. Albert Baldwin.

Q. Had you ever known Mr. Baldwin up to the time
40 you heard from him?

A. I didn't know him, didn't know who he was when he came into the office.

Q. He came to the office?

A. Yes.

Q. Did you write to him, or telephone him?

A. I did not.

Q. And when he came to the office did you have a conversation with him?

A. I did.

Q. What was said at that conversation?

10

A. Why, he introduced himself to me, and he told me that he understood that I was the owner of a bond and mortgage on property in Montclair on Lexington avenue, the bondsman of which was James Hendrickson, and that he had come to tell me that Mr. Hendrickson was at that time in hard luck, and that if I wanted to save a foreclosure cost he would deliver me a deed for the property.

Q. Showing you a letter dated September 24, 1913, does that refresh your recollection as to just when Mr. Baldwin called?

20

A. It was on September 23, 1913.

Q. (By Mr. Davis.) September 23d that he called?

A. September 23, 1913, he called at my office.

Q. (By Mr. Newman.) That is when you had the conversation you have just detailed?

A. Yes, sir.

Q. Did you embody that conversation in a letter to Mr. Martin?

A. I did.

30

Q. And is that the letter I show you?

A. That is the letter.

MR. NEWMAN. I want to offer this letter.

MR. DAVIS. I object to any letter from Mr. Marsh to Mr. Martin, unless it was dictated in Mr. Baldwin's presence; otherwise anything he may have said to Mr. Martin would not be at all material as affecting the defendant Baldwin. If this letter was dictated in his presence, and he knew the con-

40

tents of it, I would not object, but otherwise Mr. Baldwin cannot be bound by it.

MR. NEWMAN. I will ask one other question, and then state my theory.

Q. Mr. Marsh, did you state to Mr. Baldwin that you intended to communicate—

. Objected to as leading.

Q. Did you bring any knowledge of this letter to Mr. Baldwin's attention?

A. Only insofar that I told Mr. Baldwin, when he presented this proposition to me, that Mr. Martin was interested in it, because he had guaranteed the bond and mortgage to me, and therefore I could not pass on his proposition until I had an opportunity to communicate with Mr. Martin, and get his views on the matter.

MR. NEWMAN. Now, if your Honor please, I think it is a chain in the circumstances of this case. If Mr. Marsh informed Mr. Baldwin that he intended to communicate these facts to Mr. Martin in a communication, and did so, I think it is material in that aspect. If there is much doubt in your Honor's mind on the subject, I won't press it. And then I think it has some bearing on the element of damage, also.

(Letter handed to the Court.)

THE COURT. The objection will be sustained.

Q. Now, Mr. Marsh, you did communicate these facts to Mr. Martin, didn't you?

A. Yes.

Q. As a result of your communication with Mr. Martin did you see Mr. Baldwin again?

A. Why, no, it had nothing to do, as I remember my communication to Mr. Martin, that I saw Mr. Baldwin.

Q. Did you see Mr. Baldwin?

A. I did see Mr. Baldwin. I also had several telephone communications from Mr. Baldwin, but Mr. Martin had nothing to do with my having those conversations.

Q. No, but after you conferred with Mr. Martin you

took the matter up with Mr. Baldwin, is that correct, or not?

A. No, I didn't take it up; Mr. Baldwin always came to me.

Q. When did Mr. Baldwin come again to see you?

A. Mr. Baldwin telephoned again about two days after his first conversation, and wanted to know whether I had made up my mind to take the deed, or not. I told him I had not; that Mr. Martin had not communicated with me, and I didn't know what course was best to pursue; and he told me if I didn't act quickly the offer would be withdrawn; I told him he would have to wait until I made up my mind. 10

Q. What was the next conversation you had with him?

A. That was a very similar one following two or three days after on the telephone, and then later he came to my office a second time, which, referring to this letter to fix the date, was on October 3, 1913.

Q. Yes. 20

A. And he told me that he had a deed signed by Mr. and Mrs. Hendrickson, if I didn't take it then I wouldn't get it, and that he would put me to all the expense incidental to a foreclosure case, and make as much trouble as possible, if I would not accept the deed. I told him that Mr. Martin had not as yet given me any indication of what he thought we ought to do. And he insisted that I take the deed, and at the same time that I should write a letter to Mr. Hendrickson which would state that I would agree to return the property to Mr. Hendrickson if, in the course of a month or so, Mr. Hendrickson should get into such financial condition that he should wish to occupy the property. And I told him that I would take no action that would in anyway relieve Mr. Hendrickson as bondsman on the bond and mortgage. He objected to that, but I told him that would be the only condition, and with that full understanding—only condition upon which I would take the deed; and also, in order solely to avoid the necessity of my undertaking a foreclosure suit, I did at that time dictate in the presence 40

of Mr. Baldwin a letter addressed to James Hendrickson, which letter, after I had dictated to him, I delivered to Mr. Albert Baldwin, and he took the same away from my office.

Q. (Showing witness paper.) And is that a copy of the letter?

A. That is.

MR. NEWMAN. You have not the original letter, I understand, Judge Davis?

MR. DAVIS. No.

MR. NEWMAN. I offer in evidence that letter.

MR. DAVIS. Have Mr. Marsh identify that as an exact copy.

Q. Is that an exact copy of the letter?

A. Yes.

MR. DAVIS. May I examine on the copy?

THE COURT. Yes.

BY MR. DAVIS.

Q. Mr. Marsh, this is not a carbon copy, is it?

A. I am not enough of an expert on carbon impressions to say positively about that.

Q. Well, that is an original letter, isn't it? It is an original copy, it is not a carbon copy of the letter that you wrote, and it is not a letterbook copy, is it?

A. It is not a letterbook copy.

Q. And it is not a carbon copy?

A. Well, that I am not sure, whether it is a carbon copy, or whether it is a duplicate that was struck off at the same time as a first impression on the machine.

Q. Do you in your office keep your letters in a copy book?

A. Yes.

Q. You do not, as an ordinary thing, make duplications of them, and file away duplications?

A. Yes, we do both.

Q. And do you know whether this is a duplicate copy, or is it a copy of a duplicate copy?

A. Well, I don't know that I quite understand the distinction you make in that question. It is either one of two things; it is either an impression that was struck off by the stenographer at the same time, running it through the machine at the same time with the original letter which I gave to Mr. Hendrickson, or else at the same time she has run it through on a piece of yellow paper as a duplicate.

(Another paper is handed to the witness.)

Q. Have you got anything now in your hand to refresh your memory as to whether that is a carbon copy? 10

A. This letter recites to Mr. Martin that "I herewith inclose letter sent to Mr. Baldwin"—

MR. DAVIS. No, no. You are a lawyer. I object to his reading that letter.

THE COURT. That quotation from the letter will be stricken out.

Q. Have you anything in your hand now, Mr. Marsh, that will refresh your memory as to whether the paper, the yellow paper, is a carbon copy of this letter, or not? 20

A. No; this memorandum does not—

Q. I don't care to know what it is, I only ask you does it refresh your memory on that point?

A. To some extent, yes.

Q. Well, now, after having looked at the other paper for the purpose of refreshing your memory to some extent, can you now say whether the yellow paper that was handed to you by Mr. Newman is a carbon copy of the original letter that you handed to Mr. Baldwin? 30

A. No, this memorandum did not clear up that difficulty.

Q. Have you compared the contents of that yellow paper with anything in your office for the purpose of determining that it was a true copy of the original letter that you handed to Mr. Baldwin?

A. It was made at the same time the original was, and compared with that at that time.

Q. (By the Court.) By you?

A. Yes. 40

Q. (By Mr. Davis.) That is the paper you have got in your hand there?

A. This yellow paper.

Q. Was compared with the original paper you gave Mr. Baldwin?

A. Yes.

MR. DAVIS. Then I have no objection.

MR. NEWMAN. I offer the letter in evidence.

10 Said letter marked Ex. P22, and read as follows:
"October 3, 1913.

Mr. James Hendrickson,
126 Norfolk street,
Newark, N. J.

Dear sir:

20 With respect to the mortgage on property owned by you on Lexington avenue, Montclair, and on which I now hold a mortgage, I am informed by Mr. Baldwin that you are unable to meet the same when it becomes due, and that you have offered a deed of bargain and sale of the property to save the expense of foreclosure. The situation is as follows:

30 Mr. Edward W. Martin has guaranteed me on this property, and I should therefore much prefer that you would deed it direct to Edward W. Martin, and that any arrangements you might make with respect to the right to repurchase could be made with him. By deeding it to Mr. Martin he will then take the property subject to the bond and mortgage now on the property and pay it to me as it becomes due. If, therefore, you would consent to this, I should be very much obliged and it was in the hope of arranging this that I have not disposed of the deed now in my possession, to me. If you refuse to do this, I will accept the deed from yourself to me, and will agree that the same will not be sold by me within two months without your approval, and that you will have the right to repurchase from me, within the period of two months time, plus all expenses to which I may be put in caring for the property.

40

I should however, much prefer that the arrangement be made with Mr. Martin direct and will ask you if possible to arrange for the deed to him.

I enclose herewith a proper bargain and sale deed to him similar to the one to me, and if you will execute the same to Mr. Martin I should esteem it a favor.

In accepting this deed, I do not intend, however, to release you in any way from your obligations to me under the bond and mortgage, but merely to facilitate the collection of the money due. 10

Very truly yours,

Copy.

Theo. McC. Marsh."

BY MR. NEWMAN.

Q. Mr. Marsh, did you then have this deed in your possession?

A. Yes—that is, the deed from—

Q. From James Hendrickson and wife to Theodore McCurdy Marsh dated September 24, 1913? 20

A. Yes.

Q. Marked Exhibit P19. Up to this time had you ever seen Hendrickson?

A. No.

Q. Had you ever seen anyone outside of Mr. Martin and Mr. Baldwin in connection with this transaction?

A. No.

Q. Did you subsequent to the writing of that communication write a letter dated October 7, 1913, which is marked P18 for identification, to Mr. Martin, embracing 30 your arrangement in this matter that you had made with Mr. Baldwin on behalf of Mr. Hendrickson?

A. Yes.

Q. And that is the letter, is it?

A. Yes.

MR DAVIS. I ask that that part of the question that Mr. Newman asked embodying a part of the contents of the letter be stricken out.

MR. NEWMAN. I do not think I embodied any 40

part of the contents; I asked him if he wrote a letter embodying the arrangement he had made.

THE COURT. To that extent it may stand.

Q. Now, Mr. Marsh, do you recall going to Plainfield with Mr. Newman and Mr. Martin to visit P. Frank Stone?

A. Yes.

Q. And can you fix the time that was?

10 A. Only generally, that it was in the summer of 1915.

Q. And did you meet Mr. Stone there?

A. Yes.

Q. And did you have a conversation with him?

A. Yes.

Q. Will you tell us the conversation you had with Mr. Stone as near as you can recall it.

A. Why, Mr. Martin met Mr. Stone at the door of the building in which his office was, and he then went up to his office, and Mr. Martin introduced the subject by
20 saying that he had come to ask Mr. Stone to tell him his connection with the transaction in which he had been the owner of certain land in Montclair which had been deeded to Mr. James Hendrickson; that he had found out a great deal about that transaction since that time, and wanted to get Mr. Stone's account of it, and to give him an opportunity to tell him that story before he should proceed any further. Mr. Stone refused—

MR. DAVIS. I object unless he states what Mr. Stone said.

30 A. (Continued.) Mr. Stone said that he would not tell to Mr. Martin, or to either Mr. Newman or myself, any part of that transaction until he had an opportunity, at least, to communicate with Mr. Baldwin; that Mr. Baldwin had handled the matter for him, and that he would say nothing until he had communicated with him. Mr. Martin, or Mr. Newman, asked him whether he had ever seen the property in Montclair for which the deed was given, and he said no, that he had perfect faith in
40 Mr. Baldwin, and that in these transactions he had gotten

his, and Mr. Baldwin had gotten theirs, and he thought the matter was forgotten long ago.

Q That conversation took place in Plainfield, as I understand it?

A. Yes.

MR. NEWMAN. Is there any dispute, Mr. Davis, about these payments on the mortgage?

MR. DAVIS. Well, I don't know anything about them. 10

Q. Mr. Marsh, can you tell me how many payments Mr. Martin made to you on account of the principal of this mortgage?

A. Four.

Q. And how much was each payment?

A. \$150.

Q. Making a total paid on account of the mortgage of \$600?

A. Yes.

Q. Did Mr. Martin pay the interest on this mortgage 20 to you?

A. He paid the interest up to the time of the fourth payment of principal.

Q. Do you recall whether the last payment of interest was made up to September, 1914?

A. The last payment that Mr. Martin made to me was in the form of a note in June or July, 1914, being the installment due in July, 1914.

Q. And do you recall the fact that your firm made a search on this property for Mr. Martin? 30

A. The search was not made for Mr. Martin, the search was made for me in taking title to the mortgage, and Mr. Martin was called upon to pay that.

Q. And did pay it?

A. And did pay it.

Q. And was it paid, as appears upon the bill, about August 20, 1913, Exhibit P4?

A. Yes.

Q. And was the amount \$59.10? There seems to be an additional item in there. 40

A. I don't understand where that \$59.10 comes in here.

Q. Well, he says there was some item outside of that; however, it is not material. You got \$62 on that occasion?

A. Yes.

Q. Now, that note that you say embraced part of the principal and interest, that note was met, was it?

A. Yes.

10 Q. And been paid. I want to ask you one other question. Refreshing your memory as to the conversation in Plainfield, New Jersey, do you recall whether Mr. Stone said anything as to whether he knew or had ever seen Mr. Hendrickson?

A. He was asked the question whether he knew Mr. Hendrickson, and he said that he had no dealings with him, and I do not remember any statement in which he said he had never seen him.

Q. Said he had no dealings?

20 A. That is, no personal dealings with him.

CROSS EXAMINATION by Mr. Davis.

Q. You have been practicing law how long?

A. Since 1907.

Q. And the negotiations which led up to the purchase by you of this mortgage from Mr. Martin, were they conducted personally between Mr. Martin and yourself?

A. Yes.

30 Q. And the agreement of surety, which is Exhibit P2, referring to this \$3,000 mortgage of James Hendrickson to Stone, recites the fact that Edward W. Martin is now, or is about to become, the owner of a certain bond and mortgage made by Hendrickson to Stone, at the time you opened negotiations, or Mr. Martin opened negotiations with you, for the purchase of this mortgage, he actually had not yet acquired the mortgage himself, had he?

A. That I don't remember, although the reference in that agreement would seem to indicate it.

40 Q. Can you recall, after having your memory refreshed by that passage in the contract, that when he and you

talked about you taking over this mortgage, that he had not yet got the mortgage?

A. I refused to accept a mortgage that was on record, because of the fact that it did not comply with the terms, and the second one was drawn to meet my objections to the first one, as I recollect; so that the negotiations must have been conducted with me prior to the final execution of the mortgage that was transferred to me.

Q. Well, the mortgage that was transferred to you was the mortgage that was transferred first to Martin, 10 was it not?

A. Yes.

Q. And was not that mortgage the second in point of record of the two \$3,000 mortgages which you speak of?

A. Yes; the first one was objected to, and the second one was accepted.

Q. But Mr. Martin never had any assignment of that first executed mortgage, so far as you know?

A. Not that I recall.

Q. So that the mortgage that he took the assignment 20 of, and which was transferred to you, was the mortgage that contained the installment clauses?

A. Yes.

Q. Now, isn't it a fact, then, that you arranged to buy that mortgage from Martin before Martin himself had the mortgage?

A. Well, I could not tell you positively when Mr. Martin got possession of the mortgage. I can only tell you as compared to the dates of record, and my agree- 30 ment with Mr. Martin was prior to the time of record of the second mortgage.

Q. You, of course, in taking over the mortgage, inspected the papers themselves, and passed on their regularity and legality, did you not?

A. Which papers do you refer to?

Q. The bond and mortgage, the one that you bought.

A. Why, whether I saw the originals, or had the record copy of the mortgage, I don't remember, but I saw one or the other. 40

Q. And you say you made a search on the property?

A. Yes.

Q. And your search disclosed the first mortgage of \$5,000, the building and loan mortgage?

A. Yes.

Q. And the mortgage that you took was next subsequent to the \$5,000 building and loan mortgage?

A. Yes.

10 Q. The building and loan mortgage was the usual form of payment, monthly installments?

A. To the best of my knowledge. I did not make any examination of it; I did not make any particular examination, that I now remember, but my impression was that it was an installment mortgage in the building and loan form.

Q. At the time you bought the mortgage from Mr. Martin you did not see Mr. Hendrickson?

A. No.

20 Q. And did you go up and look at the property yourself?

A. I have seen the property at about that period, but I made no investigation of it at that time.

Q. Did you get any impression of it at all?

A. No.

Q. Did Mr. Martin tell you what he thought it was worth?

A. Mr. Martin? Yes.

Q. What did he tell you it was worth?

30 A. Mr. Martin told me at that time that the property had been sold for \$11,000, and—

Q. Mr. Marsh, you understood my question, didn't you?

A. I thought I answered it.

Q. No; I asked you if Mr. Martin told you what he thought it was worth?

A. Yes.

Q. What did he say that he thought it was worth?

40 A. He thought it was worth more than the amount of the two mortgages on the property.

Q. And he told you that. You paid \$2,600 for the mortgage, did you not?

A. Not at that time. I had previously loaned Mr. Martin \$2,000, or thereabouts, and I only paid the difference at the time the mortgage was transferred to me.

Q. (By the Court.) That is, you paid him \$600?

A. Either \$600 or \$700, something in that neighborhood, yes.

Q. (By Mr. Davis.) Then this mortgage was transferred to you to the extent of \$2,000, at least, to repay you for what you had loaned Martin? 10

A. Yes. Mr. Martin and I had had several transactions in which I had loaned him money, and there was an outstanding obligation, and this was intended to pay off that outstanding obligation, and I invested at that time a sum of money approximating \$600 to get this method of payment of my prior obligations.

Q. The \$2,000 that you had previously loaned Mr. Martin was loaned before there was any negotiations for the purchase of this mortgage? 20

A. Yes.

Q. I notice, Mr. Marsh, on Exhibit P20, which is the mortgage in question, that it appears to have been offered in evidence and marked Exhibit D2 in a foreclosure suit?

A. Yes.

Q. And that was the foreclosure suit of the building and loan association?

A. Yes.

Q. You proved this mortgage yourself in this foreclosure proceeding, I presume? 30

A. Yes.

Q. And the decree—

MR. NEWMAN. I object to this. I do not think this is cross examination. I think it is going very wide of the mark of my direct examination, and therefore I object to it.

THE COURT. What do you say, Judge Davis?

MR. DAVIS. If your Honor please, it seems to me it is a question that naturally follows the intro 40

duction of these exhibits, and this mortgage shows, as Mr. Marsh says, that it was offered in evidence in the foreclosure suit, and I would like to find in what way it figured in the foreclosure suit, whether it got into the decree, or not. I want to find out from Mr. Marsh whether he knows the amount that was decreed by the Court of Chancery to be due on this mortgage.

10 THE COURT. I think that is not proper cross examination.

An objection to this ruling is noted by the defendant as ground of appeal.

Q. Mr. Marsh, coming to your visit to Plainfield, didn't you hear Mr. Stone say to Mr. Martin, or ask him the question about why Mr. Martin had telephoned to Mr. Stone giving a different name than his own?

A. There was some conversation with reference to
20 that fact, yes, but it was not precisely in the form that you stated to me.

Q. Now, what was it? You have not said anything about that in your statement of the conversation.

A. Mr. Stone, I think, asked if he was the gentleman who had telephoned to him from Newark, and Mr. Martin said that he had, and Mr. Stone asked why there was the difference of the name that had been used, and Mr. Martin said that he had used his middle name.

Q. And what did Stone say?

30 A. Stone made some comment, but I don't remember it.

Q. Now, when you went there neither you—you did not tell Mr. Stone that you were coming, did you?

A. No.

Q. Were you present when Mr. Martin telephoned to Mr. Stone?

A. No.

Q. Who else was in the party besides yourself and Mr. Martin?

40 A. Mr. Benjamin Newman.

Q. Mr. Benjamin Newman, here, this gentleman, is he also a lawyer?

A. He is.

Q. And there were two lawyers and Mr. Martin that went down with you to Mr. Stone?

A. Yes.

Q. Was Mr. Stone represented by counsel?

Objected to.

Q. Was there any lawyer there for Mr. Stone? 10

A. No.

Objected to.

Objection overruled.

Q. No one else in the room besides you three and Mr. Stone when the talk was going on?

A. No. There was a customer called while we were in there, but the discussion ceased while she was in the room.

Q. After you got title to the property, Mr. Marsh, by this deed from Hendrickson, did you pay the building 20 and loan installments, or did Mr. Martin?

A. I did not; I don't know what Mr. Martin did, myself.

Q. And is it not a fact that the reason the mortgage was foreclosed, of the building and loan, was that Mr. Martin did not keep up the payments?

A. Well, I can't answer that question; I don't know what the building and loan determined.

Q. Why, didn't you investigate the amount due on the building and loan mortgage in that foreclosure suit? 30

A. I saw the Master's report in the foreclosure suit, yes.

Q. And is it not true that the foreclosure of the building and loan mortgage was by reason of the fact that Mr. Martin did not keep up the building and loan payments monthly?

A. That involves—I can't answer what the reason of the building and loan was; I don't know what their reason was.

Q. Didn't you receive notice, either from Mr. Martin 40

or the building and loan association, that the payments were in arrears?

MR. NEWMAN. I object to this on the same ground as my previous objection; I don't think it is cross examination.

THE COURT. The question may be answered. An exception to this ruling is noted by the plaintiff as ground of appeal.

10

Q. (Question read.)

A. Not that I recall.

Q. Referring again to the Plainfield talk, Mr. Marsh, do you remember Mr. Stone saying to either you or Mr. Martin that the Fairchild Baldwin Company in Newark handled his real estate affairs?

A. Yes, he referred to the fact that he had dealings with the Fairchild Baldwin Company, yes.

20

Q. And did he not say that he would not go into any talk with you gentlemen until he had time to confer with the Fairchild Baldwin Company?

A. He said he would not talk to us until he had talked to Mr. Baldwin, not to the Fairchild Baldwin Company.

Q. Did he say which Mr. Baldwin?

A. I don't remember that he specified distinctly any one of the Mr. Baldwins.

Q. He did not mention Mr. Fairchild's name at all?

A. No.

Q. When was the first time that you personally saw Hendrickson?

30

A. I saw him in the summer of 1915.

REDIRECT EXAMINATION.

Q. In the Plainfield interview Mr. Martin mentioned the name of Albert Baldwin, did he not?

Objected to.

Objection sustained.

Q. I ask you this question, Mr. Marsh; you have testified on cross examination, in answer to one of Mr. Davis's questions, that Mr. Martin stated something about

40

the value of the property; will you kindly state the conversation you had with him with respect thereto?

MR. DAVIS. I object, if your Honor please, Bringing out the conversation that was had between Mr. Martin and this witness cannot in any way bind the defendant; they were not there; and I submit it is only admissions against interest that would be chargeable to Martin.

