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Bill of Complaint.

(Filed December 7, 1929.)

In Chancery of New Jersey

10

Between

GARDEN REALTY COMPANY, a corporation of New Jersey,

Complainant,

and

MARY E. M. HADLEY,

Defendant.

On Bill, etc.

20

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

Complainant, Guardian Realty Corporation, a corporation of the State of New Jersey, respectfully shows:

1. On January 29, 1926, Mary E. M. Hadley became indebted to Complainant in the sum of \$78,500.00 and thereupon executed to complainant a bond of that date to secure said sum, payable on April 1, 1930, with interest thereon at 6% per annum, payable on May 1, 1926, and quarterly thereafter.

30

2. To secure the payment of said bond said Mary E. M. Hadley, widow, executed to complainant a mortgage of even date with said bond and thereby conveyed to complainant, in fee, the lands

40

Bill of Complaint.

hereinafter described on condition that said conveyance should be void if payment should be made according to the terms of said bond. Said mortgage, having been first duly acknowledged, was recorded in the office of the Register of the County of Hudson on February 1, 1926, in book 1356 of mortgages for said County, on page 179.

3. The mortgaged premises are described as follows:

"ALL those certain lots, tracts or parcels of land and premises, hereinafter particularly described, situate, lying and being in the Township of Weehawken, in the County of Hudson and State of New Jersey, which on a certain map entitled "Map of Clifton Park, Weehawken, N. J." made by John G. Van Horne, Civil Engineer and City Surveyor, 71 Broadway, New York, N. Y. and filed in the office of the Register of said Hudson County are marked, known and designated as lots numbered three hundred and sixty (360), three hundred and sixty-one (361), three hundred and sixty-two (362), three hundred and sixty-three (363), three hundred and sixty-four (364) and three hundred and sixty-five (365) all of said lots being of the size and dimensions as shown upon said map, all as by reference to said map will more full and at large appear."

4. Said bond and mortgage contain an agreement as follows:

"AND IT IS THEREBY EXPRESSLY AGREED that should any default be made in the pay-

Bill of Complaint.

ment of the said interest or installments or
 of any part thereof, on any day whereon
 the same is made payable, as above ex-
 pressed, or should any tax, assessment,
 water rent or other municipal or govern- 10
 mental 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 installments or any part
 thereof remain unpaid and in arrear for
 the space of thirty days or said tax, assess-
 ment, water rent or other municipal or gov-
 ernmental rate, charge, imposition or lien,
 or any or either of them remain unpaid and 20
 in arrear for the space of sixty days, then
 and from thence forth, 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 Seventy-eight thousand
 five hundred (\$78500.00) dollars with all
 arrearage of interest thereon, shall, at the
 option of the said party of the second part,
 its successors, legal representatives or as-
 signs, become and be due and payable im- 30
 mediately thereafter although the period
 above limited for the payment thereof may
 not then have expired, anything thereinbe-
 fore contained to the contrary thereof in
 anywise notwithstanding; and the said
 mortgagee may, at its option, pay such tax,
 assessment, or water rent in arrear, and the
 amount so paid shall be added to and be-
 come part of the principal sum secured by
 the said bond and by this mortgage, and 40
 shall be payable on demand with interest at

Bill of Complaint.

six per centum per annum, as by the said bond or obligation, and the condition thereof, reference being thereunto had, may more fully appear."

- 10 5. The said mortgage contains an agreement as follows:

20 "AND IT IS ALSO AGREED, by and between the parties to these presents, that the said party of the first part, her heirs, executors, administrators and assigns 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

30 said party of the second part, its successors 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 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."

6. On February 5, 1926, Complainant assigned said bond and mortgage to George W. Steneck, which assignment was recorded February 26, 1927, in book 178 of Assignments of Mortgages for Hudson County on page 253.

- 40 7. On November 1, 1929 said George W. Steneck assigned said bond and mortgage to complainant

Bill of Complaint.

by assignment of that date, which assignment and said bond and mortgage are now in the possession of the complainant.

8. On November 1, 1929 an installment of principal became due and payable on said bond and mortgage amounting to \$867.50, and the same has remained unpaid for more than thirty days and is still unpaid. Complainant hereby elects that the full amount of its said bond and mortgage become due and payable immediately. 10

9. There is now due on complainant's said bond and mortgage the sum of \$58,500.00, together with interest at 6% per annum from August 1, 1929.

10. Said Mary E. M. Hadley has always been in possession of said mortgaged premises. 20

COMPLAINANT IS WITHOUT ADEQUATE REMEDY IN THE COURTS OF LAW AND THEREFORE PRAYS:

1. That said Mary E. M. Hadley, who is the defendant in this suit, may answer this bill of complaint, without oath, and each statement herein made.

2. That an account may be taken of the amount due on complainant's said mortgage. 30

3. That the defendant may be decreed to pay to complainant the amount so found due with interest and costs by a short day to be appointed by this court, and in default of such payment, she be debarred and foreclosed of all equity of redemption in said lands and premises, or

4. That a decree may be made for the sale of said mortgaged premises to raise and pay to complainant the amount so found due on its said mortgage with interest and costs. 40

Stipulation Extending Time to Answer.

5. That a writ of subpoena may issue commanding said defendant to answer this bill of complaint and to abide by such decree as this court may make in the premises.

10

M. J. TACKELLA,
Solicitor of Complainant.

DAVID A. PINDAR,
Of Counsel.

Stipulation Extending Time to Answer.

20

It is hereby stipulated and agreed by and between the parties hereto, through their respective solicitors, that the time within which an Answer and Counterclaim must be filed in the foregoing cause of action, be and the same is hereby extended to the 3rd day of February, 1930.

Dated January 30th, 1930.

M. J. TACKELLA,
Solicitor for Complainant.

M. LESTER LYNCH,
Solicitor for Defendant.

30

40

Answer and Counterclaim.

(Filed February 3, 1930.)

IN CHANCERY OF NEW JERSEY.

Between

GARDEN REALTY CORPORATION,
Complainant,

and

MARY E. M. HADLEY,
Defendant.

75-718.
On Bill, etc.

10

The answer of the defendant, Mary E. M. Hadley,
and the Counterclaim of Mary E. M. Hadley against
the complainant, Garden Realty Corporation.

20

The defendant, Mary E. M. Hadley, answering
the bill of complaint says that:

1. Paragraphs 1 to 5 inclusive are admitted.

2. The defendant has no knowledge or infor-
mation sufficient to form a belief as to the state-
ments in paragraphs 6 and 7.

3. Defendant admits that part of paragraph 8
which reads as follows: "On November 1, 1929,
an installment of principal became due and pay-
able on said bond and mortgage, amounting to
\$867.50, and the same has remained unpaid for
more than thirty days and is still unpaid." As to
the balance of said paragraph, the defendant has
no knowledge or information concerning the same.

30

4. Paragraph 9 is denied.

5. Paragraph 10 is admitted.

40

Answer and Counterclaim.

6. Defendant further shows that complainant does not come into this Court with clean hands for the following reasons:

10 (a) The bond and mortgage set forth in complainant's bill of complaint filed in this cause and sought thereby to be foreclosed, was given by this defendant to said complainant in part payment of the purchase price of the land and premises described in said mortgage and conveyed to this defendant by complainant, by deed dated simultaneously with the execution of the aforesaid bond and mortgage.

20 (b) Defendant was induced to accept the said conveyance and to execute said bond and mortgage through the fraud and misrepresentation of the complainant, which fraud and misrepresentation consists of the following:

I. The complainant, through one of its officers, viz., the President, willfully and fraudulently represented to this defendant prior to the aforesaid conveyance and prior to the execution of the aforesaid bond and mortgage, that the said land and premises did not encroach upon other property;

30 II. The President of the complainant company represented to this defendant that the premises was fully tenanted with the exception of probably two or three vacancies;

III. The President of said company represented to this defendant that the price of \$415,000.00 was a bargain price and the property was being sold at a sacrifice at this price.

40 IV. Complainant, through its President, represented to this defendant that she, after acquiring

Answer and Counterclaim.

this property, would have a comfortable net income from this property for the remainder of her life;

V. The President of said company represented to defendant that the taxes on the said property were in the amount of \$4,000.00 a year; 10

VI. The complainant, through its agents, servants or employees, represented to this defendant that it was unnecessary for her to be represented by a lawyer at the signing of the contract by which she acquired the aforesaid property;

VII. The above statements and misrepresentations were known to said complainant, its agents, servants or employees, to be false and untrue and were willfully and fraudulently made to induce this defendant to purchase the aforesaid premises and to execute the said bond and mortgage. 20

7. At the time of the aforesaid representations and statements of the complainant, through its agents, servants or employees, the true facts were as follows, and were known to said complainant, its agents, servants or employees to be as follows:

(a) The aforesaid premises encroached upon the public highway known as the Boulevard. 30

(b) The aforesaid premises contained 16 vacancies.

(c) \$415,000.00 was an unfair, unreasonable, harsh, unconscionable and exorbitant price for the aforesaid land and premises.

(d) There was and could be no comfortable net income from this property to sustain the defendant for the remainder of her life. 40

Answer and Counterclaim.

(e) The taxes on the property were several thousand dollars more than \$4,000.00 per year.

(f) The defendant should have employed counsel to represent her at the drawing of the contract.

10 8. Defendant relied upon complainant's said false representations and accepted the said conveyance and executed the said bond and purchase money mortgage as a result of relying upon the said misrepresentations and false statements.

WHEREFORE, defendant prays that complainant's bill of complaint be dismissed with costs according to the equity and conscience of this Court.

20 By way of Counterclaim against the complainant, Garden Realty Corporation, the defendant, Mary E. M. Hadley, says that:

30 1. On December 28th, 1925, the complainant and the defendant herein entered into a contract for the exchange of the land and premises of the complainant, which is more fully described in the bill of complaint filed in this cause, with certain other land and premises of the defendant, consisting of four one-family houses located on the southwest corner of Wallnut and Woodland Streets in the City of Englewood, County of Bergen and State of New Jersey.

2. The aforesaid property of the complainant was put in this exchange at a price or valuation of \$415,000.00 and the aforesaid property of the defendant at a price or valuation of \$250,000.00.

40 3. The bond and mortgage described in paragraphs 1 and 2, respectively, of the complaint filed herein, were given by the defendant to the complainant as part of the consideration for the con-

Answer and Counterclaim.

veyance to the defendant by the complainant of its aforesaid property.

4. Defendant was induced to accept the said conveyance and to execute said bond and mortgage through the fraud and misrepresentation of the complainant, which fraud and misrepresentation consists of the following: 10

(a) Complainant, through one of its officers, viz., the President, willfully and fraudulently represented to this defendant, prior to the making of the aforesaid contract of exchange, and prior to the aforesaid conveyance and execution of the aforesaid bond and mortgage, that the said land and premises did not encroach upon other property; 20

(b) The defendant, Mary E. M. Hadley, hereby repeats and makes all the allegations and statements contained in paragraphs 6 and 7, and their respective subdivisions, of the within Answer, a part of this Counterclaim, in the same manner and to the same effect as if said statements and allegations were repeated at length herein and specifically realleged.

5. Defendant relied on the complainant's false representations and but for them, she would not have made the contract of exchange, accepted the conveyance or executed or given the aforesaid bond and mortgage. 30

6. Defendant would not have made the contract, accepted the conveyance or given or executed the bond and mortgage had she known the premises encroached upon the public highway, that there were 16 vacancies in the building, the taxes were more than \$4,000.00 per year, that there was 40

Answer and Counterclaim.

no comfortable net income from the property, or that \$415,000.00 was such an exorbitant and unconscionable price.

10 7. The fair and reasonable price and value of the complainant's land and premises as aforesaid at the time of this exchange was not more than \$250,000.00.

20 8. Unknown to the defendant, and without her consent, the complainant, through its agents, servants or employees inserted in the aforesaid contract and the aforesaid deed a clause that the conveyance of the complainant's property to the defendant was subject to "such state of facts as an accurate survey may disclose."

9. The encroachment of the premises on the public highway renders it less valuable and difficult, if not practically impossible, to resell.

30 10. In addition to having four or five real estate brokers and salesmen call upon the defendant at her home at all hours of the day and evening for three or four weeks prior to the making of the aforesaid contract of exchange, the President of the complainant company, himself, called upon the defendant at her home four or five times each week during this same period, and at each time spent approximately one or two hours arguing with the defendant as to the reasons why she should exchange her property with the complainant's property at the aforesaid price of \$415,000.00. On these occasions he told the defendant that he was doing her a special favor and bestowing upon her a great benefit in selling the defendant the aforesaid property at the price of \$415,000.00, because at this price this property would provide

40

Answer and Counterclaim.

the defendant with a comfortable net income for the remainder of her life. Also on these occasions he pleaded with the defendant to have confidence in him, leave the matter to him, and he would make a good deal for her. He assured her he would not impose upon or take advantage of a widow of her age. 10

11. As a result of these numerous statements and manifestations of loyalty and sincerity on the part of the President of the complainant company, the defendant reposed her confidence in him and trusted in him to the extent of relying upon him and his representations.

This defendant therefore prays:

1. That the complainant, Garden Realty Corporation, may answer this counterclaim and each statement therein made. 20

2. That complainant be enjoined from proceeding on its foreclosure suit until such time as this counterclaim is disposed of.

3. That the contract of exchange hereinbefore referred be reformed.

4. That the deed given by the complainant to defendant be reformed. 30

5. That complainant deliver up the aforesaid bond and mortgage so that the same may be cancelled.

6. That complainant may be decreed to account to defendant for the money representing the difference between the fair and reasonable value of its aforesaid property and the price of \$415,000.00 at which the same was sold to defendant. 40

Notice of Motion to Strike Out Counterclaim.

7. That complainant be decreed to pay defendant the amount so found to be due.

8. That the damages of the defendant be ascertained and the complainant be decreed to pay the same.

9. If the court shall find that the principal of complainant's mortgage is now due, then that the amount so found to be due the defendant may be credited on said mortgage debt; and if the amount so found due this defendant shall exceed the amount of said mortgage debt, then that complainant may be decreed to pay to this defendant the excess and deliver up the said bond and mortgage for cancellation.

M. LESTER LYNCH,
Solicitor for Defendant.

REYMER J. WORTENDYKE, JR.,
Of Counsel with Defendant.

Notice of Motion to Strike Out Counterclaim.

IN CHANCERY OF NEW JERSEY.

Between

GARDEN REALTY CORPORATION,
Complainant,

and

MARY E. M. HADLEY,
Defendant.

75-718.

On Bill, etc.

To: MARY E. M. HADLEY, Defendant.

TAKE NOTICE, that on Monday, February 17, 1930, at 10 A. M., or as soon thereafter as counsel can

Notice of Motion to Strike Out Counterclaim.

be heard, at the Chancery Chambers, No. 1 Exchange Place, Jersey City, I shall apply to the Chancellor for an Order Striking out the Counterclaim filed by you against the complainant in the above stated cause, and to strike out each and every paragraph of said Counterclaim for the following reasons: 10

1. Said Counterclaim does not set forth a good and equitable cause of action against the complainant.

2. That the allegations do not set forth a good and equitable Counterclaim against the complainant.

3. That the said Counterclaim does not show sufficient ground for the interference of a Court of Equity and states nothing which requires the complainant to answer. 20

4. That the defendant has a complete and adequate remedy in the Courts of Law.

5. The defendant has been guilty of laches in that the matters and things alleged in said Counterclaim came to the knowledge of defendant more than four years ago. 30

6. The contract for the exchange of said properties, as alleged in the Counterclaim, was entered into on December 8th, 1925, and the deed to said property was accepted by said defendant on January 29, 1926, and the defendant had ample opportunity to apprise herself as to the matters set forth in said Counterclaim and she well knew all the matters and things as alleged in said Counterclaim, before accepting the deed to said property. The said defendant is guilty of laches and is now 40

Notice to Strike Out Answer.

estopped to set up the matters as alleged in said Counterclaim.

7. The allegations of said Counterclaim are obscure and uncertain.

10 Dated February 11, 1930.

M. J. TACKELLA,
Solicitor for Complainant.

[Duly served February 11, 1930.]

Notice to Strike Out Answer.

IN CHANCERY OF NEW JERSEY.

20

Between

GARDEN REALTY CORPORATION,
Complainant,

and

MARY E. M. HADLEY,
Defendant.

75-718.

On Bill, etc.

30

To: MARY E. M. HADLEY, Defendant.

TAKE NOTICE, that on Monday, February 17, 1930, at 10 A. M., or as soon thereafter as counsel can be heard, at the Chancery Chambers, No. 1 Exchange Place, Jersey City, New Jersey, I shall apply to the Chancellor for an order striking out the answer filed by you in the above stated cause, and to strike out each and every paragraph of said answer, for the following reasons:

40

1. Said answer does not set forth a good and equitable defense to said Bill of Complaint.

Notice to Strike Out Answer.

2. The allegations contained in said answer are sham, and made for the purpose of delay.

3. The allegations contained in said answer are frivolous, and are made for the purpose of delay.

4. The allegations contained in said answer are untrue in point of fact. 10

5. That the allegations contained in paragraph 6 and the subdivisions thereof of said answer, do not set forth a good and equitable defense to the Bill of Complaint; are sham, and are untrue in point of fact. And further, for the reason that the defendant has been guilty of laches in that, the matters and things set forth in said paragraph came to the knowledge of the defendant more than four years ago. 20

6. That the allegations contained in paragraph 7 and the subdivisions thereof of said answer, do not set forth a good and equitable defense to the Bill of Complaint; are sham, and are untrue in point of fact. And for the further reason that the defendant has been guilty of laches in that, the matters and things set forth in said paragraph came to the knowledge of defendant more than four years ago. 30

7. That the matters alleged in paragraphs 6 and 7 and the subdivisions thereof, were known to the defendant before she accepted a deed for said premises.

February 11, 1930.

M. J. TACKELLA,
Solicitor for Complainant.

[Duly served February 11, 1930.]

Stipulation.

It was duly stipulated that hearing on motion to strike out answer and counterclaim be continued to final hearing of cause.

10

Applications for Receiver of Mortgaged Premises.

20

Petition was filed by complainant for appointment of receiver to collect the rents of the mortgaged premises, which petition alleged that there was due on complainant's mortgage the sum of \$58,500 with interest at six per cent. per annum from August 1, 1929, and which mortgage was subsequent to a first mortgage held by the New Jersey Title Guarantee and Trust Company, upon which there was due the sum of \$141,000 with interest from July 1st, 1929, and that the said premises were not worth more than the sum of \$180,000 and at a forced sale would not bring that sum.

30

Order to show cause why receiver for rents should not be appointed was advised by Vice-Chancellor Fallon and after consideration of the affidavits on both sides, Vice-Chancellor Fallon advised an order on January 29th, 1930, dismissing the petition for receiver.

40

Subsequently a second petition for the appointment of receiver was filed by complainant, praying for the appointment of a receiver to collect the rents of the mortgaged premises and alleging that the premises were not worth more than the sum of \$200,000 and at a forced sale would not bring that much.

Order to show cause was advised by Vice-Chancellor Fallon on this second petition bearing date April 15, 1930, and after hearing and affidavits on

Reply to Answer and Answer to Counterclaim.

both sides, order appointing receiver for the collection of rents of the mortgaged premises was advised by Vice-Chancellor Fallon, which order bears date April 29th, 1930.

10

**Reply to Answer and Answer to
Counterclaim.**

(Filed May 12, 1930, Under Stipulation Extending
Time.)

IN CHANCERY OF NEW JERSEY.

Between

GARDEN REALTY CORPORATION,
Complainant,

and

MARY E. M. HADLEY,
Defendant.

On Bill, etc.

20

The Reply to the Answer filed by the defendant and the Answer to the Counterclaim filed by the defendant.

30

The complainant, replying to the answer of the defendant, says that:

1. Paragraph 6 and the subdivisions thereof are denied, except that subdivision (a) is admitted.

2. Paragraph 7 and the subdivisions thereof are denied.

3. Paragraph 8 is denied.

40

Reply to Answer and Answer to Counterclaim.

4. As a further reply, complainant says, that defendant has been guilty of laches in that the matters and things set forth in said Answer, if the same are true, came to the knowledge of the defendant more than four years ago.

10

5. Further replying to the Answer, complainant says that the matters and things set forth in the Answer, if the same are true, came to the knowledge of the defendant more than four years ago, and that after said matters and things came to the knowledge of the defendant she paid the sum of \$20,000.00 on account of the principal sum of complainant's said mortgage, and also continued to make payments of interest on said mortgage, and defendant delayed her claim to an abatement to the point of waiver, and is thereby estopped from now asserting said claim.

20

6. Complainant joins issue with the defendant as to the remainder of said Answer.

COMPLAINANT ANSWERING THE COUNTERCLAIM OF THE DEFENDANT SAYS THAT:

1. Paragraph 1 is admitted.

30

2. Paragraph 2 is denied.

3. Paragraph 3 is admitted.

4. Paragraph 4 and the subdivisions thereof are denied.

5. Paragraphs 5, 6, 7, 8, 9, 10 and 11 are denied.

6. As a further answer, complainant says that defendant has been guilty of laches in that the matters and things set forth in said Counterclaim, if true, came to the knowledge of the defendant more than four years ago.

40

Reply to Answer and Answer to Counterclaim.

7. Further answering the Counterclaim, complainant says that the matters and things set forth in the Counterclaim, if true, came to the knowledge of the defendant more than four years ago, and that after said matters and things came to the knowledge of defendant she paid the sum of \$20,000.00 on account of the principal sum of complainant's said mortgage, and also continued to make payments of interest on said mortgage, and defendant delayed her claim to an abatement to the point of waiver, and is thereby estopped from now asserting said claim. 10

SPECIAL DEFENSES.

1. That the complainant is guilty of laches. 20
2. That the complainant is estopped by her conduct, statements and actions from obtaining the relief sought in her counterclaim.
3. That this Court is without jurisdiction to afford the relief prayed for in her counterclaim.
4. That the motion to dismiss the counterclaim for want of equity and jurisdiction is hereby reserved until the final hearing. 30

M. J. TACKELLA,
Solicitor for Complainant.

Note Joining Issue.

(Duly Filed Within Time.)

IN CHANCERY OF NEW JERSEY.

10

Between

GARDEN REALTY CORPORATION,
Complainant,

and

MARY E. M. HADLEY,
Defendant.

On Bill, etc.

20

The defendant, Mary E. M. Hadley, joins issue on the Answer of the complainant, Garden Realty Corporation, to the Counterclaim of this defendant, and particularly denies paragraphs 6 and 7 thereof.

Defendant, Mary E. M. Hadley, joins issue on the Reply to Answer of the complainant, Garden Realty Corporation, filed herein, and particularly denies paragraphs 4 and 5 thereof.

Defendant answering the Special Defenses of the complainant herein says:

30

1. She denies paragraphs 1, 2 and 3 of the Special Defenses.

The defendant, Mary E. M. Hadley, hereby reserves the right and privilege to make a motion for a dismissal of paragraphs 4 and 5 of the complainant's Reply to Answer, and paragraphs 6 and 7 of the complainant's Answer to Counterclaim, and paragraphs 1, 2 and 3 of the complainant's Special Defenses on or before the final hearing of this cause.

40

M. LESTER LYNCH,
Solicitor for Defendant.

Testimony.

IN CHANCERY OF NEW JERSEY.

Between

GARDEN REALTY CORPORATION,
Complainant,

and

MARY E. M. HADLEY,
Defendant.

On Bill, etc.

10

Hearing of February 26, 1931.

Appearances as below.

Mr. Levenson: I take it that we can stipulate that we are entitled to \$58,500 from the first day of August, 1929, with interest. 20

The Court: Why don't you just make your formal proof?

Mr. Lane: I should state that if your Honor determines that we have no right to have the contract reformed, that if your Honor holds the mortgage as original exhibit was correct, that is, for \$78,500 and we have only paid on account of that \$20,000, then, of course, that will save time. 30

The Court: I suppose to prove a *prima facie* case, is to prove the bond and mortgage?

Mr. Lane: We can stipulate that.

Transcript of shorthand notes of testimony taken in above stated cause, on final hearing, at Chancery Chambers, Jersey City, on April 14 and 15, 1931, at ten o'clock in the forenoon, before His Honor John O. Bigelow, Vice-Chancellor. 40

Testimony.

APPEARANCES:

ABE LEVENSON, Esq. (M. J. TACKELLA, Esq.),
for Complainant.

HARRY LANE, Esq. (M. LESTER LYNCH,
Esq.), for Defendant.

10

Mr. Levenson: Your Honor will recall on the 26th there was a stipulation which makes it unnecessary at this time to prove the amount due on our mortgage and I would like to offer in evidence the mortgage between Mary E. Hadley to the Garden Realty Company, dated the 29th of January, 1926, recorded on the first day of February, 1926, in Book 356 of Mortgages, page 179, covering the lands in question.

20

(Mortgage is admitted in evidence and marked Exhibit C-1.)

Mr. Levenson: And a bond made by Mary E. M. Hadley to the Garden Realty Company in the penal sum of \$157,000, and dated the same day.

(Bond admitted in evidence and marked Exhibit C-2.)

30

Mr. Levenson: And an assignment of the mortgage in question, dated the 5th day of February, 1926, made by the Garden Realty Company to George Steneck of the City of Hoboken, recorded on the 26th of February, 1927, in Book 178 of Assignments of Mortgages for Hudson County.

(Assignment admitted in evidence and marked Exhibit C-3.)

40

Mr. Levenson: And an assignment made by George Steneck of Hoboken to the Garden Realty Company, a corporation of New Jersey, dated the

James F. Gannon, direct.

first day of November, 1929, recorded on the 23rd day of December, 1930, in Book 201 of Assignments of Mortgages of Hudson County on page 63.

(Admitted in evidence and marked Exhibit C-3a.)

10

The Court: I don't know whether the stipulation was written or oral. I presume it was to the effect that nothing had been paid on the principal and interest.

Mr. Levenson: \$20,000 had been paid on the principal.

Mr. Lane: \$20,000 paid on account and interest paid to August 1, 1929.

Mr. Levenson: We rest.

20

JAMES F. GANNON, JR., sworn in behalf of the defendant.

Direct examination by Mr. Lane:

Q. What is your business? A. Real estate.

Q. Your office is in Jersey City? A. Trust Company of New Jersey building.

Q. Through what district have you carried on your business, or county? A. Principally in Jersey City, but generally speaking in Hudson County and in Bergen County.

30

Q. How long have you been engaged in business? A. Twenty-seven years.

Q. Do you know Mr. Schmulling? A. Former Commissioner Schmulling of Hoboken?

Q. Yes. A. Very well.

Q. Did you at any time have this property for sale? A. I did.

Q. When? A. In 1925.

Q. For the Garden Realty Company? A. The property was placed on my books by Mr. Schmulling.

40

James F. Gannon, direct.

ling and the placing on the books was confirmed by Mr. Garibaldi.

Q. At what price was it for sale?

10 Mr. Levenson: I object on the ground that there is no proof that this property was placed by this complainant corporation with Mr. Gannon, and second, there is no proof before the Court that this corporation ever ratified any act of anyone, and third, it is not evidential.

The Court: I think that the first objection that the first two gentlemen were not authorized on behalf of the corporation to place this property with Mr. Gannon for sale.

20 Mr. Levenson: I make that as one of my objections.

The Court: That objection is sound.

Mr. Lane (to Mr. Levenson): Is there any question they were not?

Mr. Levenson: You will have to prove your case.

Mr. Lane: I am inclined to believe the interrogatories quote that.

30 The Court: They have not been offered yet.

Mr. Lane: I have here, if your Honor please, the answer to the interrogatories. The first interrogatory was, "What date did you first acquire title to the property" and the answer was "March 13, 1924." The second interrogatory was, "In what manner did they acquire title" and the second answer was "By purchase." The third interrogatory was, "Who were the officers of the corporation at the time you first acquired this prop-

40

James F. Gannon, direct.

erty" and the third answer was "Harry L. Schmulling, president, and Henry C. Steneck, secretary."

The Court: Schmulling was president?

Mr. Lane: Yes; Henry C. Steneck, secretary.

10

The next interrogatory was "Was Harry Schmulling an officer in your corporation and if so what office did he hold and for what period of time did he hold such office to?" And the fourth answer was, "President, March 24, 1924, to November, 1929."

The fifth interrogatory, "Who composed the Board of Directors of the corporation during the months of December, 1925 and January, 1926?" And the fifth answer was, "Harry L. Schmulling, Joseph J. Garibaldi, Nicholas H. Steneck and Henry L. Steneck."

20

Q. You said Commissioner Schmulling. Is that Harry Schmulling? A. That is the same Harry Schmulling to whom you refer.

Q. Was that placed in your hands by Mr. Schmulling? A. It was.

Q. Was it confirmed by Mr. Garibaldi? A. It was.

30

Q. For the purpose of what? A. For enlisting my aid to secure a purchaser for the property.

Q. And at what price did both the gentlemen put the property in your name?

Mr. Levenson: I make the same objection as before with an additional objection that there is no proof before this Court that either Mr. Schmulling or Mr. Garibaldi had authority to act for the corporation.

40

The Court: I overrule the objection.

James F. Gannon, direct.

Q. And at what price? A. \$250,000.

Q. Can you tell us whether that included only the apartments or both the apartments and the small house? A. Included both properties.

Q. Both properties? A. Yes.

10 Q. Can you recollect whether anything was said by Mr. Schmulling as to his anxiety to dispose of the property?

Mr. Levenson: I object on the ground that there is no proof that Mr. Schmulling had authority to act for the corporation.

The Court: I overrule the objection.

A. Yes; I do recall the circumstances. The same things were then represented in the letter he wrote
20 me in 1925.

Q. Is that the letter (indicating)? A. It is the letter—

Q. Will you read it?

Mr. Levenson: I object. There is no proof that Mr. Schmulling had any authority to act for the corporation and did act for the corporation. A president may go beyond his authority. I submit there is no
30 proof at this point that Mr. Schmulling had a right to act for the corporation and it doesn't show he had any authority. It does show he was president.

The Court: I will admit it.

Mr. Levenson: Also, unless they show in advance to the Court that this man had a right to say or do something that would bind this corporation.

The Court: Overruled.

40 A. The letter is dated Hoboken, October 30, 1923, addressed to James F. Gannon,

James F. Gannon, direct.

"BOARD OF COMMISSIONERS

Department of Parks and Public Property.
Hoboken, N. J.

October 30, 1923.

Harry L. Schmulling
Director

10

Mr. James F. Gannon,
999 Bergen Ave.,
Jersey City, N. J.

Dear Jimmy:

I have succeeded in getting authority from the Garden Realty Corporation, to place the sale of River Cliff Hall in your hands for sale or trade, without interference from Garibaldi or any other broker. In other words if you can consummate a deal you will be entitled to the full commission. As previously stated to you I am anxious to dispose of this parcel owing to the fact that in about a year we will have a local election and I would like to dispose of this particular piece before that time. Will you use your best efforts to make a turnover on this. Any further information desired will be forwarded to you.

20

30

With personal regards, I remain,

Very truly yours,

Harry L. Schmulling
per M. Wetjen."

HS/MW

Q. Have you a letter there from Mr. Garibaldi?
A. I have.

Q. What is the date? A. That's dated October 30th.

40

Mary E. M. Hadley, direct.

Q. What is the date of the other? A. November 16, 1925.

Q. In connection with this property? A. Yes, sir.

Q. Will you read the letter?

10

Mr. Levenson: I object to that.

The Court: I will sustain the objection. I understand Mr. Garibaldi is merely a director.

Mr. Lane: I ask that it be marked for identification.

(Letter marked D-1 for Identification.)

Mr. Lane (to Mr. Levenson): Will you admit that is Mr. Garibaldi's signature?

20

Mr. Levenson: Yes, that is his signature.

Q. At that time did you with the letter,—did you receive any statement or record of expenses or mortgages on this property? A. I did.

Q. And was that connected with the letter from Mr. Garibaldi? A. Yes.

Mr. Lane: I ask that that letter be marked for identification.

(Letter marked D-2 for Identification.)

30

Q. You were subpoenaed by me to produce these records, were you not? A. I was.

Mr. Levenson: No questions.

MARY E. M. HADLEY, sworn in her own behalf.

Direct examination by Mr. Lane:

Q. You are the defendant in this case? A. I am.

Q. How old are you? A. I was born the 15th day of December, 1856, which makes me seventy-four years of age.

40

Mary E. M. Hadley, direct.

Q. You executed an agreement, do you recollect, in December, 1925, for the exchange of certain property that you owned in Englewood, for property up in Weehawken? A. If the agreement is synonymous with the contract, I did.

Q. You owned some property in Englewood prior to that date, did you? A. Yes. 10

Q. When did you acquire that property? A. I think about forty years prior to 1925.

Q. At that time was your husband, Dr. Hadley, alive? A. No, sir; he passed away in 1922.

Q. When you acquired the property, was he alive? A. No.

Q. When you got the property? A. You are referring to the—

The Court: The Englewood property. 20

A. Oh, yes.

Q. Did you after his death erect any houses on this property? A. I did.

Q. How many? A. Four.

Q. I show you four photographs and ask you if you recognize them as pictures of those houses?

A. I recognize them perfectly. (Looking at pictures.)

Q. When did you build these houses? A. They were in course of construction from 1923 to 1925. 30

Q. Had the time you entered into this contract, had they been completed, construction completed?

A. They had been completed about three months.

Q. Anyone living in them? A. No, sir.

Q. How much did it cost you to erect those four houses? A. \$260,000.

The Court: Cost you over \$50,000 apiece.

The Witness: Yes. Well not \$50,000 apiece. 40

Mary E. M. Hadley, direct.

Q. Wait. I will bring it out. One of these houses is a particularly large house? A. Yes.

Q. That is it (indicating on picture)? A. Yes.

Mr. Lane: I offer the pictures in evidence.

10

(Pictures admitted in evidence and marked D-3a, D-3b, D-3c and D-3d.)

Q. Do these houses, three of these houses, face on Walnut Street? A. They do.

Q. And one on Woodland Street? A. Three on Walnut Street and the other one on Woodland.

Q. Exhibit D-3, is that a photograph of the house on the corner of Woodland Street? A. A very good picture.

20

Q. That is the front of the house? A. Yes, sir.

Q. At the rear does the land slope down to the rear of the house? A. Very decidedly so. When the house was built the ground had to be materially filled in.

Q. In the back of that house is there a basement that is not shown on the photograph? A. No, sir.

Q. Do you know how many rooms in that house? A. Fourteen rooms and three baths. In reference to the basement, there is a garage there.

30

Q. Alongside of the four houses? A. The house on the corner, to which we have just made reference.

Q. Did you after building these houses, do anything towards endeavoring to dispose of them? A. I did.

40

Q. And what did you do; just tell us in your own words? A. I offered them to several of the interested real estate men in Englewood, and to Mr. D. Young, a real estate man in Englewood, with an office on the Cliff.

Mary E. M. Hadley, direct.

Q. What happened? A. Mr. Young, who had been well known, said that he thought he would do better by making an exchange and to that end he looked at several properties himself—

Q. As a result of your talk to Mr. Young, did you consider an exchange for some property in New York City? A. Yes, sir. 10

Q. That did not go through? A. No, sir.

Q. Did you see any other real estate broker other than Mr. Young? A. Mr. Young brought it to the attention of the office of Michel & Moore.

Q. Who are they? A. Real estate people at 12 Journal Square, Jersey City.

Q. When was this particular property in Weehawken on which this mortgage is, when was that first brought to your attention, and by whom? A. By Michel & Moore, early in November of 1925. 20

Q. During any of these negotiations did you have any conversations with Mr. Harry Schmulling? A. Several times.

Q. Where? A. At my own house. In his office in Hoboken and in the office of Mr. Levenson, also in Hoboken.

Q. Will you state over what period of time these conversations were had with Mr. Schmulling? A. From the time that the property was first presented to me to the close of the transaction in January of the next year. 30

Q. When you say closing, you mean closing of title? A. Yes.

Q. Prior to the entering of the contract, the execution of this contract, how many times would you say you had seen Mr. Schmulling? A. At least half a dozen times.

Q. What had Mr. Schmulling told you about this property? 40

Mary E. M. Hadley, direct.

Mr. Levenson: I object to it upon the ground that I stated before, that there is no proof that Mr. Schmulling had any authority to act for this company.

The Court: I overrule your objection.

10

Mr. Levenson: May I say at this time, rather than standing up every minute, that I would like to make a general objection to all this line of testimony.

The Court: I think the president has power to make negotiations, and if for some other reason he acts beyond the scope of his authority, I would say the burden is on the corporation to show that. I will understand you are objecting to all statements by Mr. Schmulling in reference to this transaction and will overrule same.

20

A. He represented to me that it was a good income paying property and that it would yield a net income of \$3,000 per year, and went into great detail concerning the property.

Mr. Levenson: I ask that that be stricken out and this witness state what the conversation was.

30

The Court: You object going into great detail. That will be stricken out.

Q. We want these details. Tell us what those details were and tell us all that happened? A. I think somewhat to create an impression Mr. Schmulling began by giving his previous life, telling me that he—

The Court: That I think is immaterial.

The Witness: Very well.

40

Q. Tell us what Mr. Schmulling told you about

Mary E. M. Hadley, direct.

this particular property; tell me how many times he came and how many times he reiterated, if he did, and what he did to get you to purchase this property? A. He did all he could possibly do—

Mr. Levenson: I ask that that be stricken out. 10

Mr. Lane: I consent.

The Court: Anything you can think about this property, tell me.

The Witness: He said it was located at 875 Boulevard, which was the principal street in that section; the street was controlled by the county and that it was to be greatly improved; immediately opposite the house the Commissioners were to create a beautiful park. He showed me a diagram of that park and also invited me to go to his office to see a copy of this map. Mr. Schmulling spoke of there being forty-five apartments, there being an excellent janitor and that he would take excellent care of my interest if I acquired it; and had good paying tenants. Moreover, he said he would work with me and for me and do everything to make the property paying property. After an exhaustive conversation along that line and in my house I said to him, "Mr. Schmulling, if it is such a good paying proposition, why don't you keep it yourself; you are a young man and I am an old lady." He said he was in politics and was likely to be deeply involved and couldn't hold the property, and only for that reason he was getting rid of it. He offered his intimate cooperation; would give me the benefit of his experience and would leave 20 30 40

Mary E. M. Hadley, direct.

10

me a very excellent janitor who would take care of the house; the wife took the night shift and the son the day shift, and he was sure I would have very little trouble. In less than three weeks after I took the place the janitor and his son removed to work for one of the buildings owned by the Stenecke firm in Hoboken.

The Court: I think you told me that Mr. Schmulling said that the property would yield \$3,000 a year, or at least \$3,000. Did he give you any figures?

The Witness: Yes, sir.

The Court: What do you recall?

20

The Witness: He said there were forty-five apartments and at that time there were but four vacant, and I found there were but sixteen or eighteen which became vacant. And from those forty-five apartments he said I should realize at least \$3,000 a year net, when they were rented. Moreover, we went into some detail concerning expenses. He told me that taxes were in the vicinity of \$4,000 and upon ascertaining the fact, they were near \$7,000.

30

Q. Did you ascertain that before you entered into the contract? A. No, sir; not until afterward.

Q. Was there anything said that particularly brought out that statement from Mr. Schmulling about the \$3,000 income? A. Yes, sir. For the time being I said I would possibly be all alone to handle it; and he said he was very sure it would yield that income; he said it again and again.

40

Q. Did you tell him any reason why you wanted it to yield that income? A. Yes.

Q. What? A. I wanted that to take care of me.

Mary E. M. Hadley, direct.

Dr. Hadley hadn't left any business to his two sons and there was nothing for them to step into.

Mr. Levenson: I object.

Mr. Lane: I consent.

Q. What did you tell Mr. Schmulling? A. I said I have to have an income. 10

Q. Did you have any lawyer throughout this transaction? A. No, sir; I was told in the office of Mr. Levenson, where the entire transaction took place, that I didn't need a lawyer.

Q. By whom? A. By Mr. Levenson and also by Mr. Schmulling and the agent who represented Michel & Moore. Mr. Levenson went on to say that he would represent me justly and just as well as an outside party would. It was not until the last minute, and I was anxious, and I asked the firm of Corbin & Harty to come in, and Mr. Corbin was engaged. Mr. Harty, his assistant, assisted me at the eleventh hour. 20

Q. Was that before the contract was entered? A. No, sir.

Q. I show you a paper and ask you if you recall that as the contract you signed? A. Yes. It has been read to me, I think.

Q. That is your signature there? A. Yes. 30

Q. Where were you when you signed it? A. 187 Prospect Street; in a little room I dignify by the name of office.

Q. Whose office was it? A. It was the office of Henry L. Simmons Estate, of which I am a trustee.

Mr. Levenson: I offer the agreement in evidence.

(Agreement admitted in evidence and marked Exhibit C-4.) 40

Mary E. M. Hadley, direct.

Q. What led immediately up to the signing of the contract by you, Mrs. Hadley? A. The great faith which Mr. Schmulling injected into the whole situation.

10 Q. What did he say? A. He said it must be done in a hurry if it was done at all, as he had only the day to give to it. He had tickets in his pocket for a trip to the South.

Q. Did he show you any tickets? A. He did take them from his pocket and showed them to me.

By the Court:

Q. When was the contract signed? A. The contract was signed in 1925, December 28th.

20 Q. A month and a half after you started to negotiate for the exchange? A. It took a great deal of persuasion to convince me.

Q. Was anything at that time said by Mr. Schmulling about trusting him? A. Yes.

30 Q. Tell us what it was that was emphasized? A. I was about to bring out the fact that he emphasized the fact that other people trusted him enough to make him a Commissioner in Hoboken, and he had every reason to believe that I would do right by him; but he did not continue talking like that after the thing was prolonged.

40 Q. What do you mean you were discussing it for a month and a half after? A. Not after the climax was reached. The proposition was presented to me in the office of Michel & Moore, and particularly by Mr. Michel, and when Mr. Michel saw I was not interested, they turned the thing over to a gentleman from their office, Mr. Sears, and it strung along; and finally Mr. Schmulling said we must do something now, or never; and he

Mary E. M. Hadley, direct.

was in a special haste because he was going to the South in connection with some real estate deal down there.

Q. Did you ever see Mr. Garibaldi in this transaction? A. Just once. Not in connection with this transaction but in connection with Mr. Sears who came to my office very often. 10

Q. Did you know that Mr. Garibaldi had any interest in the Garden Realty Company? A. Not in the slightest.

Q. Who did you understand were the brokers in the case? A. Michel & Moore.

Q. In your conversation with Mr. Schmulling, was there anything said about your being a widow? A. Oh, yes. 20

Q. Tell us. A. Mr. Schmulling emphasized the fact that he would always give me more assistance than otherwise because I was a widow, and he would see that my interests were in every way conserved.

Q. Had you any experience in apartment houses prior to this? A. Not at all; not at all.

Q. At the time of closing the title, where did that take place? A. In Mr. Levenson's office.

Q. Do you recollect being in the Title Company's office at any time? A. Particularly well. 30

Q. How did you get over there? A. We went from Mr. Levenson's office on Friday afternoon, to the Title Company, and found that we were too late to do business. My lawyer was present.

The Court: What?

The Witness: The only time my lawyer was present.

Q. How many times did you see this property before you bought it? A. Twice. 40

Mary E. M. Hadley, direct.

Q. With whom did you see it? A. Both times with Mr. Sears, Mr. Wiley B. Sears.

Q. No one else with you? A. Not that I recall.

Q. Did you go through the building? A. No, sir. I saw the basement of the building, the main hall
10 and one vacant apartment.

Q. Immediately after you took title to this property, how many vacancies were there? A. Sixteen.

Q. Did you find out what the taxes were? A. I may have had some information concerning the taxes when they came to me for adjustment; the taxes were due on December 1st, and the title was passed the following January, but I did not find it until I had to get together the tax money in June. I went to Commissioner Schmulling and said, "You
20 said the taxes were in the vicinity of \$4,000." And he said, "That is all what they were for us." He said, "All you have to do is to go before the Commission on a revaluation of the property."

Q. This was about June? A. No, the taxes were due in June. It was considerably prior to that, possibly March or April.

Q. Were they about \$4,000? A. No, the taxes I paid was \$6,449.

Q. Did you have any talk with Mr. Schmulling at any time about any encroachments? A. No,
30 sir; I did not.

Q. Did you find out whether there were any encroachments? A. Later on.

Q. When?

Mr. Levenson: I object.

The Court: Perhaps the order of proof.

Mr. Levenson: I withdraw the objection.

The Court: When did you find out?

The Witness: I found out in April or
40 May, 1928.

Mary E. M. Hadley, direct.

Q. Did you at any time after you got this property, have any talk with Mr. Schmulling about it?

A. Indeed I did, several times.

Q. Tell us of all these talks and what was said?

Mr. Levenson: I think counsel ought to fix the time. 10

The Court: When was the first talk? I understand Mr. Lane means talk after you got the deed?

The Witness: In considerably less than a year. It came to me that I was assuming a tremendous responsibility to pay \$20,000 on the first mortgage. I went to Commissioner Schmulling—

Mr. Levenson: I object to this. 20

The Court: I will permit it.

Q. Answer that. A. I went to see Mr. Schmulling after I had taken title to the property and then I realized the dreadful work I might be confronted with in getting together the \$20,000 to pay on the second mortgage that was to be paid within the year.