MR. NEWMAN. My reason is that the cross examination has made the entire conversation evidential. Judge Davis asked Mr. Marsh whether, when he took this mortgage over, Mr. Martin stated anything to him concerning the value of the property, and what that was, so that I think the whole conversation is admissible, and on that ground I am asking the question. 10

THE COURT. The objection is sustained.

An exception to this ruling is noted by the plaintiff as ground of appeal. 20

OSCAR S. RITTER sworn for the plaintiff.

DIRECT EXAMINATION by Mr. Newman.

Q. Mr. Ritter, what is your full name?

A. Oscar F. Ritter.

Q. Where do you reside?

A. 29 Berwick street, Orange.

Q. And were you formerly connected with the Fairchild Baldwin Company? 30

A. Yes, sir.

Q. And do you know Albert F. Baldwin, the defendant in this case?

A. Yes, sir.

Q. And P. Frank Stone?

A. Yes, sir.

Q. Are they related?

A. Half brothers, as I understand it.

Q. Do you recall meeting Albert F. Baldwin some 40

time in the month of September, 1913, and having a conversation with him with respect to a deal that he had closed with Edward W. Martin?

A. Why, some time in the summer, August, or early part of September, 1913, I had made a deal with Mr. Martin, I met Mr. Albert Baldwin in front of the Firemen's building, he had heard of my deal, and he said to me "Hello, I hear you have made a deal with Martin." I said, "Yes." He said, "I have just made a nice little
10 steal from him." That was his remark. And he said he had gotten some lots for a mortgage which he claimed was a phony mortgage, that was his expression.

Q. (By the Court.) A what?

A. A phony mortgage, that was his expression.

Q. (By Mr. Newman.) Did he say where those lots were situated?

A. Yes, Orange, Gregory avenue.

Q. What else did he say?

A. I made a remark like this: I said, "I have had
20 quite some dealings with Mr. Martin, and I have found him to be a very clean cut fellow"—

MR. DAVIS. I object to any remarks this witness made about Mr. Martin. I submit the only part of the conversation admissible would be statements by Mr. Baldwin against his interest. We are not bound by anything this witness says.

THE COURT. Yes, perhaps you are not bound, but this may have called for some other statement
30 from Mr. Baldwin; I can't tell; the answer may proceed.

A. (Continued.) I said that I had had quite some business with Mr. Martin, and I had found him to be a very clean cut fellow, I had been in the real estate business many years, and had had dealings with different types; and he said, "Well"—

MR. DAVIS. One moment. - I ask whether that
40 last statement of the witness was part of the conversation, or remarks about his real estate history.

WITNESS. That was part of the conversation.

MR. DAVIS. May I ask whether—

MR. NEWMAN. I object to this method of procedure.

THE COURT. Proceed.

Q. (Proceed.)

A. Well, he said "We got a nice little deal out of him; we traded a mortgage we had in Montclair." I don't know just what else was said. He says, "The mortgage, of course, as you know, belonged to Frank P. Stone, and it was assigned to Martin for these lots free and clear." 10

Q. (By the Court.) From what you just said I think I misunderstood what you said at first; won't you repeat what Mr. Baldwin first said to you?

A. He said, "Hello," as he always does, and said, "I hear you have made a deal with Mr. Martin;" I had just closed a deal with Mr. Martin for some apartment houses. I said, "Yes." He said, "I made a nice little deal with him some time ago, I stole away some lots he had on Gregory avenue." That was his remark. 20

Q. (By Mr. Newman.) You testified you were connected with Fairchild Baldwin Company for how long, did you say?

A. About two years, possibly a little better than that, two years, went with them in 1910 and left them in 1912.

Q. You know what relation Mr. Albert Baldwin, the defendant in this case is to Mr. Fairchild? 30

A. Yes. Mr. Albert Baldwin is a nephew of Mr. Fairchild. I believe Mrs. Fairchild, Mr. Fairchild's wife, is a sister of Mr. Albert B. Baldwin, father of the Baldwin boys; that is my knowledge of it.

Q. Is Mr. Albert B. Baldwin, father of the Baldwin boys, connected with the company?

A. Yes, sir.

Q. And is Clifford Baldwin, the other brother, connected with the company?

A. Yes, sir. 40

Q. And is Mr. Albert Baldwin, the defendant in this suit, connected with the company?

A. As a broker; further than that I have no knowledge.

CROSS EXAMINATION by Mr. Davis.

Q. Mr. Ritter, how long have you been in the real estate business?

A. About fifteen years.

10 Q. For yourself, or connected with others?

A. Myself independently, except being connected on a commission basis; never worked for any one under salary.

Q. How long were you connected with the Fairchild Baldwin Company?

A. About two years.

Q. Do you remember when you went there?

A. 1910.

Q. And you stopped when?

20 A. 1912.

Q. You say you left them; did you leave them of your own accord?

A. I did; yes, sir.

Q. Isn't it true that you left because of a dispute about some commissions for a coal deal.

A. Would you like me to explain that matter to you?

Q. No, I ask you if that is not so?

A. No, absolutely no; that was—

30 Q. No, I am not asking you; just answer the question; you are very anxious to testify, aren't you?

MR. NEWMAN. I object to the comment of counsel.

A. No, sir, not at all.

THE COURT. That is a question.

Q. Will you let me see your subpoena, please?

A. I don't think I have it; no, I haven't; it is back in my office. I will get it for you if you would like it.

Q. Well, you haven't got it with you, have you?

40 A. No, I haven't got it with me.

Q. Albert Baldwin made this statement to you voluntarily, did he?

A. Unsolicited on my part, yes, sir.

Q. And he told you that they had made a nice deal with Mr. Martin?

A. Yes, sir.

Q. And then used the word "Steal," didn't he?

A. Made a nice little steal; that is a frequent word.

Q. Yes, but he also made the statement that they made a nice deal, too, didn't he? 10

A. Well, it might have been in those words, as well as a steal.

Q. Didn't you say a moment ago that he said he made a nice deal?

A. Yes.

Q. Isn't that so?

A. I don't know; I know nothing about the deal other than what he said to me.

Q. I am not asking you that, Mr. Ritter—

A. You asked me if it was true. 20

Q. Will you please listen while I frame my question. You said a moment ago, did you not, that Albert Baldwin said to you that he made a nice deal?

A. Yes.

Q. With Mr. Martin?

A. Yes, sir.

Q. And you, after you had this talk with Mr. Baldwin, told the substance of the talk to Mr. Martin?

A. I told him?

Q. Yes, didn't you? 30

A. No, sir.

Q. You didn't tell Mr. Martin?

A. No, sir.

Q. Did you tell his attorneys?

A. Some of it.

PLAINTIFF RESTS.

MR. DAVIS. If your Honor please, in this case I ask for a nonsuit against the defendant Stone, first, on the ground even if, as the testimony stands, state- 40

ments were made by Albert Baldwin in this matter, even acting as an agent for Mr. Stone, that Mr. Stone is not in any way responsible for any such statements that may have been made by his agent, there being no evidence in the case whatever that Mr. Stone either knew about the statements, or authorized the making of the statements; no evidence that shows that Mr. Stone was aware of any representations that Albert Baldwin made, if he made any; that he ever agreed in them, or sanctioned them, or knew about them; nothing in the case at all to show at any time was there any offer of rescission, or any offer to give back to Stone the property in Montclair, and to demand back from Stone the lots that he had in West Orange; nothing in the case to show that Stone was in any way connected with any statements made by Albert Baldwin with regard to this property, and I submit that he is not responsible in the case for any deceit, if deceit was practiced, by his agent.

(Mr. Newman replied.)

THE COURT. The motion for nonsuit will be held until the close of the defendant's case.

MR. DAVIS. I would like to ask for a nonsuit for the defendant Baldwin for the following reasons: The alleged misrepresentations may be grouped under two heads, first, misrepresentations as to the value of the property, and, second, misrepresentations as to the responsibility of the bondsman, and the amount that he paid for it. On the first head, that is, alleged allegations as to the value of the property, I submit to the Court that the testimony shows that Mr. Martin did not rely upon those statements in deciding whether he would or would not make the deal. He stated in his evidence that he had formed his own opinion as to the value of that property, and that regardless of the statements of Albert Baldwin either that \$11,000 was paid for the property, or that in Albert Baldwin's opinion the property was worth

\$11,000 or \$12,000, he decided for himself in his own opinion that those statements represented an excessive value, and that after he had gone there and looked over the property thoroughly, going all through it, he decided that the property was worth at least the amount of the mortgages, and, therefore, that in his opinion the property was worth at least \$8,000; and the evidence shows that Mr. Martin acted, not on the statements made by Albert Baldwin as to the property, or the cost of the property, but upon his own estimate that it was worth the amount of the mortgage. 10

Secondly, on the question of the responsibility of Hendrickson. The evidence shows that Albert Baldwin told Mr. Martin what he knew about Hendrickson, that he was a plumber, that he was a man that did work for the Fairchild Baldwin Company, that he did steady work, that he was going to live there in that house, and that he was responsible and well able to carry the property, or words to that effect. 20
 I submit to the Court that his statement of the information that he had, or his knowledge of Hendrickson, constituted the basis for what came afterwards; namely, that he was responsible, and well able to carry the property; that his statement that he was responsible, and well able to carry the property, was simply a statement of Albert Baldwin's conclusions; and before making the statement of his conclusions on Hendrickson's responsibility, he laid before Mr. Martin his statements of what he knew about Hendrickson, and then stated substantially this, "In my opinion, he is a responsible man, and well able to carry the property." 30

THE COURT. But a person has no right to state as their opinion, even, a matter which they know to be false.

MR. DAVIS. I submit to the Court this, that when he made that statement that he was responsible, and well able to carry the property, he was 40

stating his opinion; but he had given Mr. Martin the whole ground work for his opinion. He might have drawn a wrong conclusion, but Mr. Martin was put in possession of all the facts from which he could draw his opinion as to whether Albert Baldwin's opinion was such as could be drawn from that knowledge. Furthermore, regardless of the fact whether these statements were false or not, the case as it stands at the present time shows that Mr. Martin got something that was of the value of \$3,000. All the evidence at the present time in the case shows that the property was worth \$8,000; shows that that mortgage was worth \$3,000. So that, regardless of anything in the case at all, if we should admit that everything that was said—admit the misrepresentations as to the responsibility of Hendrickson—as the case stands now it shows that what Martin got was what he expected to get, namely, a bond and mortgage worth \$3,000; and that it was worth \$3,000, on his own estimate, and in the estimate of every one else who has testified in the case, and therefore he was not defrauded—

THE COURT. But a bond from a man who was financially responsible.

MR. DAVIS. Even admitting that statement was made, the case still shows he got a bond and mortgage that were worth \$3,000, and out of which \$3,000 could be gotten, and should be gotten. They all agree it was a second mortgage, second to a \$5,000 mortgage, and, at the lowest calculation given in this case, that the property was worth \$8,000; and that Martin himself, disregarding everything that Albert Baldwin said to him, concluded that what he got was worth \$8,000. And there is nothing in the case to show that it was not worth \$8,000. Therefore, even if there were misrepresentations in the case, it did not in any way affect the value of that bond and mortgage, and the bond and mortgage was

worth \$8,000, and he got \$3,000 worth. On all those grounds I ask for a nonsuit against Albert Baldwin.

THE COURT. The motion will be denied, and an exception noted.

An exception to this ruling is noted by the defendant as ground of appeal.

MR. DAVIS. And I ask for a nonsuit as to both on the grounds stated.

THE COURT. As to Mr. Stone, the motion will be held until the close of defendant's case. As to Mr. Baldwin the motion will be denied, and exception noted. 10

An exception to this ruling is noted by the defendant as ground of appeal.

CLIFTON BALDWIN sworn for the defendant.

DIRECT EXAMINATION by Mr. Davis.

Q. Mr. Baldwin, you are Clifton D. Baldwin, are you? 20

A. I am.

Q. And where do you live?

A. South Orange.

Q. What business are you engaged in?

A. Real estate.

Q. Whereabouts?

A. Newark.

Q. What company are you connected with?

A. Fairchild Baldwin Company.

Q. Their office is where? 30

A. Fireman's building.

Q. Are you a brother of Albert Baldwin?

A. I am.

Q. And you are a half brother of Mr. Stone here?

A. I am.

Q. For how many years have you been engaged in the real estate business?

A. Eleven years.

Q. You are acquainted, are you not, with a deal with Mr. Martin? 40

A. I am.

Q. Did you have anything to do with these negotiations that led up to this deal between Mr. Martin and Mr. Stone?

A. I did.

Q. When did you first hear of any negotiations for an exchange, Mr. Baldwin?

A. About the 10th of July.

Q. And from whom did you first get any information?

10 A. From the firm of Fell & Devine of East Orange, Mr. Devine.

Q. Did they come to you, or did you go to them?

A. They came to me.

Q. And Mr. Devine is the man that had the matter in charge?

A. He is.

Q. He is dead now?

A. Yes.

Q. Did you see Mr. Martin at all before the contract
20 was signed?

A. I did.

Q. Whereabouts?

A. He came to my office about the middle of July, I should say, the 15th of July.

Q. And that was about a week or so before the contract was closed?

A. I should judge about.

Q. Did you and Mr. Martin have a conversation at your office at that time regarding this proposed transfer?

30 A. We did.

Q. Will you please state what the conversation was?

A. Mr. Martin asked me to make the deal, giving him this mortgage in Montclair for 150 feet of ground on Gregory avenue. I told him I thought he ought to give me about \$1,000 in cash, and the land, for the mortgage, and he replied that the face of the mortgage was only \$3,000, and that he had paid \$2,800 in cash for the ground, and the best that he would do would be to make an even deal. I told him I wasn't willing to do that at that time,
40 I would think it over and let Mr. Devine know.

Q. Was that the only talk you had with Mr. Martin before the contract was entered into?

A. That was the only talk.

Q. When did you next hear either from Mr. Martin or from Mr. Devine anything in connection with this matter?

A. Well, Mr. Devine called me up several times trying to consummate the deal, and finally I consented to make the deal as he termed it, an even deal, taking the lots for the mortgage. 10

Q. Did you have anything to do with the trip that your brother Albert and Mr. Martin made to Montclair to look at this property?

A. I did. Mr. Devine telephoned down asking if he could borrow a machine and chauffeur to take Mr. Martin to Montclair. I told him yes. I inquired—

Objected to.

Q. What did you do in response to that telephone?

A. I sent my brother Albert up to Devine's office with a machine, and orders to take Mr. Martin to Montclair. 20

Q. Had you seen the lots up on Gregory avenue?

A. I was familiar with them; I had seen them several times.

Q. Now, did you have anything to do personally with the contract that was made between Mr. Stone and Mr. Martin? I mean the original contract?

A. Well, in the drawing of the contract?

Q. Yes.

A. I believe it was drawn in our office.

Q. After your brother Albert had gone up to Montclair and talked with Mr. Martin how soon after that did you hear as to whether the deal was or was not going through? 30

A. Why, it was very shortly after that, I think, a day or two.

Q. And from whom did you hear that?

A. Mr. Devine.

Q. And then you say you drew the contract?

A. Yes, sir?

Q. How many copies did you draw, do you remember? 40

MR. NEWMAN. He didn't say he drew it; he said it was drawn in the office.

THE COURT. He said he believed it was drawn in the office.

Q. Will you please look at it, Mr. Baldwin, and see whether you are able to say whether it was or was not drawn in your office. Just look at it all; I don't mean read it all, but just look at the contract.

10 A. All I can say is I believe it was, Judge this is some two or three years ago that it happened.

Q. And did you see Mr. Martin after that at all in relation to this deal?

A. No, not for some time after. I don't believe I ever saw him in relation to this deal.

Q. Was it you that secured the signing of the contract by Mr. Stone, or was it someone else?

A. I secured it.

Q. In what way?

A. Told him to sign it.

20 Q. And did you mail them to him, or did he come and sign them?

A. I mailed them to him.

Q. To where?

A. To Plainfield.

Q. When the contracts came back, or the contract came back, what did you do with it?

A. Sent them to Devine's office, Fell & Devine; they were the brokers in the transaction.

30 Q. Mr. Stone, you say, is your half brother, and lives in Plainfield; what business is he in?

A. He is a photographer; photographing studio.

Q. Has your office, or yourself, and Mr. Stone had any real estate dealings?

A. Yes.

Q. Covering a period of how long?

A. Five years?

Q. On how many pieces of property—

MR. NEWMAN. I object to the question.

40 MR. DAVIS. Wait until I finish my question.

MR. NEWMAN. I beg your pardon. I thought you were finished.

Q. On how many pieces of property during that period of time have you had to do with Mr. Stone in a business way?

MR. NEWMAN. I object to it on the ground it is immaterial, and that it is not relevant to the inquiry.

MR. DAVIS. I ask to be permitted to show that Mr. Stone was dealing in real estate for several years, and on that basis I ask this question. 10

THE COURT. He said Mr. Stone did deal with them for four or five years. (Question read.)

I think that question may be answered.

An objection to this ruling is noted by the plaintiff as ground of appeal.

A. I deeded one tract of land to him.

Q. (By the Court.) No, no, answer that question by number; number of transactions. 20

A. About fifteen.

Q. (By Mr. Davis.) And who was it, Mr. Baldwin, in your office, if anybody, that had charge of Mr. Stone's real estate deals?

A. Myself.

Q. Do you recall when the Fairchild Baldwin Company secured title to this property in Montclair?

A. The latter part of December, 1912.

Q. And do you recall that in the summertime of 1913 the property was conveyed by the Fairchild Baldwin Company to Mr. Stone? 30

A. I do.

Q. And under what arrangement was it, if you had any, with Mr. Stone, that the property was conveyed?

MR. NEWMAN. I object to this. Are we going into the entire history of Fairchild Baldwin's dealings with Mr. Stone, and with respect to this property? Is that material or relevant to this issue, what their dealings were? 40

THE COURT. You are alleging a conspiracy to defraud here, in which Mr. Stone is a party, and, while I agree with you that it is quite improper to go into all the real estate transactions with Fairchild Baldwin Company, my present view is it is quite proper to go pretty fully into this particular transaction. He is now asking about this particular tract. The question will be admitted.

10 An exception to this ruling is noted by the plaintiff as ground of appeal.

A. I gave the house to Mr. Stone with the understanding that he was to trade it for lots in Plainfield, or other places, and to give me \$3,000 out of the proceeds, keeping anything over that for himself. He was to settle with me on the basis of \$3,000.

Q. When you say "give me," do you refer to yourself personally, or to the company?

A. I refer to the firm.

Q. Fairchild Baldwin Company?

20 A. Fairchild Baldwin Company.

Q. Had you talked with Mr. Stone about this?

A. I had.

Q. When, Mr. Baldwin?

A. About the 1st of June.

Q. And did he, or did he not, agree to that arrangement?

MR. NEWMAN. I object to that.

A. He agreed.

30 THE COURT. You object on the same grounds?

MR. NEWMAN. Yes. I think he has no right to tell the conversation between this party and Mr. Stone as to what arrangements they had with reference to this property.

THE COURT. The objection will be overruled.

Q. You know Mr. Hendrickson, do you?

A. I do.

Q. And for how long a period have you known Mr.
40 Hendrickson?

A. I have known him for over five years.

Q. What dealings did you have, or your company have, with Mr. Hendrickson during those five years?

A. We gave him some contracts for plumbing on various buildings in Newark.

Q. And he did the work for you?

A. He did.

Q. Do you remember having had any conversation with Mr. Hendrickson either in the month of June or July, 1913?

10

A. I do.

Q. Was that conversation, or was it not, in relation to the Montclair property?

A. It was.

Q. Now, can you state with any degree of accuracy whether it was in June or July?

A. Well my first conversation with him was in the, I should say, the early part of June, the first part of the month.

Q. What was it, Mr. Baldwin?

20

A. He said he would like to buy the house in Montclair, but he didn't want to give up any money, he would like to give back an installment mortgage; and he spoke of raising some chickens up there, and running a boarding-house in a small way, and that he could make a very nice thing of it.

Q. Do you know whether that was before or after he had been up to look at the house?

A. I believe he looked at it at that time.

Q. No, not what you believe, did he say anything to you at that time indicating whether he had, or had not, been up to look at the property?

30

A. He had been up to look at the property before he talked to me.

Q. Well, did he say that?

A. He did.

Q. Did he say anything to you concerning the size of the lot?

A. Yes; he told me he was surprised to find it was such a large lot.

40

Q. Now, did you have any further conversation with Mr. Hendrickson, in addition to that conversation, relating to the Montclair property?

A. After he bought the property we had a conversation.

Q. What was it?

A. He said he was very pleased with his purchase, and he was going up there to make this property his home.

Q. Now, when was that?

10 A. Some time in August.

Q. Did you have any talk with Mr. Martin concerning Mr. Hendrickson's responsibility, anything of that sort?

A. None.

CROSS EXAMINATION by Mr. Newman.

Q. You knew Mr. Hendrickson was not a responsible man, didn't you, Mr. Baldwin?

A. No.

Q. You did not know that?

20 A. I did not.

Q. You were going to give him a piece of property for nothing, were you, Mr. Baldwin?

A. No.

Q. Well, you were not going to get any money for the property, were you?

A. I expected to.

Q. What, on his bond and mortgage?

A. Yes.

Q. A man who did laboring work for your concern?

30 A. Yes.

Q. Mr. Baldwin, did you ever use Mr. Hendrickson in a transaction of this kind before?

A. No.

Q. Do you know Mr. Dwyer, this man here?

A. No.

Q. Don't know him at all?

A. Never met him.

Q. Of the Dwyer Warehouse Company?

A. Never met him.

40 Q. Did you ever hear your brother speak about him?

A. I don't recall now.

Q. You don't know that Albert Baldwin put a deal through with Mr. Dwyer, using Mr. Hendrickson as the medium, do you?

A. I don't recall it.

Q. No, you never heard of that before, did you?

A. I may have, I don't recall.

Q. I see. Your memory on that point is not as good as some other matters. Now, Mr. Baldwin, he told you he was going to run this place for a boarding-house, 10 did he?

A. That is what he did.

Q. Going to have chickens there?

A. He did.

Q. Did he tell you he was going to furnish the dining-room with Circassian walnut?

A. No, he did not,

Q. Or anything about mahogany bedrooms he was going to have there?

A. Not that I recall. 20

Q. How many rooms were there in the house?

A. I think eleven rooms.

Q. And you knew the house had a \$5,000 mortgage on it, didn't you?

A. I did.

Q. And you also knew that he was to give you a \$3,000 mortgage?

A. I do.

Q. And you were going to give this man the possession of that house without one penny in cash, isn't that so? 30

A. It is.

Q. And you were going to advise your half brother to make the deed to him, were you?

A. I was.

Q. And when you told your half brother to do it, he did it, wasn't that correct?

A. Correct.

Q. And whatever you told him to do he would do, wouldn't he?

A. Within reason. 40

Q. Now, then, on the 15th of July you say you had a conversation with Mr. Martin?

A. I did.

Q. How do you fix it as the 15th of July?

A. Because that is the time it was.

Q. That is the best answer you can give on that, sir?

A. Good enough, isn't it?

Q. Yes, if it is good enough for you I will have to accept it as good enough for me.

10 A. It was after Devine telephoned me, and he telephoned me about the 10th of July, and it was about five days; it may have been the 16th, 17th or 14th.