The Court: That was the mortgage held by the Garden Realty Company? 30

The Witness: It was to be a payment of \$20,000 in the first year. I told Commissioner Schmulling it seemed well nigh impossible with my expenses with the house and besides that I would have the taxes to pay and with the taxes over \$6,000 it seemed well nigh impossible. He said he would secure a buyer. I said, "If you don't, what will I do?" and he said, "We will take it off your hands." That was a tremendous relief to me; but whether I came out of that secure 40

Mary E. M. Hadley, direct.

10 or not I did not feel sure. With property inherited I consummated a sale at a very low price, taking back a \$14,000 purchase money mortgage, and I offered that mortgage and it is still in the City Trust Company of Passaic, bearing interest of six per cent. on the payment of that \$20,000. I told Mr. Schmulling how difficult it would be and he again reiterated that he would take it off my hands.

Q. Did they? A. No, they didn't, they didn't make any overtures.

Q. Did they say anything about you taking it and giving it a trial? A. They questioned Mr. Schmulling.

20

Mr. Levenson: I object.

The Court: I think it is competent.

A. Mr. Schmulling said I hadn't given it a fair trial. What could I expect to do in a year or so. That it would take a good deal longer than that to get it on a paying basis. Moreover, Mr. Schmulling recalled the fact that in that house there had occurred a disastrous fire; and it was not so much in getting the house back in good shape, but in giving the house a bad reputation because the tenants were the type to be very temperamental and they said the fires were due to a short circuit. I went to considerable expense to prove that.

30

The Court: They took place after you took title?

The Witness: Yes, sir, two years after.

40

Q. Did Mr. Schmulling say anything about reputation? A. He said, "Yes, Mrs. Hadley, don't you

Mary E. M. Hadley, direct.

know those fires give your property a bad eye and you will have to be patient."

Q. Was anything said by Mr. Schmulling prior to the closing of the contract about the rental of that house, that one-family house? A. The one-family house was leased to a gentleman by the name of Drescher, Captain Drescher of the North German Lloyd people, and the lease had less than six months to run and they did stay a little after, but the rent was \$165 a month; and he said I needn't worry in the least; that they could sell it in no time for \$45,000, but nothing ever came of that statement. 10

Q. What do you mean nothing? Did you tell them to sell it; what did you tell them to do? A. I kept on urging and Mr. Sears said Christmas would not go before the house would be sold. 20

Q. After Drescher moved out were you able to rent it? A. No, it is not rented now.

Q. Have you had any conversation with Mr. Schmulling since you took title, first giving us the date as you remember? A. I can't quite say, Mr. Lane. There were at least six conversations that occurred. Mr. Schmulling, I believe, passed away in November. As I moved out in November,—I may have,—I am trying to get the time,—I saw Mr. Schmulling possibly in September of 1928 and I told him how disappointed I was and that I would have to give it up; and he said, "Hold on, hold on, I will help you." 30

Q. You say this was September? A. If my recollection serves me I think it was in September.

Q. You are sure you moved from that house in November, 1928 or 1929? A. 1928.

Q. How many years, last year? A. Two years last, it is going on three. 40

Mary E. M. Hadley, direct.

The Court: How long before this foreclosure suit was started?

The Witness: Shortly after Mr. Schmulling's death.

10 The Court: This foreclosure suit was started in November, 1929, a year ago last November.

The Witness: Then I guess it was 1929 when I moved out, instead of 1928. I guess it was 1929.

Q. You speak of several conversations. Where did you see Mr. Schmulling? A. In my own house.

Q. This was after. I am talking after you took the property. A. Oh, I saw him more particularly
20 in the office of the Municipal Building in Hoboken, and I think nowhere else.

Q. Where did you go to pay the interest? A. The office of the Garden Realty Company was in the Steneck Bank Building on River Street, Hoboken.

Q. Did you ever see Mr. Schmulling there? A. Once.

Q. I am talking about after? A. Yes.

Q. Mrs. Hadley, what was there, if anything, that
30 persuaded you to finally enter this contract? A. The reiterated representations by Mr. Schmulling that it would afford me an excellent living for the rest of my life.

Q. Did you say anything to Mr. Schmulling about your having a real estate agent to look over this property? A. I did, I told him I was unfamiliar with values in that section; that I was unfamiliar with real estate people, but I had spoken to a man and I had suggested Mr. Doremus who was a man
40 of estimable reputation in that field, and he turned it down.

Mary E. M. Hadley, direct.

Q. Who turned it down? A. Mr. Schmulling.

Q. What do you mean? A. He said he gave exact values and I said I didn't like the figures and the price you are offering me. Yet I went through it.

Q. What was said about price, if anything, and by whom? A. Constantly by Mr. Schmulling, and the best price they could give me for my property. 10

Mr. Levenson: I object to this on the ground that the contract speaks for itself.

The Court: Objection overruled.

A. The price that Mr. Schmulling was offering for the four houses in Englewood was \$250,000, and the price he put on the apartment house and the house was \$415,000. 20

The Court: He was offering \$250,000?

The Witness: For the four houses.

The Court: And he was asking what?

The Witness: He was asking for the apartment at 875 Boulevard East, and the house 11 Columbia Terrace, \$415,000.

Q. What, if anything, did Mr. Schmulling say to you about that price of \$415,000 for this apartment? 30

Mr. Levenson: I object to this upon the ground as I have already indicated to your Honor, there was no proof Mr. Schmulling had authority to act; and second, the contract in evidence speaks for itself.

The Court: Objection overruled.

Q. What did he say about that price of \$415,000? A. He said it was a bargain. There was a great future for that property, and he would surely stand 40

Mary E. M. Hadley, direct.

by his figure and not modify his figure; that at that price it was a bargain.

Q. Was there ever any net income from this house, this apartment, while there? A. No.

10 Q. After you took this house did you put in improvements? A. Yes, sir; almost immediately to satisfy tenants I put in an oil heating system; and the plumbing was very much out of repair, and I had to spend over \$1,000 for that.

Q. How much for the oil heater? A. Something like \$1,200.

Q. Did that include both boiler and oil heater? A. You see the oil heater,—it is like this,—the oil heater together with a very superior hot water system cost over \$1,200, but the plumbing was entirely extra from that, Mr. Lane.

20 Q. After you had taken this property, did you yourself go there and live? A. I did.

Q. When did you go there? A. Not until October of 1926.

Q. And in addition to that did you have it in the hands of Michel & Moore and James F. Gannon, collecting the rents and running it? A. I had it in the hands of Michel & Moore for a year and a half and then turned it over to the heirs of James F. Gannon & Sons.

30

Q. And you stayed there until November, 1929, when you left? A. Yes, sir.

Q. Did you leave Englewood and move there? A. Yes, sir; I thought I would be on the property and do more justice to it.

The Court: How soon after you took title did you move there?

40 The Witness: I took title in January, 1926; we did not go until October or November of that same year.

Mary E. M. Hadley, direct.

The Court: You stayed there until about November, 1929?

The Witness: I did.

Q. Mrs. Hadley, to whom, if anybody, did you pay the commissions for this? A. Immediately after the deed was filed and I had taken title I was taken by Mr. Wiley Sears to the office of Mr. Garibaldi; I think it was the morning of Saturday; and the first payment of commission was, I think, \$5,000, if my recollection serves me. For the balance I gave notes due and payable at different times. 10

The Court: Who did you pay the \$5,000 to?

The Witness: That, I think, was made payable—it may have been to Mr. Garibaldi, because I questioned what he had to do with it. 20

The Court: You don't remember?

The Witness: No.

Q. To refresh your recollection, will you refer to this check I show you (indicating)? A. It might have, but I couldn't be fairly sure, because this gives the date February 15, 1926, and for the sum of \$4,000. And as I recall, Mr. Lane, I paid \$5,000. 30

Q. Here is a check the same day, February 15, 1926, which check is made to Wiley Sears for \$500. Those two checks would make up \$5,000? A. Yes, sir.

Q. Have you any recollection why you made one of those checks to Garibaldi for \$4,500 and one to Wiley Sears for \$500, on that date? A. I can't say; I did only as I was told to.

Q. By whom? A. Mr. Wiley Sears represented the firm of Michel & Moore. 40

Mary E. M. Hadley, direct.

Q. Are you confusing the first payment of \$5,000 with the payment of \$5,000 that you made to the Garden Realty Company of \$5,000 on November 22, 1926? A. No, sir; I think they are separate and apart and distinct.

10 Q. Do you know what you paid that \$5,000 to Garden Realty Corporation? A. No, I cannot say; I think Mr. Porter can tell you.

Q. I show you another check of February 19, 1926, to the order of Wiley Sears for \$1,750, which is endorsed Wiley Sears and for deposit Joseph F. Garibaldi. Do you know about that, what that was? A. I recall that check to Mr. Sears, in that amount, \$1,750, but I am not conversant for the reason of Mr. Garibaldi's endorsement.

20 Q. There is a check of March 1, 1926, for \$283.33. Do you know what that is? A. Yes, sir; in connection with the commission and a certain amount of interest added.

Q. June 3, 1926, to Wiley Sears for \$500? A. No; I don't think that has anything to do with that transaction.

Q. Here is one of February 1st? A. What year?

Q. 1926. A. Yes.

30 Q. To the order of Wiley Sears and endorsed by him, \$1,000. Did that have anything to do with this? A. Yes.

Q. This check of February 15, 1926? A. Had to do with commissions.

Mr. Lane: I offer these checks in evidence.

(Checks admitted in evidence and marked Exhibits D-5, D-6, D-7, D-8, D-9, D-10 and D-11.)

40

Q. Mrs. Hadley, as I understand it, this property

Mary E. M. Hadley, cross.

that was conveyed to them has never been conveyed back to you; they still have it? A. No, sir.

Q. They never conveyed it back to you? A. No.

Q. While you were in this apartment house you paid off \$20,000 on account of the mortgage? A. Yes, sir. 10

Q. Did you keep the premises in repair? A. No. I rather superintended the repairs, but they were relegated to the janitor.

Q. Did you pay for the repairs? A. Certainly.

Q. You left that property you say in November, 1929? A. Yes, sir.

Q. You have not collected any rents or anything else since that time? A. No, sir.

Q. Did you say anything to Mr. Schmulling about he could take his property back? 20

Mr. Levenson: I object; that is very leading.

The Court: I will admit it.

A. I certainly did, Mr. Lane; said it over and over again.

The Court: What did you say?

The Witness: I said it was beyond me to make any progress there and have an income; there was nothing in sight. 30

Q. When you said you wished him to take it back, did you ask him for anything? A. Nothing except to take it back.

The Court: Did you tell him you wanted to give him a present of it?

The Witness: I said, "Take the property off my hands and let all things be forgotten." 40

Cross examination by Mr. Levenson:

Q. In reference to the occupancy of that apart-

Mary E. M. Hadley, cross.

ment house isn't it a fact that you took an apartment there and were in possession of the apartment before you took the title? A. No, sir.

Q. You know Mrs. Fleming? You see her in court? A. Yes, sir.

10 Q. I show you what purports to be an agreement dated the 31st day of December, 1925, between the Garden Realty Company and Mary E. M. Hadley, and ask you whether that is your signature. A. It looks like it, but I wasn't there.

Q. Won't you be certain whether that is your signature? A. I don't like to confirm that this is my signature.

20 The Court: Do you know your signature when you see it?

The Witness: Yes.

The Court: Is that your signature?

The Witness: I really do not know.

Q. Look at Defendant's Exhibits D-5, D-6, D-7, D-8, D-9 and D-10 and D-11. Will you examine the signatures on these checks and state whether or not any or all of them are your signatures? A. Every one of them.

30 Q. Taking another look at this signature that I have shown you before, and ask you to examine it more closely, and tell us if that is your signature? A. I am still in doubt if it conveys to you the idea of whether I was in that—

Q. Is that your signature? A. I am in doubt.

Q. Be good enough to take a good look at it. A. Yes, sir.

Q. Have you taken a good look? A. I have.

40 Q. Will you say it is your signature? A. I am still in doubt.

Q. Do you recall expressing a desire to go into

Mary E. M. Hadley, cross.

the apartment to try it at the time of taking the deed? A. Oh, no.

Q. Weren't you advised you would be a vendor and buyer in possession and that you would have to take a lease? A. No.

Q. Wasn't there any thought of you occupying an apartment in that apartment house prior to the time of taking title? A. No. 10

Q. Are you certain that you didn't move in then, now, in the year 1926? A. Most certainly I did not.

Q. Have you ever seen this paper I now show you, before this date? (Witness is shown what purports to be a lease.) A. No; I don't recall that I have.

Mr. Levenson: I offer that for identification. 20

(Lease marked C-5 for Identification.)

Q. You said in your direct examination you were not acquainted with values in Weehawken? A. Not in the lease.

Q. Did you speak to Mr. Arthur Corbin about this property before you took it over? A. No, sir.

Q. Do you know Mr. Lockwood? A. Quite well.

Q. Did you speak to Mr. Lockwood? A. No. 30

Q. Did you ask Mr. Corbin to send someone to make an examination of this apartment house before you bought it? A. No, sir.

Q. What is Mr. Lockwood's business? A. Real estate.

Q. Do you see him in court this morning? A. No, sir.

Q. Is Mr. Lockwood here? (A gentleman in the audience stands.) Do you recognize him? A. I suppose it is he. 40

Q. You are not certain? A. No, sir; because I knew Mr. Lockwood to be quite old.

Mary E. M. Hadley, cross.

Q. Isn't it a fact that before you entered this contract you had a talk with Mr. Lockwood in your home? A. Yes, sir.

Q. Wasn't that talk with respect to this apartment house? A. Not at all.

10 Q. Did you ask him to make an inspection of this apartment house? A. No.

Q. Did he at any time report to you that he had made an inspection of this apartment house? A. Not that I recall.

Q. Would you say that he did or did not? A. I would say he did not.

Q. Did you have a talk with Mr. Corbin? A. About the apartment house?

20 Q. Did you have a talk with him? A. Will you kindly modify the statement a little bit. Mr. Corbin has been our counsel for twenty-five years and I may have made some reference, but not asking for advice, or taking it or otherwise.

Q. Why not? A. He is not familiar with the values and I would have no reason to ask him.

Q. These premises in Englewood, owned by you, have been vacant for how long? A. From the finishing of the contract, for about three months.

30 Q. Was there any question about the mortgage being called? A. No.

Q. This exhibit marked C-4, is the contract in question, isn't it? A. Yes, sir.

Q. Where did you sign that? A. I signed it in the office which I have at 126 Prospect Street, Passaic.

Q. And from whom did you get the contract? A. I think it was delivered by Mr. Wiley B. Sears and Mr. Garibaldi.

40 Q. To you? A. Yes, sir.

Q. In Englewood? A. In Passaic.

Mary E. M. Hadley, cross.

Q. At the office of the Simmons Estate? A. Yes, sir.

Q. You make that your office, do you? A. I have no personal right to it, but it is my office connected with the trusteeship of the Simmons Estate.

Q. You read it before you signed it? A. Yes, sir. 10

Q. And you showed it to Mr. Porter? A. Yes, sir.

Q. And who else? A. No one else.

The Court: Who is Mr. Porter?

The Witness: He is my secretary.

The Court: Is he a real estate man?

The Witness: He is a certified public accountant. 20

Q. By the way, Mrs. Hadley, did the estate make investments in real estate? A. Yes, sir.

Q. You make appraisals for them? A. Occasionally, we lent money on mortgages.

Q. You had some that you examined? A. Not many.

Q. How long have you been trustee? A. Nearly forty years.

Q. How many houses have you looked at in that time on which mortgages were placed? A. Not more than a dozen. 30

Q. They would be scattered throughout Hudson and Bergen counties? A. No, I don't think we have any mortgages in Hudson County, we have several in Bergen and in the transaction with Mr. Levenson, we have one in Fanwood, but I don't know the county.

Q. That is held by the Simmons Estate? A. It is.

Q. Who made that appraisal? A. Mr. Levenson.

Q. You haven't taken a loss on it? A. No, sir. 40

Mary E. M. Hadley, cross.

Q. When you speak of Mr. Levenson, you mean my brother here? A. At your right-hand there.

Q. The premises in Englewood, you caused them to be build? A. Yes, sir.

10 Q. Supervised the building of them? A. Not at all.

Q. You retained an architect? A. An architect and engineer and a builder, and Mr. Porter.

Q. You say Mr. Porter, of the Simmons Estate? A. He is simply secretary of the Simmons Estate.

Q. This property was built under your supervision? A. Somewhat under my direction after the plans had been submitted to me and I had agreed to it.

20 Q. As they were built you supervised them? A. Merely the interest as an owner.

Q. You watched the construction? A. Yes, sir.

Q. And you arranged the financing? A. I did.

Q. Secured the mortgage from the bank? A. The Title Company.

Q. You took care of the payments on the mortgage? A. Yes, sir.

Q. In addition to your duties—

30 The Court: May I interrupt? Who determined whether to build those four houses or not?

The Witness: It was I.

The Court: Did you?

The Witness: Yes.

The Court: You used your own judgment, on your plans?

The Witness: I took careful instruction on those plans and also saw a very intimate friend who advised me.

40 Q. You certainly owned other property at that time, didn't you? A. I had one piece of property.

Mary E. M. Hadley, cross.

Q. Where was that? A. Located in Passaic, at the junction of River Road.

Q. What type of property is that? A. A building.

Q. What type? A. A building that had been a blacksmith job and had been remodelled and at that time was rented for a garage.

10

Q. Had you done the remodelling of it? A. Not at all.

Q. You had some confidence in Mr. Porter's ability in inspecting your real estate? A. Every confidence.

Q. He accompanied you to the Title Company at the time of the closing; was in attendance at the time of the closing? A. He happened to be at the Jersey City office of the Title Company.

Q. And happened to be there at your direction? A. Yes, sir. Mr. Sears asked him to go.

20

Q. You wanted him? A. I asked him to go.

Q. After you signed this contract what did you do with it? A. I imagine it was sent back.

Q. Didn't you make application for changing of title, for a title policy? A. Yes, sir.

Q. When did you make that? A. When I became quite dissatisfied.

Q. When? A. That may have been within a few weeks of the closing.

30

The Court: A few weeks after you got the deed, or a few weeks, when you got dissatisfied.

The Witness: A few weeks before I got it. I knew they had—

The Court: No. I just wanted the time.

Q. This contract was signed by you on the 28th of December, 1925? A. Yes, sir.

Q. Then, isn't it the fact that you made the ap-

40

Mary E. M. Hadley, cross.

plication for the policy on the 8th day of January, 1926? A. That is about two weeks prior to taking of title.

Q. And it is also eleven days after the making of the contract, isn't it? A. Yes, sir.

10 Q. Who accompanied you to the Title Company at the time of making the application? A. It may have been my smallest son,—I have two sons,—or it may have been Mr. Porter.

Q. At that time you had complete confidence in Mr. Schmulling? A. No, I did not.

Q. When did you lose confidence in Mr. Schmulling? A. When Mr. Schmulling told me that the property was fully worth \$415,000.

20 Q. But that was plain to you at the time of the signing of the contract? A. No, sir.

Q. Didn't you testify in your direct examination that he had told you that before you signed the contract? A. When we were negotiating price.

Q. That was before signing the contract? A. Yes, sir.

Q. You had lost confidence in Mr. Schmulling before signing the contract? A. Somewhat.

Q. Not wholly, though? A. No.

30 Q. But you were skeptical about the situation and Mr. Schmulling's description? A. Not as far as the description, but I was skeptical as to the situation.

Q. Isn't that why you wanted to move there and examine the property yourself? A. Not at all.

Q. How many times prior to the time when you actually accepted, had you been in that building? A. Twice.

40 Q. Why didn't you go there more often? A. It was impossible. I could not go unless accompanied.

Mary E. M. Hadley, cross.

Q. Had you asked Mr. Sears to go there with you? A. I did.

Q. How many times had you asked him to go with you? A. Once.

The Court: Why didn't you go alone?

10

The Witness: Being brought up the way I have.

The Court: It was a respectable place to go to live?

The Witness: If the agent should present the situation it would be very much more desirable.

Q. The agent you speak of is Mr. Sears? A. Michel & Moore.

Q. And Michel & Moore represented you? A. Yes, sir.

20

Q. Did you have confidence in Mr. Sears? A. I wish you wouldn't put that question.

Q. You know that Mr. Schmulling passed away before this bill was filed? A. I do not know the time of the foreclosure; I know approximately the date of Mr. Schmulling's passing.

Q. November, 1929? A. I think so.

Q. You know that this foreclosure was started the following month? A. So you say.

30

Q. Between the time of the making of the contract and the time you accepted the deed, did you visit this apartment house? A. Yes, sir.

Q. How many times? A. I have only been in the house twice, once before and once after.

Q. You were in that neighborhood very often? A. No, sir; had no reason to go to that neighborhood.

Q. If you were suspicious about the house and suspicious about Mr. Schmulling, these two rea-

40

Mary E. M. Hadley, cross.

sons,—did they give you any further reason to make an inspection of the apartment house? A. No, sir.

Q. You simply thought you would take a chance?
A. I think it was a very great deal more than a
10 chance. He explained that it would give a very good income for the rest of my life.

Q. You took the figures he had of the expenses?
A. Yes, sir.

Q. Did you check them? A. I found they were wrong.

Q. When did you check them? A. Before I took title.

The Court: Did you find they were wrong
20 then?

The Witness: Yes; with respect to the taxes.

Q. You did know that the taxes were in excess of \$4,000 at the time you took title? A. I was not positive; I had not seen the bill; I was told so.

Q. You saw the closing statement? A. It was made by word of mouth.

Q. Didn't Mr. Harty attend? A. No. He was only on the scene twice.
30

Q. At the time you took the title wasn't Mr. Harty present at Mr. Levenson's office and at the Title office? A. On those two occasions he was.

Q. You say you were there on a Friday and had to come back on a Saturday; aren't you mistaken? A. If my memory serves me, we were there on a Friday afternoon and Mr. Schmulling 'phoned the office and told one of the representatives to remain as late as possible; but we could
40 not do it that night and we had to come back Saturday morning.

Mary E. M. Hadley, cross.

Q. Didn't you stay there until about six o'clock?

A. It is my—

Q. Didn't Mr. Harty make up figures of adjustment at that time? A. I don't know.

Q. You had him there for that? A. No doubt he did his duty.

10

Q. Didn't you get a closing statement from anyone? A. That I don't recall. If there was a closing statement it was handed to Mr. Harty or to Mr. Porter.

Q. If there was one you did not see it? A. I have seen it since.

Q. When did you first see it? A. Within the year.

Q. You mean you took no notice or wanted to know how much money was expended until a year later? A. Oh, yes, I took a very, very great interest because I was paying the bills.

20

Q. Why didn't you look at the closing statement? A. What good would it have done?

Q. When did you get your bill? A. The first part of June.

Q. 1926? A. Yes, sir.

Q. What were the taxes, considerably in advance of \$6,500? A. More than \$6,500.

30

Q. Were they closer to \$5,000? A. No, sir.

Q. How much was allowed to you, from the period of 1926 to the date of the deed? A. I can't recall.

Q. \$325.25, from January 1st to January 29, 1926? A. I can't remember those figures.

Q. When you observed this closing statement, did you observe this allowance? A. I may have done so.

Q. Did you attempt to figure up what the taxes were for 1926? A. Not on that basis.

40

Mary E. M. Hadley, cross.

Q. Have you the bill for 1926? A. I may have turned it over to my counsel.

Q. In November, 1926, you made a payment of \$5,000 on this mortgage, to be exact, the 23rd of November? A. I suppose it is.

10 Q. Who did you make the payment to? A. It may have been to the collector, Mr. Wichter. It was the year that I paid the \$20,000.

Q. You made that payment in the office of the Steneck Company, in the— A. Up in the Steneck or the Garden Realty Company.

Q. Where was it? A. I think the Garden Realty Company office.

20 Q. You made a payment of \$2,000 in January, 1927? A. That may have been interest on the second mortgage.

Q. Wasn't that an instalment payment? A. It might have been.

Q. Didn't you make a payment on the 18th day of February, of \$2,000? A. My memory doesn't serve me.

Q. What is that? A. I can't remember.

Q. On the 24th of February did you make a payment of \$11,000? A. No, sir.

30 Q. Did you ever make a payment of \$11,000 on account of the principal? A. Not to the Garden Realty Company. I made so many payments.

Q. Is there any doubt that you made a payment of \$20,000? A. No, sir.

Q. Do you know in what amount? A. No.

Q. Do you know when you made the last payment? A. No.

40 Q. What was the gross income from the property in 1926? A. Something less than \$2,300 per month.

Q. Did you keep a record of that? A. Yes, sir;

Mary E. M. Hadley, cross.

the amount turned over to me by Michel & Moore and by Gannon & Sons.

Q. Who paid the carrying charges? A. I did.

Q. Did you keep a record of that? A. Yes, sir.

Q. How much was that in 1926? A. In the first place there was three— 10

Q. Did you keep any books of the income and expenses? A. Yes.

Q. Have you them here? A. I have not.

Q. And that shows the gross income for 1926, for gross expenses? A. Yes, sir.

Q. When did you say to Mr. Schmulling, "I don't like your values"? A. When we first talked about it.

Q. When you first talked over the property? A. Yes, sir. 20

Q. Did you inquire of anyone else about it? A. I didn't make any inquiry of anyone else.

Q. As to values? A. It was a bargain value at \$415,000.

The Court: You have testified that when Mr. Schmulling said the property was worth \$415,000, you lost confidence in him, because you didn't think it was worth that much.

The Witness: I considered myself a novice. 30

The Court: You didn't believe his figures, yet you trusted him.

The Witness: Yes.

The Court: And you took the values and income and found they were not true.

The Witness: Yes.

Q. Just after the bill was filed, do you remember whether there was an application to put in a rent receiver for that building? A. If it was done, it was done by my counsel. 40

Mary E. M. Hadley, cross.

Q. You knew an application was made to take the control out of your hands, pending this suit?

A. Yes, sir.

Q. And you told your counsel to resist that application? A. I don't recall.

10 Q. You made an affidavit in opposition to the rent receiver? A. If I did it was on advice of counsel.

The Court: Do you remember whether you made an affidavit or not? If you don't remember, say you don't.

A. I don't remember.

Q. You know the Garden Realty Company wanted to put in a rent receiver; is that true? A. I can't really recall.

20 Q. Is that brand new when I tell you now that the Garden Realty— A. Mr. Lynch has recently told me that that was the case.

Q. When did you hear that? A. That was six weeks.

Q. You mean when you signed an affidavit on December 2, 1929, in opposition to the rent receiver, you didn't know what you were signing and what its purpose was? A. I can't say yet. I couldn't say I didn't know anything about the receiver. It is over my signature. I don't remember it.

30 Q. You do know there was an action to get a rent receiver? A. Yes.

Q. You wanted to resist that so you could hold on to the property? A. I don't think so.

Q. Isn't that why you made an affidavit in opposition to it? A. If that was on advice of counsel, it didn't originate with me.

40 Q. You followed his advice? A. Yes.

Mary E. M. Hadley, cross.

Q. And you made the affidavit? A. (No answer.)

Q. You didn't want a receiver in there? A. Why not? Giving up the property I didn't know what other course would follow.

Q. Did you want a receiver in there? A. Why not?

10

The Court: Did you?

The Witness: Yes.

Q. Did you say in that affidavit: "I am financially responsible and can be made liable in the event of a forced sale of this property?" A. I do not remember.

Q. Do you understand that language? A. I think I could interpret it.

Q. I show you an affidavit signed Mary E. M. Hadley, the 23rd of December, 1929, and ask you whether you signed it? A. Yes, sir.

20

Q. Did you read this before you signed it? A. I do not know whether I read it. It might have been read to me.

Q. You were familiar with it before you signed it? A. Yes.

Q. After you made your request for the examination of the title by the Title Company, did they make a report to you? A. They sent me a guarantee of title.

30

Q. And you went over it carefully? A. Yes.

Q. And there were certain things the Title Company wanted you to observe? A. I don't recall.

The Court: Before you got the guarantee of title didn't you get a report from the Title Company, a report a day or so before?

The Witness: No; I think not.

Q. What effort after January 26th did you make

40

Mary E. M. Hadley, cross.

to sell this apartment house? A. I made a number of efforts because I thought it an honorable thing to do.

10 Q. When did you make the first one? A. After Commissioner Schmulling had told me that he might take it off my hands.

Q. In which real estate firm did you place this for sale? A. I went to the office of Frothingham & Livingston in Englewood.

Q. When was that? A. Within a year.

Q. Within a year of purchase? A. Yes.

Q. And you listed it with other concerns? A. I might have.

Q. Who was the second one you placed it with? A. I don't recall.

20 Q. Are you in doubt whether you listed it with another firm? A. I am not.

Q. At what price did you list it? A. Anything over \$50,000.

Q. You wanted to dispose of it? A. Yes, sir.

Q. Do you know a man by the name of Layden, Charles W. Layden? A. I do not know him at all.

Q. Did you know James F. Gannon? A. Yes, sir; I was about to say it was he; and he said it was impossible.

30 Q. But you did list it with the office of James F. Gannon? A. I did not, because he said he did not care to handle it.

Q. But you did go to his office for the purpose of listing it? A. It might have been within two years after I took title.

40 Q. Did you know Mr. Charles W. Layden within four or five months prior to the 17th of January, 1930, submitted as an exchange for your apartment to you as owner? A. If you would refresh me as to who this Mr. Layden was.

Mary E. M. Hadley, cross.

Q. Do you know whether a man by the name of Mr. Charles M. Layden made an application in your behalf, in opposition to the rent receiver? A. No, sir.

Q. Do you know a Charles M. Layden that was an associate in the office of James F. Gannon? A. I do not know the gentleman. 10

Q. Did anyone, either by the name of Layden or any other name, submit an exchange to you for your apartment house within four or five months prior to the 17th of January, 1930? A. It occurs to me that there was an apartment house that was shown me.

Q. Do you recall the man's name? A. Not at all.

Q. Did this man Layden, or any other person, at the time of the submission of this offer to you, tell you that you would get the price of \$335,000? A. No, sir. 20

Q. Did you turn this down because you thought your apartment house was worth more? A. Such a proposition was never presented to me, that I recall.

The Court: When did you say that you put this property in the hands of the Englewood realty firm? 30

The Witness: Within two years.

The Court: Within two years. That means anywhere between January, 1926, and January, 1928?

The Witness: Yes, sir.

The Court: Can you be a little more definite about that?

The Witness: 1926. No, sir; I am afraid I cannot assist you.

The Court: Was it within six months after you took title? 40

Mary E. M. Hadley, cross.

The Witness: No.

The Court: Then we can narrow the period from January, 1926, to January, 1928?

The Witness: Yes.

10 Q. You testified that Mr. Schmulling stated that you would get an income of \$3,000? A. Yes, sir.

Q. And that statement was made to you before you signed the contract? A. Yes, sir.

Q. Was it made after the signing of the contract? A. Again and again.

Q. You didn't insist the rental income, et cetera, that representation, be put in writing at all? A. No.

20 Q. And as these conversations were held between you and Mr. Schmulling, as you testified to, almost up to his death, you didn't get them in writing? A. Correct.

Q. There was no correspondence between you and Mr. Schmulling? A. No.

Q. You knew the property didn't pay before you bought it? A. No.

30 Q. Why did you say: "Why don't you keep it?" A. I said it the first thing he said to me. He said that he couldn't do justice to the property because he was in public office.

Q. You knew you couldn't make it pay? A. He said he wasn't making it pay as he couldn't give it the attention.

Q. You believed that he wasn't making it pay? A. Yes.

Q. And still you took it? A. I did.

Q. You said in answer to his Honor's question, you said, "Take the property off my hands and let the whole thing be forgotten." A. Yes.

40 Q. What you wanted to do was to be relieved

Mary E. M. Hadley, redirect.

from the bond? A. I didn't consider the bond as separate and apart from the deed.

Q. Still you want to be relieved of the liability of the bond? A. The whole thing.

Q. That includes the bond? A. Yes, sir.

10

Mr. Lane: I desire to offer in evidence the tax bill of 1926.

(Tax bill admitted in evidence and marked Exhibit D-12.)

Redirect examination by Mr. Lane:

Q. You say you became skeptical of Mr. Schmulling's values before entering the contract? A. I did.

Q. Why did you enter into the contract? A. Because he reassured me that I could make it a paying proposition and get the sum of \$3,000 income per annum for myself.

20

Q. Who assured you of that? A. Mr. Schmulling himself.

Q. I believe you stated you put some mortgages on it as represented by Mr. Levenson? A. Some other property.

Q. You never had seen Mr. Levenson before this transaction? A. Never. In conjunction with loaning the money.

30

Q. What did you mean in answer to the Court's question that you thought it was the honorable thing to do to offer to sell the property? A. As I couldn't carry it on, being an old lady and not having the cooperation, that someone else could do better. And I do recall that I went to Mr. Gannon and he said it was an impossible proposition for him to handle.

Q. What books do you keep? A. Of receipts and expenses.

40

Percy N. Limouze, direct.

Q. Have you any books that you haven't produced here in court? A. No.

Q. During most of the time you had this property did you collect the rents or did you have Michel & Moore? A. Michel and Gannon were my
10 agents for the payments of electric light, et cetera.

Q. What particular books have you, a check book? A. I have a check book; and I have another book.

Q. Where is it? A. A little personal book, in which I record my income and outgo.

Q. Does that include this property or all your expenses? A. All.

Q. Is this property on a separate page? A. Not
20 separate.

Q. How much appraising of property have you done as trustee of your estate? A. I never do any appraising on my own initiative, but I pay someone else unless I get a guarantee.

Q. When you built the houses in Englewood, did you have an architect? A. Yes, sir.

Q. One or two? A. One.

(Adjourned for recess until two o'clock
P. M.)

30

PERCY N. LIMOUZE, sworn in behalf of defendant.

Direct examination by Mr. Lane:

Q. What business are you in? A. A real estate broker.

Q. Where is your office? A. 708 Bergenline Avenue, Union City.

Q. How long have you been engaged in the real
40 estate business? A. Twenty-five years.

Percy N. Limouze, direct.

Mr. Lane: Do you admit his qualifications?

Mr. Levenson: Yes.

Q. Have you looked at the property, 875 Boulevard East? A. Yes, sir.

Q. What does that property consist of? A. Five-story brick elevator apartment building, forty-five apartments and fifty-eight rooms.

Q. There is a house alongside, 11 Columbia Terrace? A. Yes, sir.

Q. Did you appraise this also as of December, 1926, and January, 1927? A. Yes, sir.

Q. What value did you place on that as of that time?

Mr. Levenson: I object. It is immaterial and irrelevant to this issue.

The Court: I will overrule the objection.

Q. What was the value in 1926, without looking at your memorandum? A. Apartment house only?

Q. Each separate and both together. A. \$265,000 is my recollection of the figures that I told.

Q. That includes the two of them? A. The dwelling house and the apartment house and the land.

Q. 1926 or 1927. A. My recollection is 1926 valuation I put on.

Q. Can you tell us how that was given, how you arrived at the value?

The Court: As I understand it, the witness is attempting to give us his opinion of what the value; he is attempting to give us a recollection of what he said at some other time.

Mr. Lane: That may be.

Percy N. Limouze, cross.

10 Q. Can you place the valuation on that property, irrespective of any affidavit; what was the appraised value of it in December, 1925, and the early part of January, 1926? A. For the land \$60,000, the dwelling \$15,000 and the apartment house \$185,000.

The Court: \$60,000 for the land?

The Witness: \$60,000 for the land; \$15,000 for the dwelling and \$185,000 for the building.

The Court: Approximately what is the size of the apartment house,—50 by 80?

The Witness: 100 feet front, 80 feet wide, five stories high.

20 Part of the frontage would be deducted because of the court.

Q. In your opinion, was that worth anything in the neighborhood of \$415,000? A. No, sir.

Mr. Levenson: I object. It is immaterial to the issue.

The Court: I will allow it.

Cross examination by Mr. Levenson:

30 Q. What is the determination to fix market values? A. Cost of construction may be one element.

Q. A ready buyer? A. Market price; ready buyer and ready seller, might be, if there were no other issue.

Q. Did you examine this property in December, 1925? A. I think it was in 1926.

Q. Did you examine it in January, 1926? A. Yes, sir.

40 Q. For what purpose? A. To make an affidavit in connection with some Chancery proceedings, what I do not know, at Mr. Lynch's request.

Percy N. Limouze, cross.

Q. That was in 1930, wasn't it? A. Oh, yes, that is right.

Q. You made no inspection? A. Not in 1926.

Q. Then it follows you haven't any knowledge of the condition of the building in 1926? A. Not the interior, from personal knowledge. But from an intimate knowledge, as it was in the market at various times, and the history in general, since they came to me in my real estate business. 10

Q. Between January, 1926 and January, 1930, did it depreciate in value at all? A. I don't think it would be very much.

Q. There has been a depreciation? A. Yes, sir.

Q. Between January, 1926 and January, 1930? A. As a matter of opinion I would give it maybe fifteen or twenty per cent. Depends on the condition they operate. 20

Q. When you give us a value of \$260,000 you mean, January, 1930? A. No, that would be the value I would give it in 1926.

Q. What would you say it was in 1930? A. I would give it the same value.

Q. Wouldn't you take off the fifteen per cent. at all? A. I would not.

Q. You are mistaken about that? A. Not mistaken in that. My figures are established on the property and are based on intimate knowledge of conditions and I didn't give it the top of the market, due to factors that would have to be brought out. 30

Q. But your values are based on a market value of January, 1926? A. Yes, sir.

Q. \$260,000? A. \$260,000.

Q. What is the market value in January, 1930? A. Maybe considerable less under a forced sale. 40

Q. I am asking you as an expert? A. Yes, sir;

Percy N. Limouze, cross.

I would value it at the same price, but I don't know what would be realized under a forced sale.

The Court: You don't know what it would realize under a forced sale?

10 The Witness: It wouldn't be prudent.

The Court: When you said you didn't give it top value I gathered it would yield more?

The Witness: Market value and top market value would be revealed in my files. The value of the improvements and the value of the land based on cost of construction and if all things had been credited it might have been a greater sum of money.

20 Q. In your twenty-five years of buying and selling real estate you have put through some exchanges? A. Yes, sir.

Q. Have you observed in these exchanges fair value put by both parties, or is rather the reverse?

A. It is rather a hard proposition to find out what the values are.

Q. There is a difference in your opinion of market value and value at forced sale? A. Yes, sir.

30 Q. And in January, 1926, the market value was \$260,000? A. Yes, sir.

Q. What would it be at a forced sale? A. If it was under pressure it would be hard to fix the selling price.

Q. You mean now you don't want to give what this property would get in January, 1926, at a forced sale? A. Yes.

Q. Why did you say in your affidavit \$260,000? A. It might have been my conclusion at that time.

40 Q. You did say forced sale? A. Yes, what the affidavit says is true.

Percy N. Limouze, redirect—recross.

Q. You are unwilling now to speculate on what it would bring at a forced sale? A. Yes, and that is why I wanted to refer to these copies.

The Court: If it would bring \$260,000 at a forced sale, what would it be at ordinary market value, \$300,000? 10

The Witness: Yes, you can allow that. That piece of property would be dependent on terms offered.

The Court: Isn't it true of any property that involves anything like \$200,000 whether you can get a long term mortgage?

The Witness: It is for the most part, and for those intimate with the construction, there is a possibility that the title might be objected to by the purchaser. It is reflected. 20

Redirect examination by Mr. Lane:

Q. You say in reference to top price; what do you know about it? A. There was some negotiation with the town of Weehawken to get consent to the encroachment of the north wall and some negotiations with the Boulevard Commission on the east wall. The encroachment runs four inches in spots and I know it was general knowledge in the North Hudson realty, of the difficulty with the New Jersey Title Company at the time the loan was placed. 30

Recross examination by Mr. Levenson:

Q. Do you know whether any title holder has been ejected from that four inches? A. No, but I know the encroachment exists.

Q. From what people told you? A. No, it was published in the newspapers. 40

Q. It is for the validating ordinance? A. Yes, sir.

C. Alfred Burhorn, direct.

C. ALFRED BURHORN, sworn in behalf of defendant.

Direct examination by Mr. Lane:

10 Q. You are in the real estate brokerage business in Hoboken? A. Yes; 1 Newark Street.

Q. And have been for nearly thirty years? A. Twenty-eight years.

Q. You made an affidavit for the complainant in this cause on the application for the rent, didn't you? A. Early in 1930 I think it was.

Mr. Lane: (To Mr. Levenson.) Do you admit his qualifications?

Mr. Levenson: Yes.

20 Q. What do you say the value of that property is?

Mr. Levenson: I make the same objection and add to that that it relates to present-day value.

Q. As of 1926, early in 1926—

30 Mr. Levenson: I make the objection that it is irrelevant. The value has nothing to do with it.

The Court: I will overrule your objection. What do you think the value was in 1926?

The Witness: My examination of the property was made in 1930, with a view of arriving at a figure at that time; nothing said about previous years.

The Court: By that you had no opinion of its value?

40 The Witness: It means I haven't given any thought to its value up to that time.

C. Alfred Burhorn, direct.

Q. You fix the general market value as of April, 1930, of \$199,200?

Mr. Levenson: I object. It is leading and immaterial.

The Court: I suppose it is stated in the affidavit. I will permit it. 10

A. \$199,200.

Q. That is about its market value in 1926, wasn't it? A. I think the conditions in 1926 were very much the same as to encumbrances; the condition of the property might be better.

Q. You didn't see anything very wrong with the property in January, 1930? A. It needed some repairs.

Q. What do you mean, "it needed some repairs"? A. The outside. The window sash frames needed repainting; and there was a crack I think in the south wall; and on the top floor there might have been some settlement in the foundation. 20

Q. Do you recollect when this building was built? A. Yes; I think I do. I think it was somewhere in 1924 or probably, 1925. The builder acquired title to the land in 1923 or 1924.

Q. You knew quite a little about the building even when it was being constructed? A. I knew it when it was being built and when they wanted to sell it after it was built. 30

Q. You knew the prices that were being asked for in 1924 and 1925? A. I think I did.

Q. What? A. I knew he sold it for \$250,000.

Q. That was in 1924, wasn't it, as near as you recollect? A. I think it was.

Q. What was the man's name? A. Weiss.

Q. Nathan Weiss? A. Nathan Weiss. 40

Q. Did you know the property after the Garden Realty Company had it? A. No, sir.

Henry Frank, direct.

Q. You didn't have anything to do about marketing it for them? A. No, sir.

Cross examination by Mr. Levenson:

10 Q. Did you know that the New Jersey Title & Guarantee Company placed a \$185,000 first mortgage? A. I know there was such a mortgage because I saw it on the records.

Q. That was just on the apartment house alone? A. I think so.

HENRY FRANK, 3d., sworn in behalf of the defendant.

Direct examination by Mr. Lane:

20 Q. You are engaged in the real estate business, making appraisals of real estate? A. Yes, sir.

Q. Do you know this particular property in Weehawken? A. I do.

Q. As a matter of fact, you made an appraisal for the complainant in this case? A. Right.

30 Q. What have you to say as to the value of this property in the latter part of 1925 and early part of 1926? A. I would say that property was worth about the price it was sold for, \$250,000.

Q. You say price sold; you don't mean \$415,000? A. No.

Q. And you in your appraisal refer to the fact that the building encroaching on the public street, naturally depreciated the resale value, didn't you? A. Yes.

Cross examination by Mr. Levenson:

40 Q. Were you making appraisals of apartment houses in 1925? A. I was.

Q. Which year did you appraise, 1925? A. I appraised some forty or fifty from 1923 to 1925.

Henry Frank, cross.

Q. For whom? A. For myself and for the courts, for the City of Jersey City, Weehawken.

Q. Your real estate experience has been mostly industrial? A. Industrial.

Q. Mostly industrial property? A. At that time; yes.

10

The Court: How do you arrive at \$250,000, so much a cubic foot?

The Witness: Yes, in 1926. I am just giving an opinion.

The Court: When you give us the value for 1926, I want to know how you get that figure.

The Witness: It can be built for that.

The Court: How much?

20

The Witness: There are two pieces, 100 by 100 and the second piece is 50 by 100, with a dwelling in the rear.

The Court: What street is that?

The Witness: Columbia Terrace.

The Court: Both have frontage, 150 by 100?

The Witness: Yes, sir.

The Court: And the main street is Boulevard East?

30

The Witness: Boulevard East is the main thoroughfare.

The Court: What is the land worth?

The Witness: Four corner lots. It would be more than when I made it in 1930. I said \$30,000.

The Court: And in 1926 it would be slightly above?

The Witness: Yes, it would be a little better.

40

The Court: A great deal better?

The Witness: There is a condition there.

Francis Porter, direct.

By Mr. Lane:

Q. Did you ever appraise this property for Mr. Schmulling? A. No, I never did.

Q. The appraisal you gave in 1930 was \$190,000 for the apartment house and \$16,000 for the house?

10 A. Yes, sir.

Q. Is that right? A. Yes.

FRANCIS PORTER, sworn in behalf of defendant.

Direct examination by Mr. Lane:

Q. Do you know Mrs. Hadley? A. I do.

20 Q. Have you been associated with her in any way? A. Since 1923.

Q. In what capacity? A. Secretary for her as trustee for the Henry P. Simmons Estate.

Q. Do you recollect the construction of those houses in Englewood? A. Yes, sir.

Q. You are an accountant, are you? A. Yes, sir.

Q. Do you know what the cost of the construction of those buildings?

30 Mr. Levenson: I object. How is that material?

Mr. Lane: I withdraw it.