Q. That fixes the date. Now, at that time Mr. Baldwin spoke to you about buying this property, did he? About exchanging for a mortgage on the property?

A. He did.

Q. At that time did you communicate with your brother P. Frank Stone?

A. No.

20 Q. You owned the property, didn't you, at that time?

A. No, I didn't own the property.

Q. Well, the corporation, Fairchild Baldwin Company, owned it, didn't they?

A. They had title to it.

Q. And why was it that they did not give the title immediately to Mr. Hendrickson?

A. Because we had not closed our negotiations with him.

30 Q. And then, to close your negotiations, your first made a deed to Mr. Stone, did you?

A. That was my agreement with him.

Q. And then afterwards he made the deed to Mr. Hendrickson?

A. He did.

Q. Mr. Stone did not execute this \$3,000 mortgage, did he?

A. He did not.

Q. Mr. Stone is a photographer, is he?

40 A. He is.

Q. He is financially responsible, isn't he?

A. He is.

Q. And that was the main reason why he did not execute the \$3,000 mortgage, isn't it?

A. No.

Q. Now, you gave this property without any consideration to Mr. Hendrickson, and yet he was very particular about the size of the lot, wasn't he?

A. I didn't give it to him without consideration.

Q. Well, without any cash consideration; without any money consideration? 10

A. Yes.

Q. He was very particular about the size of the lot?

A. He was.

Q. And he accepted the property, and search was made on it, was it?

A. I don't think so; I didn't make it.

Q. And did you know that the deed and the mortgage and everything connected with the transaction was paid by your firm? Do you now? 20

A. I do.

Q. You not only made Mr. Hendrickson a present of the property, but you did not charge anything for drawing the papers; you paid it?

A. Done that many times.

Q. Now, Mr. Hendrickson you always considered a pretty reliable man, didn't you?

A. I knew he was for several years a steady, reliable hard worker. 30

Q. You do not dispute that now, do you, that he was reliable?

A. Well, we stopped doing business with him some time ago.

Q. When you stopped doing business with him was it because you had any doubt about his reliability, or workmanship, anything of that sort?

A. Things were not very satisfactory, that is why we stopped; we were not satisfied with his work, the way he did it, or when he did it. 40

Q. Now, you say you were not satisfied with his work, the way he did it, is that right?

A. That is why we stopped.

Q. Who is Mr. Philips in your concern?

A. Bookkeeper.

Q. Was Mr. Hendrickson's conduct such that you would feel justified in giving him a letter of character, or not?

10 A. We were not satisfied with his conduct, that is why we stopped doing business with him.

Q. Would you, then, be apt to write communications setting forth to the world that you thought he was a reliable, good man?

A. I didn't do it.

Q. Did anyone in your firm do it?

A. I don't think so.

Q. Would Mr. Philips, or Mr. Fairchild, have authority to do it?

20 A. Mr. Fairchild would, I suppose; of course he would.

Q. How about Philips?

A. He would have no authority at all.

Q. Would he be apt to do it unless he was told?

Objected to.

Objection sustained.

A. I can't tell about that.

30 Q. You can't tell about that—Oh, the question was objected to. The Fairchild Baldwin Company executed the bond accompanying this \$5,000 mortgage, did they not, to the building and loan?

A. They did.

Q. They were responsible upon that bond, then, were they not?

A. They were.

Q. And when you made this conveyance to Mr. Hendrickson there was no change made with regard to the \$5,000 mortgage, was there?

40 A. No.

BY THE COURT.

Q. That was an installment mortgage?

A. It was a building and loan mortgage.

Q. How much was to be paid?

A. \$50 a month, and whatever the premium was; I think a few cents premium.

REDIRECT EXAMINATION.

Q. Mr. Baldwin, I show you a check of Fairchild Baldwin Company dated August 29, 1913, to the order of James Hendrickson, for \$26.15; is that a check of your company? 10

A. Yes.

Q. And is that Mr. Hendrickson's name on the back of it?

A. I am not familiar with his signature.

MR. NEWMAN. Well, there is no doubt about it, Judge.

Q. Who was it signed that check?

A. I did. 20

Q. And what was it given for?

MR. NEWMAN. I object. How is this material?

MR. DAVIS. I will withdraw that, and ask another question.

Q. Was there any check given to James Hendrickson by the Fairchild Baldwin Company during the month of July, or the month of August, 1913, excepting that check?

A. There was not.

MR. DAVIS. I offer the check in evidence, if your Honor please. 30

MR. NEWMAN. I object to it, and I would like to have an opportunity to examine the witness.

THE COURT. It can be marked subject to cross examination.

Said check marked Ex. D1.

Q. Did you ever agree to pay James Hendrickson \$25 for his participation in this transaction, or did you pay him \$25? 40

MR. NEWMAN. I object to the question on the ground there is no charge that this witness did that; it is that Albert Baldwin did it.

MR. DAVIS. I will withdraw the question.

Q. Did you have any knowledge of any such agreement?

A. None whatever.

10 RE-CROSS EXAMINATION.

Q. Mr. Baldwin, you haven't got your check book here, have you?

A. I have.

Q. Where is your check book? Do you run any other bank account that the Federal Trust Company?

A. Yes.

Q. What other bank account?

A. Peoples National Bank, Hackettstown.

Q. Any other?

20 A. Fairchild Baldwin Company, do you mean?

Q. Yes.

A. No.

Q. The Fairchild Baldwin Company then conduct two bank accounts?

A. They do.

Q. Have you got both the stubs here?

A. Well, the stubs of the Peoples National Bank, that is an account we don't use very much; I can bring those stubs here in a very few moments; you can telephone for them and get them.

30 Q. (By Mr. Davis.) Will you send for the stubs of the other account?

A. Right away.

P. FRANK STONE sworn for the defendant.

DIRECT EXAMINATION by Mr. Davis.

Q. Mr. Stone, you are one of the defendants in this case, are you?

A. Yes, sir.

40 Q. And where do you live?

- A. Plainfield.
- Q. Are you in business for yourself there?
- A. I am.
- Q. What business is it?
- A. Photograph.
- Q. For how many years have you been in business as a photographer in Plainfield?
- A. Why, fifteen.
- Q. And during that time have you been in business for yourself all that time? 10
- A. Why, yes, except I have taken a partner, if that makes a difference.
- Q. In addition to your photograph business did you do any dealing in real estate?
- A. Yes, sir.
- Q. Covering a period of how long?
- A. About five years.
- Q. You are the half brother of Albert and Clifton Baldwin, are you?
- A. I am. 20
- Q. And have you done any real estate dealing in the last five years through them, or either of them?
- A. Oh, yes.
- Q. Through whom?
- A. Well, the Fairchild Baldwin Company.
- Q. Did you have any communications or talk with Clifton or Albert Baldwin in the summer of 1913 concerning this Lexington avenue property?
- A. I did.
- Q. And did you take title to it? 30
- A. I did.
- Q. What arrangement did you have, if, any, with the Fairchild Baldwin Company, or with Clifton Baldwin, regarding your taking title to the property?
- A. You mean as to why?
- Q. Why, and what you were to do, and what they were to get, and so forth.
- A. (Not answered.)
- Q. (By the Court.) Was there any arrangement in writing? 40

A. Not in writing, no, sir.

Q. (By Mr. Davis.) Did you ever have any arrangement in writing with them about your real estate deals?

A. No, sir.

Q. Now, with whom did you make the arrangement about this Montclair property?

A. Why, with the company.

Q. Well, which individual?

A. Mr. Clifton.

10 Q. And what was the arrangement, Mr. Stone?

A. Why, it was simply to be conveyed to me for—you mean for what reason it was conveyed to me?

Q. No, what was the arrangement about the conveyance? What were you to give? What were they to get?

A. It was to be given to me to straighten my account.

Q. And were the Fairchild Baldwin people to get anything out of it?

A. Yes.

Q. What were they to get?

20 A. Why, \$3,000.

Q. What were you to get?

A. Whatever I got above.

Q. Was anything said to you by either Clifton or Albert Baldwin before this Hendrickson arrangement was made?

A. In what way?

Q. Well, about the exchange with Mr. Martin. Was there anything said to you about the exchange with Mr. Martin?

30 A. No, sir.

Q. When did you first have knowledge about the exchange with Mr. Martin?

A. Why, it was along about the first part of June.

Q. June of what year?

A. 1913.

Q. I show you a contract dated July 24, 1913, between Mr. and Mrs. Martin and you, will you please look and see if your name is signed to it?

A. Yes.

40 Q. You made the contract?

- A. I signed the contract.
- Q. How did the contract get to you, or where did you sign it?
- A. Why, I imagine right there in the studio.
- Q. In Plainfield?
- A. Yes.
- Q. Was it sent to you by mail, or messenger, or how?
- A. I think by mail.
- Q. And did you look it over and approve it?
- A. Yes. 10
- Q. And sign it?
- A. Yes.
- Q. What did you do with it after doing that?
- A. Mailed it back to the Fairchild Baldwin Company.
- Q. At Newark?
- A. Yes, sir.
- Q. In the carrying out of the contract did you take title to the lots in West Orange?
- A. I did.
- Q. Did you ever authorize Albert Baldwin to make any statements to Mr. Martin regarding James Hendrickson, his reputation? 20

MR. NEWMAN. I object to whether he authorized it.

THE COURT. The objection is overruled.

An exception to this ruling is noted by the plaintiff as ground of appeal.

- A. No, sir, I did not.
- Q. Did you know of Albert Baldwin having any talks with Mr. Martin, or the contents of those talks? 30
- A. No, sir.
- Q. Did you have any knowledge of anything that Albert Baldwin said to Mr. Martin concerning the value of the property in Montclair?

MR. NEWMAN. I object on the same ground.

THE COURT. The objection is overruled.

An exception to this ruling is noted by the plaintiff as ground of appeal.

- A. I did not. 40

Q. Did you have any knowledge, or give any authority to Albert Baldwin, concerning any statements he made to Mr. Martin regarding Hendrickson's ability to keep that property up and to pay the running expenses?

A. I did not.

Q. Now, Mr. Stone, what was the first time that you saw Mr. Martin, the plaintiff in this case?

A. Some time last summer.

Q. 1915?

10 A. Yes.

Q. Do you remember the month?

A. I do not positively, no.

Q. And where was it that you saw him?

A. At my studio.

Q. Was that the time he came accompanied by Mr. Marsh and Mr. Newman?

A. Yes.

Q. Before that time, on the same day, he had telephoned you, had he not?

20 A. Yes.

Q. And what did he say?

A. Made an appointment; asked me if I would be at the studio, and would meet him.

Q. And who did he say he was over the telephone?

A. Well, I had forgotten it, but since speaking of it, it is Mr. Williams.

Q. Now, when he came to the studio accompanied by these two gentlemen will you please state what the conversation was that took place?

30 A. They wanted a private conversation at first, and I told them I didn't think it was necessary, as whatever business I did it didn't make any difference whether it was private or not; they said that it might be disagreeable to me; I told them I would take the chance; and they started asking me if I knew about this deal in question, and I said I did; and I can't give you the exact words, but they accused the Fairchild Baldwin Company of putting through a fraudulent deal; and I told them that if that was their view of the matter I did not care
40 to talk with them, as I had done business with the Fair-

child Baldwin Company for a long time, and I knew they were thoroughly reliable. And I said further "You came down under an assumed name, and I don't like to do business with people under those conditions." Of course there were other arguments, trying to induce me to change my position, but that was the substantial part of it.

Q. In talking with them, Mr. Stone, did you say to them that you had left all the details of this deal with Albert Baldwin, or with the Fairchild Baldwin Company?

A. With the company. 10

Q. Had Albert Baldwin communicated with you in any way concerning the details leading up to this deal with Mr. Martin?

A. No.

CROSS EXAMINATION by Mr. Newman.

Q. Did you know that Mr. Albert F. Baldwin was doing anything in connection with this matter?

A. No.

Q. Nor did you care whether he was or not, did you? 20

A. Not seriously.

Q. You left it to him, did you not?

A. No.

Q. Well, you left it with the Fairchild Baldwin Company with which he was connected?

A. I did.

Q. And you expected that some of the details of the transaction might be done by him, or anyone else they might designate, did you not?

A. I did not consider that. 30

Q. Is it a fact you would have been perfectly satisfied to have left the entire matter to Albert F. Baldwin?

Objected to.

Objection sustained.

Q. Isn't it a fact you would have left the entire matter to Albert F. Baldwin if he had so requested?

Objected to.

Objection sustained.

Q. As a matter of fact, you and Albert F. Baldwin are half brothers, are you not? 40

A. Yes.

Q. You never heard that Albert F. Baldwin had anything to do with this matter, did you?

A. Not previous.

Q. When did you first hear about it?

A. After the deal was consummated some time; I can't say when.

Q. After the deal was consummated you heard about it. You were satisfied with it, were you not?

10 A. Didn't give it any thought.

Q. Didn't give it any thought?

A. I had entire confidence in the company.

Q. And you had like confidence in him, didn't you?

A. Yes.

Q. You had an arrangement with the company by which you were to pay them \$3,000 on this property and you were to get all over that?

A. Yes.

Q. You never got anything over that, did you?

20 A. No.

Q. And you were perfectly satisfied to sell it without getting anything over it, were you?

A. Yes, under the circumstances.

Q. What circumstances were they?

A. I couldn't see much in the deal.

Q. And you were, therefore, glad to get rid of the property, is that right?

A. As I told you, I left it entirely to the Fairchild Baldwin Company.

30 BY THE COURT.

Q. Did you ever go to Montclair to see this property?

A. Yes.

Q. When?

A. Why, very recent.

Q. Before this transaction took place?

A. No, sir.

BY MR. NEWMAN.

Q. So you never saw the property?

40 A. No.

Q. Until very recently, and you left it all to the company?

A. Entirely.

Q. You mean to tell this Court and jury that Mr. Albert F. Baldwin never told you anything about this deal?

A. Not previous to the deal.

Q. After the deal was closed didn't he inform you about it?

A. I can't say whether it was him or the company. 10

Q. As a matter of fact you know he informed you all about the deal, because he put the deal through, didn't he?

A. No, I don't say that.

Q. Do you want us to understand you signed this contract, or agreement, without knowing anything about the details of it?

A. Yes.

Q. So you really had not interest in the matter at all, did you?

A. Yes, I had an interest in the matter. 20

Q. If you had an interest in the matter why didn't you go into the details of the transaction?

A. On account of my confidence in the company.

Q. On account of your confidence in the company, but the company had told you nothing that they did in the transaction, is that it?

A. That may be.

Q. And you never looked at the property?

A. No, not then.

Q. No, that is what I mean. You didn't know the man to whom it was to be sold? 30

A. No.

Q. You didn't know James Hendrickson?

A. Never saw him.

Q. You didn't know whether the mortgage and bond he would give would be of any value at all?

A. Only through the company.

Q. Only through what you heard of the company; and you left it all to the company, as you say? 40

A. Yes.

Q. And you mean to tell us Albert F. Baldwin never told you anything about the transaction, is that it?

A. He didn't tell me previous to the transaction.

Q. After the transaction was complete, did he tell you about it?

A. I can't say as to him personally; the business was done through the company.

10 Q. Don't you know that he, personally, had this trans-
action in charge?

A. When do you mean, before, or after?

Q. After the deal was closed?

A. Well, I don't know about that.

Q. What do you say, that you don't know he had it in charge, or you do know he had it in charge?

A. The company had it in charge.

Q. I am asking you whether you knew that Albert F. Baldwin had this matter in charge?

A. As agent of a company?

20 Q. Yes, put it that way, if you will. You did know he had it in charge?

A. Yes.

Q. Then he did tell you some of the details of the transaction, didn't he?

A. After the transaction.

Q. And you were satisfied with the arrangement, were you not?

A. I didn't give it a serious thought.

30 Q. By your silence you acquiesced in what he did, didn't you?

Objected to.

Objection sustained.

Q. Well, you made no protest to anything that Albert F. Baldwin had done in this transaction, did you?

A. I made no protest to anything the company had done.

Q. I say you made no protest to what Albert F. Baldwin had done, did you?

A. I think I have answered that question.

40 Q. I submit I am entitled to a direct answer. You

made no protest to what Albert F. Baldwin had done in this transaction?

A. I don't recognize Albert F. Baldwin except as an agent of the company.

Q. That is the best answer you want to give us?

A. That answers the question.

Q. You don't recognize him except as agent of the company, although he informed you after the deal was closed that he put the deal through?

A. Yes. 10

Q. And informed you of the details of it, is that it?

A. Yes.

Q. And you knew this piece of property had been taken in your name, did you not?

A. I knew it had been conveyed to me.

Q. You knew that you had entered into an agreement with Mr. Martin, did you not?

A. Yes, sir.

Q. You knew, second, that the property had been conveyed to you, and that you had made a deed to James Hendrickson, didn't you? 20

A. Yes.

Q. You knew subsequent to that that Mr. Hendrickson executed a mortgage back to you, did you not?

A. Subsequent to that? No, sir.

Q. At the same time, simultaneously with the delivery of the deed, isn't that the fact?

A. I imagine so.

Q. Is there any doubt about it, Mr. Stone? 30

A. That happened three years ago, and as to the exact time it is difficult to remember.

Q. Refreshing your memory, there is a mortgage made by Hendrickson to you which you subsequently assigned to Mr. Martin, isn't that so?

A. Yes.

Q. You made no protest about any part of the transaction, did you? That part of it?

A. No.

Q. You were perfectly satisfied with whoever had 40

made that deal, whether the Fairchild Baldwin Company, or one of its agents, the deal was satisfactory to you?

A. No, I don't say that.

Q. But you went through with the deal, didn't you?

A. Well, not in the way you take it; I was satisfied if the company approved it.

Q. And you were satisfied if you, yourself, approved, as you did approve by your own signature, didn't you?

10 A. I approved to the extent of taking the word of the company.

Q. Did you know there were two mortgages drawn in this matter from Mr. Hendrickson to you?

A. When?

Q. At the time of the closing of this transaction.

A. I don't think I did.

Q. And you didn't know that one of them was cancelled of record, did you?

A. I don't remember that.

20 Q. In other words, you didn't know much about the details of this transaction at all, did you?

A. I told you that.

Q. And your memory is not very clear on it, is it?

A. No.

Q. Is your memory equally clear about the conversation you had at Plainfield?

A. I think so.

30 Q. Now, don't you remember saying in Plainfield to these gentlemen, when they came there and spoke to you, and said that Mr. Albert F. Baldwin had the transaction in charge, you said you were entirely satisfied with what Mr. Baldwin did in the matter?

A. I don't think I said that; in fact, I am positive I did not; I referred entirely to the company; I didn't refer to individuals.

Q. You are very much afraid of individuals. Now, was it the Fairchild Baldwin Company they told you about, or did they tell you about Albert F. Baldwin?

A. They told me about the company.

40 Q. You knew that Fairchild Baldwin Company no

longer owned that property; you knew it had been conveyed to you?

A. Yes.

Q. Didn't they mention to you the name of Albert F. Baldwin?

A. That is very possible.

Q. And isn't it very possible you should have said, being your half brother, and being connected with Fairchild Baldwin Company, that whatever he did was satisfactory?

10

A. No.

Q. You would not have said anything like that, would you?

A. No.

Q. That would not have entered your mind at all, would it?

A. No.

Q. You would not have said "The Fairchild Baldwin Company has got theirs in these deals, and I get mine."

A. I am positive I did not make that statement in those words. 20

REDIRECT EXAMINATION.

Q. In answer to Mr. Newman's question you said that some time after the deal was made, and the contract signed, that Albert Baldwin told you about the details of it; what do you mean by the details?

A. I really cannot say; it didn't impress me very much.

Q. Did he tell you anything that he had said to Mr. Martin? 30

A. Oh, no.

ALBERT F. BALDWIN sworn for the defendant.

DIRECT EXAMINATION by Mr. Davis.

Q. You are one of the defendants in this case?

A. I am.

Q. And how old are you?

A. Twenty-four,

40

Q. When were you twenty-four?

A. The 8th of March.

Q. Of this year?

A. Yes, sir.

Q. In 1913 you were twenty-one?

A. Yes, sir.

Q. Your relationship to Mr. Stone is that of half brother?

A. Yes, sir.

10 Q. And in 1913 were you connected with the Fairchild Baldwin Company?

A. In a way, Judge.

Q. And what was your connection with the company at that time?

A. Why, I collected some rents for them, and made myself generally useful.

Q. Are you married, or single?

A. Married.

Q. And do you know Mr. Martin?

20 A. I do.

Q. Now, what was the first time that you came in contact with Mr. Martin personally regarding this deal for the Montclair property?

A. On the day I went up to Mr. Devine's office.

Q. And you went to Mr. Devine's office in East Orange?

A. Yes, sir.

Q. Did you take anything with you that day, or, what did you go in?

30 A. Went up in an automobile.

Q. Were you sent, or did you go voluntarily?

A. My brother, Clifton Baldwin, sent me up.

Q. Your brother is how many years older than you?

A. Seven years older.

Q. Do you remember what time of day it was you got there?

A. I think it was in the morning, Judge; I am not sure; I am pretty certain it was in the morning.

40 Q. You got there, and when you went into Mr. Devine's office who did you find there?

A. Mr. Devine and Mr. Martin were in the back office talking, and I waited out front for them until they came out.

Q. How long did you wait for them before they came out?

A. I guess they were talking together five or ten minutes.

Q. After Mr. Devine and Mr. Martin came out of the back office into the front office what was said, if anything, by any of you three people at the time? 10

A. Well, Mr. Devine asked me if I would be good enough to run Mr. Martin to Montclair, as he was busy, and I told him I was there for that purpose.

Q. Had you up to that time taken any part in the negotiations between Mr. Devine and your office regarding this deal that Mr. Martin was interested in?

A. No, Judge.

Q. Who went with you in the automobile from Devine's office to Montclair?

A. Just Mr. Martin. 20

Q. No one else?

A. No one else.

Q. And did you and Mr. Martin talk on the way there?

A. Mr. Martin talked quite a little to me on the way there.

Q. Well, you and he had a conversation?

A. Yes.

Q. Do you remember what the conversation was on the way there? 30

A. Why, on the way there Mr. Martin opened up the conversation by asking me how old I was; I told him I was twenty-one, and he told me he had started in the real estate business, and was making such a success of it he had bought out this agency and general brokerage business in Roseville, and was conducting that as well as buying and selling of large apartment houses; and he told me of wonderful opportunities there were for a young man in the real estate business; told me he hoped in future to work into other things, and possibly grad- 40

ually work over to New York, or some other city, where there were opportunities.

Q. How long did it take you to run from Fell & Devine's office over to the Lexington avenue place in Montclair?

A. Possibly ten or fifteen minutes.

Q. Just where is Lexington avenue in Montclair with regard to the Montclair depot?

A. Within two or three minutes walk.

10 Q. What street does Lexington avenue run from?

A. Elm street, I believe, where the trolley line was.

Q. Elm street is the street where the Orange and Montclair trolley runs on?

A. Yes, sir.

Q. And Lexington avenue runs which way from Elm street?

A. East, I should say.

Q. Does Lexington avenue run parallel with Bloomfield avenue?

20 A. It does.

Q. And how many blocks south of Bloomfield avenue?

A. Well, a very few; I am not certain.

Q. How far east of Elm street is No. 18 Lexington avenue?

A. I guess just a few hundred feet; I imagine probably five or six hundred feet from the railroad.

Q. When you and Mr. Martin got to the Montclair house what did you do?

30 A. Why, Mr. Martin examined the property with me, and asked me what I thought the value of it was. Well, at the time I didn't really feel competent to—

Q. What did you say to him?

A. Why, I told him I thought he was a better judge of that, and get his views on it, but all I could tell him was that the Fairchild Baldwin Company had paid \$10,000 for the property in exchange with Mr. Wakeman.