Q. Did you have anything to do with this contract of exchange of property? A. Nothing, except that certain figures which appeared in the contract, setting forth the mortgage liens of the property which Mrs. Hadley owned in Englewood. That contract showed that the property in question was subject to mortgage liens to the extent of \$95,000 set up in the following manner—

40

The Court: Need we go into that?

Francis Porter, cross.

Q. You attended the closing of the title? A. As accountant for Mrs. Hadley.

Q. You figured the adjustments? A. I figured some of them and Mr. Harty did.

Q. Did Mrs. Hadley get the closing statement? A. She might have gotten it from Mr. Harty, I didn't make any. 10

Q. Were you present at any time of conversations with Mr. Schmulling and Mrs. Hadley? A. I don't recall I was.

Q. Never? A. I don't think so. I really don't recall I was present at any conference of Mrs. Hadley and Mr. Schmulling.

Q. Do you know whether anyone else was? A. At the time I was in conference at Mr. Levenson's office. 20

Q. When was that? A. Prior to the time of the contract when we were closing the title, on Friday and then again on Saturday prior to the time of going to the Title Company.

Q. There has been said something about Mr. Schmulling wanting to clean it up in a hurry, wanting to go away? A. I believe so.

Q. What do you know about it? A. I do know Mr. Schmulling was in a hurry to get away to Florida, having bought the tickets, I seen the ticket on his person. 30

Q. Do you know real estate values of apartment houses? A. No.

Cross examination by Mr. Levenson:

Q. You went over this contract with her before she signed it? A. I believe so.

Q. Do you know on what basis the taxes were adjusted? A. The taxes were adjusted on the basis from December 1st, second half of 1925, and title to become effective on February 1, 1927. 40

Harry E. Roche, direct.

Q. 1926, you mean. A. 1926. The taxes were adjusted for the period from December 1st to February 1st.

Q. They were adjusted on the basis of 1925 taxes? A. Yes.

10

HARRY E. ROCHE, sworn on behalf of defendant.

Direct examination by Mr. Lane:

Q. Are you connected with the New Jersey Title Guaranty & Trust Company? A. I am.

Q. Have you the record of a mortgage to be placed on this property by the New Jersey Title & Guarantee Company? A. I have.

20 Q. When was that mortgage placed, the date of it? A. The mortgage is dated March 8, 1922.

Q. What was the original amount of the mortgage? A. \$185,000.

Q. Have you any record of the payments on first mortgage made by Mrs. Mary E. M. Hadley after she became the owner? A. I do not know the date she became the owner.

Q. January, 1926? A. 1926, January, 1926.

30

The Court: January, 1929, is the date of the deed?

The Witness: January, 1929.

Q. \$19,500 isn't on account of the principal? A. I believe so. We have no record of who makes these payments. We only have the record of the date we receive.

Q. What is the date of the last payment on that \$19,500? A. January 29, 1929.

40

The Court: What was the first of those payments that make up that \$19,500?

The Witness: April 1, 1926.

Charles J. Schwarz, direct.

CHARLES J. SCHWARZ, sworn on behalf of defendant.

Direct examination by Mr. Lane:

Q. Can you tell when the Garden Realty Company was incorporated? Have you any records there? You were subpoenaed to produce records. 10
A. Do you want me to get them?

Q. Yes. A. (Witness produces records.)

The Court: Is this gentleman connected with the Garden Realty Company?

Mr. Lane: Yes; I understand that he is the one that was sent to testify.

Mr. Levenson: He is vice-president since the first of this year. 20

A. February 27, 1924, is the date of the incorporation.

Q. How long have you been connected with the corporation? A. Since the first of the year.

Q. Did you know anything about it before? A. No.

Q. What are you, vice-president of it? A. Yes, sir.

Q. Are you associated in Mr. Levenson's office? 30
A. No; I am not.

Q. Whose office are you associated with outside of the Garden Realty Company? A. The Steneck Trust Company.

Q. Can you tell me who the directors of the Garden Realty Company are?

Mr. Levenson: I object. It is immaterial and irrelevant. It was asked in the interrogatories and your Honor ruled it out.

The Court: What is the purpose? 40

Mr. Lane: To show that this corporation

Charles J. Schwarz, direct.

is in reality no more than a dummy corporation for Mr. Schmulling, Mr. Garibaldi and Mr. Steneck.

The Court: I will sustain the objection.

10 Q. Can you tell me who were the directors in 1926? A. What part of 1926?

Q. In January. A. Who were the directors?

Q. Yes. A. Harry L. Schmulling, Joseph Garibaldi, Nicholas and Henry C. Steneck.

Q. Who were the officers? A. Harry L. Schmulling, Nicholas D. Steneck, Henry C. Steneck, Mabel W. Witzel, secretary.

Q. Do you know where the principal office of the corporation is? A. 95 River Street.

20 Q. Is that the Steneck Trust Company building? A. Yes, sir.

Q. Has the corporation done any other business than real estate business?

Mr. Levenson: I object to it as immaterial.

Mr. Lane: The purpose is to further substantiate your Honor's ruling as to the president of the corporation being unable to speak for the corporation.

30 The Court: I will overrule the objection.

A. I cannot say yes or no; I couldn't say; I think so.

Q. Your principal business is real estate? A. It is.

The Court: Is that the minute book you have there (indicating)?

The Witness: Yes.

40 The Court: Has it the by-laws of the company in it?

The Witness: Yes; it has.

Charles J. Schwarz, direct.

Q. Have you got any resolution in the minute book relating to the confirmation of the contract which was entered into for the exchange of this Weehawken property for the Englewood property—that would be, I assume, around 1925 or January, 1926? A. It does not seem to be in here. (Witness looks at book.) 10

Q. An authorization for the execution of the deed? A. It does not seem to be in the book; it might have been in here. (Witness looks at book.)

Q. Can you tell me from your records, as to who the stockholders were in 1926, or December, 1925?

Mr. Levenson: I object. It is immaterial. What difference does it make who the stockholders were. 20

The Court: I sustain the objection.

Q. Can you tell from your books of record there of the Garden Realty Company, as to whom the Garden Realty Company paid any real estate brokerage, as the broker of the Garden Realty Company?

Mr. Levenson: I object; what difference does it make?

The Court: I will permit it. Do your records show that? 30

The Witness: I doubt it. I have looked through it as far back as four or five years.

Q. Have you been able to find any records in books of account around that time, of any payment of real estate commission at that time? A. I will look.

Mr. Lane: I will withdraw you from the stand. 40

Joseph J. Garibaldi, direct.

JOSEPH J. GARIBALDI, sworn in behalf of the defendant.

Direct examination by Mr. Lane:

10 Q. You are in the real estate business in Hoboken and have been for a number of years?

A. Yes, sir.

Q. Interested in the Garden Realty Company?

A. I am.

Q. The business of that company in 1925 and 1926, was what? A. Real estate operation.

Q. And holding real estate? A. Right.

Q. They held this Weehawken property? A. They did.

20 Q. Were you interested in that company at that time? A. I was.

Q. Stockholder and director? A. Yes, sir.

Q. Not as an officer? A. No, sir.

Q. Likewise Mr. Schmulling? A. He was.

Q. Likewise Mr. Steneck? A. Yes, sir.

Q. Was this company organized for the primary purpose of taking over this Weehawken property?

A. That was organized prior to that, I believe. They owned other property.

30 Q. Did you have anything to do with the entering into of this contract for the exchange of property? A. I represented the Garden Realty Company.

Q. You represented who? A. The Garden Realty Corporation.

Q. As a real estate broker? A. As a real estate broker.

Q. Who represented Mrs. Hadley? A. Michel & Moore.

40 Q. You performed no services for Mrs. Hadley in this transaction? A. I did not.

Joseph J. Garibaldi, direct.

Q. Might I refresh your recollection. A suit was instituted on the assignment of a claim by you, in which you filed an affidavit on a notice to strike out an answer, stating that you had represented Mrs. Hadley, and that the suit was for the balance of the commission? A. Right.

10

Q. Did you or did you not say you performed services for which you were entitled to a commission? A. I did not perform services for Mrs. Hadley. If I may, I will explain why commission was paid to me, by Mrs. Hadley. About two weeks before this contract was closed Mrs. Hadley stated that she would not consummate the deal until Mr. Lockwood would inspect the property for her. Two or three days later Mr. Lockwood came to my office and said that he was representing Mrs. Hadley and he wanted to be taken care of, as far as commissions were concerned. At the conference it was agreed to take care of Mr. Lockwood and commission would be to me for me to dispose of.

20

Q. Do you recollect saying in your affidavit on or about December 28, 1925, "I rendered services, certain services relating to certain property which the petitioner owned in the city of Englewood; by reason of which certain services there was due a commission of \$12,500"? A. I do.

30

Q. You say that is not strictly so? A. It is not exactly so, but Mrs. Hadley agreed that payment be made to me for the property.

Q. When you say Mrs. Hadley agreed, would you say that this paper I show you was signed by Mrs. Hadley? A. Correct.

Q. Do you know whose handwriting is on that? A. My handwriting.

Q. Do you know whether or not that was put on

40

Joseph J. Garibaldi, direct.

before or after Mrs. Hadley signed the agreement?

A. Before.

Q. Couldn't be any question about it? A. Absolutely not.

10 Q. Did you speak to Mrs. Hadley about this commission agreement? A. I was present at the time there was a discussion with Mr. Sears of Michel & Moore.

Q. Did you tell Mrs. Hadley you were interested in this property? A. No, sir.

Q. Did you tell her that you were receiving a commission from the Garden Realty Company as a broker? A. I did not.

20 Q. Why didn't you tell Mrs. Hadley that you were interested in the Garden Realty Company?

Mr. Levenson: I object.

The Court: I will permit it.

A. I didn't think it necessary.

Q. Was there any particular reason you were concealing it from Mrs. Hadley? A. No.

Q. I will say refraining from telling her? A. No.

Q. As a matter of fact, you had spoken to Mrs. Hadley about her making this exchange? A. No.

30 Q. You were never to her house? A. Once.

Q. When was the conversation? A. I inspected the property with Mr. Sears of Michel & Moore and on the way back he said, "I want you to meet Mrs. Hadley." And I asked Mrs. Hadley when she would be ready to enter the contract, and she said not until Mr. Lockwood inspected the property. I didn't talk to her about it. It was the first time I met her.

40 Q. Did you say anything to her about the property at that time, or was the property mentioned,

Joseph J. Garibaldi, direct.

or was it mentioned that you went up to appraise the Englewood property? A. No; I was introduced by Mr. Sears as a broker representing the Garden Realty Company.

Q. What did Mrs. Hadley say when you suggested to her that she sign the agreement to pay you the commission, rather than her broker? A. Mr. Lockwood wanted it done through my office and she was brought in at the last minute. 10

Q. Do I understand you to say that Mrs. Hadley told you for the first time when you were at her house, that she wanted to have Mr. Lockwood inspect this property before she entered the agreement? A. She didn't tell me; she told it to Mr. Sears.

Q. In your presence? A. Right. 20

Q. What did Sears say? A. He said, "When do you want him to go?" And she said she had already notified him.

Q. You didn't go with Lockwood to the property? A. No, sir.

Q. You say Lockwood for that was to get part of the commission? A. Mr. Lockwood said that he had the exclusive agency on those four houses and that he wanted to be taken care of on the commission or there wouldn't be any deal. 30

Q. Unless you take care of Lockwood on the commission the deal wouldn't go through? A. He had the exclusive authorization to sell and we couldn't make the deal without Lockwood.

Q. That was the main thing that Lockwood was interested in? A. In my talk with Mr. Lockwood the first time I met him, he said he had been down to inspect the property for Mrs. Hadley and that he had exclusive right to sell it and he expected to be taken care of. 40

Joseph J. Garibaldi, direct.

Q. Did you tell Lockwood the property was worth \$415,000? A. No.

Q. You didn't tell him it was worth that much? A. No.

Q. What value do you put on it? A. \$315,000.

10 Q. You were willing to see that Lockwood was paid part of the commission? A. He received his share.

Q. How much? A. Whatever it was. A check was sent to him for his proportionate share.

Q. Have you a return check? A. Mr. Levenson may have it.

Q. Were you paid in connection with by the Garden Realty Company? A. Yes, sir.

Q. Who is John Brower? A. John Brower?

20 Q. That was the plaintiff in the suit in the Supreme Court, the suit against Mrs. Hadley? A. That is the gentleman the note was assigned to.

Q. By whom? A. By me.

Q. For what? A. Balance due on commission.

Q. Did Brower have anything to do with the sale? A. No.

Q. Whose money was that? A. The money belonged to the broker in the transaction.

30 Q. What broker? A. Michel & Moore, Mr. Lockwood and myself.

Q. What interest did you have in it? A. By agreement with the other brokers.

Q. You got a percentage of this \$12,500 for yourself? A. Yes, sir.

Q. What percentage? A. I haven't the figures here. Have you them, Mr. Levenson?

The Court: \$12,500?

The Witness: That is the commission agreed upon.

40

The Court: In addition to that there was

Joseph J. Garibaldi, direct.

a brokerage paid by the Garden Realty Company?

The Witness: Yes, sir.

The Court: Do you know how that \$12,500 was figured?

The Witness: On a percentage basis; five per cent., I believe. 10

Q. How was it divided between the two brokers on a percentage? A. Not equally; there was some difference.

Q. Do you know the amount? A. I don't know. I turned the papers—

Q. I show you a check for \$500. Mr. Levenson has your checks and things? A. Yes, sir.

Q. Did you tell Mrs. Hadley that you were going to get any portion of the commission? A. No; I did not. 20

Q. Sure of that? A. Positive.

Q. Did you tell Mrs. Hadley who was to get the commission? A. I did not.

Q. Did she make any inquiry about it? A. No; she did not.

Q. You knew that Mr. Schmulling had seen her quite often? A. I knew he had seen her once or twice, but that is all I know. 30

Q. When was the first talk about her paying the commission to you; at which she was present? A. I think—when she was present?

Q. Yes. A. At the time of the signing of the contract.

Q. Can you tell us who was present at the signing of the contract? A. Mr. Porter, Mr. Sears, myself and Mrs. Hadley.

Q. Where was it signed? A. In her office in Passaic. 40

Q. How did you get out there? A. I went out

Joseph J. Garibaldi, direct.

there with Mr. Sears; I represented the Garden Realty Company.

Q. Had the contract been signed by the Garden Realty Company? A. I don't believe it had.

10 Q. So you got Mrs. Hadley to sign hers? A. I don't remember.

Q. Were there two copies signed? A. Yes; we left one with Mrs. Hadley.

Q. So that as far as you know, Mrs. Hadley didn't have a copy permanently? A. There was another one; I don't know; it might have come back.

Q. Do you know where this contract was prepared? A. By Mr. Levenson.

20 Q. Did you have anything to do with the preparing? A. Nothing at all.

Q. Did you tell Mrs. Hadley that you were the broker representing the Garden Realty Company? A. No. I was introduced to her as the broker of the Garden Realty Company.

Q. How long were you at Mrs. Hadley's house that day? A. Maybe five minutes.

Q. That is all? A. That is all.

30 Q. You sat down and had coffee on that day? A. No.

Q. Sure? A. Didn't even sit down; stood in the doorway.

Q. How long before the actual entering into the contract was this? A. I think it was a week or ten days.

Q. Did you ever have any talk with Mrs. Hadley after the contract was executed in relation to this matter? A. Not until after the deed.

Q. After the deed? A. Not until that time.

40 Q. Mr. Lockwood with her? A. He came to the office several times.

Joseph J. Garibaldi, direct.

Q. Never had a talk? A. Never.

Q. Positive? A. Never.

Q. Did you tell her after the contract was executed that you were interested in it? A. I did not.

Q. Did you have an equal interest in it with Schmulling? A. I had the same interest as Schmulling. 10

Q. Steneck the same? A. Yes, sir.

Q. Do you know whether or not there was a ratification of it by the Garden Realty Company, with reference to this transaction? A. I know we had a meeting.

Q. Can you show it in the books? A. No; the books were taken care of by the secretary.

Q. There was no written agreement? A. We had a meeting and agreed on the price for closing. 20

Q. When was this? A. The four of us; the four directors, a few days before the closing.

Q. Before the talk you had with Mrs. Hadley? A. Before.

The Court: \$315,000 for River Cliff Hall and \$150,000 for the Englewood property.

Q. But the brokerage was figured on \$100,000 or more than that? A. I didn't handle that.

Q. Did any part of your commission go to the Garden Realty Company, or did you keep your share? A. I kept my share; I think it was figured at two per cent. 30

Q. It was a substantial amount? A. Yes, it was a substantial amount.

Q. Do you recollect? Can I refresh your recollection that the percentage that Lockwood got was twenty-five per cent., and that you and Michel & Moore split the difference? A. It might be. Mr. Lockwood got less than we did. 40

Philip Botgong, direct.

Q. Did you split with Michel & Moore any part of your commission? A. I couldn't say offhand.

Cross examination by Mr. Levenson:

10 Q. You were asked what value you put on the apartment house and you said \$315,000? A. Yes, sir.

Q. And on the Englewood property? A. \$150,000.

Q. Did you afterward sell it? A. Yes.

Mr. Lane: I object to it; he is my witness.

The Court: I sustain the objection.

Q. What value did you place on the Englewood property? A. \$150,000.

20

PHILIP BOTGONG, sworn in behalf of complainant.

Mr. Lane: Mr. Botgong would like to get away.

Direct examination by Mr. Levenson:

Q. You are a member of the bar of this State? A. I am.

30 Q. In December, 1925, and in January, 1926, were you connected with the New Jersey Title & Guarantee Company? A. I was.

Q. In what capacity? A. Closing titles.

Q. Have you the papers with respect to the closing of the title to the property at 875 Boulevard, East, Weehawken? A. I presume that is one of them. We go by blocks and lots.

40 Q. Did you close this 163 to 165 on Boulevard, East and Columbia Terrace, Weehawken, and say that is the property? A. Yes.

Philip Botgong, direct.

Q. Have you the application? A. I have.

Q. Who signed it? A. Mary E. M. Hadley, 176 Prospect Street.

Q. What is the date? A. January 8, 1926.

Mr. Levenson: I offer it in evidence.

(Application is admitted in evidence and marked C-6.)

10

Q. As a result of that application, did the Title Company make an inspection of it? A. Yes, sir.

Q. And reported it? A. Addressed it to Mrs. Hadley, 178 Prospect Street, Passaic, New Jersey.

Q. Were you in attendance at the closing of this title? A. Yes.

Q. When did it take place? A. On Friday afternoon, January 29, 1926.

20

Q. Is there anything in the application with respect to encroachments? A. No, sir.

Q. Is there anything in the report? A. Nothing in the report, because the survey was waived; we didn't know whether there were any encroachments.

Q. You waived that? A. The applicant.

Q. Anything in the title policy? A. General survey waiver.

30

The Court: That is in the application?

The Witness: It is on the sheet.

The Court: How did she waive?

The Witness: Just general questions. Whether they want a survey.

The Court: The waiver is made verbally.

The Witness: Yes. The survey is an extra charge. It states "By reason of encroachments, of fences, buildings or other structures, or by reason of the filing of any other state of facts that the survey would

40

Philip Botgong, cross—redirect.

disclose, the party waives this survey of the premises."

10 Q. And that went to Mrs. Hadley before the title policy was issued? A. No; after the title was closed. The report shows the survey waived.

The Court: When did you send Mrs. Hadley the report?

The Witness: From correspondence in the case, it was mailed January 19th.

Q. How long after the title policy was sent to her did she object to it? A. Never heard of any.

Cross examination by Mr. Lane:

20 Q. Do you recollect that when this title was put through, Mr. Schmulling was in a great hurry to get it through? Do you recollect that? A. I recollect he was anxious to get it through; he wouldn't be here the next morning.

Q. Did he say anything about being there the next morning? A. Didn't say anything to me. The way he said, all adjustments had been made and it wouldn't take half an hour to close it; and for some reason or other it took to nearly seven
30 o'clock.

Redirect examination by Mr. Levenson:

Q. Was it finally closed that day? A. There was some question about a certified check or something like that and the matter of the deed being recorded and placed on record on Saturday and they were held over until Monday.

Q. Were all the papers left with you? A. As far as I know that was five years ago.

40 Mr. Levenson: Mr. Harty would like to get away.

Charles J. Harty, direct.

CHARLES J. HARTY, sworn in behalf of the complainant.

Direct examination by Mr. Levenson:

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

A. Yes, sir.

10

Q. Practicing in Passaic? A. Yes, sir.

Q. Were you in January, 1926? A. I was.

Q. Do you know Mrs. Hadley? A. I do.

Q. How long have you known Mrs. Hadley? A. I have known her since around 1919, approximately.

Q. You represented her since that time? A. Our office has represented her since that time in some proceedings; not individually, but as trustee; I haven't, my associate, Mr. Corbin.

20

Q. With reference to this closing on January, 1926, the apartment in question, were you retained by Mrs. Hadley to represent her? A. Our firm.

Q. When were you retained? A. To the best of my recollection a day or so before the time of closing, when I first heard of it.

Q. Did Mrs. Hadley bring the contract to you? A. I don't recall.

Q. What did you do after that? A. I went to Hoboken on Friday morning, January 29, 1926, and there was in attendance one of the lawyers of Levenson, Comen & Levenson until some time in the afternoon, and we were making adjustments. I was with Mr. Porter and went to the office of the Title Company in Jersey City and was there until quite late, and I don't recall what I did the next morning, but I went there with Mr. Porter; what we did I don't recall.

30

Q. Who was present at the time of the adjustment? A. I don't recall. There were a number

40

Charles J. Harty, cross.

of agents; Mr. Porter, Mrs. Hadley. She was present most of the time; Mr. Levenson, and there were some real estate agents that I can't recall.

Q. Did you go over the adjustment with her?

10 A. They had made the adjustments while she was there. Yes, I went over them with Mr. Porter.

Q. You went then to the Title Company? A. Yes, sir.

The Court: Did you make all the adjustments, insurance, et cetera?

The Witness: All the ordinary adjustments; it was like a title closing; it was an exchange.

20 Q. Mrs. Hadley took an interest? A. She was present. She left the questions to Mr. Porter and myself.

Q. Did you get her a closing statement? A. I don't recall whether I did.

Q. After that did she consult with you with reference to this property at all? A. She might have seen me once or twice, but I can't recall with reference to what.

Cross examination by Mr. Lane:

30 Q. You didn't know anything about this until a day or two before the closing? A. Two or three days before the closing.

Q. You had nothing to do with the search or anything of that kind? A. No, sir.

Q. Nothing to do with the execution of the contract? A. No.

Q. Didn't consult with Mrs. Hadley or anyone with reference to the sale or value of the land?

40 A. No; I didn't know anything about the value of the land.

Henry C. Steneck, direct.

CHARLES SCHWARZ, recalled on behalf of the defendant.

Direct examination by Mr. Lane:

Q. Were you able to find those figures? A. I was.

10

Q. What was the amount of commission paid?

Mr. Levenson: I object to it as immaterial, irrelevant and incompetent.