Q. Was that so?

A. Yes, I believe it to be so, Judge.

40 Q. What else did he say about the property, and its value?

A. Well, he laughed at me when I said \$10,000, and said, "Don't you think you are a little high, Baldwin?" I said, "Mr. Martin, I don't know as much as you do about real estate, but I should think if the Fairchild Baldwin Company paid \$10,000 for it they ought to know what they were doing." "Well," he says, "I would not consider it worth \$10,000 in my way of thinking."

Q. Did he say what he would consider it worth?

A. He told me the property in his way of estimation would certainly be worth the amount of the two mortgages. 10

Q. And what two mortgages do you refer to?

A. The \$5,000 B. & L., and \$3,000 second.

Q. Did you at that time, or on the way back, have a talk with Mr. Martin about Mr. Hendrickson?

A. Oh, yes; he mentioned the bondsman, who the bondsman was, or who he was going to be. I told Mr. Martin the mortgage bond was not drawn up as yet; and Mr. Martin asked me as to the honesty of the man, and as to his business. All I could tell him was— 20

Q. What did you tell him?

A. I told him the man was a plumber working for Fairchild Baldwin Company, and Real Securities Investment Company; and I had seen him in the office on different occasions.

Q. Did you say to Mr. Martin anything about whether Mr. Hendrickson was going to live there, or not?

A. I believe I did, sir.

Q. What did you say?

A. I told him—he asked me what Mr. Hendrickson 30 intended to do; I told him Mr. Hendrickson told me he was going to live in the house.

Q. Had Mr. Hendrickson told you that?

A. He had.

Q. Did you at any time, from the time you left Mr. Devine's office on that occasion, and on the trip to Montclair, or at the building, or on the trip back to Montclair, did you say to Mr. Martin that Hendrickson, in addition to giving a \$3,000 mortgage, had also, or was going to pay \$3,000 in cash for the property? 40

A. No, Judge, I never said that.

Q. Did you at any time on that day, or any other day, say to Mr. Martin that Hendrickson had payed \$11,000 in cash to the Fairchild Baldwin Company for the property?

A. No, Judge.

Q. Did you say that Mr. Stone had paid \$11,000 in cash to the Fairchild Baldwin Company for the property?

A. I did not, Judge.

Q. Did you say that Hendrickson was a responsible
10 man?

A. No, Judge.

Q. Did you say to Mr. Martin that from all you knew of Hendrickson, or words to that effect, that he was well able to pay the building and loan mortgage installments, and the interest on the second mortgage, and the taxes, and to carry the property?

A. Mr. Martin did not go into that with me, Judge.

Q. Did you say that to him?

A. No.

20 Q. Did you say to Mr. Martin that in your opinion the property was worth \$11,000?

A. I did not, Judge.

Q. Did Mr. Martin make any request to you on that occasion with regard to having somebody guarantee the bond and mortgage that Hendrickson was to make?

A. Well, he asked me about Stone, and said he didn't know Stone, but wondered if his guarantee was good, and if he would guarantee the mortgage, if not, would the Fairchild Baldwin Company go on the bond behind
30 Stone; and I told Martin he would have to look to the property for his value, and neither Mr. Stone or the Fairchild Baldwin Company would guarantee the mortgage in any detail.

Q. Did Mr. Martin ask you what you knew, or words to that effect, of Hendrickson's responsibility?

A. I don't know that, Judge. He asked me about Hendrickson, and whether he was good, and I invited Mr. Martin to look up Hendrickson.

Q. What did you say about looking up Hendrickson?

40 A. I just told him he could see him any day, he was

in the office off and on, and he was privileged to talk to him and satisfy himself.

Q. Had you, Mr. Baldwin, had anything to do with making arrangements with Mr. Hendrickson for the taking over of that property?

A. No, Judge, except I dickered with Mr. Hendrickson as Mr. Hendrickson stated, the latter part of May, or first of June, about the sale of the property, and he kept putting it off and putting it off, and he went up and seen the property, as he stated, I guess on the 25th of July, 10
was it? the deal went through with Hendrickson.

Q. When did Mr. Hendrickson go up to see the property, if you know?

A. That I don't remember; I just remember that he said he saw the property in June.

Q. Did you ever take him up to see the property in the automobile, or otherwise?

A. No, he went up by himself.

Q. Did you ever tell him to dress up and go and look at the Montclair property? 20

A. No, Judge; I never went up with him to look at the Montclair property.

Q. No, but did you ever tell him to dress up and go and look at the Montclair property?

A. No, Judge.

Q. Did you ever, in connection with this matter here, tell him on any occasion to dress up?

A. Well, when we were going to your office to sign the bond and mortgage, he was in the office, just came in from a job, and he didn't look very good, and I told him he had better go home and get dressed and go up to Judge Davis's office. 30

Q. Did he go home?

A. Yes, he went home and got dressed, and put on better clothes than than he has now for this occasion.

Q. Did you call for him and his wife in the automobile and take them up?

A. I did.

Q. Did you ever make any arrangement with Mr. 40

Hendrickson that for his part in this transaction you were to pay him, or the office was to pay him, \$25?

A. I did not, Judge.

Q. Did you every pay him \$25, or any sum, for—

A. I never gave Mr. Hendrickson a cent in my life.

Q. Were you present in the Fairchild Baldwin office at any time that Mr. Martin came there and had any talk with your brother Clifton?

A. I remember him coming one day before this deal
10 went through, and talking with my brother in the corner office.

Q. Do you remember him saying anything about the value of these lots up there to your brother?

Objected to.

Question withdrawn.

Q. Do you remember hearing any of the conversation that took place between your brother Clifton, and Mr. Martin, the time he called at the company's office?

A. I can't remember the conversation, Judge.

20 Q. Well, in whose room did he go on the day he called?

A. In my brother's office, the corner office.

Q. When you got back from Montclair with Mr. Martin where did you leave him?

A. At Fell & Devine's.

Q. That is in East Orange?

A. Yes, sir.

Q. Near the Lackawanna depot, at the railroad?

A. Yes, sir.

30 Q. Where did you go then?

A. I went back to the office.

Q. Do you remember the drawing of the contracts between Mr. Martin and Mr. Stone?

A. No, I don't remember them, Judge; I don't remember.

Q. After the contracts were drawn did you have anything to do with them?

A. I don't remember that, either. I may have taken them up and left them at Fell & Devine's office; it might
40 possibly be; or, that my brother mailed them.

Q. Did you personally have anything to do with the drawing of them?

A. No, Judge.

Q. In any talk that you had with Mr. Martin on the day of the trip to Montclair did he make any statement to you as to the value of the lots in West Orange?

A. Why, he told me that—I asked him about the value of them, and he told me that a woman next door wanted \$1,100 apiece for them, and I misconstrued his meaning, and asked him if she got \$1,100 apiece for them, and he said she got \$1,100 apiece for the lots. 10

Q. Did he say how much front those lots were that she got \$1,100 for?

A. The same as his, 50 feet to the lot.

Q. Now, Mr. Baldwin, you remember having a talk with Mr. Marsh, the attorney here?

A. I do remember a conversation.

Q. The first talk that you had with Mr. Marsh, was it in his office, or on the telephone?

A. Why, Mr. Marsh called me up on the telephone, and it was over the telephone. 20

Q. What was said on the telephone between you and Mr. Marsh on the occasion that he called you on the telephone?

A. He said that as yet he had not received interest, but he was not kicking about that; the building and loan had not been kept up on this property, and he asked me why that was. I told him it had nothing to do with me, and I didn't know about it; and he said "Well, Mr. Martin, we will have to foreclose this property," and I said that he was privileged to do. 30

Q. Now, did he have a subsequent talk with you on the telephone?

A. I believe he called me up a day or so later, and says, "Well, this foreclosure is going to cost a lot of money," and requested me to get this deed from Mr. Hendrickson. I told him I would try to do that for him.

Q. When was the next time you had a talk with Mr. Marsh?

A. Why, I believe he either called me, or left word 40

that I should call him, and I think he left word with the young lady I was to call him, and go over there.

Q. Go over where?

A. Go over to his office; and I did do that, Judge.

Q. You went there?

A. Yes, sir.

Q. Did you have a talk with Mr. Marsh there in his office?

10 A. I did, Judge, yes.

Q. And what was the talk about there?

A. Why, he spoke about the same thing, about turning this—about foreclosing this mortgage; and I told him I didn't know whether Mr. Hendrickson would give a deed to it, and if he was willing to make an arrangement whereby Mr. Hendrickson could buy it back, say within three months, we would go up and see Mr. Hendrickson; and he gave me a letter—I guess the letter is correct, Judge—to cover that, and I went up and saw Hendrickson and told him rather than foreclose it he had better
20 deed it over.

Q. Who went with you?

A. I think I was alone the first talk.

Q. Were you with Mr. Philips the time he went up and got the deed signed by Mr. Hendrickson?

A. I don't remember whether I was with Mr. Philips or not, it is so long ago.

Q. Did you ever tell Mr. Stone of the talks you had with Mr. Martin?

30 A. No, I had no business relations with Mr. Stone at all; my older brother did that.

Q. Who had the business relations in the office, or the office of the company, with Mr. Stone?

A. My older brother.

Q. That is Clifton?

A. Clifton, yes.

CROSS EXAMINATION by Mr. Newman.

40 Q. When was it first agreed to convey this property to Hendrickson?

A. It must have been around the first of June, Mr. Newman.

Q. First of June?

A. Somewheres around there.

Q. And that arrangement was not carried out until after you had entered into this agreement, was it?

A. No.

Q. Now, you remember Mr. Martin making specific inquiries concerning Mr. Hendrickson, don't you?

A. Concerning Mr. Hendrickson? 10

Q. Yes.

A. Yes.

Q. And he wanted to be sure that he was a good bondsman?

A. I remember him asking me that, yes.

Q. And you told him that Mr. Hendrickson was a responsible man, didn't you?

A. I did not, Mr. Newman.

Q. No. Don't you know that Mr. Martin was very insistent to make inquiries concerning Hendrickson? 20

A. No.

Q. Do you know of any reason why it was inserted in the agreement that Mr. Hendrickson should go upon the bond?

A. No, I don't remember that.

Q. You don't remember that?

A. I don't remember the agreement.

Q. Directing your attention to the agreement, it says "It is agreed that the title to the premises covered by said mortgage and bond is held in fee simple by James Hendrickson, that it is free and clear from all encumbrances excepting said \$5,000 mortgage, and said second mortgage of \$3,000, also that the maker of the said \$3,000 mortgage is the same person who is now the owner of said premises, or will be the owner at the time this agreement is performed;" do you remember that? 30

A. I cannot say, Mr. Newman, that I remember the contract; I did not draw the agreement; I don't think I even saw the agreement.

Q. And you don't remember that it was a material 40

part of the agreement that Mr. Hendrickson was to be the owner of the property, and go on the bond?

A. Well, that was understood.

Q. And it was understood because you had told him Mr. Hendrickson was a responsible man, wasn't it?

A. I did not make any such statement.

Q. What did you say with regard to Mr. Hendrickson's responsibility?

A. I invited Mr. Martin to look up Mr. Hendrickson.

10 Q. Didn't you tell us before, in answer to Judge Davis, that you told him he was a plumber?

A. Yes.

Q. And worked for Fairchild Baldwin & Company?

A. Yes.

Q. Don't you think you might also have told him more than that?

A. Well, Mr. Martin didn't build much on Mr. Hendrickson.

20 Q. Didn't build much on Mr. Hendrickson, but insisted on putting him in the written agreement, as you observe now?

A. I don't know whether that was at his instigation.

Q. At that time Mr. Hendrickson was not even the owner of the property, was he?

A. I don't think he had title to it.

Q. But it was a material part of this agreement, so far as it appears on its face, that Mr. Hendrickson should own the property at the time the deal was closed.

30 A. It appears that he was to own it, or about to own it; the contract states it.

Q. Had Mr. Hendrickson ever owned property before that was conveyed to him?

A. Not to my knowledge.

Q. Has he ever executed mortgages for you?

A. I don't remember.

Q. Well, you know Mr. Wilbur B. Dwyer of the Dwyer warehouse, don't you?

40 A. I remember the event, but don't remember the name; I remember the case you are about to bring up.

Q. You remember Mr. Hendrickson executed the mortgage in that case?

A. I don't remember that.

Q. You don't remember that you represented to him that Mr. Hendrickson was a responsible man, and he should take the mortgage?

A. No; that was handled through his own broker.

Q. (By the Court.) Whose own broker?

A. Mr. Dwyer's.

Q. (By Mr. Newman.) And you were acting as the broker for him in that transaction? ¹⁰

A. I was not acting as the broker.

Q. Well, the deal was concluded in Howe & Davis's office, wasn't it?

A. The deal?

Q. Yes.

A. I don't think Mr. Dwyer ever closed the deal.

Q. And you returned him the money, didn't you, on the deal?

A. I remember Mr. Devine calling me up and saying that Mr. Dwyer was welching on his deal, and wanted to back out of it, and I told him if he felt that way I would try and get his money back for him, which I did. ²⁰

Q. And you did get his money back?

A. I believe I did.

Q. Mr. Hendrickson was the man who was to make the mortgage?

A. I don't recall that, Mr. Newman.

Q. How long have you been in the real estate business? ³⁰

A. As broker?

Q. Yes.

A. I guess possibly eight years.

Q. You are thoroughly familiar with the business, aren't you?

A. I can't say that I am thoroughly familiar.

Q. Well, you are familiar with it, if you don't like the word "thoroughly"?

A. Yes. ⁴⁰

Q. And you have acted for Fairchild Baldwin Company in a number of matters?

A. I have.

Q. And I assume that when you act in those matters you act for the owner of the property, don't you?

A. Will you repeat that question?

Q. I say when you act in those real estate matters you act for the owner of the property, don't you?

10 MR. DAVIS. I object on the ground he is asking the witness for a conclusion of law.

(Question withdrawn.)

Q. In this matter you knew that P. Frank Stone was the owner of the property, didn't you?

A. I was told that.

Q. You didn't have any doubt about it, did you?

A. I didn't know.

Q. Well, did you accept the statement that Frank P. Stone was the owner of the property? Don't look at anybody else; please look at me. Did you accept the statement that P. Frank Stone was the owner of the property?

20 A. I did.

Q. And then, in concluding this matter you were acting for him, were you not?

A. For P. Frank Stone?

Q. Yes.

A. No.

Q. You were not acting for him at all?

A. No.

30 Q. And you knew that Fairchild Baldwin Company had no interest in the property, didn't you?

A. I knew just what interest they had in it, just to the extent that they turned it over to Mr. Stone to work out all he could over \$3,000, which they have done on numerous occasions on other property.

Q. Then the property was actually Mr. Stone's, wasn't it?

MR. DAVIS. I object; it is a discussion as to a legal point.

40

THE COURT. The question may be answered.

A. Will you repeat the question, please?

Q. Then the property was really Mr. Stone's, was it not?

A. Yes.

Q. And you were acting for the owner, were you not?

A. No; I was told to go up there to Mr. Devine's office, and I did it.

Q. When you sold it did you sell it to P. Frank Stone?

A. I didn't sell the property. 10

Q. When you made this exchange?

A. I didn't make the exchange.

Q. Were you the party that brought Mr. P. Frank Stone and Mr. Martin together?

A. I was not.

Q. What did you have to do with the transaction?

A. The part of a chauffeur, practically, just to show the property to Mr. Martin; that is all it amounted to.

RECESS.

20

Q. Mr. Baldwin, I believe you stated to Mr. Martin that Mr. Hendrickson intended to occupy the property as his home, did you not?

A. I was told that by Mr.—

Q. And you so testified?

A. I believe I did, Mr. Newman.

Q. And, as a matter of fact, he never did occupy it?

A. Not to my knowledge.

Q. Do you recall when this transaction was closed?

A. With Mr. Hendrickson? 30

Q. No, with Mr. Martin.

A. Mr. Martin?

Q. Yes. The contract called for closing on the 15th of August, was it closed on that day, or a few days later?

A. I don't know, you would be the better judge of that.

Q. I am asking your recollection about it, sir?

A. I have no recollection of dates.

Q. Can you fix the time when Mr. Martin called you on the 'phone the first time? 40

A. Well, it must have been September, maybe October.

Q. Well, now, aren't you sure whether it was September or October?

A. No, I am not.

Q. It certainly was prior to the time you delivered the deed, wasn't it?

A. Must have been, yes, surely.

Q. The date of the deed is September 24th, so it was prior to that?

10 A. It must have been.

Q. Can you fix how much prior to that it was?

A. It must have been a few days; I suppose that followed within a week's time.

Q. Well, did it take you long to get the deed?

A. From Mr. Hendrickson?

Q. Yes.

A. Why, I suppose about a week after Mr. Marsh called me up.

20 Q. Now, then, was Mr. Hendrickson very willing to give you the deed?

A. Why, he didn't seem to object to it.

Q. Now, it may have been a week or ten days before that that Mr. Marsh called you up, is that correct? It certainly was some days prior to this?

A. Yes.

Q. And when Mr. Marsh called you up, what did he say to you over the 'phone? This is the first time you spoke to Mr. Marsh in your life, wasn't it?

30 A. Yes.

Q. Just tell us what he said?

A. He said either he or Mr. Martin had gone up to see Mr. Hendrickson, and had located him.

Q. Oh, they had located Mr. Hendrickson at that time?

A. Yes, it didn't take two years; they had located him right away.

Q. Go on.

A. And had come to the conclusion Mr. Hendrickson
40 was not able to keep up the payments on the building and

loan and was not able to keep up the installments that would be due Mr. Martin.

Q. No installments had come due to Mr. Martin yet?

A. No; they formed that conclusion.

Q. Didn't you say to Mr. Martin that the building and loan threatened foreclosure?

A. No, never made that statement.

Q. Did you make any statement that Mr. Hendrickson had defaulted in the building and loan payment?

A. Did I make such a statement? 10

Q. Yes, in your direct testimony, in stating the conversation between yourself and Mr. Marsh?

A. I don't believe so.

Q. You don't believe you said it. So Mr. Marsh asked you for a deed because he was afraid Hendrickson could not make the payment, no payment being due; that is what you would have us understand?

A. Yes.

Q. And nothing was said whether there was any default in the building and loan mortgages? 20

A. Mr. Marsh told me that, yes.

Q. That is what I am asking you. Did Mr. Marsh tell you that?

A. Told me the building and loan mortgage had not been paid yet.

Q. Did he say that because the building and loan had not been paid foreclosure had been threatened?

A. No, he didn't say that.

Q. He simply said the building and loan had not been paid, is that it? 30

A. That the building and loan payments had not been paid.

Q. And did you infer, or did he say to you, that there was several payments had not been made?

A. I don't remember about that.

Q. What impression did you get about that?

A. That Mr. Hendrickson was very lax in his payments to the building and loan.

Q. And there was several of them due?

A. May have been one or two; I don't know. 40

Q. May have been three?

A. Your dates will show that.

Q. Don't you know?

A. I don't know, no.

Q. Nothing was said to you about how many payments were due?

A. No.

Q. This transaction was closed the 18th of August, or 15th of August, you know that, don't you?

10 A. Yes.

Q. You know, further, at the time that conveyance was made there was no encumbrance against this property except the \$5,000 mortgage, and \$3,000 mortgage, isn't that correct?

A. The conveyance to—

Q. Mr. Hendrickson.

A. There was the \$5,000 mortgage.

Q. And the \$3,000 mortgage?

A. The \$3,000 mortgage he gave back as a purchase
20 money mortgage.

Q. And everything else was free and clear?

A. I believe so; I had no means of knowing that.

Q. That was the understanding?

A. I believe so.

Q. And you know, don't you, that the Fairchild Baldwin Company paid the August installment to the building and loan?

A. I know nothing about it, Mr. Newman.

Q. So that when you had your conversation with Mr. Marsh there was no installment to the building and loan
30 due, nor was there any interest due on his mortgage of \$3,000, isn't that the fact?

A. There was no interest due Mr. Marsh?

Q. Yes.

A. I don't believe there was.

Q. Notwithstanding the fact there was no interest due Mr. Marsh, and no interest due the building and loan, he said the man was behind in his payments, and he wanted the deed for the property?

40 A. To the building and loan.

Q. He was behind in his payments to the building and loan?

A. Yes.

Q. You don't know, as a matter of fact, that the books of the Fairchild Baldwin Company that have been offered here in evidence show that the August payment was made by them to the building and loan?

MR. DAVIS. One minute. The question is that the books of the Fairchild Company have been offered in evidence; there have been no books offered in evidence. 10

THE COURT. No, there have not.

MR. DAVIS. I object to the question.

THE COURT. The objection will be sustained.

Q. Now, Mr. Baldwin, you got this letter, P22, from Mr. Marsh, directed to Mr. Hendrickson; you have so testified?

A. Yes, I imagine I did. 20

Q. You imagine you did?

A. It is addressed to Mr. Hendrickson; if it is addressed to him I would not have got the letter.

Q. Didn't you testify just this noon, before we had luncheon that you received that letter from Mr. Marsh?

A. Do you want me to read this letter over?

Q. Yes, you can read it over.

A. I believe this is the letter. This is the only letter Mr. Marsh directed either to me, or Mr. Hendrickson?

Q. Yes. 30

A. Then this is the letter.

Q. And he gave it to you?

A. Yes, in his office.

Q. And what did you do?

A. Gave it to Mr. Hendrickson.

Q. And when did you give it to Mr. Hendrickson?

A. Must have been about the time he gave the deed for the property.

Q. Now, as a matter of fact, he gave the deed for the property on September 24th? 40

A. Yes.

Q. And Mr. Marsh didn't accept the deed until October 3rd?

A. Yes.

Q. So it must have been after that, wasn't it?

A. When did this deed come into Mr. Marsh's hands?

Q. The testimony seems to indicate it came on October 3rd.

A. October 3rd?

10 Q. Yes.

A. Then I got this letter concerning Mr. Hendrickson's interest in the property, is that right?

Q. Yes. Then you gave it to him a day or two later, is that what you mean?

A. Yes.

REDIRECT EXAMINATION.

Q. I forgot to ask you on direct examination, Mr. Baldwin, you know Mr. Ritter?

20 A. Yes.

Q. Did you say to Mr. Ritter in the conversation that he has alluded to here, that you turned over to Mr. Martin in this deal for the lots a phony mortgage?

A. I don't remember the conversation, Judge.

Q. Did you make that statement to Mr. Ritter?

A. No. I would not be apt to, because Mr. Ritter and I have not been on very good terms.

MR. NEWMAN. I object to the answer.

30 THE COURT. The answer will be stricken out.

Q. Were you and Mr. Ritter on friendly terms about that time?

A. I should not think so, no.

Q. Well, were you? You know whether you were or not.

A. No. He had been discharged from the Fairchild Baldwin Company.

40 Q. Did you make a statement to Mr. Ritter about the time of this transaction, or a short time thereafter, that

you had put one over on Mr. Martin, and that you had given to Mr. Martin a phony mortgage?