The Court: I will permit it.

A. \$7,875.

Q. To whom? A. Joseph J. Garibaldi.

HENRY C. STENECK, sworn in behalf of the defendant.

20

Direct examination by Mr. Lane:

Q. Are you connected with the Garden Realty Company? A. As a stockholder, yes.

Q. And were in 1925 and 1926? A. Yes, sir.

Q. Did you know this particular property, Weehawken property? A. Yes, sir.

Q. What did you have to do with the exchange of the property for Mrs. Hadley? A. I had nothing to do with it at all. The only thing we had a meeting and that the property was to be exchanged for some property in Englewood; that is all I know.

30

Q. You had a meeting? A. Between the stockholders, Mr. Schmulling, Mr. Garibaldi, my brother and myself.

Q. As a matter of fact, in relation to this matter, you left everything to Mr. Schmulling, didn't you? A. I would say Mr. Schmulling and Mr. Garibaldi.

Q. As far as making the contract with Mrs. Hadley or making the sale, you didn't have anything to do with it? A. Nothing to do with it.

40

Henry C. Steneck, direct.

Q. You knew that Mr. Schmulling was carrying on negotiations? A. That he was trying to make the sale; I knew about that.

10 Q. Did you place any value on the property as of that time? A. No; I didn't place any value on the property; of course, we were interested in what the Garden Realty Company was making. I don't think we made \$1,000 on the whole transaction. We wanted to get rid of the Boulevard property in exchange. Of course, we got these four pieces in Englewood.

Q. You know you got some cash when the sale went through? A. I really cannot tell you. It might be in the book; I don't remember the entire transaction at this moment.

20 Q. Did you know who the brokers were in the transaction? A. No; I don't know who the brokers were in the transaction.

The Court: You, I take it, weren't very active.

The Witness: No; we had hardly any meetings at all.

The Court: You left things for Mr. Schmulling to run.

30 The Witness: He had to do with the apartments. I think we had only two other pieces. As far as the apartments, Mr. Schmulling had entire charge.

Q. You also know that you got \$20,000 on account of this particular mortgage? A. The second mortgage we got payment, that is true.

Mr. Lane: That is the defendant's case.

Joseph J. Garibaldi, direct.

JOSEPH J. GARIBALDI, recalled in behalf of complainant.

Direct examination by Mr. Levenson:

Q. With reference to the Englewood property that the corporation took over, did you sell it? A. Yes, sir. 10

Q. How much? A. \$140,000.

Q. How long was it held before it was sold? A. Several months.

Q. Sold to one buyer or to more than one person? A. Three pieces to one buyer and one to another buyer.

The Court: Was that a fair price, in your opinion? 20

The Witness: It was the best we could get. We tried very hard. We had it in the hands of other brokers, in addition to our own.

Cross examination by Mr. Lane:

Q. To whom did you sell the property? A. One of the smaller pieces to Mr. Volk and the three to a Mr. Goldenburg.

Q. You say you priced it at \$150,000? A. For the exchange. 30

Q. You put it in the contract at \$150,000? A. No; as I remember—

Q. But that was the value you kept in your head? A. That was the value of the Garden Realty Company.

Q. You fixed the value of the Weehawken property back in your head at \$315,000, although it was put in at \$415,000? A. I figured it at \$315,000.

Q. You mean you raised it a hundred thousand? A. The contract did not state any price. 40

Joseph J. Garibaldi, cross.

Q. On the right basis of valuation what you really considered the Englewood property worth was \$150,000? A. Yes.

Q. Is that right? A. Yes.

10 Q. And you considered the Weehawken property worth \$315,000? A. Yes.

Q. Did you tell Mrs. Hadley you were doing that? A. No, because I didn't represent Mrs. Hadley. As far as Mrs. Hadley was concerned, I had nothing to do with negotiating her end with her.

Q. You didn't tell Mrs. Hadley that your property was worth only \$315,000 in your opinion? A. No; I had no opinion.

20 Q. Why didn't you tell Mrs. Hadley that you were interested in the Garden Realty Company?

Mr. Levenson: I object.

The Court: I will sustain the objection.

Q. Even \$315,000 was a high valuation at that time, in your opinion? A. No.

Q. What did you pay for it?

Mr. Levenson: I object. It is immaterial.

The Court: I will permit it.

30 A. I don't know what was paid for it.

Q. When did you buy it? A. Possibly a year or a year and a half before we sold to Mrs. Hadley.

Q. Who did you buy it from, Weiss? A. No; I did not.

Q. From whom? A. I think Rivercliff Holding Company.

Q. Did you have anything to do with the buying of it, or did Schmulling? A. I was a stockholder and we had a meeting.

40 Q. Who did the actual negotiations for the price? A. A real estate broker by the name of McQueen.

Joseph J. Garibaldi, cross.

Q. Who did he deal with? A. The real estate men, myself and Mr. Steneck.

Q. As a matter of fact that property was question to you from the Lloyd Realty Company? A. No; the Garden Realty Corporation had not been formed at the time the original purchase was made and it was made under the Lloyd Realty Company and later on it was transferred to the Garden Realty Company. 10

Q. You said you don't know how much you paid for it? A. No.

Q. The High Wood Park Realty Company was the owner? A. That is the name.

Q. Did you buy it? A. On an exchange.

Q. The other Realty Company was Steneck? A. Yes. 20

Q. Was the High Wood Park Realty Company? A. No; that was Dr. Asrath of Hoboken.

Q. You knew that Mrs. Hadley had put over \$200,000 in the construction of those houses? A. I did not.

Mr. Levenson: I object; it is immaterial.

The Court: I will permit it.

Q. On what did you base your valuation? A. On conditions at that particular time, of that type of property. 30

Q. You offered these houses and got \$40,000 from Mr. Goldenburg? A. I think the price asked Mr. Goldenburg was \$140,000 for four of the houses.

Q. When were they sold? A. Several months after we took them over.

The Court: I understand you to say that you did not mention to Mrs. Hadley the price of \$315,000 or \$150,000; did you talk to her about the price of \$415,000 or \$250,000? 40

The Witness: I did not, your Honor.

Mary Fleming, direct.

MARY FLEMING, sworn on behalf of complainant.

Direct examination by Mr. Levenson:

Q. Where do you live? A. 290 Prospect Place.

10 Q. Where were you living in December, 1925?
A. 875 Boulevard, East.

Q. That is the apartment house we are talking about? A. Yes, sir.

Q. Were you the superintendent there? A. My husband was; I helped.

Q. After December, 1925, how long did you live there with your husband? A. Until the first of April, 1926; from December, 1925, until the first of April, 1926.

20 Q. Did you assist your husband? A. Yes, sir.

Q. Do you know Mrs. Hadley? A. I do.

Q. When did you first meet her? A. I met her when she first came to look over the property.

Q. When was that? A. Some time in December.

Q. What year? A. 1925.

Q. Do you know whether she ever occupied an apartment? A. Yes, sir. Apartment 37, third floor.

30 Q. When did she move in? A. Some time in February and she was there until two months before we left.

Q. You say it was February? A. I am not sure of the time.

Q. Until two months before you left? A. Mr. Sears assisted her to move into the apartment.

Q. How many times did you see her during those two months? A. Every day.

40 Q. Did she ever go through the apartment house in those two months? A. She went through the apartments before she bought it.

Mary Fleming, direct.

Q. How do you know? A. I took her through once and Mr. Schmulling took her through once after that.

Q. During the two months she lived there who collected the rents? A. I did.

Q. Who did you give them to? A. My husband. 10

Q. Who did he give them to? A. Mr. Schmulling.

Q. And what about Mrs. Hadley? A. Collected them and put it in the bank.

Q. You are positive she lived there two months before you moved out? A. Yes, sir.

Q. In what apartment? A. No. 37 on the third floor. That was the only vacant apartment we had when she bought it.

Q. Was it full in 1926? A. It was. 20

Q. How many were empty when you left? A. None.

Q. Your husband is working down at the Steneck building now? A. No; he hasn't been working there since 1926.

Q. He was working in the apartment, was he? A. He was.

Q. And he went from this apartment to the Steneck Bank Building? A. No.

Q. Where did he go? A. He went to Scotland for three months. 30

Q. When he came back where did he work? A. The Steneck Trust, but not right away.

Q. And he went there to work? A. For a short time.

Q. Where is he now? A. Over in Scotland.

Q. How long over there? A. Since December.

Q. Where do you work? A. I am not working; I am staying with my son.

Q. Where do you live? A. 290 Borden Place, Weehawken. 40

John J. Lockwood, direct.

Q. How long were you janitor, or your husband?
A. From May, 1924, to the first of April, 1926.

Q. You say that during that time there were vacancies? A. We had vacancies, but very few.

10 Q. You recollect that before you left in April, 1926, before Mrs. Hadley came, there were four vacancies? A. There was only one vacant; and we only had apartment 37 which was vacant.

Q. And it remained vacant? A. No; Mrs. Hadley occupied it.

Q. No other vacant apartment in April? A. We moved out the first of April.

Q. No other vacant apartment until the first of April? A. No.

20 Q. Do you know who owns the house you live in now? A. Yes; I am not working in the apartment; I rent where I am now.

Q. Do you know who owns it? A. Yes; Smith.

JOHN J. LOCKWOOD, sworn on behalf of the complainant.

Direct examination by Mr. Levenson:

30 Q. What is your business? A. Real estate.

Q. What was it in December, 1925? A. Real estate.

Q. Where were your offices at that time? A. Office at 183 Broad Avenue, Leonia.

Q. How many years in the real estate business? A. I think I can say for thirty-six years.

Q. When did you first meet Mrs. Hadley? A. I think I first met Mrs. Hadley in the fall or winter of 1925.

40 Q. Under what circumstances? A. I received a telephone call from Mr. Corbin of the Title Guar-

John J. Lockwood, direct.

antee Company of Passaic, for whom I had done a good deal of business and he suggested that I get in touch with her as she had some houses that the Title Company—

Mr. Lane: I object to any further conversations. 10

Q. As a result of what Mr. Corbin told you, what did you do? A. I went to see Mrs. Hadley.

Q. When did you see her? A. I don't remember the date; the latter part of 1925.

Q. What conversation did you have with her? A. I told her how I came there.

Q. What did you say? A. I said that Mr. Corbin suggested that I come to see her and obtain an exclusive agency for the sale of her houses and such an agreement was signed by her. 20

Q. And you got the exclusive sales right of those houses in Englewood? A. Yes, sir.

Q. What did you do then? A. I proceeded to sell the houses. I may have done a little advertising.

Q. Do you recall how long your option ran? A. I don't recall; it was a matter of several months.

Q. Did you take an option on 875 Boulevard, East? 30

The Court: Counsel uses the word "option." You didn't have an option.

A. No. Exclusive agency.

Q. Did you ever inspect the apartment at 875 Boulevard, East? A. I did.

Q. When? A. I don't recall that, but late in 1925.

Q. At whose suggestion? A. Mrs. Hadley's. 40

Q. How did she come to do that? A. After I

John J. Lockwood, direct.

10 got the exclusive agency for her houses she told me she had been in negotiations with brokers in Hudson County for the exchange of houses, and she was anxious to make the exchange, that the burden of carrying the houses in Englewood was too much, and asked me to look at these houses and report on them. I did look at the houses and saw the apartments and I reported to Mr. Corbin of the Title Company of Passaic and I talked to Mrs. Hadley about it.

Q. Did you tell Mrs. Hadley that you had made an inspection of them? A. I did.

Q. Did you advise her to go through with it? A. I made my report to Mr. Corbin. I told her to see Mr. Corbin.

20

The Court: You didn't tell Mrs. Hadley anything about the property at all?

The Witness: Yes, I did.

The Court: What did you tell Mrs. Hadley?

30

The Witness: I told her the price asked for the apartment house was too high, but the price she put on her house was too high and in the question of trading the equities figure, trades being based on the actual equity above the mortgages.

40

Q. Did you thereafter get in touch with Mr. Garibaldi? A. Yes; I recall calling on Mr. Garibaldi after that. I said that my interest was that of exclusive agent and could have got the whole commission for the sale of those houses, but if Mrs. Hadley was in the position where she was anxious to make the trade I didn't want to stand in the way of the trade. I could see now I was too much of a good samaritan.

John J. Lockwood, cross.

Cross examination by Mr. Lane:

Q. When did you first talk to Mr. Garibaldi about your commission? A. My recollection is it was shortly after I had inspected the apartment house, when I thought there was a possibility of Mrs. Hadley being interested in making this deal. 10

Q. Did you know what the details of the contract were before it was executed? A. No; I don't believe I ever saw the contract.

Q. Do you know what the price and manner of payments were to be, that you were to be a party to the contract? A. I have a general recollection that I did not know what the price shown on the statement was and I knew what we were asking for the sale of their houses. I knew what the mortgages were. 20

Q. Did you approve of the sale? A. I do not say I approved of it. I will say that under the circumstances at the time it was a good thing for Mrs. Hadley to do, if she could have the advice of her own attorney in doing it. In my opinion the equities in Englewood had reached a point where something must be done there about the property or she would lose them.

Q. You say you made a report to Mr. Corbin? A. Yes, sir. 30

Q. Did you make that report in writing? A. No.

Q. How did you make it? A. Spoke to Mr. Corbin in his office in Passaic.

Q. How soon after you inspected the property? A. A day or two after.

Q. Was Mr. Harty present? A. I do not know.

Q. Mr. Harty right there (indicating)? A. A very nice man, but I didn't know him before I saw him here. 40

Q. But you made your report? A. I told him

John J. Lockwood, cross.

that I saw the apartment house and was well attended; and the statement.

The Court: What statement?

10 The Witness: The statement of rents and a set-up of expenses.

Q. Have you got it there? A. No.

The Court: Who gave it to you?

The Witness: I received it either from Mr. Sears or Mrs. Hadley.

The Court: What did you do with it? Did you give it to Mr. Corbin; do you recall?

The Witness: I may have. It was one of numerous copies of a set-up.

20 Q. Whom did you get it from? A. From Mrs. Hadley or a man by the name of Sears, who was in the picture at that time.

Q. When you looked at the property you knew that Mr. Sears was endeavoring to get Mrs. Hadley to take the property? A. Yes, sir.

Q. Did you understand that Mr. Sears represented Mrs. Hadley as broker? A. I understood that this man had been to Mrs. Hadley before I had obtained the agency of her houses.

30 Q. You understood that Sears had been working for her before you got her exclusive agency? A. Absolutely.

Q. You say you went there at Mr. Corbin's request? A. Yes, sir.

Q. And he asked you to get an exclusive agency? A. Yes, sir.

Q. Why? A. Because I had done a number of deals for him and he thought it would be well to have those houses in my hands.

40 Q. Do you know what commission was to be

John J. Lockwood, cross.

paid? A. I understood the commission was to be five per cent.

Q. On what? A. On the trade price.

Q. Which was higher than the real value? A. Yes, it was.

Q. You knew what it cost to build? A. I didn't. 10

Q. You had an idea? A. No; those houses were built extraordinarily good.

Q. Kindly give us in detail just what you reported to Mr. Corbin, did you report as to the value of the Weehawken property, the actual property?

A. I may have; I may have given my opinion as to the value of the property at Weehawken.

Q. Do you know the true value was \$415,000?

A. I don't recall that. 20

The Court: May I interrupt? Was there a matter on which you reported to Mr. Corbin,—and I take it the matter on which he was interested in, was whether or not the Garden Realty Company would be able to take care of the title so that the mortgage would be eventually paid on what I will call Mrs. Hadley's end?

The Witness: I wanted to know as far as I could whether there was any substantial equity over the mortgage. I felt that it would be a good thing for Mrs. Hadley to do. I had every reason to believe at the time that she could no longer carry the Englewood houses. I wasn't interested in whether it was \$415,000 or not. 30

(Adjourned to April 15, 1931, at ten o'clock A. M.)

John J. Lockwood, cross.

(Continued pursuant to adjournment, on Wednesday, April 15, 1931, at ten o'clock A. M.)

Appearances as before noted.

JOHN J. LOCKWOOD, recalled.

10

Cross examination by Mr. Lane (continued):

Q. Mr. Lockwood, I asked you last evening if you would look in your office to see if you could find the written authorization of the exclusive agency,—have you found it? A. I have it there (pointing to counsel table).

Q. Is this it?

20

(Mr. Levenson hands paper to Mr. Lane, who shows it to witness.)

A. Yes; that is it.

Mr. Lane: I offer it in evidence.

(Authorization of exclusive agency is admitted in evidence and marked Exhibit D-13.)

Q. I notice that there is no price in this exclusive agency. Was any price given you? A. No.

30

Q. No price mentioned? A. Mrs. Hadley told me what she had been asking for the house.

Q. What had she? A. Something like \$55,000 for three of them.

Q. \$50,000 for them? A. Each.

Q. Each. A. Yes. If my memory is correct, \$55,000 for the corner house.

Q. Would you rather think \$75,000 at least for the corner house? A. No; not in my opinion.

Q. On a larger tract of property? A. Somewhat larger, but not a great deal.

40

Q. The corner house; it is much larger, much

John J. Lockwood, cross.

more palatial; you understand what I mean? A. Much more pretentious.

Q. That is a better word. And you would not say the house on the corner is worth at least \$20,000 more? A. Not in my opinion.

Q. Would you say the house on the corner was worth \$20,000 to build? A. It cost more money to build, but whether \$20,000—\$20,000 would seem too much. I believe the fill was greater on the side street than it was on the corner. 10

The Court: Approximately how big is the corner lot, a couple of acres?

The Witness: I should judge about 100 or 125 feet on Woodland Street and I would say about the same thing on Walnut Street. 20

Q. Can you tell me the width of each house on Walnut Street? A. No, I couldn't; I could make a guess.

Q. Something like 125 feet? A. Which one?

Q. Each of the houses. A. No.

The Court: The width of the house or lot?

Q. Lot. A. I should think the lot,—I don't think those lots are over 100 feet in width. 30

Q. Would you say they are not more than 75 feet in width? A. I think they are more.

Q. Tell me what you did, if anything, in trying to sell this property? A. I immediately, on receipt of this exclusive agency, turned the matter of the sale over to one man and he worked on this property exclusively for a time. I went to some of the other brokers who had the property, had had it over a period of several months and I told them I wanted them to sell these houses, not to pay too 40

John J. Lockwood, cross.

much attention to price, to get the best they could, and as far as commissions were concerned, we would split commissions. I also called on the neighbors. I was in a position where this property had to be sold and if they had friends who were able to buy it, they could do so. That took a lot of time.

Q. How long a time would you say? A. We were working, I don't know what was the length of time; we were working all the time until the transaction of the apartment house trade was consummated.

Q. A week? A. Longer than that.

Q. Three months? A. No; I wouldn't say that.

Q. How long before you went down to look at the house in Weehawken, had you been working on this property? A. My recollection is that it would be several weeks. Whether it would be three weeks or five weeks I cannot say.

Q. Do you recollect when Mrs. Hadley entered into the contract? A. For the purchase of the apartment house?

Q. Exactly. A. I do not.

Q. When was the first you knew she had entered into the contract? A. I can only tell you that by trying to recall the sequence of things. A few days after I secured the exclusive agency I knew this trade had been offered to Mrs. Hadley.

Q. You knew, even if you didn't know the date, you knew at the time that Mrs. Hadley had entered into the contract? A. I knew eventually that she did.

Q. How long after the contract had been entered into did you know eventually? A. I can't say that; it seems I ought to know. My agreement for the sale of the property—

John J. Lockwood, cross.

Q. Shortly before the contract was entered into you entered into an agreement with Garibaldi? A. When I found out about the deal I went to Mr. Garibaldi.

Q. Did you go to Mr. Garibaldi or did Mr. Garibaldi go to you? A. My impression is that I went to Mr. Garibaldi. There is a little confusion in my mind,—this man Sears— 10

Q. How did you know this man Garibaldi had anything to do with the property? A. I understood that Mr. Garibaldi represented the owner of the apartment house. I had the Steneck Trust Company in my mind.

Q. You thought the Steneck Trust Company was the real owner? A. I had in my mind the owners of this property were officers of the Steneck Trust Company. 20

Q. Did you know that Mr. Garibaldi was an officer of the Steneck Trust Company? A. No.

Mr. Levenson: I object. I do not think it is cross examination.

The Court: I will permit it.

Q. Did you know whether Mr. Garibaldi was an officer of the Steneck Trust Company? A. No. Yesterday is the first time I knew of it. 30

Q. Did you know that Mr. Garibaldi was interested in the corporation that owned the apartment house? A. I did not.

Mr. Levenson: I object. I think it is immaterial.

The Court: What would you say was the gist of this witness' direct examination, the bearing of that testimony on the case?

Mr. Levenson: We feel that we have proved through him that Mrs. Hadley had 40

John J. Lockwood, cross.

an agent to consult with, and second, it was a dire necessity for her to get rid of this property in Englewood.

The Court: I think this examination bears on whether she did or not.

10

Q. Did you advise Mrs. Hadley whether she should or should not enter into this exchange? A. No; I did not consider that I should advise her.

The Court: May I interrupt? I did not understand from your direct examination whether you gave her any information at all from which she might determine whether it was a good trade or not?

20

The Witness: Yes, I examined the apartment house. I remember now of having made a calculation of the construction of that apartment house, the value of the land; and I remember considering what the relationship of the land was to the value of the property, and I told her those things as far as I could arrive at. I did not advise her to buy it and I particularly wanted her to consult her attorney.

30

The Court: You said in your direct examination you thought the trade was advisable if there was any equity at all in the property she was getting?

The Witness: Right.

Q. Then, I take it, it would be advisable if it was an even trade? A. If there was a substantial equity above the mortgage.

The Court: On an even trade?

The Witness: Yes.

40

The Court: You would recommend it if there was?

John J. Lockwood, cross.

The Witness: If she could obtain a substantial equity above her property I think it would be advisable for her to do it.

Q. Have you any other figures that you made up at that time? A. I have no figures left in my file except the agency agreement and the memorandum of Mr. Garibaldi's. 10

Q. Have you the memorandum of Mr. Garibaldi? A. Yes.

Q. May I see it? A. (Witness produces paper.)

Q. I show you a memorandum which you have just handed me, dated December 28, 1925, and ask you if you received that report from Mr. Garibaldi. A. (No answer.)

Mr. Lane: I offer the report for identification. 20

(Report marked D-14 for Identification.)

Q. Then you did know when this contract was entered, that the contract was being executed on that certain day, didn't you? A. I knew; I may have known the exact date of the contract.

Q. Because I call your attention to the fact that this agreement is dated the same day as the contract, December 28, 1925? A. Yes. 30

Q. Will you kindly tell me where you got that paper, were you at Mr. Levenson's office? A. I never met Mr. Levenson until I met him on the date of going to trial.

Q. I notice a pencil memorandum on this paper which says, "January 29." Is that in your handwriting? A. No; that is not in my handwriting. This scribbling up here seems to be (indicating), but that isn't.

Q. Will you kindly explain what this scribbling 40

John J. Lockwood, cross.

up here means, in your handwriting? A. I am sorry. It doesn't mean anything to me now.

Q. Apparently there were three figures in that figure of \$283.33? A. Yes.

10 Q. And after the first one, two months, the third one, three months and after the first March 1, second April 1st and the third May 1st, you have the word "Pd." after the first and after the other nothing. Does that mean anything? A. I am sorry; nothing.

The Court: Pd or Pm?

The Witness: I recognize that. These scribblings are not in my handwriting.

20 Q. On the bottom of this paper the words appear, "I agree to the above, William J. Lockwood?" A. Warren J. Lockwood, the W. J. Lockwood, that is my handwriting.

Q. Tell me in reference to the date of this agreement, December 28, 1925, when did you place that on the bottom? A. I can't say why I shouldn't have done it at the time I received this thing.

30 Q. When did you receive it, did you say? A. I don't know. I may have received it at the time at Mr. Garibaldi's office, or he may have sent it to me in the mail. It is apparently a carbon copy and I suppose I got the same thing with the other brokers.

Q. Did you know Mr. Garibaldi prior to this transaction? A. No, sir; just by reputation.

Q. Did you know Michel & Moore prior to this transaction? A. Never had any business with Michel & Moore.

Q. Do you know Mr. Sears? A. No, sir.

40 Q. Had you ever seen Mr. Sears? A. No, sir.

Q. Did you state to Mr. Garibaldi that you

John J. Lockwood, cross.

wanted the commission, or wanted him to obtain an agreement from Mrs. Hadley to pay the commission to Mr. Garibaldi, or anything of that kind?

A. I believe the question of collecting the commission was agreeable to me; I believe Mr. Garibaldi's collecting the commission was satisfactory to me.

10

Q. You knew that Mr. Garibaldi was the broker on the other side? A. Yes; I considered him the broker in connection with the apartment house.

Q. Did you have any talk with Mrs. Hadley about her signing an agreement for the paying of commissions to Garibaldi? A. No.

Q. Did you have any talk with Mr. Garibaldi? A. About it?

Q. To pay the commissions to Garibaldi? A. No.

20

Q. Did you know that Mr. Garibaldi was to be paid a commission? A. I think I did.

Q. How did you know that? A. My understanding of the agreement between Mr. Garibaldi and myself and the other brokers, and I believe the agreement states that.

Q. Did you have any negotiations with the other brokers? A. No.

Q. What do you mean then? By talking? A. No.

30

Q. What do you mean then by negotiations? A. I had no negotiations with the other brokers. My recollection is that in addition to the young man Sears, there was a fourth man and that is why I was only supposed to receive a fourth of the commissions.

Q. Did you know what the commission was that was paid by Mrs. Hadley? A. Yes, sir; I knew it, but I never got it.

Q. You knew it was \$12,500? A. Yes.

40

Q. And you knew it was figured upon the valuation of her property as \$250,000? A. Yes.

John J. Lockwood, cross.

Q. And at that time you, in your own mind, did not believe her property was worth \$250,000? A. I didn't believe it.

10 Q. And the selling value of the property was not \$250,000 but some less sum? A. Actually in that transaction it was \$250,000, but the others had the apartment house up at the other figure.

Q. There was nothing in the transaction to indicate to Mrs. Hadley, so far as you knew, that her property was being grossly overvalued, as far as you personally knew? A. No; I had no relation to that end of the thing at all. My relation to this matter was trying to ascertain if there was an equity coming.

20 The Court: What did you do to ascertain it?

The Witness: I felt, when I was sent down to see this apartment house, I should find out if Mrs. Hadley made this trade, if there would be an equity over and above her bargain and I found there was a time coming when she was likely to need it.

The Court: Did you ascertain there was an equity?

30 The Witness: At that time, in my opinion there was, over and above the mortgage.

The Court: Do you recall how much?

The Witness: No, your Honor. If I could have that original statement I could.

The Court: You say this property went in at \$250,000?

The Witness: Yes.

40 Q. Did it go in for any other purpose at \$250,000 other than fixing commissions? A. I wouldn't say that; as you know tradings are made frequently

John J. Lockwood, cross.

with the respective figures much higher than prior sales.

The Court: Instead of quoting \$250,000 and \$415,000 it was just as easy to quote Mrs. Hadley's property at \$350,000 and the other property at \$515,000 and to increase the commission another \$5,000? 10

The Witness: Yes, if that be the purpose.

Q. But for some reason or other it has been the purpose to put both figures up and make everybody feel well, including the real estate men? A. Yes.

Q. When determining whether there was equity, will you tell what the equity in Mrs. Hadley's property was? A. I felt \$150,000 would represent her property. 20

Q. Will you tell what the value of Mrs. Hadley's equity in her property was? A. Yes.

Q. You will have to figure it? A. Yes; I would like to figure it in my mind,—about \$60,000.

Q. In making those figures you figured what was due on the mortgage and deducted that from \$150,000 just now? A. Just now.

Q. Outside of that you had no recollection of what you figured her equity was? A. No. 30

Q. And you have no figures in your valuation? A. No.

Q. Would you kindly tell us what you figured the cost of the construction of the apartment house in Weehawken? A. I can't recall.

Q. Did you figure that? A. Yes.

Q. On what did you figure the property? A. If I figured it at all I figured it on paper.

Q. Did you confirm it when you were at the apartment house with Mrs. Hadley? A. I suppose I did. 40

John J. Lockwood, cross.

Q. Did you tell Mrs. Hadley how much you thought the cost of the building was? A. I don't know; I probably did.

Q. You probably did? A. I probably did.

10 Q. That day? A. I don't know whether on that day.

Q. Did you see Mrs. Hadley more than one time? A. I saw her repeatedly.

Q. About this exchange? A. I saw her repeatedly.

Q. At her house? A. At her house.

Q. At your office? A. I don't think she came to my office; I went to her house.

20 Q. Are you certain that Mrs. Hadley went to that apartment house with you? A. I am just as sure as I can be.

Q. How did you get there? A. Drove down in my car.

Q. From where? A. From Mrs. Hadley's house in Englewood.

Q. You went there and got her? A. That is my recollection.

Q. When you were through you drove her home? A. No—

30 Q. Do you recollect—

The Court: Do you remember where you went after going to the apartment house?

The Witness: No, I don't. It is a fair assumption—

The Court: We are not interested in a fair assumption.

Q. Was it in the morning or the evening? A. That I don't know.

40 Q. Who did you see at the apartment? A. My impression was I saw the janitor.

John J. Lockwood, cross.

Q. Do you know his name? A. No; I found him in the basement.

Q. In what part of the apartment did you go?

A. We walked up and looked in a vacant apartment.

Q. You looked in one apartment? A. I can't say. 10

Q. How many rooms in the apartment you looked at? A. I don't recall. You are asking me details about something that happened five years ago.

Q. Will you tell me what value you fix the apartment house at? A. I can't tell you.

Q. What value did you tell Mr. Corbin? A. I can't tell you; I have no figures here.

Q. Did you tell Mr. Corbin you had figured Mrs. Hadley's house at \$150,000? A. I did not. 20

Q. Did you tell anybody of it? A. I did not.

Q. Did you tell Mr. Corbin what equity you figured as to the apartment house? A. My conversation with Mr. Corbin was principally that I had been down there and Mrs. Hadley said she wanted to see whether there was an equity.

The Court: I understood that you made a much fuller report to Mr. Corbin, and you advised Mrs. Hadley to go and see Mr. Corbin. 30

A. I did advise her and my report to Mr. Corbin was on this sheet.

Q. I don't recall whether you saw him? A. I saw him at his office.

Q. What was the value of the equity in the apartment house you fixed? A. I don't recall.

Q. \$1,000? A. I don't recall; I haven't the figures. There is some statement— 40

John J. Lockwood, cross.

Q. What statement? A. Statements given by the brokers at the time.

Q. Given you by Mr. Garibaldi? A. I think it came through Sears.

10 Q. I show you Exhibit D-2, and ask you if this is the statement? Is this the one? A. No.

Q. Did you have a statement like that? A. I had a memorandum which showed the price of the house, the amount of it; the set-up of the expenses in connection with it in a similar statement of that, but that was not the statement I saw.

Q. The statement you see from looking at this exhibit, the item of taxes was \$2,600? A. Looking at that, yes, I would say this says—

20 Q. Don't you recall what the taxes were? A. I haven't the figures, whether it was \$4,000 or \$8,000.

Q. On a rental of \$41,000 gross rental, what value would you place at that time? A. I don't think I would place it over three times the rent.

Q. Do you know of what this apartment house is constructed? A. I don't recall.

Q. Would you say that you gave Mrs. Hadley independent advice as to the buying of this property? A. No.

30 Q. I don't know whether or not you testified, did you tell Mrs. Hadley you were splitting the commission with the other brokers? A. I did not, no.

Q. You don't know? A. I don't know, I imagine so; I don't know.

Q. You imagine? A. It seems to me I would have.

Q. I am asking you whether you did or did not? A. The answer is no.

40 Q. Did you know that Mr. Garibaldi was getting part of this commission? A. Yes; I knew that.

John J. Lockwood, cross.

Q. You knew he was the broker on the other side? A. Yes, sir.

Q. Will you tell us why you agreed to give part of the commission to the other broker, if you were representing Mrs. Hadley? A. My answer to that is clear.

10

Q. Let us have it? A. I didn't do anything to start it for Mrs. Hadley. If I had demanded the whole commission I don't suppose there would have been a deal.

Q. There is no question that you were representing Mrs. Hadley,—you didn't represent the Garden Realty Company? A. I certainly did not.

Q. You say it was within your right, without the knowledge of this defendant, that you were to pay part of the commission of the brokers on the other side? A. I could have paid the whole commission to the other side.

20

Q. Can you tell me whether or not there were any vacancies in the apartment at the time you examined it? A. I must have known it at the time.

Q. You have no recollection? A. No.

Q. Where did you get the information that you had? A. At that time?

Q. Yes. A. The janitor.

30

Q. You went there? A. Yes, sir.

Q. You didn't walk around through the apartment to see if there were any vacancies? A. No.

Q. Have you any recollection of being there more than once? A. Yes.

Q. Twice? A. I wouldn't say whether it was two times or eight times.

Q. How long were you there? A. In the building?

Q. Yes. A. Perhaps an hour.

40

John J. Lockwood, redirect.

Redirect examination by Mr. Levenson:

Q. This authorization from Mrs. Hadley, Exhibit D-13, did you hand me that this morning? A. Mrs. Hadley's agreement? Yes, I did.

10 Q. Where did you get it? A. From my files last night.

Q. You have testified that you were in the real estate business for twenty-five years? A. Yes, sir.

Q. Placing mortgages throughout Bergen County? A. Yes, sir.

Q. What, in your opinion, in December, 1925, was the value of the Englewood property? A. December, 1925, I don't believe those properties could be sold for over \$150,000.

20 Q. When you were in this apartment house can you say you went into several apartments? A. My recollection is we were in one.

Q. Do you recall whether it was tenanted? A. My recollection is I went into a vacant apartment.

Q. Mr. Lane showed you Exhibit D-2 (showing witness paper), this is River Cliff Hall? A. That is right.

Q. That is the name of this apartment house, isn't it? A. I don't recall the name of it.

30 Q. In all, from the time you got your authorization signed by Mrs. Hadley until this deal was consummated, how many times did you see Mrs. Hadley? A. I would say I saw Mrs. Hadley six to ten times.

Q. Since that time and up to the present day have you seen or spoken to Mrs. Hadley? A. I have not seen Mrs. Hadley since that time.

Recross examination by Mr. Lane:

40 Q. You don't mean by saying that that place could not be sold for more than \$150,000, that at

John J. Lockwood, recross.

that time they were not worth more than \$150,000?

A. I think they were worth more, but they could not have been sold.

Q. If she had sold them? A. The difficulty, the parcels of land were not large enough.

Q. What do you say, in your opinion, was the value of the houses? A. The houses themselves? 10

Q. And the land. A. Those houses should cost say, between \$35,000 to \$45,000 to construct, with the exception of one house would cost more money.

Q. Mr. Lockwood, you had these houses, would you say, a couple of months or more for sale, their exclusive agency? A. Yes, sir.

Q. What did you figure the actual value, taking the whole thing? A. The actual value of the house? 20

Q. Yes; in your opinion. A. I should say—

Q. And the land. A. I should say the three houses on the side street were worth between \$40,000 and \$45,000, so far as the cost of those houses, and the value of the land was \$2,000. The house on the corner, about \$10,000.

The Court: Mr. Lockwood, perhaps I don't understand you. I think of the value as having very little relation to the cost. 30

The Witness: That is right.

The Court: My understanding of value is what property can be sold for, if there is the ordinary demand not influenced by the fact that a bank was going broke, etc. What was the value of these properties as an investment proposition?

The Witness: Notwithstanding that these houses were built that year, at that time for over \$35,000 for the three and \$45,000 for the house on the corner, at that price they could 40

Joseph Garibaldi, redirect.

have been sold, and a good price for the buyer.

10 Q. When did you find, if you did find out, what the rents of these apartments were? A. From the schedule handed to me by Sears through Mrs. Hadley.

Q. Do you know what the apartment was actually renting for at that time; how many apartments were rented and what the rents were? A. Never saw the leases and had no knowledge other than the paper.

Q. Never made any inquiry of the leases? A. No, sir.

20 Q. Never made any inquiry as to whether it had been rented for over \$41,000? A. No, sir.

Q. Would you say you are surprised at \$41,000? A. It seems to me \$280,000 would be rather a low figure.

Q. That is the figure that you placed on the Weehawken property, \$2,480,000? A. That is the figure I would place on any property if that was the true figure.

30 Q. What if the true schedule of rents was \$35,000; you would place what value? A. Seven times the rent.

JOSEPH GARIBALDI, recalled in behalf of the complainant.

Redirect examination by Mr. Levenson:

Q. At the time this house was sold, or thereabouts, did you know what the gross income was?

40 A. In that big building the rents were approximately \$41,000 a year.

Q. How much for the smaller building? A. Brought about \$18,000 or \$15,000.

Joseph Garibaldi, recross.

Q. What, in your opinion, was the correct value in December, 1925, of the small building around the corner from this? A. Between \$22,000 and \$25,000.

Recross examination by Mr. Lane:

10

Q. The Garden Realty Company has books that show the rents? A. Yes, sir.

Q. Will you produce them? A. Mr. Levenson?

Mr. Levenson: Here they are.

Q. Will you show me in this book of rentals of the Weehawken property, during December, 1925,—what are they,—on loose paper, the records you are looking at? A. These records are kept by the secretary of the Garden Realty Company.

20

Q. Have you any ledgers? A. These are part of the ledger books; there must be another book (looking). I am not familiar with these records. The young man who was here yesterday is.

Q. You say the young man who was here yesterday, is? As a matter of fact, the young man who was here yesterday joined up in January of this year?

Mr. Levenson: I object; he didn't say that.

30

Mr. Lane: I am saying that now.

The Court: The young man said he was connected with the company in January of this year.

A. I said the young man is familiar with this. He is an auditor over there. This is a loose leaf ledger, as far as I can see. Rents for January, February, March of that year, January, 1925, \$3,233; February, \$3,270; March, \$3,353; April, 3,233; that is exclusive of vacancies; it is marked

40

Joseph Garibaldi, recross.

here. I may find the other one here if I am permitted to look for it.

Here is the Garden Realty Company's statement of income of rent for the year ending December 31, 1925, \$36,332.03.

10 Q. \$36,332.03? A. That is the rents of that apartment for the year 1925, was that figured? A. I would say that fully rented it would be \$41,000.

Q. And this statement was made up as of December 31, 1925? A. Right. It says so.

Q. I call your attention under cost of operation, that the taxes, unless I am wrong, taxes \$4,400; is that right? A. Right.

20 Q. And this \$10,146; have you any idea what that is? A. No; I have not. This is for other property; there is more than River Cliff Hall. You see the income is from other apartments.

Q. You say that the apartment if fully rented would yield \$41,000? A. Yes, sir.

Q. And according to figures approximately \$4,700 of that \$41,000 was not rented? A. During that year.

30 Q. During that year can you tell how many apartments that would average? A. That would average about three or four apartments a year. You see the reason for the apartments not all being occupied, they had to be decorated and there was doubling up, otherwise the apartment would have been fully rented.

The Court: When was this decorating?

The Witness: In the year 1925, before it was sold to Mrs. Hadley.

40 Q. You say in December, 1925, that the apartment was fully rented? A. Except that one apartment.

Joseph Garibaldi, recross.

Q. Have you any records to show the actual receipts in December, 1925? A. It may be here (indicating papers). I am not familiar with the papers.

Q. You had personal charge of this apartment? A. No; I did not.

10

Q. How did you know it was fully rented? A. Because I went through the apartment several times.

Q. Have you brought with you the leases? A. No; I didn't have them.

Q. Who did have them? A. They should be here (indicating); I don't know whether they keep the leases from year or year or whether they turned them over to Mrs. Hadley, because the rents went from October to October.

20

Q. Can't you turn to the receipts to show what it was for the first part of the year of 1925? A. I tried to find them here, but I couldn't find them. (Witness looks through papers.)

Q. Of course, Mr. Garibaldi, Mr. Schmulling would know how many vacancies were in that apartment, wouldn't he? A. He should know; he had charge of the management at that time.

Q. Could you tell me when you signed that deed which was marked for identification? A. The date set in there, December 28th.

30

Q. Where were you? A. At my office.

Q. Was Mr. Lockwood there? A. He was.

Q. At your office? A. He was.

Q. And that was the date of the contract that it was put through? A. Later on, after the contract was signed.

Q. And you didn't have any agreement with Mr. Lockwood prior to the contract? A. I had none. We agreed verbally prior to the signing of the contract how the commission would be divided.

40

Arthur S. Corbin, direct.

Q. I call your attention to the fact that the contract is dated on December 28th. I understood you took the contract to the bank? A. Yes, with Mr. Sears.

Q. And had it signed? A. Yes.

10 Q. And went back to your office? A. Right.

Q. What is the date of the deed? A. I am not sure whether it was not a day or two after.

Q. You went out there by appointment with Mrs. Hadley? A. Not my appointment. Sears had the appointment with Mrs. Hadley.

Q. When you got back did you telephone Lockwood that the contract had been executed? A. I don't say whether I or Mr. Sears. Mr. Lockwood was there that afternoon.

20 Q. Did I understand you first got in touch with Mr. Lockwood the first time? A. Mr. Lockwood came to me.

Q. In reference to the property? A. Yes, sir.

ARTHUR S. CORBIN, sworn in behalf of the complainant.

Direct examination by Mr. Levenson:

30 Q. You are a member of the bar of this State? A. I am.

Q. Connected with whom? A. The Guarantee Title & Mortgage Company of Passaic.

Q. What is your official capacity? A. President.

Q. Do you know Mrs. Hadley? A. I do.

Q. How long have you known Mrs. Hadley? A. Thirty-five or forty years.

Q. Have in that time been her counsel and adviser? A. Yes, sir.

40 Q. Were you such in December, 1925? A. My

Arthur S. Corbin, direct.

principal connection with Mrs. Hadley has been as counsel for the estate of Henry L. Simmons.

Q. You know Mr. Lockwood? A. I do.

Q. Some time in November or December, 1925, some time in November, 1925, did you have a conversation with Mr. Lockwood in connection with Mrs. Hadley's property in Englewood? A. I don't recall whether I had any conversation with him in November, 1925. 10

Q. Was there some conversation with you with respect to Mrs. Hadley's property in Englewood? A. Yes, sir.

Q. Where was that conversation? A. As far as I recall, it was in my office.

Q. Had you had a talk with Mrs. Hadley prior to that relative to the sale of the property? A. I had recommended Mr. Lockwood to Mrs. Hadley, to dispose of the property. 20

Q. Because she wanted to dispose of them? A. Yes, sir.

Q. Your company held the mortgage? A. Yes, sir.

Q. As a result of this conversation with Mr. Lockwood, did he call? A. Yes.

Q. Do you recall just what took place? A. I think he merely told me that there was some negotiations under way for the exchange of those houses for an apartment. 30

Q. Do you remember whether he showed you any figures of the apartment houses? A. No.

Q. Did you consult with Mrs. Hadley with respect to the exchange? A. I did not.

Q. Your firm represented her in the closing through Mr. Harty? A. Mr. Harty was at the closing.

Q. He is a member of your firm? A. He is. 40

Arthur S. Corbin, direct.

Q. Between the time you spoke to Mr. Lockwood when you came back to your office until the closing date, did you have any conference with Mrs. Hadley with respect to this matter? A. No.

10 Q. Did you tell Mrs. Hadley that you thought it advisable to sell these houses in Englewood? A. No.

Q. Do you know why you called in Mr. Lockwood? A. I didn't call him in. I recommended him to Mrs. Hadley.

Q. Was that because Mrs. Hadley said she was very much interested in disposing of them? A. She said she was desirous of selling.

Cross examination by Mr. Lane:

20 Q. Mr. Corbin, how long have you been associated with Mrs. Hadley in this estate? A. Something over ten years.

Q. Do you recollect whether when Mr. Lockwood talked to you the apartment house, or the exchange for an apartment, whether it was for some apartment house in New York City or Jersey City, or whether it was this particular apartment house? A. I do not know what particular house.

Q. Did he go into any detail or figures with you? A. No.

30 Q. Did he give you any information on which you could advise Mrs. Hadley whether she should go into this transaction? A. No.

Q. What have you to say as to Mrs. Hadley's ability to conduct her business affairs? A. I say she had good ability.

Q. Did you ever threaten, as counsel for the Title Company, to foreclose these mortgages? A. No.

40 Q. Did Mr. Lockwood tell you that he had the exclusive selling agency from Mrs. Hadley? A. He may have; I don't know whether he did.

Arthur S. Corbin, direct.

Q. Did he in talking with you, say that he had arranged to split his commission with the broker on the other side?

Mr. Levenson: I object. It is not proper cross examination.

The Court: I sustain the objection.

10

Q. Did you have any conversation other than the one conversation with relation to this transaction? A. I think not.

Q. Do you recollect whether this conversation was in your office or not? A. I think in my office.

Q. Do you remember anything else that was said at that time about this matter? A. I think nothing else, as far as I remember.

Q. Did you advise with Mrs. Hadley as to whether she should or should not go into this transaction? A. I never advised her one way or the other.

20

The Court: Mr. Corbin, was Mrs. Hadley sole trustee of the estate of her mother?

The Witness: Mrs. Hadley and her father were the trustees during the lifetime of Mr. Hadley, but she became the sole trustee on his death.

30

The Court: Was that estate of such size that the handling of it would give her considerable business experience?

The Witness: It became such. It was the old homestead and vacant land, and it gradually came into the market and she became experienced in the handling of that property her father left her.