MR. NEWMAN. Objected to.

THE COURT. That is not what Mr. Ritter said.

Q. Or substantially, words to that effect?

THE COURT. The words he said were, "I just made a nice little steal from him;" and he subsequently said, "I stole away some lots he had up in Gregory avenue." 10

Q. Did you make a statement to Mr. Ritter in language substantially as follows, referring to the dicker with Mr. Martin, "I just made a nice little steal from Mr. Martin; I stole away some lots up on Gregory avenue in West Orange for a phony mortgage."

A. No, I made no such statement.

Q. Or any statement to that effect?

A. No, Judge.

FRED W. ROMINE sworn for the defendant. 20

DIRECT EXAMINATION by Mr. Davis.

Q. Mr. Romine, what is your business?

A. Real estate broker.

Q. And for how many years have you been in that business?

A. About eighteen years.

Q. Where are you located now in the real estate business?

A. Fireman's Insurance building. 30

Q. In Newark?

A. In Newark.

Q. How many years have you been located there?

A. Five.

Q. Do you recall having a conversation at the Firemen's Insurance building with Mr. Martin some time after the deal went through between him and Mr. Stone, regarding a Bloomfield exchange for some West Orange lots?

A. You mean Montclair? 40

Q. I mean in Montclair.

A. Yes.

Q. Did Mr. Stone say to you in that conversation—

THE COURT. You mean Mr. Martin?

Q. Did Mr. Martin say to you in that conversation substantially this: "I have put one over on the Fairchild Baldwin crowd; I gave them lots that cost me \$1,500 for a mortgage of \$3,000," or words to that effect?

10 A. Yes.

CROSS EXAMINATION by Mr. Newman.

Q. What did he say?

A. Why, he said that he had just recently made a deal with the Fairchild Baldwin crowd, and that he had made a deal with some land in West Orange for a mortgage.

Q. When was it he made this statement to you?

A. Well, he said it was shortly after—it was some time in—

20 Q. No, I am asking you when it was?

A. Well, it was late in the summer of 1913; September, possibly.

Q. Is that all he said, just what you have told us now?

A. No. He referred to Gregory avenue, and wanted to know what I thought land was worth there; and in a general conversation we had a little talk about that, and other matters also; and the price of the Gregory avenue land was mentioned to me, and I told him what I thought it was worth.

30 Q. Can you fix the date any nearer than the summer of 1913?

A. Not definitely, excepting I think it was between August and—either late in August, or early in September.

Q. Might it have been in October?

A. No, I don't think so.

Q. Might it have been in the latter part of September?

A. No, I don't think—I think it was between the 15th of August and the 15th of September; I am quite sure.

Q. You knew Mr. Martin at that time?

40 A. Oh, yes, yes, sir.

Q. You are in the same building with the Fairchild Baldwin Company, are you?

A. I am.

Q. Doing business with them?

A. Once in awhile.

MR. DAVIS. If the Court please, I desire to offer in evidence a contract between Fairchild Baldwin Company and James M. Wakeman, dated December 16, 1912, the purpose of it being to show that the premises 18 Lexington avenue were taken in by them on that trade with Wakeman at the price of \$10,000. I understand Mr. Newman makes no objection to the offer of the contract because of the nonappearance of the subscribing witness. 10

MR. NEWMAN. I object to it as not being evidential, and having no bearing on the case.

THE COURT. There appears to be no suggestion of misrepresentation on the part of the defendants, or either of them, as to the price which the Fairchild Baldwin Company paid for the property; that price seems not to be at issue in the case. I will sustain the objection. 20

An exception to this ruling is noted by the defendant as ground of appeal.

William S. Fairchild is called as a witness, but does not respond.

MR. DAVIS. If Mr. Newman has any rebuttal, may I have the right to call Mr. Fairchild? He will be here in a moment, and I will rest. 30

THE COURT. Is there any objection?

MR. NEWMAN. I don't think so.

DEFENDANT RESTS,

reserving the privilege of calling Mr. Fairchild.

EDWARD W. MARTIN recalled for plaintiff in rebuttal.

DIRECT EXAMINATION by Mr. Newman. 40

Q. Mr. Martin, you saw Mr. Romine, the gentleman who was just on the witness-stand?

A. Yes.

Q. Did you know him in the summer of 1913?

A. I did not.

Q. When did you first meet him?

A. Perhaps a year, eight months after that, before I personally met Mr. Romine.

Q. Then did you, in the summer of 1913, ever say to him that you had exchanged the lots on Gregory avenue for a house on Lexington avenue, and that you put one over on the Fairchild Baldwin crowd?

MR. DAVIS. He has already denied that.

Q. You know Clifton Baldwin?

A. Yes.

Q. He testifies that prior to the time this contract was made you came in there and had an interview with him with respect to these lots, in which you stated to him what in your judgment the lots were worth, and took up the matter with him as to the sale and exchange of the lots and mortgage, is that so?

A. That is not so.

Q. Did you ever have any such conversation with him?

A. No, I did not.

MR. NEWMAN. I want to ask this one question; it may have been asked, but I want it clear on the record.

Q. Mr. Martin, you did not buy this property in at the foreclosure sale—

MR. DAVIS. I object to Mr. Newman leading the witness; the questions certainly are very leading.

THE COURT. You had better put it "did you"?

Q. Did you?

A. I don't know just what you refer to.

Q. This property was foreclosed?

A. Yes.

Q. You never realized anything on it, did you?

A. No.

THE COURT. He has already testified to that.

Q. And you never bought it in at the foreclosure sale?
Objected to as having been gone over.

NOT CROSS EXAMINED.

THEODORE McCURDY MARSH recalled for the
plaintiff in rebuttal.

DIRECT EXAMINATION by Mr. Newman.

Q. Mr. Marsh, Mr. Albert Baldwin testifies that he
called you, or you called him up on the 'phone, some
time prior to when this deed was delivered, and told him
that you wanted a deed of the property, and that you
stated, as I understand, that the installments on the build-
ing and loan were in arrears. Did you ever make that
statement to him over the 'phone? 10

A. No.

Q. Did you ever have any 'phone conversation with
Albert F. Baldwin of that character?

A. No.

Q. Did you ever have any conversation with him over
the 'phone, or know him at all, until the time that he
called you up, as you testified in your direct examination,
and he came over to see you? 20

MR. DAVIS. I object to that; Mr. Marsh al-
ready testified to that.

THE COURT. I understand Mr. Marsh to say
he had never met Mr. Albert Baldwin before he came
to his office and tendered him the deed to the prop-
erty. 30

MR. NEWMAN. That is substantially correct.

A. The first time he came he did not tender the deed,
but I never met him until he first called at my office to
discuss the subject.

MR. NEWMAN. They have gone into the con-
versation, stating the details.

THE COURT. You may, of course, rebut the
details of the conversation. 40

Q. And you were in court and heard the conversation with reference to this interview over the 'phone, in which he stated that you had called him up, and that you had stated to him that the payments, or the installments, I think was the phrase he used, were in arrears, and that you would like to have a deed for the property to save foreclosure expenses, or words to that effect; did that ever transpire?

10 A. I never said that to him, either on the telephone or personally.

NOT CROSS EXAMINED.

JAMES HENDRICKSON recalled for the plaintiff in rebuttal.

DIRECT EXAMINATION by Mr. Newman.

Q. I will ask this question, you need not answer it, perhaps I have gone over this, but did you ever tell Clifton Baldwin that you intended to occupy the property on
20 Lexington avenue?

MR. DAVIS. Objected to; we have been over that, and he has denied it.

MR. NEWMAN. Then it is admitted that he denied it?

MR. DAVIS. No. I object that he has been over the ground, and he has denied it.

30 THE COURT. The question may be answered, unless it is admitted.

MR. DAVIS. I admit he has been asked the question, and denied it.

PLAINTIFF RESTS.

WILLIAM S. FAIRCHILD sworn for the defendant.

DIRECT EXAMINATION by Mr. Davis.

Q. Mr. Fairchild, where do you live?

40 A. Glen Ridge.

Q. And what officer are you, if any, of the Fairchild Baldwin Company?

A. President.

Q. In the summer of 1913 were you in the City of Newark?

A. I was not.

Q. Where were you that summer?

A. Up in the northern part of New York State.

Q. When did you leave Newark?

A. In June. 10

Q. When did you return?

A. September.

Q. Did you have anything to do with the deal between Mr. Martin and Mr. Stone?

A. Nothing in any way.

NOT CROSS EXAMINED.

DEFENDANT RESTS.

TESTIMONY CLOSED. 20

MR. DAVIS. I ask your Honor to rule on my motion for nonsuit as to Stone.

(Motion argued.)

THE COURT. This being a case of deceit, not an action upon the contract, I think that there is no evidence from which the jury would have a right to find that Mr. Stone was guilty of deceit by having made, himself, false representations regarding the property in question, or having authorized anyone else to do so, or by being a party to the fraud. The motion, therefore, to nonsuit the plaintiff as to Mr. Stone, will be granted, and an objection of that ruling on the part of the plaintiff will be noted. 30

An objection to this ruling is noted by the plaintiff as ground of appeal.

The Court charged the jury as follows:

DUNGAN, J.

Gentlemen. This is what is known as an action of deceit, fraud, and at the outset I ought to say that the 40

burden of proving deceit, fraud, is upon the plaintiff. That there was fraud, as I shall presently define it to you, must appear by the greater weight of the evidence in the case, before you can find the defendant guilty.

I may also say that it is the duty of jurors to reconcile testimony when that can possibly be done consistently with an assumption of truth on the part of the witnesses on both sides. But in this case it would appear to be absolutely impossible to reconcile this testimony, and say that the witnesses on both sides are telling the truth. Therefore it will be for you, because you are the jurors in this case, if you are unable to reconcile the testimony, to determine who is telling the truth, and to decide the case accordingly.

The facts have been so fully argued that I shall not mention them in great detail, but shall refer simply to the main points in the testimony of Mr. Martin, Mr. Hendrickson, Mr. Marsh and the two Baldwins. However, you are to consider all the surrounding facts as bearing upon the testimony, whether it is recited by the Court or not.

Before reciting these facts I ought to make a statement of the law applicable to this case; and in doing so I shall simply read extracts from a well known work upon this subject, and will say that the fraud which gives rise to an action of deceit exists where a person makes a false representation of a material fact susceptible of knowledge, knowing it to be false, or as of his own knowledge, when he does not know whether it is true or false, asserting it to be a fact, when he does not know whether it is true or false, with intention to induce the person to whom it is made, in reliance upon it, to do or refrain from doing something, to his pecuniary hurt, when such person, acting with reasonable prudence, is thereby deceived, and induced so to do, or refrain, to his damage. You will observe that this does not necessarily refer only to persons who are to be particularly benefitted by a transaction. Those false representations, made under these circumstances, by a person who is to receive absolutely no benefit from the transaction, would be actionable. I mention

that at this time because it appears that Mr. Baldwin, the defendant—a nonsuit having been granted as to Mr. Stone—was at that time acting either for Mr. Stone, or for the Fairchild Baldwin Company, or in some such capacity. He says that he was not acting for Mr. Stone; that he was simply sent to the office of Fell & Devine to act as chauffeur, and to take Mr. Martin over to see this property. But if he made false and fraudulent representations, coming within the definition I have read to you, that would not excuse him, and he would be responsible for those false and fraudulent representations. 10

From what I have said you can readily see that before the plaintiff can recover six things must appear; not one or two of the six, but all six things must appear. First, that the defendant made a material representation; that is, a representation which the plaintiff relying upon was liable to a loss; that is, if he did rely upon the statement, there was liable to be injury or loss to him on account of it. That is necessary to make the representation material. Second, that the representation was false. Third, that when he made it he knew it to be false, or make it recklessly; one or the other; either that he knew it to be false, or made it recklessly, without any knowledge of its truth, and as a positive assertion; not a mere matter of opinion, but as a positive assertion. Fourth, that he made it with the intention that it should be acted upon by the plaintiff. Fifth, that the plaintiff did act with reliance upon it. And, sixth, that he thereby suffered injury. 20

In mentioning those six points to you I said it must be not merely a matter of opinion, because a statement which by reason of its form or subject matter amounts merely to an expression of opinion, is not actionable, if it is one upon which reliance cannot safely be placed. But it is not always easy to determine whether a given statement is one of opinion, or fact; the subject matter, the respective knowledge of the parties, and the form of the statement, all being important circumstances in deciding the question. But an expression of opinion may be so blended with statements of fact as to become itself a statement 30
40

of fact. That is, where one of the parties has superior knowledge on the subject his expression of opinion, which he knows he does not entertain, because it is contrary to the facts, may be actionable, if made for the purpose of inducing another to act upon it, when he does so to his injury. As, for instance, if a person express to another his opinion—even though he express it as his opinion—that certain things are facts, as to the value of property or as to the financial responsibility of another person, 10 when he actually knows that the value he has fixed is false, or that the financial condition of which he has given his opinion is not the true condition of that person, even though it is given as an opinion, is actionable.

Such an opinion may amount to an implied assertion that he knows the facts which justify his opinion, and thus his statement may become actionable, the same as a false statement of facts.

Under ordinary circumstances the purchaser is required to use reasonable prudence to avoid deception. Where 20 the subject matter of the representation is a fact not peculiarly within the knowledge of the person making the representation, but is one to which the purchaser has equally available means and opportunity of information, and there are no confidential relations between the two, and no fraud or artifice is used to prevent inquiry or investigation, it is a general rule that the purchaser must make use of his means of knowledge, and that, failing to do so, he cannot recover on the ground that he was misled by the person making the representation. But 30 where there exists between the parties some relation whereby the purchaser, being ignorant of the fact, is justified in placing trust and confidence in the honesty and superior knowledge of the person making the representation, or where, in the absence of any particular relation, special confidence is placed in the person making such representations on account of his peculiar knowledge, and the purchaser's ignorance, the purchaser may, without further investigation, rely on the statements of such person. Therefore the rule imposing upon a purchaser 40 the duty to investigate as to the truth of the statements

made to him concerning the property in question, has no application to representations made by third persons as to the credit, solvency, and so forth, of another. In cases of this character the position of the parties is not antagonistic, but somewhat confidential, therefore, if this representation was of such a character, and was made under such circumstances as to justify its belief by a reasonably prudent man, plaintiff being ignorant of the truth, and acting upon the representations to this injury, a recovery may be had, although the plaintiff might, by the exercise of diligence, have ascertained the insolvency of the person recommended; and defendant will not be heard to say that he is a person on whose word the plaintiff had no right to rely. 10

This substantially expresses the law of this case, although there is some other law which I shall read to you when I am passing upon the defendant's requests to charge.

Shortly, then, for the facts, or a portion of the facts, upon which you are to decide whether or not fraud has been committed by the defendant upon the plaintiff, as I have defined it to you. 20

Mr. Martin says that the first time he met Mr. Baldwin, the defendant, was at the office of Fell & Devine; and that he had placed with Fell & Devine these West Orange lots owned by him for sale; and that he was notified by Fell & Devine of the desire of the Fairchild Company, or the defendant in this case, as the case may be, to exchange this \$3,000 mortgage for these lots. And he says at that time Mr. Albert Baldwin represented to him that the house in Montclair which he was to get, upon which this mortgage was to be placed, was a one-family house; that it was about to be sold by a Mr. Stone, whose name was mentioned then, to another person whose name was mentioned as Mr. Hendrickson; that Mr. Hendrickson was buying the house for his residence; that he was going to live in it, and pay \$11,000 for it; that then he went to look at the house; that Mr. Baldwin took him up in the automobile; and that after they got up there he says that he, Martin, commented on the fact that a 30 40

first mortgage of \$5,000, and a second mortgage of \$3,000, a total of \$8,000 would seem to him a very big proportion to the value; that he could not see much equity over these two mortgages. That Mr. Baldwin said to him that he must be mistaken, if someone would pay \$11,000 for it, and he said that that was what Mr. Hendrickson had paid. To continue the testimony of Mr. Martin, he says: "Then I said I would not want to do it altogether on the strength of the property, because of the
 10 closeness of the equity with the value, and I wanted to know something about Hendrickson; and then he told me these things; that Hendrickson was a man in business; that he had known him for some time; that he is engaged frequently doing work for the Fairchild Baldwin Company; that he was responsible, had sufficient means to pay the installments on the house; that he, Hendrickson, wanted this as his own residence, that he would live there; that he was a plumber in business, and that he had an income sufficient; that he knew, because he knew
 20 of the man's affairs; that he had an income sufficient not only to pay the quarterly payments, but to carry the property, pay the charges, building and loan, and that he was aware of that fact, and knew it. Upon cross examination he supplements that by the statement Mr. Baldwin told him that Hendrickson was a plumber in business, that he had an established trade, that he was employed frequently by Fairchild Baldwin Company, and that was how he could speak with knowledge of him, that he had bought this house to live in, as his residence,
 30 that he had bought it for cash, and that he had elected to make the payments on the mortgage in this installment way, and that his bond was perfectly good.

Were these statements made as mere opinion, or were they made—if you find that they were made—as a matter of fact? And, if mere opinion, were they made recklessly, as a statement by Mr. Baldwin of his knowledge of facts of which he had no knowledge. In either of these situations, if the other matters to which I have called your attention in defining fraud were present, then
 40 if Mr. Baldwin made those representations, he is respon-

sible for the results of his misrepresentations, if they were misrepresentations.

James H. Hendrickson gives this version of this transaction. He says in the summer of 1913 he had a talk with Mr. Baldwin at the Firemen's building, and that Baldwin asked him if he wanted to make \$25; he said, "Come to the office," and he did go to the office, and there Mr. Baldwin asked him if he had real estate, and had judgments against him, and he said he had none; he said that was all there was at that time; then papers were brought to his house, he was taken over to Orange where, in the office of Judge Davis, a bond and mortgage were executed by him; and he did not receive anything then, but Mr. Baldwin told him to go to work at a certain place, that he went there and did some work, and that he received a check for that work, and for \$25 additional; that Mr. Baldwin told him to dress up and go to Montclair and look at this property, and pretend he owned it. He said he never paid anything for the propetry, or had anything to do with it; that he never intended to live there; that he had no property, and no financial responsibility. He says that subsequently Mr. Baldwin came to him, and he signed a deed, and he asked what it was, and Mr. Baldwin said it was for a piece of property, and he asked him if it was all right, and Mr. Baldwin said "Yes." He said he never saw Edward Martin. He said he lived in Waverly avenue in the summer of 1915, and that he paid nothing for the property, and paid nothing for the transfer of any of these papers, and that he never, so far as he knew, had any interest in the property.

Mr. Marsh, to whom the mortgage had been assigned, says that on September 23rd, which was just a little over a month after this transaction Mr. Baldwin came into his office; that at that time he did not know Mr. Baldwin, and that he did not write, or telephone to him; and that Mr. Baldwin said that he understood that he was the holder of this bond and mortgage in question; that Mr. Hendrickson was in hard luck, and that if he wanted to save foreclosure costs he would deliver to him a deed for the property. Mr. Marsh says he then told him Mr.

Martin was interested, as he had guaranteed the bond and mortgage, and he could not do that without communicating with Mr. Martin, which he did; that about two days later Baldwin telephoned and asked him if he had made up his mind; that he replied no, and was told that the offer would be withdrawn if he did not act quickly; that he said he would have to wait. And on October 3rd, Baldwin came to the office and said he had a deed, and if he did not accept quickly he would put him to the
10 expense of foreclosure. Mr. Marsh then told him he would take no action which would relieve Martin of his guarantee, and that that was the only way he would take the deed. He says he then dictated a letter to Mr. Hendrickson at the request of Mr. Baldwin, to which I will presently call your attention.

Against that Mr. Clifton Baldwin says that he had a conversation early in the summer with Mr. Hendrickson about this Montclair property; that Mr. Hendrickson himself came in and said he would like to buy that prop-
20 erty, that he had no money, but that he would give an installment mortgage, and as it was a large lot, and large house, he wanted it to keep boarders, and to raise chickens, and said he had been up there to examine it, and was surprised to find it was such a large lot. Mr. Hendrickson says, you remember, that he was never up there to look at the lot until after he had signed this bond and mortgage. And Baldwin says that after he had bought, Mr. Hendrickson said he was pleased with the purchase, and was going up there to make the property his home.

30 Albert Baldwin denies generally all of these representations to which Mr. Martin has testified. He says he simply went over there as a chauffeur for Mr. Martin, to take him up to this property; that there was nothing said between them while they were at the office of Fell & Devine; that on the way up there they indulged in a general conversation, Mr. Martin giving him some fatherly, or brotherly, advice about the real estate business, and after they had got up to the property Mr. Martin examined it and asked him what he thought the property was worth,
40 and he says he told him that he thought he was a better

judge than he, Baldwin, was, and that Fairchild Baldwin Company had paid Wakeman \$10,000 in exchange for it, and he considered the property worth the amount of the two mortgages. He does admit that he told him Mr. Hendrickson was a plumber for the Fairchild Baldwin Company, and did jobs for them. And he told him that Mr. Hendrickson said that he was going to live in the house, and he asserts that Mr. Hendrickson did tell him he was going to live in the house. Mr. Hendrickson, you will remember, denies he ever had such intention. 10
 He denies specifically the statements made by Hendrickson, and says that he did not say to Mr. Martin that Mr. Hendrickson was going to pay \$3,000 in cash, or that he had paid \$11,000, or that Stone had paid \$11,000 in cash, or that Hendrickson was a responsible person well able to pay the building and loan, interest on the \$3,000 mortgage, and taxes, and carry the property, or that in his opinion the property was worth \$11,000. He says, contrary to that, that when Mr. Martin asked him if Stone, or the Fairchild Baldwin Company, would 20
 guarantee this mortgage, he told Martin that he would have to look up Hendrickson, that he was in the office every day, and that he could see him and satisfy himself.

So much for the conversation with Martin. He gives an entirely different version of what took place at Mr. Marsh's office. He says that Marsh called him up on the telephone and said he had not received the interest, but that he was not kicking, and said that the building and loan had not been kept up, and that Martin would have to foreclose. That a day or two later Marsh called 30
 him up again and said the foreclosure was going to cost a lot of money, and requested him to get a deed from Hendrickson, and asked him to come to the office, and then spoke of the same thing; that he said he would go up and try to get the deed from Hendrickson, and then Mr. Marsh gave him the letter which is in evidence here, and which may have an important bearing, if you are unable to reconcile the testimony, in deciding the probabilities of this case.

Where you are unable to reconcile the testimony, and 40

when it differs materially, you have a right to consider the probabilities of a case. It may be important for you to determine whether or not Marsh, or Martin, knew Mr. Hendrickson before the summer of 1915. They said they did not. Mr. Hendrickson says they did not know him until the summer of 1915. Is it probable that Mr. Marsh would have said what Baldwin says he did to him just a little over a month after this transaction had taken place, and this property had been conveyed
10 only a month before, presumably with only the \$5,000 mortgage and the \$3,000 mortgage upon the property. It does not appear there were any back dues at that time, and this was in the early part of October, October 3rd, this letter is dated, when this transaction and conversation took place between Mr. Baldwin and Mr. Marsh; and Mr. Baldwin himself says that the transaction leading up to this letter occurred probably a week before this time. Is it probable that there would have been building and loan dues so far in arrears as to have called for such a
20 statement, and for such anxiety on the part of Mr. Marsh? In addition to that, it does not appear from the evidence in this case that there was anything at that time due as an installment upon this mortgage. The first installment did not become due until three months after the making of the mortgage. So at this time there was no installment due upon the mortgage.

Another question is would Mr. Marsh be likely to desire a conveyance from Hendrickson, when he had the guarantee of Martin, and within about a month after he
30 had taken an assignment of the mortgage in such a way as to relieve both him and the maker of the bond of any further or future liability, unless a reservation of such liability was a part of the transaction.

Another probability which you may consider is the fact contained in this letter, in the very first paragraph; and this letter Mr. Baldwin admits having taken from the Marsh office and having delivered to Mr. Hendrickson. This letter says "With respect to the mortgage on property owned by you on Lexington avenue, Montclair, and
40 on which I now hold a mortgage, I am informed by Mr.

Baldwin that you are unable to meet the same when it becomes due, and that you have offered a deed of bargain and sale for the property to save the expense of foreclosure." The last clause may also be significant. If Mr. Marsh had accepted a deed for this property without any reservation at all, as suggested by what I have already said, that would have been a satisfaction, not only of this mortgage, but a satisfaction of the bond. But Mr. Marsh says in this letter "In accepting this deed, I do not intend, however, to release you in any way from your obligations to me under the bond and mortgage, but merely to facilitate the collection of the money due." Does this letter show an anxiety on the part of Mr. Marsh to receive a deed for that property? Or does it indicate that the proposition came from the defendant? Of course, this transaction with Mr. Marsh has nothing to do with the original representations, or misrepresentations, as the case may be, made to Mr. Martin, except as bearing upon the probability whether or not there was a scheme to defraud the plaintiff. And if you find Mr. Baldwin's statement to be false in this respect, as to the transactions with Mr. Marsh, it will be for you to say what credit you will accord to this testimony in denial of Mr. Martin and Mr. Hendrickson.

I have already stated, and repeat that before the plaintiff in this case can recover, before he is entitled to your verdict, it must appear by the greater weight of the evidence that the defendant made to the plaintiff a material representation, or representations, which were false, and which he knew to be false; or that he made them recklessly, without knowledge of their truth, and with the intention that the plaintiff would be deceived thereby, and that the plaintiff acted in reliance upon them to his injury. If that does appear by the greater weight of the evidence, then you come to the question of damages.

In such a case as this, a case of fraud, the measure of the plaintiff's damage, if he is entitled to recover, would be the amount of his loss caused by the fraud, or, in other words, damages adequate to the injury which he has sustained. There cannot be any compromise verdict

in this case. The plaintiff is entitled to all of the damages which he has sustained, or he is not entitled to any of them. If he has been defrauded by the defendant in this case then, as I have already stated, he is entitled to receive at your hands the amount of the loss caused by the fraud; and if he has not been defrauded by the defendant, then he is not entitled to anything. So, as I have already said, if a compromise verdict is ever allowable, which we are taught to believe it is not, this is not
 10 one of the cases. The plaintiff is entitled to recover what he has lost, or is not entitled to anything.

The plaintiff has stated the amount of money which he has expended, or for which he is responsible by reason of this transaction. In the first place it will be well to note that this property was foreclosed by the first mortgage, and taken entirely away, and nothing realized on the second mortgage; and if we are to credit the testimony of Mr. Hendrickson, the bondsman, he is worth
 20 no property, and nothing can be recovered on the bond. It is for you to say, of course, whether or not that is the situation. The amount of money for which Mr. Martin is still responsible to Mr. Marsh upon his guarantee to the bond is \$2,400. He is responsible to him for interest upon that mortgage to the extent of \$396, that is up to April 25th, and I suppose the interest is waived from that date down to this time; that is the date to which interest was figured. He says he made the following payments: To Fell & Devine for commissions \$100; to Raymond, Mountain, VanBlarcom & Marsh for
 30 search \$59.10; that he paid building and loan dues \$150 upon one occasion, \$50 upon another occasion, \$50 upon another, \$100 upon another, and \$50 upon another occasion; that he paid to Mr. Marsh installments upon this mortgage; four installments; the first was \$150, and \$45 interest, making \$195; the second \$150 and \$42.75 interest, making \$192.75; at another time \$190, being \$150 installments and \$40 interest; and at another time \$188.25, being \$150 installment and \$38.25 for interest; that he paid taxes \$138.28; and that interest upon those
 40 expenditures, other than the mortgage, amounts to

\$195.53. So that he has paid, if you credit his testimony, or is responsible for \$4,509.91.

I am requested by the defendant to charge.

1. "If you find that the plaintiff Martin did not act upon any representations that the defendant Baldwin may have made, then, even though you believe the statements were made, the plaintiff has no right to recover."

I charge you that.

2. "If you believe from the evidence that the representations that both Mr. Martin and Mr. Baldwin made to each other as to the strong points of their side of exchange, were no more than the talk of dealers puffing and praising their property, and that each, or Mr. Martin, was aware of that fact, there should be a verdict for the defendants." I charge you that. 10

3. "If you believe that what Mr. Baldwin said to Mr. Martin about the property's value, and as to Hendrickson's qualifications as a businessman, was merely stated as his opinion and not with the intention of deceiving, there can be no recovery by the plaintiff." 20

That, generally stated, is a correct proposition of law, unless, as I have already indicated to you in the main charge, the statements made by Mr. Baldwin as his opinion were statements which he knew at the time to be false, even though they were expressed as his opinion.

4. "The defendant Baldwin was under no obligation to give any information to Martin concerning Hendrickson's qualifications, and it is a question for the jury to decide whether Mr. Martin was justified in relying on Mr. Baldwin's statements, and whether, if he had full opportunity to investigate the responsibility of the bondsman, and did no do so, he was not acting in so negligent a manner that he cannot recover here." 30

That is a question for the jury. I charge you that.

The fifth and eighth requests I decline to charge except as I have charged. The sixth and seventh are withdrawn, apparently, as a pencil mark is drawn through them.

9. "From the evidence it appears that the \$3,000 mort- 40

gage was a valid and legal lien on the property, subject to a first mortgage of \$5,000."

I charge you that. You may retire.

(The jury retired.)

MR. DAVIS. I ask an exception to the refusal of the Court to charge the fifth request, as follows:

10 "If the jury believe from the evidence that Albert F. Baldwin was not the person who had charge of the matter for Mr. Stone, as his agent, but that the statements alleged to have been made by him were made, if at all, when he was taking Mr. Martin to Montclair to show him the property under orders from his superior in the Fairchild Baldwin Co., he cannot be held liable in this action."

The exception is noted by the defendant as ground of appeal.

MR. DAVIS. I also pray an exception to the refusal of the Court to charge the eighth request as follows:

20 "If you find that the property was worth \$8,000 or more, or was worth the amount of the two mortgages, then the matter of misrepresentation is not important, if the plaintiff got a mortgage worth \$3,000."

The exception is noted by the defendant as ground of appeal.

MR. DAVIS. I also pray an exception to that part of your Honor's charge in which you stated language substantially as follows, that the rule of representation made as to credit of third parties does not apply in this case, or words to that effect.

30 THE COURT. An exception will be noted to what I said on that point.

The exception is noted by the defendant as ground of appeal.

MR. DAVIS. I also pray an exception to the rule that your Honor laid down for the guidance of the jury as to the measure of damages.

40 THE COURT. An exception may be noted to what I said on that subject.

The exception is noted by the defendant as ground of appeal.

Ex. P1. (Copy.)

ARTICLES OF AGREEMENT, made the twenty-fourth day of July in the year of Our Lord One Thousand Nine Hundred and Thirteen BETWEEN Edward W. Martin and Susan H. Martin, his wife, of the City of Newark in the County of Essex and State of New Jersey of the first part; AND P. Frank Stone of the City of Plainfield in the County of Union and State of New Jersey of the second part; WITNESSETH that the said party of the first part, for and in consideration of the sum of ONE DOLLAR and other valuable consideration 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 they 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 encumbrance excepting restrictions now existing thereon, on or before the Fifteenth day of August next ensuing the date hereof; all those lots, tracts or parcels of land and premises, hereinafter particularly described, situate, lying and being in the town of West Orange in the County of Essex and State of New Jersey.

FIRST TRACT:—*Being* on the easterly side of Gregory avenue one hundred twenty-five feet (125) from the northeast corner of Gregory avenue and Luddington road, having a frontage of fifty (50) feet and a depth of one hundred and fifty (150) feet more or less and known and designated as lot No. 5 on Map of the Oranges, as compiled by P. H. Mueller.

SECOND TRACT:—*Being* on the easterly side of Gregory avenue, two hundred and seventy-five (275) feet from the northeasterly corner of Gregory avenue and Luddington road, having a frontage of one hundred (100) feet by one hundred and fifty (150) feet more or

less. Being known and designated as lot No. 11 and No. 13 on map of the Oranges, as compiled by P. H. Mueller.

SAID property to be free and clear of all encumbrance. The taxes on said property to be apportioned on the day of passing title.

It is agreed that the descriptions for the two tracts above set forth shall be according to deed to the party of the first part.

10

AND the said P. Frank Stone, for himself, his heirs, executors and administrators, doth covenant, promise and agree, to and with the said party of the first part, their heirs, executors, 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 in the said sum of ONE DOLLAR and other valuable consideration as and for the purchase money of the foregoing described lands and premises, in the following manner, that is to say :

20

Said party of the second part agrees to assign to the said party of the first part, a certain purchase money mortgage amounting to Three Thousand Dollars (\$3,000) at six per cent. given by or to be given by James Hendrickson of the City of Newark, Essex County, New Jersey, to P. Frank Stone, of the City of Plainfield, Union County, New Jersey, now on property known and designated as No. 18 Lexington avenue in the town of Montclair, County of Essex and State of New Jersey. Said mortgage to mature July 1, 1915. This mortgage to contain the usual thirty day interest default clause and sixty day tax clause with installments of principal payable One Hundred and Fifty dollars (\$150) every three months from the date thereof. Said property being described as follows :

30

BEGINNING at a point in the easterly line of Lexington avenue (formerly called Ridgewood avenue) distant five hundred and twenty feet southerly from the southeast corner of Park and Lexington avenue; thence

40

running along Lexington avenue south thirty-four de-

grees nine minutes east eighty feet to the northwest corner of lot No. 28; thence easterly at right angles to said avenue two hundred and eight feet to the southwesterly corner of lot No. 22; thence along rear line of lot No. 22 parallel with said avenue eighty feet northerly to corner of lot No. 30; thence westerly along lot No. 30 two hundred and eight feet to the place of BEGINNING.

Being lot No. 29 on a map of property of E. O. Doremus surveyed by Harrison Van Duyne, February, 1869.

Being the same premises described as the second tract in the deed from Edward E. Clapp and Eliza B. Clapp, his wife, to James M. Wakeman recorded in book F 40 of Deeds for Essex County on pages 377-379.

The above Three Thousand Dollar mortgage being second to a Building & Loan mortgage of Five Thousand Dollars now on said property, the payments upon said mortgage of principal and interest having been paid in accordance with the terms thereof. The said party of the second part also agrees to assign the bond accompanying the said mortgage.

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 Fifteenth day of August 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 office of Howe & Davis, 252 Main street, Orange, N. J., between the hours of ten in the forenoon and four o'clock in the afternoon on the said Fifteenth day of August next ensuing the date hereof.

It is agreed that the title to the premises conveyed by said mortgage and the bond accompanying the same is held in fee simple by said James Hendrickson, and that same is free and clear from all encumbrances excepting said Five Thousand Dollar mortgage and said second mortgage of Three Thousand Dollars. Also that the maker of said Three Thousand Dollar mortgage is the

same person who is now the owner of said premises, or will be the owner at the time this agreement is performed.

And for the performance of all and singular the covenants and agreements aforesaid, the said parties do bind themselves and their respective heirs, executors and administrators; and they hereby agree to pay, upon failure to perform the same, the sum of— which they hereby fix and settle as liquidated damages therefor.

10 IN WITNESS WHEREOF, the said parties have hereunto interchangeably set their hands and seals the day and year first above mentioned.

Signed, Sealed and Delivered
in the presence of

EDWARD W. MARTIN, (Seal)
SUSAN H. MARTIN, (Seal)
P. FRANK STONE. (Seal)

Ex. P2. (Copy)

20 AGREEMENT made this Twenty-second day of August, nineteen hundred and thirteen, between Edward W. Martin, of the City of Newark, Essex County, New Jersey, of the first part, AND Theodore McCurdy Marsh, of the City of East Orange, County of Essex, New Jersey, of the second part:

30 WITNESSETH, that whereas, the said Edward W. Martin is now or is about to become the owner of a certain bond and mortgage made and executed by James Hendrickson and wife to P. Frank Stone, in the amount of Three Thousand Dollars, at 6% for two years, on property on the northerly side of Lexington avenue, in the town of Montclair, Essex County, New Jersey, which said bond and mortgage contain the usual tax and interest default clauses, for thirty and sixty days respectively; and provide for a payment of \$150 on account of the principal every three months:

40 NOW THEREFORE, the said Edward W. Martin does hereby agree to sell the said bond and mortgage

made by the said James Hendrickson and wife to the said P. Frank Stone as aforesaid, to the said Theodore McCurdy Marsh, his executors, administrators and assigns, for the sum of twenty-six hundred dollars. And the said Edward W. Martin for himself, his heirs, executors and administrators does further agree to and with the said Theodore McCurdy Marsh, his executors administrators and assigns, that he will guaranty the payment of the principal and interest due on the said bond and mortgage, and that upon a default of any of the conditions of the said bond and mortgage, he, the said Edward W. Martin, his heirs, executors or administrators, will pay the full amount of principal and interest then due to the said Theodore McCurdy Marsh, his executors, administrators and assigns. 10

AND the said Theodore McCurdy Marsh, does for himself, his executors, administrators and assigns, agree to and with the said Edward W. Martin, his executors, administrators and assigns, that he will pay the said Edward W. Martin, his executors, administrators and assigns, the sum of Twenty-six hundred dollars, upon the delivery to him of an assignment of the said bond and mortgage of the said James Hendrickson and wife as aforesaid. And the said party of the second part does for himself, his executors, administrators and assigns agree that in the event of any default being made in the payment of the said bond and mortgage, according to the conditions thereof, and in the event that the said Edward W. Martin, his heirs, executors and administrators, shall be called upon to pay the principal or interest due on the said bond and mortgage, or any part thereof, in accordance with the terms of the Guaranty hereinbefore set forth, that upon such payment the said party of the second part, his executors, administrators or assigns, will assign, transfer and set over unto the said Edward W. Martin, his executors, administrators and assigns, the said bond and mortgage of the said James Hendrickson and wife. 20 30

IN WITNESS WHEREOF, we have unto set our 40

hands and seals this Twenty-second day of August, Nineteen Hundred and Thirteen.

Signed, sealed and delivered
in the presence of

EDWARD W. MARTIN. (Seal)
THEO. McC. MARSH. (Seal)

EX. P3. (Copy)

10 No. 262. Newark, N. J., Aug. 5, 1913.

CITY TRUST COMPANY, of Newark, N. J.
122 Roseville Avenue.

Pay to the Order of Fell & Devine One Hundred and
00/100 Dollars.

\$100 00/100. EDWARD W. MARTIN.
Endorsement Fell & Devine.

Ex. P4. (Copy)

20 THOS. L. RAYMOND ANDREW VAN BLARCOM
WORRALL F. MOUNTAIN THEODORE MCC. MARSH

GORDON JAMES

RAYMOND, MOUNTAIN, VAN BLARCOM & MARSH

Counsellors at Law

164 Market Street, Newark, N. J.

August 20, 1913.

Mr. Edward W. Martin,
Myrtle Avenue, Newark, N. J.

To Raymond, Mountain, Van Blarcom & Marsh, *Dr.*

30 To services making search on premises on the
northerly side of Lexington avenue, Mont-
clair \$35.00

Drawing deeds, Joseph Keane to Martin Wertz ;
William Wertz to Edward W. Martin; Ed-
ward W. Martin to P. Frank Stone 10.00

To Disbursements—

Tax Search 3.00

U. S. District Court Search 3.20

Continuation against James Hendrickson80

40 N. J. Supreme Court Search 7.20

Continuation against James Hendrickson80
Recording assignment of mortgage, Stone to Martin and Martin to Marsh	2.00
	<hr/>
	\$62.00

Received payment,
Raymond, Mountain, Van Blarcom & Marsh.

Ex. P5. (Copy)
No. 359. Newark, N. J., Nov. 12, 1913. 10

CITY TRUST COMPANY, of Newark, N. J.
122 Roseville Avenue.

Pay to the Order of Improved Building & Loan One
Hundred Sixty-five & 00/100 Dollars.
\$165 00/100. EDWARD W. MARTIN.

Ex. P6. (Copy)
No. 411. Newark, N. J., Dec. 3, 1913.

CITY TRUST COMPANY, of Newark, N. J. 20
122 Roseville Avenue.

Pay to the Order of Theodore McC. Marsh Two Hun-
dred and Forty-five & 00/100 Dollars.
\$245 00/100. EDWARD W. MARTIN.
Indorsement Theodore McC. Marsh.

Ex. P7. (Copy)
LIBERTY TRUST COMPANY
Central Avenue & Fourth Street.
Newark, N. J., Dec. 9, 1913.
Pay to the Order of Improved Building & Loan Asso- 30
ciation \$50.00. Fifty & 00/100 Dollars.
No. 175. EDWARD W. MARTIN.

Ex. P8. (Copy)
LIBERTY TRUST COMPANY
Central Avenue & Fourth Street.
Newark, N. J., Jan. 13, 1914.
Pay to the Order of Improved Building & Loan Asso-
ciation \$50.00. Fifty & 00/100 Dollars.
No. 216. EDWARD W. MARTIN. 40

Ex. P9. (Copy)

No. 524. Newark, N. J., February 10, 1914.

CITY TRUST COMPANY, of Newark, N. J.
122 Roseville Avenue.

Pay to the order of Improved Building & Loan Association Fifty & 00/100 Dollars.

\$50.00. EDWARD W. MARTIN.

Ex. P10. (Copy)

10 No. 537. Newark, N. J., Feb. 21, 1914.

CITY TRUST COMPANY of Newark, N. J.
122 Roseville Avenue.

CITY TRUST COMPANY of Newark, N. J.

Pay to the Order of Theodore McC. Marsh One Hundred Ninety-two & 75/100 Dollars.

\$192 75/100. EDWARD W. MARTIN.

Indorsement Theodore McC. Marsh.

Ex. P11. (Copy)

20 No. 543. Newark, N. J., April 14, 1914.

CITY TRUST COMPANY of Newark, N. J.
122 Roseville Avenue.

Pay to the Order of Improved Building & Loan Association One Hundred and Five & 00/100 Dollars.

\$105.00. EDWARD W. MARTIN.

Ex. P12. (Copy)

No. 602. Newark, N. J., May 12, 1914.

CITY TRUST COMPANY of Newark, N. J.
122 Roseville Avenue.

30 Pay to the Order of Improved Building & Loan Association Two Hundred Fifty & 00/100 Dollars.

\$250/00. EDWARD W. MARTIN.

Marginal Note—

A/c 175-177 Woodrich 200.

A/c 18 Lexington Ave., Montclair 50.

\$250.

Ex. P13. (Copy)

40 No. 632. Newark, N. J., June 2, 1914.

CITY TRUST COMPANY of Newark, N. J.
122 Roseville Avenue.

Pay to the order of Theodore McC. Marsh Two Hundred Twenty-three & 00/100 Dollars.

\$223.00. EDWARD W. MARTIN.

Indorsement Theo. McC. Marsh.

Ex. P14. (Copy)

Hahn & Newman.

No. 3024. Newark, N. J., July 30th, 1914.

Pay to the Order of Howard A. Sigler, collector, One ¹⁰
Hundred and Thirty-eight and 28/100 Dollars.

To Merchants National Bank,
Newark, N. J.

\$138.28. HAHN & NEWMAN.

Indorsement Edward W. Martin.

Montclair, N. J.
June 13, 1914.

Office of
Collector of Taxes
& Assessments
of the
Town of Montclair

Mr. Thomas M. Marsh, 20
Lexington Avenue.
to TOWN OF MONTCLAIR, DR.
Room 7, Crane Building

Office Hours :
10 to 12 A. M. &
4 to 6 P. M.

Checks should be made payable to
H. A. SIGLER, Collector.

48 A. 68

136—31	Tax, 1913	\$109.76	30
	Int.	3.82	
	Costs47	
		\$114.05	

(In lead pencil)	}	\$109.76
		Int. 4.70
		Costs 1.47
		Snow & Ice..... 2.16
		Side Walk 19.64
		Int.55
		\$138.28

40

Ex. P15. (Copy)

HOWELL M. STILLMAN
EDWARD W. MARTIN

Insurance
Coal—Loans

Office of
STILLMAN & MARTIN
18 Bathgate Place, Newark, N. J.
REAL ESTATE

Tel. 302 B.B.

August 5, 1913.

10

This is to acknowledge receipt of \$100—one hundred dollars—being commission in full for exchange of lots located on Gregory Avenue, West Orange, for a certain mortgage on property on Lexington avenue, Montclair.

It is agreed in the event the exchange of property should not be effected that this sum—\$100—will be returned on demand.

THOS. J. DEVINE,
Fell & Devine.

20

THIS INDENTURE

Made the Twenty-third day of December, in the year of Our Lord One Thousand Nine Hundred and Twelve BETWEEN James M. Wakeman and Jessie I. Wakeman, his wife, of the City of East Orange, in the County of Essex and State of New Jersey, parties of the First Part; AND Fairchild-Baldwin Co., a corporation of the State of New Jersey, having its principal office located in the City of Newark, in the County of Essex and State of New

30

Jersey, party of the Second Part:

WITNESSETH, That the said party of the first part, for and in consideration of One Dollar and other valuable considerations, lawful money of the United States of America, to them in hand well and truly paid by the said party of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the first part therewith fully satisfied, contented and paid, have given, granted, bargained, sold, aliened, released, enfeoffed, conveyed and confirmed, and by these presents do give, grant,

40

bargain, sell, alien, release, enfeoff, convey and confirm, to the said party of the second part, and to its successors, and assigns forever, ALL that certain tract or parcel of land and premises, hereinafter particularly described, situate, lying, and being in the Town of Montclair, in the County of Essex and State of New Jersey.

BEGINNING at a point in the Easterly line of Lexington Avenue (formerly called Ridgewood Avenue), distant five hundred and twenty feet Southerly from the southeast corner of Park and Lexington Avenues; thence running along Lexington Avenue South thirty-four degrees nine minutes East eighty feet to the northwest corner of lot No. 28; thence Easterly at right angles to said Avenue two hundred and eight feet to the southwesterly corner of lot No. 22; thence along rear line of Lot. 22 parallel with said Avenue eighty feet Northerly to corner of lot No. 30; thence Westerly along lot No. 30 two hundred and eight feet to the place of BEGINNING. 10

Being lot No. 29 on a map of property of E. O. Doremus, surveyed by Harrison Van Duyne, February, 1869. 20
Being the same premises described as the second tract in the deed from Edward E. Clapp and Eliza B. Clapp, his wife, to James M. Wakeman, recorded in Book F 40 of Deeds for Essex County on pages 377-379. The above described are conveyed expressly subject to a mortgage thereon of Four Thousand Dollars, which said mortgage the party of the second part hereby assumes and agrees to pay and satisfy, the same having been computed as a part of the consideration of this conveyance. The above described premises are also conveyed expressly subject to the rights of tenants. 30

TOGETHER with all and singular, the houses, buildings, trees, ways, waters, profits, privileges and advantages, with the appurtenances to the same belonging or in anywise appertaining; ALSO, all the estate, right, title, interest, property, claim and demand whatsoever, of the said party of the first part, of, in and to the same, and of, in and to every part and parcel thereof, TO HAVE AND TO HOLD, all and singular the above described land and premises with the appurtenances, unto the said 40

party of the second part, its successors and assigns, to the only proper use, benefit and behoof of the said party of the second part, its successors and assigns forever; and the said James M. Wakeman does for himself, his heirs, executors and administrators covenant and grant to and with the said party of the second part its heirs and assigns, that he, the said James M. Wakeman is the true, lawful and right owner of all and singular the above described land premises, and of every part and parcel
 10 thereof, with the appurtenances thereunto belonging; and that the said land and premises, or any part thereof, at the time of the sealing and delivery of these presents, are not encumbered by any mortgage, judgment, or limitation, or by any encumbrance whatsoever, by which the title of the said party of the second part, hereby made or intended to be made, for the above described land and premises, can or may be changed, charged, altered or defeated in any way whatsoever except as aforesaid.

AND ALSO, that the said party of the first part now
 20 have good right, full power and lawful authority, to grant, bargain, sell and convey the said land and premises in manner aforesaid. AND ALSO, that he, the said James M. Wakeman, will WARRANT, secure, and forever defend the said land and premises unto the said Fairchild-Baldwin Co., its successors and assigns, forever, against the lawful claims and demands of all and every person or persons, freely and clearly freed and discharged of and from all manner of encumbrances whatsoever, except as aforesaid.

30 IN WITNESS WHEREOF, the said party of the first part have hereunto set their hands and seals the day and year first above written.

JAMES M. WAKEMAN, (L. S.)

JESSIE I. WAKEMAN. (L. S.)

Signed, Sealed and Delivered
 in the presence of
 Philemon Woodruff.

40

(Copy)

STATE OF NEW JERSEY, }
 COUNTY OF ESSEX, } SS.

BE IT REMEMBERED, That on this Thirtieth day of December, in the year of our Lord One Thousand Nine Hundred and Twelve, before me, the subscriber, a Master in Chancery of New Jersey, personally appeared James M. Wakeman and Jessie I. Wakeman, his wife, who, I am satisfied are the grantors mentioned in the within Deed of Conveyance named, and to whom I first made known the contents thereof, and thereupon they acknowledged that they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed: IO

And the said Jessie I. Wakeman being by me privately examined, separate and apart from her husband, acknowledged that she signed, sealed and delivered the same as her voluntary act and deed, *freely*, without any fear, threats or compulsion of her said husband. 20

PHILEMON WOODRUFF,
 Master in Chancery of New Jersey.

MORTGAGE. Book I 31—213.

FAIRCHILD-BALDWIN Co. All that certain tract or parcel
of land and premises, herein-
TO after particularly described,
situate, lying and being in the
THE IMPROVED B. & L. Town of Montclair, in the
ASSOCIATION. County of Essex and State of
New Jersey :

10 BEGINNING at a point in the Easterly line of Lex-
ington Avenue (formerly called Ridgewood Avenue) dis-
tant five hundred and twenty feet Southerly from the
southeast corner of Park and Lexington Avenues; thence
running along Lexington Avenue South thirty-four de-
grees nine minutes East eighty feet to the northwest cor-
ner of lot No. 28; thence Easterly at right angles to said
Avenue two hundred and eight feet to the southwesterly
corner of lot No. 22; thence along rear line of lot No. 22
parallel with said Avenues eighty feet Northerly to corner
20 of lot No. 30; thence Westerly along lot No. 30 two hun-
dred and eighty feet to the place of BEGINNING. Be-
ing lot No. 29 on a map of property of E. O. Doremus,
surveyed by Harrison Van Duyne, Febrary, 1869.

Being the same premises conveyed to Fairchild-Baldwin
Company, a corporation by James M. Wakeman, and wife
by a deed recorded in Book S 51 of Deeds for Essex
County, on page 336.

The premises above described are mortgaged by Fair-
child-Baldwin Company, a corporation of the City of
30 Newark, Essex County, New Jersey, to The Improved
Building & Loan Association, a corporation of the State
of New Jersey, to secure the payment of \$5,000, by the
payment of One Dollar a month on each of twenty-five
shares of the capital stock of said Association owned by
said Fairchild-Baldwin Co. and assigned as collateral
security to this mortgage on the Second Tuesday of each
month until said shares shall obtain the par value of Two
Hundred Dollars each with interest on said sum of Five
Thousand Dollars, from date, at 6% per annum, pay-
40 able monthly at the same time as the stock payments

aforesaid secured to be paid by a certain bond bearing even date with the mortgage.

The mortgage is dated the Tenth day of June, A. D. 1913, and proved on the Twenty-third day of the same month and year at Newark, N. J., before Thomas J. Butler, Master in Chancery of New Jersey, by the oath of Clifton D. Baldwin, subscribing witness named in said instrument. And

Received in the Office of the Register of the County of Essex June 23rd, A. D. 1913, at 11.41 A. M. 10

THOMAS P. ALWORTH, Register.

THIS INDENTURE

Made the Twenty-first day of July in the year of Our Lord One Thousand Nine Hundred and Thirteen, BETWEEN Fairchild Baldwin Co., a corporation of the State of New Jersey, of the City of Newark, in the County of Essex and State of New Jersey, of the First Part; AND, P. FRANK STONE, of the City of Plainfield, in the County of Union and State of New Jersey of the Second Part: 20

WITNESSETH, That the said party of the first part, for and in consideration of One Dollar and other valuable considerations, lawful money of the United States of America, to it in hand well and truly paid by the said party of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the first part, therewith fully satisfied, contented and paid, has given, granted, bargained, sold, aliened, released, enfeoffed, conveyed and confirmed, and by these presents does give, grant, bargain, sell, alien, release, enfeoff, convey and confirm to the said party of the second part, and to his heirs and assigns forever, ALL that certain tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the Town of Montclair, in the County of Essex and State of New Jersey. 30

BEGINNING at a point in the easterly line of Lexington Avenue (formerly called Ridgewood Avenue) dis- 40

tant five hundred and twenty feet southerly from the southeast corner of Park & Lexington Avenues; thence running along Lexington avenue south thirty-four degrees nine minutes East eighty feet to the northwest corner of lot No. 28; thence easterly at right angles to said Avenue two hundred and eight feet to the southwesterly corner of lot No. 22; thence along rear line of lot No. 22 parallel with said Avenue eighty feet northerly to corner of lot No. 30; thence westerly along lot No. 30 two hundred and eight feet to the place of BEGINNING. Being
 10 lot No. 29 on a map of property of E. O. Doremus, surveyed by Harrison Van Duyne, February, 1869.

Being the same premises conveyed to said Fairchild Baldwin Co. by James M. Wakeman and Jessie I. Wakeman, his wife, by deed dated December 23, 1912, and recorded in the Register's Office of the County of Essex on the 31st day of December, 1912, in Book S 51 of Deeds for said County on pages 336-338.

20 The above described premises are conveyed expressly subject to a building and loan mortgage of \$5,000, which said mortgage the party of the second part hereby assumes and agrees to pay and satisfy, the same having been computed as a part of the consideration of this conveyance. The above described premises are also conveyed expressly subject to the rights of tenants.

30 TOGETHER with all and singular, the houses, buildings, trees, ways, waters, profits, privileges and advantages, with the appurtenances to the same belonging or in anywise appertaining; ALSO, all the estate, right, title, interest, property, claim and demand whatsoever, of the said party of the first part, of, in and to the same, and of, in and to every part and parcel thereof, TO HAVE AND TO HOLD, all and singular the above described land and premises with the appurtenances, unto the said party of the second part, his heirs and assigns, to the only proper use, benefit and behoof of the said party of the second part, his heirs and assigns forever: And the said party of the first part does for itself and its successors, covenant and grant to and with the said party of the
 40

second part, his heirs and assigns, that it, the said party of the first part is the true, lawful and right owner of all and singular the above described land and premises, and of every part and parcel thereof, with the appurtenances thereto belonging; and that the said land and premises, or any part thereof, at the time of the sealing and delivery of these presents, are not encumbered by any mortgage, judgment, or limitation, or by any encumbrance whatsoever, by which the title of the said party of the second part, hereby made or intended to be made, for the above 10 described land and premises, can or may be changed, charged, altered or defeated in any way whatsoever, except as aforesaid.

AND ALSO, that the said party of the first part now has good right, full power and lawful authority, to grant, bargain, sell and convey the said land and premises in manner aforesaid, AND ALSO, that the said party of the first part will WARRANT, secure, and forever defend the said land and premises unto the said party of the 20 second part his heirs and assigns, forever, against the lawful claims and demands of all and every person or persons, freely and clearly freed and discharged of and from all manner of encumbrances whatsoever.

IN WITNESS WHEREOF, the said party of the first part has caused these presents to be signed by its Vice-President, and its common seal to be hereto affixed, the day and year first above written.

Signed, Sealed and Delivered 30
in the presence of

Attest: Clifton D. Baldwin, Sec'y.

FAIRCHILD BALDWIN CO.,
Albert B. Baldwin, Vice-Pres.
Fairchild Baldwin Co.
Incorporated 1906.
Newark, N. J.

STATE OF NEW JERSEY, }
 COUNTY OF ESSEX. } SS.

BE IT REMEMBERED, That on this twenty-eighth day of July, in the year of Our Lord One Thousand Nine Hundred and Fifteen, before me, the subscriber, Theron A. Phillips, a Commissioner of Deeds for New Jersey,
 10 personally appears Clifton D. Baldwin, who, being by me duly sworn, doth depose and make proof to my satisfaction, that he well knows the corporate seal of the Fairchild Baldwin Co., the grantor named in the foregoing deed; that the seal thereto affixed is the proper corporate seal of said company; that the same was so affixed thereto and the said deed signed and delivered by Albert B. Baldwin, who was at the date and execution thereof, the Vice-President of said company, in the presence of the said deponent, as the voluntary act and deed
 20 of the said company, and that the said deponent thereupon signed the same as subscribing witness.

CLIFTON D. BALDWIN, (L. S.)

Sworn and subscribed before me at
 Newark, N. J., the date aforesaid.

THERON A. PHILLIPS,
 A Commissioner of Deeds for New Jersey.

30 THIS INDENTURE

Made the twenty-fifth day of July, in the year of Our Lord One Thousand Nine Hundred and Thirteen, BETWEEN P. Frank Stone and Emma R. Stone, his wife, of the City of Plainfield, in the County of Union and State of New Jersey of the First Part; AND James Hendrickson, of the City of Newark, in the County of Essex and State of New Jersey, of the Second Part:

40 WITNESSETH, That the said party of the first part, for and in consideration of One Dollar and other valuable

considerations, money of the United States of America, to them in hand well and truly paid by the said party of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the first part herewith fully satisfied, contented and paid, have given, granted, bargained, sold, aliened, released, enfeoffed, conveyed and confirmed by these presents do give, grant, sell, alien, release, enfeoff, convey and confirm, to the said party of the second part, and to his heirs and assigns forever, 10
 ALL that certain tract or parcel of land and premises, hereinafter particularly described, situate, lying, and being in the Town of Montclair, in the County of Essex and State of New Jersey.

BEGINNING at a point in the easterly line of Lexington Avenue (formerly called Ridgewood Avenue) distant five hundred and twenty feet southerly from the southeast corner of Park and Lexington Avenues; thence running along Lexington Avenue south thirty-four degrees nine minutes East eighty feet to the northwest corner of lot No. 28; thence easterly at right angles to said Avenue two hundred and eight feet to the southwesterly corner of lot No. 22; thence along rear line of lot No. 22 parallel with said Avenue eighty feet northerly to corner of lot No. 30; thence Westerly along lot No. 30 two hundred and eight feet to the place of BEGINNING. Being lot No. 29 on a map of property of E. O. Doremus, surveyed by Harrison Van Duyne, February, 1869. ■■
 20

Being the same premises conveyed to said P. Frank Stone by Fairchild Baldwin Co., a corporation, by deed dated July 21, 1913. The above described premises are conveyed expressly subject to a Building and Loan Mortgage of \$5,000, which said mortgage the party of the second part hereby assumes and agrees to pay and satisfy, the same having been computed as a part of the consideration of this conveyance. The above described premises are also conveyed expressly subject to the rights of tenants. 30
 40

TOGETHER with all and singular, the houses, buildings, trees, ways, waters, profits, privileges and advantages, with the appurtenances to the same belonging or in anywise appertaining; ALSO, all the estate, right, title, interest, property, claim and demand whatsoever, of the said party of the first part, of, in and to the same, and of, in and to every part and parcel thereof, TO HAVE AND TO HOLD, all and singular the above described land and premises with the appurtenances, unto the said
 10 party of the second part, his heirs and assigns, to the only proper use, benefit and behoof of the said party of the second part, his heirs and assigns forever; and the said P. Frank Stone and Emma R. Stone, do for themselves, their heirs, executors and administrators covenant and grant to and with the said party of the second part his heirs and assigns, that they, the said P. Frank Stone and Emma R. Stone, are the true, lawful and right owners of all and singular the above described land and premises, and of every part and parcel thereof, with the appurtenances hereunto belonging; and that the said land and
 20 premises, or any part thereof, at the time of the sealing and delivery of these presents, are not encumbered by any mortgage, judgment, or limitation, or by any encumbrance whatsoever, by which the title of the said party of the second part, hereby made or intended to be made, for the above described land and premises, can or may be changed, charged, altered or defeated in any way whatsoever, except as aforesaid.

30 AND ALSO, that the said party of the first part now has good right, full power and lawful authority, to grant, sell and convey the said land and premises in manner aforesaid; AND ALSO, that P. Frank Stone will WARRANT, secure and forever defend the said land and premises unto the said James Hendrickson, heirs and assigns, forever, against the lawful claims and demands of all and every person or persons, freely and clearly freed and discharged of and from all manner of encumbrances whatsoever, except as aforesaid.
 40

IN WITNESS WHEREOF, the said party of the first part have hereunto set their hands and seals the day and year first above written.

P. FRANK STONE, (Seal)

EMMA R. STONE. (Seal)

Signed, Sealed and Delivered
in the presence of
C. W. V. Moy.

STATE OF NEW JERSEY, }
 COUNTY OF ESSEX. } SS.

BE IT REMEMBERED, That on this twenty-fifty
 day of July, in the year of our Lord One Thousand Nine
 Hundred and Thirteen, before me, a Master in Chancery,
 personally appeared P. Frank Stone and Emma R. Stone,
 10 his wife, who, I am satisfied are the grantors mentioned
 in the within Indenture, and to whom I first made known
 the contents thereof, and thereupon they acknowledged
 that they signed, sealed and delivered the same as their
 voluntary act and deed, for the uses and purposes therein
 expressed.

And the said Emma R. Stone, being by me privately
 examined, separate and apart from her husband, acknowl-
 edged that she signed, sealed and delivered the same as
 her voluntary act and deed, *freely*, without any fear,
 20 threats or compulsion of her said husband.

G. W. V. MOY,
 M. C. C. of New Jersey.

THIS INDENTURE

Made the twenty-fifth day of July, in the year of our
 Lord One Thousand Nine Hundred and Thirteen,
 BETWEEN James Hendrickson of the City of Newark,
 in the County of Essex and State of New Jersey, party
 30 of the First Part; AND P. FRANK STONE of the
 City of Plainfield, in the County of Union and State of
 New Jersey, party of the Second Part.

WITNESSETH, That the said party of the first part,
 for and in consideration of the sum of Three Thousand
 Dollars, lawful money of the United States of America,
 to him in hand well and truly paid by the said party of
 the second part, at or before the sealing and delivery of
 these presents, the receipt whereof is hereby acknowl-
 edged, and the said party of the first part, therewith fully
 40 satisfied, contented and paid, has given, granted, bar-

gained, sold, aliened, enfeoffed, conveyed and confirmed, and by these presents does give, grant, bargain, sell, alien, enfeoff, convey and confirm to the said party of the second part, and to his heirs and assigns forever ALL that tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the Town of Montclair, in the County of Essex and State of New Jersey.

BEGINNING at a point in the Easterly line of Lexington Avenue (formerly called Ridgewood Avenue) distant five hundred and twenty feet Southerly from the southeast corner of Park and Lexington Avenues; thence running along Lexington Avenue South thirty-four degrees nine minutes East eighty feet to the northwest corner of lot No. 28; thence Easterly at right angles to said Avenue two hundred and eight feet to the southwesterly corner of lot No. 22; thence along rear line of lot No. 22 parallel with said Avenue eighty feet North-
erly to corner of lot No. 30; thence Westerly along lot
No. 30 two hundred and eight feet to the place of BE-
GINNING. Being lot No. 29 on a map of property of
E. O. Doremus, surveyed by Harrison Van Duyne, February, 1869.

Being the same premises conveyed to James Hendrickson by P. Frank Stone and Emma R. Stone by deed dated July 25th, 1913, and recorded herewith, this mortgage being given to secure a part of the consideration of said conveyance.

TOGETHER with all and singular the profits, privileges and advantages, with the appurtenances to the same belonging, or in anywise appertaining. ALSO, all the estate, right, title, interest, property, claim and demand whatsoever of the said party of the first part of, in and to the same, and of, in and to every part and parcel thereof; TO HAVE AND TO HOLD all and singular the above described tract or lot of land and premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, to the only proper use, bene-
40

fit and behoof of the said party of the second part, his heirs and assigns forever.

PROVIDED ALWAYS, and it is agreed by and between the parties to these presents, that if the said James Hendrickson, his heirs, executors, or administrators, do and shall well and truly pay or cause to be paid, to the said party of the second part, or to his certain attorney or attorneys, heirs, executors, administrators or assigns, the sum of Three Thousand Dollars in one year from
10 the date hereof, with lawful interest for the same, at the rate of six per centum per annum, payable semi-annually, according to the condition of a certain bond bearing even date herewith, in the penal sum of Six Thousand Dollars, without any deduction or defalcation for taxes, assessments, or any imposition whatsoever; then and from thenceforth, these presents and said obligation, and everything herein and therein contained, shall cease and be void; anything herein and therein contained, to the
20 contrary in anywise notwithstanding.

AND the said party of the first part, his heirs, executors and administrators, does covenant and grant to and with the said party of the second part, his heirs and assigns, that the said party of the first part, his heirs and assigns, shall not nor will claim or demand or be entitled to receive any credit or credits on the interest payable hereon or on the moneys to secure payment of which this mortgage is made, for so much of the taxes assessed against said lands as is equal to the tax rate applied to the amount
30 due on this mortgage or any part thereof; and that the said party of the second part, his heirs and assigns, shall and may, from time to time, and at all times after default shall be made in the performance of the proviso or condition herein contained, peaceably and quietly enter into, have, hold, use, occupy, possess and enjoy all and singular the above granted and bargained premises, with the appurtenances, without the let, suit, trouble, hindrance or denial of the said party of the first part, his heirs or assigns, or of any other person or persons whatsoever.

40 AND it is also agreed by and between the parties to

these presents, that the said party of the first part shall and will keep the buildings erected and to be erected upon the lands above conveyed, insured against loss or damage by fire, in some safe and responsible Insurance Company or Companies, to an amount not less than Three Thousand Dollars, and assign the policy and certificate thereof to the said party of the second part as collateral security for the payment of the principal and interest aforesaid; and in default thereof it shall be lawful for the said party of the second part, to effect such insurance, and the premium 10 and premiums paid for effecting the same shall be a lien on the said mortgaged premises, added to the amount of the said bond or obligation, and secured by these presents, and payable on demand with legal interest.

IN WITNESS WHEREOF, the said party of the first part has hereunto set his hand and seal the day and year first above written.

JAMES HENDRICKSON. (L. S.)

Signed, Sealed and Delivered
in the presence of
Thomas A. Davis.

20

STATE OF NEW JERSEY, }
 COUNTY OF ESSEX. } SS.

BE IT REMEMBERED, That on this twenty-fifth day of July, in the year of our Lord One Thousand Nine Hundred and Thirteen, before me, a Master in Chancery of New Jersey, personally appeared James Hendrickson, who, I am satisfied, is the grantor mentioned in the within
 10 Indenture, and to whom I first made known the contents thereof, and thereupon he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed.

THOMAS A. DAVIS,

Master in Chancery of New Jersey.

(ENDORSEMENT)

20 On this 19th day of August, A. D. 1913, the original mortgage here recorded was produced in the office of Howe & Davis, receipted, cancelled and maid void.

THOMAS P. ALWATH, Register.

THIS INDENTURE

Made the twenty-fifth day of July in the year of our Lord One Thousand Nine Hundred and Thirteen, BETWEEN James Hendrickson and Margaret Hendrickson, his wife, of the City of Newark, in the County of
 30 Essex and State of New Jersey, of the first part; AND P. Frank Stone, of the City of Plainfield, in the County of Union and State of New Jersey, party of the second part.

WHEREAS, the said James Hendrickson is justly indebted to the said party of the second part, in the sum of Three Thousand Dollars, lawful money of the United States of America, secured to be paid by a certain bond or obligation, bearing even date with these presents, in
 40 the penal sum of Six Thousand Dollars, lawful money

as aforesaid conditioned for the payment of the said first-mentioned sum of Three Thousand Dollars, payable as follows: \$150 on July 25, 1913, and \$150 every 3 months thereafter and the balance remaining due on the principal, lawful money as aforesaid, to the said party of the second part, his executors, administrators or assigns on the twenty-fifth day of July, which will be in the year One Thousand Nine Hundred and Fifteen and interest thereon, to be computed from the twenty-fifth day of July, 1913, at and after the rate of six per cent. per annum, and to be paid semi-annually. 10

AND IT IS THEREBY EXPRESSLY AGREED that should any default be made in the payment of the said interest or installments of principal or of any part thereof, on any day whereon the same is made payable, as above expressed, or should any tax, assessment, water rent or other municipal or governmental rate, charge, imposition or lien be hereafter imposed or acquired upon the premises described in this mortgage, and become due and payable, and should the said interest or installment of principal remain unpaid and in arrear for the space of thirty days, or said tax, assessment, water rent or other municipal or governmental rate, charge, imposition or lien, or any or either of them remain unpaid and in arrear for the space of sixty days, then and from thenceforth, that is to say, after the lapse or expiration of either of the said periods as the case may be, the aforesaid principal sum of Three Thousand Dollars, with all arrearage of interest thereon, shall, at the option of the said party of the second part, or his legal representatives, become and be due and payable immediately thereafter, although the period above limited for the payment thereof may not then have expired, anything therein before contained to the contrary thereof in anywise notwithstanding: as by the said bond or obligation, and the condition thereof, reference being thereunto had, may more fully appear. 20 30

NOW THIS INDENTURE WITNESSETH, That the said party of the first part, for the better securing the payment of the said sum of money mentioned in the con- 40

dition of the said bond or obligation, with interest thereon, according to the true intent and meaning thereof, and also for and in consideration of the sum of one dollar, to them in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, released, conveyed and confirmed, and by these presents do grant, bargain, sell, alien, re-lease, convey and confirm, unto the said party of the
 10 second part, and to his heirs and assigns forever,

ALL that certain tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the Town of Montclair, in the County of Essex and State of New Jersey :

BEGINNING at a point in the easterly line of Lexington Avenue (formerly called Ridgewood Avenue) distant five hundred and twenty feet southerly from the southeast corner of Park and Lexington Avenues; thence
 20 running along Lexington Avenue south thirty-four degrees nine minutes east eighty feet to the northwest corner of lot No. 28; thence easterly at right angles to said avenue two hundred and eight feet to the southwesterly corner of lot No. 22; thence along rear line of lot No. 22 parallel with said Avenue eighty feet northerly to corner of lot No. 30; thence westerly along lot No. 30 two hundred and eight feet to the place of BEGINNING. Being lot No. 29 on a map of property of E. O. Doremus, surveyed by Harrison Van Duyne, February, 1869.

30 Being the same premises conveyed to the said James Hendrickson by the said P. Frank Stone by deed bearing even date, and recorded in the Essex County Register's Office. This mortgage being given to secure a part of the consideration in said deed expressed.

Note: Assignment recorded August 22, 1913,
 Book 112-536.

Note: Assignment recorded August 22, 1913,
 Book 112-537.

40 TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or

in anywise appertaining, and reversion and reversions, remainder and remainders, rents, issues and profits thereof. AND ALSO, all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in and to the same, and every part and parcel thereof, with the appurtenances: TO HAVE AND TO HOLD the above granted and described premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, to his and their own proper use, benefit and 10
behoof forever.

PROVIDED ALWAYS, and these presents are upon this express condition, that if the said party of the first part, his heirs, executors or administrators, shall well and truly pay unto the said party of the second part, his executors, administrators or assigns, the said sum of money mentioned in the condition of said bond or obligation, and the interest thereon, at the time and times, and in the manner mentioned in the said condition, according to the true intent and meaning thereof, that then these 20
presents, and the estate hereby granted, shall cease, determine and be void.

AND the said James Hendrickson for himself, his heirs, executors and administrators, does covenant and agree to pay unto the said party of the second part, his heirs, executors, administrators or assigns, the said sum of money and interest, as mentioned above and expressed in the conditions of the said bond.

AND IT IS ALSO AGREED, by and between the 30
parties to these presents, that the said party of the first part, shall and will keep the buildings erected, and to be erected, upon the lands above conveyed, insured against loss or damage by fire, by insurers, and in an amount approved by the said party of the second part, his executors, administrators or assigns, and assign the policy and certificates thereof to the said party of the second part; and in default thereof, it shall be lawful for the said party of the second part to effect such insurance, and the 40

premium and premiums paid for effecting the same shall be a lien on the said mortgaged premises, added to the amount of the said bond or obligation, and secured by these presents, payable on demand, with interest at the rate of six per cent. per annum, from the time of payment of such premium or premiums.

AND THE SAID party of the first part for himself, his heirs, executors, and administrators, does covenant and grant to and with the said party of the second part,
 10 his heirs and assigns, that the said party of the first part, his heirs and assigns, shall not nor will claim or demand or be entitled to receive any credit or credits on the interest payable hereon or on the monies to secure payment of which this mortgage is made for so much of the taxes assessed against said lands as is equal to tax rate applied to the amount due on this mortgage or any part thereof.

IN WITNESS WHEREOF, the said party of the first part have hereunto set their hands and seals the day and
 20 year first above written.

JAMES HENDRICKSON, (L. S.)
 MARGARET HENDRICKSON. (L. S.)

Signed, Sealed and Delivered
 in the Presence of
 Thomas A. Davis.

STATE OF NEW JERSEY, }
 COUNTY OF ESSEX. } SS.

BE IT REMEMBERED, That on this Eighth day of August in the year of our Lord One Thousand Nine Hundred and Thirteen before me, a Master in Chancery of New Jersey, personally appeared James Hendrickson and Margaret Hendrickson, his wife, who, I am satisfied, are the grantors mentioned in the within Indenture and to whom I first made known the contents thereof, and thereupon they acknowledged that, they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed; and the said Margaret Hendrickson being by me privately examined, separate and apart from her husband, further acknowledged that she signed, sealed and delivered the same as her voluntary act and deed, *freely*, without any fear, threats or compulsion of her said husband. 10

THOMAS A. DAVIS, 20
 Master in Chancery of New Jersey.

KNOW ALL MEN BY THESE PRESENTS

THAT I, P. Frank Stone, of the City of Plainfield, County of Union, and State of New Jersey, party of the first part, in consideration of the sum of One Dollar and other valuable considerations, lawful money of the United States of America, to me in hand paid by Edward W. Martin of the City of Newark, County of Essex and State of New Jersey, party of the second part, at or before the 30
 en sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, assigned, transferred, and set over, and by these presents do grant, bargain, sell, assign, transfer, and set over unto the said party of the second part, a certain INDENTURE OF MORTGAGE, bearing date the twenty-fifth day of July, One Thousand Nine Hundred and Thirteen, made by James Hendrickson to me on lands in the Town of Montclair, Essex County, New Jersey, 40

to secure the payment of \$3,000 and interest, which mortgage is recorded in the Register's office of the County of Essex in Book M 31 of Mortgages, page 456.

TOGETHER with the bond or obligation therein described, and the money due and to grow due thereon, with the interest. TO HAVE AND TO HOLD the same, unto the said party of the second part, his executors, administrators or assigns, for their own use and benefit, subject only to the proviso in the said Indenture of Mortgage mentioned: AND I do hereby make, constitute, and appoint the said party of the second part, my true and lawful attorney irrevocable, in my name or otherwise, but at his proper costs and charges, to have, use and take all lawful ways and means for the recovery of all the said money and interest; and in case of payment to discharge the same as fully as I might or could do if these presents were not made. AND I do hereby covenant, promise and agree, to and with the said party of the second part, that there is now due and owing upon the said Bond and Mortgage, the sum of \$3,000 and interest.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the ninth day of August, in the year or our Lord One Thousand Nine Hundred and Thirteen.

P. FRANK STONE. (Seal)

Signed, Sealed and Delivered
in Presence of
H. R. Limbarger.

STATE OF NEW JERSEY, }
 COUNTY OF ESSEX. } SS.

BE IT REMEMBERED, That on this ninth day of August in the year of our Lord One Thousand Nine Hundred and Thirteen, before me, the subscriber, a Commissioner of Deeds in and for the State of New Jersey, personally appeared P. Frank Stone, who, I am satisfied, is the Assignor in the within Deed of Assignment named; and I having first made known to him the contents thereof, he did acknowledge that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed. 10

(L. S.) H. R. LIMBARGER,
 Commissioner of Deeds for
 New Jersey.

KNOW ALL MEN BY THESE PRESENTS 20

THAT I, Edward W. Martin, of the City of Newark, County of Essex and State of New Jersey, party of the first part, in consideration of the sum of One Dollar and other good and valuable considerations, lawful money of the United States of America, to me in hand paid by Theodore McCurdy Marsh of the City of East Orange, County of Essex and State of New Jersey, party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, assigned, transferred, and set over, and by these presents do grant, bargain, sell, assign, transfer, and set over unto the said party of the second part, one certain INDENTURE OF MORTGAGE, bearing date the twenty-fifth day of July, One Thousand Nine Hundred and Thirteen, made by James Hendrickson and wife on lands in the Town of Montclair, County of Essex and State of New Jersey, to secure the payment of Three Thousand Dollars, which mortgage is recorded in the Register's office of the County 30 40

of Essex in Book M 31 of Mortgages, page 456, which mortgage was assigned by P. Frank Stone to Edward W. Martin by assignment, dated August 9, 1913.

TOGETHER with the bond or obligation therein described, and the money due and to grow due thereon, with the interest. TO HAVE AND TO HOLD the same, unto the said party of the second part, his heirs or assigns, forever, subject only to the proviso in the said Indenture of Mortgage mentioned: AND I do hereby make,
10 constitute, and appoint the said party of the second part, my true and lawful attorney irrevocable, in the name or otherwise, but at his proper costs and charges, to have, use and take all lawful ways and means for the recovery of all the said money and interest; and in case of payment to discharge the same as fully as I might or could do if these presents were not made. AND I do hereby covenant, promise and agree, to and with the said party of the second part, that there is now due and owing upon
20 the said Bond and Mortgage the sum of Three Thousand Dollars (\$3,000) together with interest from the 25th day of July, 1913.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the twenty-second day of August, in the year of our Lord One Thousand Nine Hundred and Thirteen.

EDWARD W. MARTIN. (Seal)

Signed, Sealed and Delivered
in Presence of
30 Spaulding Frazer.

STATE OF NEW JERSEY, }
 COUNTY OF ESSEX. } SS.

BE IT REMEMBERED, That on this twenty-second day of August in the year of our Lord One Thousand Nine Hundred and Thirteen, before me, the subscriber, a Master in Chancery of New Jersey, personally appeared Edward W. Martin, who, I am satisfied, is the Assignor in the within Deed of Assignment named; and I having made known to — the contents thereof, — did — acknowledged that — signed, sealed and delivered the same as — voluntary act and deed; for the uses and purposes therein expressed. 10

SPAULDING FRAZER,
 Master in Chancery of New Jersey.

THIS INDENTURE

Made the twenty-fourth day of September, in the year of our Lord One Thousand Nine Hundred and Thirteen, BETWEEN James Hendrickson and Margaret Hendrickson, his wife, of the City of Newark, in the County of Essex and State of New Jersey, parties of the First Part; AND Theodore McC. Marsh, of the City of East Orange, in the County of Essex and State of New Jersey, party of the Second Part: 20

WITNESSETH, That the said party of the first part, in the consideration of the sum of One Dollar and other valuable considerations, lawful money of the United States of America, to them in hand paid, by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, remitted, released, conveyed and confirmed, and by these presents do grant, bargain, sell, alien, remise, release, convey and confirm, unto the said party of the second part, and to his heirs and assigns forever, ALL that certain tract or parcel of land and premises, hereinafter par- 40 30

ticularly described, situate, lying and being in the Town of Montclair, in the County of Essex and State of New Jersey.

BEGINNING at a point in the Easterly line of Lexington Avenue (formerly called Ridgewood Avenue) distant five hundred and twenty feet Southerly from the southeast corner of Park and Lexington Avenues; thence running along Lexington Avenue South thirty-four degrees nine minutes East eighty feet to the northwest corner of lot No. 28; thence easterly at right angles to said Avenue two hundred and eight feet to the southwesterly corner of lot No. 22; thence along rear line of lot No. 22 parallel with said Avenue eighty feet northerly to corner of lot No. 30; thence Westerly along lot No. 30 two hundred and eight feet to the place of BEGINNING.

Being lot No. 29 on a map of property of E. O. Doremus, surveyed by Harrison Van Duyne, February, 1869. Being the same premises described as the second tract in the deed from Edward E. Clapp and Eliza E. Clapp, his wife, to James M. Wakeman, recorded in Book F 40 of Deeds for Essex County on pages 377-379.

The above described premises are conveyed subject to encumbrances now a lien thereon.

TOGETHER with all and singular, the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, AND ALSO, all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in, or to the above described premises and every part and parcel thereof, with the appurtenances.

TO HAVE AND TO HOLD, all and singular the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, their heirs, and assigns forever, to the only property use, benefit and behoof of the said party of the second part, his heirs and assigns forever.

IN WITNESS WHEREOF, the said party of the first part have hereunto set their hands and seals the day and year first above written.

JAMES HENDRICKSON, (L. S.)

MARGARET HENDRICKSON. (L. S.)

Signed, Sealed and Delivered
in the presence of
T. A. Phillips.

STATE OF NEW JERSEY, }
 COUNTY OF ESSEX. } SS.

BE IT REMEMBERED, That on this twenty-fourth day of September, in the year of our Lord One Thousand Nine Hundred and Thirteen, before me, a subscriber, a Commissioner of Deeds for the State of New Jersey,
 10 personally appeared James Hendrickson, who, I am satisfied is the grantor mentioned in the within Indenture, and to whom I first made known the contents thereof and thereupon, he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed. And the said Margaret Hendrickson, being by me privately examined, separate and apart from her husband, acknowledged that she signed, sealed and delivered the same as her voluntary act and deed, *freely*, without any fear, threats or compulsion of her said husband.
 20

THERON A. PHILLIPS,
 Commissioner of Deeds for New Jersey.

THIS INDENTURE

Made the Fifteenth day of August, in the year of Our Lord One Thousand Nine Hundred and Thirteen, BETWEEN Edward W. Martin and Susan H. Martin, his wife, of the City of Newark, in the County of Essex and State of New Jersey, parties of the First Part; AND
 30 P. Frank Stone, of the City of Plainfield, in the County of Somerset and State of New Jersey, of the Second Part:

WITNESSETH, That the said party of the first part, for and in consideration of One Dollar and other good and valuable consideration, lawful money of the United States of America, to them in hand well and truly paid by the said party of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the first
 40 part therewith fully satisfied, contented and paid, have

given, granted, bargained, sold, aliened, released, enfeoffed, conveyed and confirmed, and by these presents do give, grant, bargain, sell, alien, release, enfeoff, convey and confirm, to the said party of the second part, and to his heirs and assigns forever, ALL those certain tracts or parcels of land and premises, hereinafter particularly described, situate, lying, and being in the Town of West Orange, in the County of Essex and State of New Jersey.

First Tract—BEGINNING at a point on the Easterly 10
side of Gregory Avenue distant one hundred and twenty-five feet northeasterly from the northeast corner of Gregory Avenue and Luddington Road; and running thence South sixty-two degrees twenty-four minutes East one hundred and fifty-one feet and thirty-five hundredths; thence North twenty-eight degrees forty-three minutes East fifty feet; thence North sixty-two degrees twenty-four minutes West one hundred and fifty-one feet and thirty-nine hundredths to the Easterly side of Gregory Avenue; thence along said side of said Avenue South 20
twenty-eight degrees forty minutes West fifty feet to the place of BEGINNING. Being lot No. 37 as shown on map of property of Luddington Realty Co. filed in the Essex County Register's Office in case No. 538.

Second Tract—BEGINNING at a point in the Easterly side of Gregory Avenue distant northeasterly two hundred and seventy-five feet from the northeast corner of Luddington Road and Gregory Avenue; and running thence South sixty-two degrees twenty-four minutes East one hundred and fifty-one feet and forty-seven hundredths; thence north twenty-eight degrees forty-three 30
minutes East one hundred feet; thence north sixty-two degrees twenty-four minutes West one hundred and fifty-one feet and fifty-five one hundredths to the Easterly side of Gregory Avenue; thence along said side of said Avenue south twenty-eight degrees forty minutes West one hundred feet to the place of BEGINNING.

Being lots Nos. 33 and 34 as shown on map of property of Luddington Realty Company filed in the Essex County Register's Office in case No. 556. 40

Being the same premises conveyed by William D. Wertz and Emily Wertz, his wife, to Edward W. Martin by deed dated August 15, 1913, and not yet recorded. Subject to the building restrictions now on said premises and set forth more particularly in a deed from Joseph Keane (single) to William D. Wertz, dated August 14, 1913.

10 TOGETHER with all and singular, the houses, build-
ings, trees, ways, waters, profits, privileges and advan-
tages, with the appurtenances to the same belonging or
in anywise appertaining; ALSO, all the estate, right,
title, interest, property, claim and demand whatsoever, of
the said party of the first part, of, in and to the same, and
of, in and to every part and parcel thereof, TO HAVE
AND TO HOLD, all and singular the above described
land and premises with the appurtenances, unto the said
party of the second part, his heirs and assigns, to the only
proper use, benefit and behoof of the said party of the
20 second part, his heirs and assigns forever; and the said
parties of the first part do for themselves, their heirs,
executors and administrators covenant and grant to and
with the said party of the second part, his heirs and
assigns, that they, the said parties of the first part, are
the true, lawful and right owners of all and singular the
above described land and premises, and of every part and
parcel thereof, with the appurtenances thereunto belong-
ing; and that the said land and premises, or any part
thereof, at the time of the sealing and delivery of these
presents, are not encumbered by any mortgage, judgment,
30 or limitation, or by any encumbrance whatsoever, by
which the title of the said party of the second part, hereby
made or intended to be made, for the above described land
and premises, can or may be changed, charged, altered or
defeated in any way whatsoever, except building restric-
tions as aforesaid.

AND ALSO, that the said party of the first part now
have good right, full power and lawful authority, to
grant, bargain, sell and convey the said land and premises
40 in manner aforesaid; AND ALSO, that the said parties

of the first part will WARRANT, secure, and forever defend the said land and premises unto the said party of the second part, his heirs and assigns, forever, against the lawful claims and demands of all and every person or persons, freely and clearly freed and discharged of and from all manner of encumbrances whatsoever, except building restrictions as aforesaid.

IN WITNESS WHEREOF, the said party of the first part have hereunto set hands and seals the day and year first above written. 10

EDWARD W. MARTIN, (Seal)

SUSAN H. MARTIN. (Seal)

Signed Sealed and Delivered
in the presence of
Theo. McC. Marsh.

Alterations of "Frank B." & "P. Frank" in name of grantee made before execution. Theo. McC. Marsh. 20

STATE OF NEW JERSEY, }
COUNTY OF ESSEX. } SS.

BE IT REMEMBERED, That on this twenty-second day of August in the year of our Lord One Thousand Nine Hundred and —— before me, the subscriber, a Master in Chancery of New Jersey, personally appeared
10 Edward W. Martin and Susan H. Martin, his wife, who, I am satisfied are the grantors mentioned in the within Indenture, and to whom I first made known the contents thereof, and thereupon they acknowledged that they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed;

And the said Susan H. Martin, being by me privately examined, separate and apart from her husband, acknowledged that she signed, sealed and delivered the same as her voluntary act and deed, *freely*, without any fear,
20 threats or compulsion of her said husband.

THEO. McC. MARSH,
Master in Chancery of New Jersey.

NEW JERSEY SUPREME COURT

EDWARD W. MARTIN,

vs.

ALBERT F. BALDWIN AND

P. FRANK STONE.

*Action at Law.**Stipulation.*

10

It is hereby stipulated and agreed that the hereto annexed copies of instruments may be used in place of the original instruments or certified copies at the trial of the above case.

HAHN & NEWMAN,
Attorneys of Plaintiff.

HOWE & DAVIS,
Attorneys of Defendants.

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NEW JERSEY
COURT OF ERRORS AND APPEALS

EDWARD W. MARTIN,
Plaintiff & Respondent,

vs.

ALBERT F. BALDWIN,
Defendant & Appellant.

Grounds of Appeal.

10

The appellant states the following grounds of appeal:

The following questions were overruled:

1. To the witness Edward W. Martin: "When you said a moment ago that Albert Baldwin did not say to you that Stone had paid \$11,000 in cash for that property, were you speaking the truth?"

2. To the witness Edward W. Martin: "So that the real estate men did not put one over on you, did they?" 20

3. To the witness Theodore McC. Marsh: "I notice Mr. Marsh, on Exhibit P20, which is the mortgage in question, that it appears to have been offered in evidence and marked Exhibit D2 in a foreclosure suit?

"And that was the foreclosure suit of the building and loan association?

"You proved this mortgage yourself in this foreclosure proceeding, I presume?

"And the decree——?"

30

The following question was admitted:

4. To the witness Albert F. Baldwin: "Then the property was actually Mr. Stone's, wasn't it?"

5. The Court refused to non-suit the plaintiff's case against this defendant.

6. The Court refused to admit in evidence a contract between Fairchild-Baldwin Company and James M. Wakeman, dated December 16, 1912, the purpose of it being to show that the premises, No. 18 Lexington Ave-

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nue, Montclair, were taken in by them on a trade with Wakeman at the price of \$10,000.

7. The Court refused to charge the jury as follows:

10 "If the jury believe from the evidence that Albert F. Baldwin was not the person who had charge of the matter for Mr. Stone, as his agent, but that the statements alleged to have been made by him were made, if at all, when he was taking Mr. Martin to Montclair to show him the property under orders from his superior in the Fair-child-Baldwin Co., he cannot be held liable in this action."

8. The Court refused to charge the jury as follows:

"If you find that the property was worth \$8,000 or more, or was worth the amount of the two mortgages, then the matter of misrepresentation is not important, if the plaintiff got a mortgage worth \$3 000."

9. The Court charged the jury as follows:

20 "But where there exists between the parties some relation whereby the purchaser, being ignorant of the fact, is justified in placing trust and confidence in the honesty and superior knowledge of the person making the representation, or where, in the absence of any particular relation, special confidence is placed in the person making such representations on account of his peculiar knowledge, and the purchaser's ignorance, the purchaser may, without further investigation, rely on the statements of such person. Therefore the rule imposing upon a purchaser the duty to investigate as to the truth of the statements made to him concerning the property in question, has no application to representations made by third persons as to the credit, solvency, and so forth, of another. In cases of this character the position of the parties is not antagonistic, but somewhat confidential, therefore, if this representation was of such a character, and was made under such circumstances as to justify its belief by a reasonably prudent man, plaintiff being ignorant of the truth, and acting upon the representations to his injury, a recovery may be had, although the plaintiff might, by the exercise of diligence, have ascertained the insolvency 30 of the person recommended; and defendant will not be 40

heard to say that he is a person on whose word the plaintiff had no right to rely."

10. The Court charged the jury as follows:

"In such a case as this, a case of fraud, the measure of the plaintiff's damage, if he is entitled to recover, would be the amount of his loss caused by the fraud, or, in other words, damages adequate to the injury which he has sustained. There cannot be any compromise verdict in this case. The plaintiff is entitled to all of the damages which he has sustained, or he is not entitled to any of them. If he has been defrauded by the defendant in this case, then, as I have already stated, he is entitled to receive at your hands the amount of the loss caused by the fraud; and if he has not been defrauded by the defendant, then he is not entitled to anything. So, as I have already said, if a compromise verdict is ever allowable, which we are taught to believe it is not, this is not one of the cases. The plaintiff is entitled to recover what he has lost, or is not entitled to anything."

11. The verdict was against the clear weight of the evidence. 20

12. The verdict was excessive.

13. The verdict should have been in favor of the defendant.

14. The plaintiff made out no cause establishing a cause of action against the defendant.

HOWE & DAVIS.

Of Counsel with Appellant.

POSTEA

This case was tried before Judge Nelson Y. Dungan with a jury, at the Essex County Circuit Court on April 28th, 1916, to whom said cause was referred to his Honor William S. Gummere, presiding Justice at said Circuit.

The Court Ordered a Judgment of Non Suit as to P. Frank Stone.

10 The Jury rendered a general verdict against the defendant Alfred F. Baldwin and in favor of the plaintiff for the sum of four thousand five hundred and nine dollars and ninety-one cents.

NELSON Y. DUNGAN,
Circuit Court Judge.