Q. You say she is the sole trustee now? A. She is now, since the death of Dr. Hadley, her husband.

40

Q. Was there any matter that came up before

Jay M. Levenson, direct.

Vice-Chancellor Lewis, or any matter as to her condition as sole trustee? A. No.

Q. I understand that Mr. Porter had something to do with that? A. Keeps the accounts and the books of the estate.

10 Q. At whose suggestion was that? A. Mrs. Hadley had a bookkeeper prior to employing Mr. Porter, and my recollection is she asked me my opinion of Mr. Porter as an accountant and bookkeeper, and she subsequently employed him.

Q. Has the accounting of this estate been before Vice-Chancellor Lewis? A. In a number of things, a number of different accounts.

Q. You have been present at those hearings? A. Yes, sir.

20 Q. Why, you said there was nothing of that nature? A. There had been exceptions to some of the accounts. I don't think I understood.

Q. Can you state whether or not she was asked to account as sole trustee? A. I don't believe any question was asked on that account.

JAY M. LEVENSON, sworn on the part of the complainant.

30

Direct examination by Mr. Levenson:

Q. When did you first meet Mrs. Hadley? A. At the time we closed the title.

Q. Where was that made? A. That was made at my office in Hoboken.

Q. Where did you go from that place? A. After we had completed part of our adjustments, we went down to the New Jersey Title & Guarantee Company in Jersey City.

40

Q. Do you recall on what basis the taxes were

Jay M. Levenson, direct.

adjusted? A. The taxes were adjusted on the basis of the 1925 taxes.

Q. Have you seen Mrs. Hadley since that time?

A. Many times.

Q. On what occasion and under what circumstances? A. At my office.

10

Q. How long did she continue to come to the office? A. From the time the title was closed until I believe some time in 1929.

Q. Have you found the letter she wrote you in 1928? A. Yes, sir.

Q. Will you produce it? A. I have it there. (Witness points to counsel table.) No; I have it.

Q. Do you recognize the signature to the letter?

A. It appears to be that of Mrs. Hadley.

20

Mr. Levenson: I offer the letter.

Mr. Lane: I object, unless it relates to this transaction.

The Court: How is it material?

Mr. Levenson: The absence in their complaint to anything in this transaction two years after it was done it seems to me is very material. They made no complaint about it.

The Court: I don't understand that she makes any complaint about Mr. Levenson.

30

I will sustain the objection.

Q. I show you a contract dated the first day of March, 1926, made between the Garden Realty Company and Michael Volk and Helen M. Volk, his wife, and ask you if you recognize that contract? A. I do.

Q. Who prepared that? A. I prepared it.

Q. What does it purport to contract to sell?

40

Mr. Lane: I object. Counsel cannot prove any sale that way.

The Court: I will overrule the objection.

Jay M. Levenson, cross.

Q. What does it purport to be? A. A contract for the sale of land and premises in Englewood, New Jersey.

10 The Court: Premises formerly owned by Mrs. Hadley?

 The Witness: Yes, sir. One of the houses acquired by the Garden Realty Company of Mrs. Hadley.

Q. As a result of that contract did you attend the closing between the Garden Realty Company and Mr. Volk? A. I did.

Q. Do you know what the sale price was?

Mr. Lane: I object.

20 The Court: Why.

Mr. Lane: I object on the ground that if it is the contract, the contract speaks for itself.

 The Court: I will overrule the objection, but I will permit the contract to go in if it is offered. What is the price?

 The Witness: The price paid at the closing is the price specified in the contract.

30 Q. What is that? A. \$30,000.

 Mr. Levenson: I offer the contract in evidence.

 (Contract admitted in evidence and marked Exhibit C-7.)

Cross examination by Mr. Lane:

40 Q. Mr. Volk is interested in the Steneck Trust Company? A. I do not know. Mr. Volk I knew to be a New York broker with an office in Maiden Lane.

 Q. How do you know that? A. I have met him.

Jay M. Levenson, cross.

Q. Where did you meet him? A. I met him in the office.

Q. You say you have no knowledge whether or not Mr. Volk has any connection with the Steneck Trust Company? A. I have not.

Q. Did you have anything to do with the drawing of this contract? A. I prepared it for the Garden Realty Corporation. 10

Q. This contract was executed I assume on March 1, 1926, the date that it bears? A. I believe it was.

Q. At your office? A. I don't recollect where the contract was executed by Mr. Volk; I know it was executed by the Garden Realty Company at our office.

Q. Do you know what the negotiations were which led up to the entering of this contract the month after the property had been acquired by the Garden Realty Company? A. No; I do not. 20

Q. Were you present at the closing or the exchange of the property and title? A. The Garden Realty—Hadley exchange?

Q. Yes. A. I was.

Q. Who did you represent? A. The Garden Realty Corporation.

Q. Just for my information and the Court's, Mrs. Hadley paid you \$50; what was that for? A. I don't know. 30

Q. I show you a check dated February 2, 1926. Has that anything to do with this? A. I think it had something to do with revenue stamps.

Q. I have another check of \$100, odd dollars, for revenue stamps I will show you. You haven't any recollection? A. My recollection—

The Court: Did you draw the deed and bond and mortgage? 40

Joseph Goldberg, direct.

The Witness: I drew the deed for the trade of it from the Garden Realty Company to Mrs. Hadley, and I believe I drew the purchase money mortgage. I don't know whether I drew her deed.

10

JOSEPH GOLDENBERG, sworn in behalf of the complainant.

Direct examination by Mr. Levenson:

Q. Where do you live? A. 80 Woodland Street.

Q. Englewood? A. Yes, sir.

Q. That is one of the Hadley houses? A. Yes, sir.

20

Q. On the 30th of January, 1926, did you contract to buy these houses from the Garden Realty Company? A. I did.

Q. What was the price? A. \$110,000.

Q. Did you subsequently take title? A. Yes, sir.

Q. How much did you pay? A. I think \$50,000.

Q. What was it worth? A. \$110,000.

Cross examination by Mr. Lane:

30

Q. You are a builder? A. Right.

Q. You bought these houses when did you say?
A. 1926.

Q. Can you tell me as to what the value of these houses was at the time you bought them? A. I paid for them \$110,000; the value was more than I paid for them.

Q. And you were engaged in the building business? A. Right.

40

Q. What did you figure, the bargain, fifty per cent., what percentage? A. I don't know; I held the corner for myself and I know the corner is worth more; I still live in the corner.

L. George Horowitz, direct.

The Court: How soon did you sell the other two?

The Witness: About three months.

Q. You as a builder knew the cost was more than you paid for them? A. Right.

10

Q. What did you figure the other houses? A. \$65,000 or \$67,000.

Q. \$65,000 or \$67,000? A. Right.

Q. And still live in the corner? A. In the corner.

Q. From your experience as a builder, that house is much more valuable than the other two? A. That is right.

Q. From your experience as a builder, what actual value did you put on this house in 1926, the house you are living in? A. The house stands me something like \$43,000.

20

Q. What? A. The house stands me something like \$43,000.

Q. Is that the value? A. It is worth more.

Q. It is worth twice that? A. No.

Q. At least \$20,000 more? A. No; \$10,000 or \$15,000 more.

Q. Did you pay cash for it? A. Right; subject to a mortgage.

30

L. GEORGE HOROWITZ, sworn on behalf of the defendant.

Direct examination by Mr. Lane:

Q. Are you a graduate engineer and architect?

A. I am architect; a graduate engineer.

Q. Did you have anything to do with the building of the houses in Englewood? A. President of the company that built them.

Q. What was the cost of the construction?

40

Joseph M. Boyd, direct.

Mr. Levenson: I object, that is improper rebuttal and second that it is irrelevant and immaterial.

The Court: It seems to be pretty remote.

10

JOSEPH M. BOYD, sworn on behalf of the defendant.

Direct examination by Mr. Lane:

Q. You are engaged in the real estate business?

A. Yes, sir.

Q. Have you examined these house in Englewood? A. Yes, sir; I have.

20 Q. Did you place a value on these houses as of 1926? A. I have.

Q. What was the value? A. \$205,000.

Cross examination by Mr. Levenson:

Q. When did you examine them? A. I have been familiar with two of them for four or five years and made a more thorough examination of the other two at the request of Mr. Lane very recently. But I have been physically familiar with them for four or five years.

30 Q. You had a ready buyer for them in 1925? A. Not in 1925; in 1926 my associate bought them.

Q. Who is he? A. Mr. Bower.

Q. From whom? A. From Mr. Goldenberg.

Q. For how much? A. \$65,000.

Q. Did that have anything to do with the fixing of the price you have given us? A. I believe not.

Q. Two of them were purchased for \$65,000? A. I understand that to be the case.

40 Q. That doesn't fix the value? A. No; I think that Mr. Goldenberg and Mr. Bower got those cheap.

Joseph Garibaldi, direct.

Q. The buyer doesn't fix the price? A. No, sir.

Q. Isn't that the way to fix it? A. Not always.

The Court: How much more is it worth than \$65,000.

The Witness: \$15,000.

10

The Court: \$80,000?

The Witness: \$90,000. \$25,000 instead of \$15,000.

Redirect examination by Mr. Lane:

Q. Do these exhibits, D-3-A, D-3-B and D-3-C fairly show these houses as they are today? A. Yes, sir.

Q. Were the houses practically the same in 1926, except perhaps for shrubbery? A. Yes, sir; that is correct.

20

JOSEPH GARIBALDI, recalled on behalf of the defendant.

Direct examination by Mr. Lane:

Q. When did Mr. Schmulling die? A. In November—

Q. November 14, 1929? A. Right.

30

Q. Did you know there was a default in the payment of interest in August, 1929? A. No, I did not.

Q. You know it now? A. From the testimony here, yes.

Q. I think it was August, 1929 (turning to Mr. Levenson)?

Mr. Levenson: Yes.

Q. You say that you didn't know it at that time? A. No; I did not.

40

Julian F. Hadley, direct.

JULIAN F. HADLEY, sworn on behalf of the defendant.

Direct examination by Mr. Lane:

- 10 Q. Are you the son of Mrs. Hadley? A. Yes, sir.
Q. How old are you? A. Thirty-one.
Q. Do you recollect the time your mother got this apartment house? A. No; I don't recollect the time she got it.
Q. Where were you? A. In Englewood. I don't remember the date.
Q. You remember when she got it? A. Yes.
Q. You didn't have anything to do with it? A. No, sir.
- 20 Q. After she got that apartment house, do you recollect when she moved in there? A. The fall after we left Englewood; the fall of 1926.
Q. Did you live with your mother all the time up until 1926? A. Yes, sir.
Q. You saw this apartment house? A. Yes, sir.
Q. Shortly after your mother got it? A. Yes, sir.
Q. Were there any vacancies in it? A. Yes, sir.
Q. How many? A. I didn't go through them all.
Q. Did you see any vacancies? A. Yes, sir.
- 30 Q. How many did you see? A. I know there were four, because we lived in four of them.
Q. Was that immediately after the purchase, after your mother purchased the property or was it in the fall of 1926? A. In the fall of 1926, we moved from one apartment to another.
Q. As they were rented? A. Yes, sir.
Q. Do you remember how many were vacant in the spring of 1926?

- 40 The Court: Your mother moved in there in February of 1926 in the winter time and I suppose you moved in with her?

Mary E. M. Hadley, direct.

The Witness: I went there in the fall.

The Court: She went there before you did?

The Witness: Not that I know of.

Q. Did your mother go there before you did? 10

A. I think so.

Q. Were you living with her? A. Yes.

Q. When did your mother go there? A. As far as I know, the fall of 1926.

Q. Take the summer of 1926, was your mother living with you in Englewood? A. Yes, sir.

Q. Come home at night to sleep? A. Yes, sir.

Q. Is there any possibility in your mind that she was living—

The Court: I think I misled him. 20

Mr. Lane: Yes, sir.

Cross examination by Mr. Levenson:

Q. Did you occupy apartment 27 with your mother? A. That was the last one.

MARY E. M. HADLEY, recalled in her own behalf.

30

Direct examination by Mr. Lane:

Q. Did you ever go to inspect this apartment house with Mr. Lockwood? A. I never did.

Q. Did you receive from Mr. Lockwood at any time any advice as to whether or not you should go into this transaction or not? A. No, sir.

Q. Did you receive any advice from anybody as to whether you should go into this transaction or not? A. On many occasions I received advice from Commissioner Schmulling. 40

Mary E. M. Hadley, direct.

Q. Did you receive advice from anybody other than Commissioner Schmulling? A. No, sir.

10 Q. You testified to a lot of advice Mr. Schmulling gave you. I just want to direct your attention to one portion of it, as I recollect your testimony that was to a certain time that you had full confidence in Mr. Schmulling? A. Yes, sir.

Q. And did you use the word skeptical? A. Yes, I may have used that word.

Q. There is some question in my mind as to when you became skeptical; when was that? A. I only became skeptical at the closing, practically the closing of the title.

20 Q. As I sum it up in my mind, as to whether you became skeptical before the contract was signed or after? A. After the contract.

Mr. Levenson: I object.

The Court: I think it is proper.

30 Q. Will you just explain to the Court when it was and how you had become sort of skeptical? Why you didn't do something at that time and what actually you did do. Tell it in your own words? A. I had implicit confidence in Commissioner Schmulling. He said again and again, repeating on many occasions, that I could do no better than to dispose of those houses in Englewood, and make an exchange for those two houses 875 Boulevard East and 11 Columbia Terrace. He said I was getting a great bargain. I was getting an opportunity for an income for the rest of my life. Then he said that he would give me the fullest cooperation, that he would help me to the fullest of his ability. He had experience in the
40 working of the house, and he knew he would help me. Again and again he came to see me and

Mary E. M. Hadley, direct.

urged the sale of the houses and always told me he would be at my right hand. I put every confidence into every word he said until I began to feel, a day or two before the signing of the deed, that he was assuming \$415,000 as the price of that house. Notwithstanding that I went through with the whole thing and signed the deed, having up to that time had perfect confidence in everything and Mr. Schmulling. They advised me in the office of Mr. Levenson and Mr. Schmulling that I didn't need any lawyer. 10

The Court: Did you ever meet Mr. Levenson before the day you signed the deed?

The Witness: No, sir.

Q. Did you say anything to Mr. Schmulling about this skepticism, we will call it, which you had about this \$415,000,—before you closed the deal? 20

A. No; practically none, because it was the day of the closing.

Q. What did you say? A. I said: "Commissioner Schmulling, I am greatly upset; this is too large a transaction for a woman of my years and you must remember besides this, that I am a lady." He said: "We will take care of you and if you can't take care of it, we will take it back." 30

Q. Have you told us everything about the time of the closing? A. Yes, sir; except that Mr. Schmulling kept inspiring me as to what he could do for me.

Q. Did you go into this apartment in February, 1926? A. No, sir.

Q. When did you? A. Not until October of the same year, 1926.

Q. Do you recollect the occasion when Mr. Garibaldi was at your house? A. Very well. 40

Mary E. M. Hadley, direct.

Q. Did he get out? A. At my request.

Q. Did he come into the house? A. He did.

Q. What was the conversation and what did he do?

Mr. Levenson: I object; it is incompetent.

10 The Court: When was this conversation?

The Witness: This was some time before the closing of the title. Mr. Garibaldi came there in an automobile.

The Court: I thought you met him out at the house.

Q. How did they get there; did they come in an automobile? A. They did; they came in Wiley
20 Sears' car, and after Mr. Sears came at my request, I asked who was the gentleman in the car, and he said, "Mr. Garibaldi," and I said, "It is cold today; ask him to come in." Mr. Garibaldi came in and I invited them to have tea, but they didn't stay, and we confined our attention to putting the deal through.

Q. Did you know until now, that Mr. Lockwood received any of his commission? A. This is the first to my knowledge.

30 Q. Did you know that Mr. Garibaldi was to receive any commission? A. I didn't know anything about it. But there were checks to a large amount drawn to him. I didn't know they were to go to him.

Q. Did the Mrs. Fleming that testified that you went to live there in February,—is she the wife of the man you said left three weeks after you lived there? A. I think Mr. Lane,—I know she is the wife of the janitor; I think you are mistaken about three weeks; I think they both stayed over
40 a month and a half or two.

Mary E. M. Hadley, cross.

Q. During any of the time that she was there did you stay there? A. I might have stayed there a night or two.

Q. What do you mean, stayed there a night or two? A. This was winter time and bitter cold; and to get from Weehawken to Englewood was quite difficult and I was provided with a cot to sleep and stayed one or two nights; but I was in and out of the house daily and also I had information that the janitor was leaving me. 10

Cross examination by Mr. Levenson:

Q. Did you pay the first half of the 1929 taxes? A. I am very sure I did.

Q. This interrogatory was asked of you and you made answer: "When did you actually move into the apartment house?" And you answered "April, 1929." Do you recall that? A. I don't remember. 20

Mr. Lane: I now offer deed marked D-2 for Identification and deed marked D-14 for Identification.

The Court: They will be admitted in evidence.

(Deeds marked D-2 for Identification is received in evidence and marked Exhibit D-2. Deed marked D-14 for Identification is received in evidence and marked Exhibit D-14.) 30

CASE CLOSED.

*Exhibits.***Exhibit C-1.****(Mortgage.)**

10 Mortgage made by Mary E. Hadley, widow, to Garden Realty Corporation, dated the 29th day of January, 1926, to secure a bond in the penal sum of \$157,000 to secure the payment of the sum of \$78,500 on the first day of April, 1930 with interest to be computed from January 25, 1926 at 6% per annum, and to be paid on May 1st, 1926 and quarterly thereafter. Mortgage recorded in the Register's Office of Hudson County on February 1, 1926 in Book 1356 of Mortgages, Page 179.

20 Mortgage covers the premises mentioned in Paragraph Three of the Bill of Complaint and the first tract contained in the contract of exchange (Exhibit D-4) conveyed by the complainant to the defendant in pursuance with said contract.

Mortgage in usual form containing interest, insurance and municipal lien clauses.

Exhibit C-2.**(Bond.)**

30

Bond in usual form secured by mortgage Exhibit C-1.

Exhibit C-3.**(Assignment of Bond and Mortgage.)**

40 Assignment of bond and mortgage (Exhibits C-1 and C-2) made by Garden Realty Corporation to George W. Steneck of the City of Hoboken, bear-

Exhibits.

ing date the fifth day of February, 1926 and recorded in the Register's Office of Hudson County on February 26, 1927 in Book 178 of Assignments of Mortgages, Page 253.

10

Exhibit C-3A.**(Assignment of Bond and Mortgage.)**

Assignment of bond and mortgage (Exhibits C-1 and C-2) made by George W. Steneck of the City of Hoboken, to Garden Realty Corporation (complainant), bearing date November 1, 1929 and recorded in the Register's Office of Hudson County on December 23, 1930 in Book 201 of Assignments of Mortgages, on Page 63.

20

Exhibit C-4.**(Contract of Exchange.)**

(Contract of Exchange of properties made between Garden Realty Corporation (complainant) and Mary E. Hadley (defendant), bearing date December 28th, 1925.)

30

AGREEMENT made this 28th day of December, 1925, BETWEEN GARDEN REALTY CORPORATION, a corporation of New Jersey, of the first part, and MARY E. HADLEY, widow, of the City of Englewood, County of Bergen and State aforesaid, of the second part.

WHEREAS, the first party is the owner of a certain forty-five family apartment house, together with a one family private residence on the same

40

Exhibits.

plot, in the Township of Weehawken, County of Hudson and State aforesaid, hereinafter more particularly described; and

10 WHEREAS, the second party is the owner of four one family houses at the South-West corner of Walnut and Woodland Streets, in the said City of Englewood, also hereinafter more particularly described, and more particularly described in the sketch or plan hereto annexed and made a part hereof.

WHEREAS, the said respective parties have interchangeably agreed to an exchange of their respective properties on the basis hereinafter more particularly set forth:

20 NOW THIS INDENTURE WITNESSETH, That for One dollar and other valuable consideration, interchangeably passing between the parties hereto, the receipt whereof is hereby severally acknowledged, it is agreed as follows:

30 That the first party shall, on or before January 29, 1926, well and sufficiently convey by full covenant and warranty deed, free and clear of all encumbrances, except as hereinafter stated, its said lands and premises in the Township of Weehawken, more particularly described as follows:

40 All those certain lots, tracts or parcels of land and premises, hereinafter particularly described, situate, lying and being in the Township of Weehawken, in the County of Hudson and State of New Jersey, which on a certain map entitled "Map of Clifton Park, Weehawken, N. J." made by John G. Van Horne, Civil Engineer and City Surveyor, 71 Broadway, New York, N. Y. and filed in the Office of the Register of said Hudson County are

Exhibits.

marked, known and designated as lots numbered three hundred and sixty (360), three hundred and sixty-one (361), three hundred and sixty-two (362), three hundred and sixty-three (363), three hundred and sixty-four (364) and three hundred and sixty-five (365) all of said lots being of the size and dimensions as shown upon said map, all as by reference to said map will more fully and at large appear. 10

It is understood and agreed that the said last mentioned lands and premises shall be conveyed subject to the following:—

1. First mortgage in the sum of \$162,000.00 held by New Jersey Title Guaranty & Trust Co. which said mortgage bears interest at the rate of six per cent per annum, payable quarterly, together with installment payments on account of principal of \$1500. quarterly, and which said mortgage has about four and one-half years to run and which said mortgage is a first mortgage on the apartment house property and a second mortgage on the private dwelling. 20

2. First mortgage in the sum of \$11,000.00 on the private dwelling, interest six percent, payable quarterly which has about two years to run. 30

3. Such state of facts as an accurate survey may disclose.

4. Rights of tenants in possession under leases and monthly tenancies.

Coincident with the passing of title to the last mentioned lands and premises, the party of the second part shall also, on or before January 29, 1926, well and sufficiently convey to the first party, 40

Exhibits.

by full covenant and warranty deed, free and clear of all encumbrances, except as hereinafter stated, her said property at the corner of Walnut and Woodland Streets, in the said City of Englewood, more particularly described as follows:

10

Being a plot of ground with a frontage of one hundred and thirty-nine (139) feet on Woodland Street, a frontage of five hundred and twenty-nine (529) feet on Walnut Street, a depth of three hundred and eight and fourteen one-hundredths (308.14) feet on the northwesterly side and being about four hundred feet wide in the rear, and having located thereon four one family private residences, designated for the purposes of this agreement as properties one, two, three and four and more particularly set forth in the sketch and plan hereto annexed and made a part hereof.

20

The said last mentioned lands and premises shall be conveyed subject to the following:

1. First mortgage of \$20,000. covering property No. 1 which has about two and one half years to run, interest 6%.

30

2. First mortgage of \$20,000. covering property No. 2 which has about two and one half years to run, interest 6%.

3. First mortgage of \$20,000. covering property No. 3 which has about two and one half years to run, interest 6%.

4. First mortgage of \$15,000. covering property No. 4 which has about two and one half years to run, interest 6%.

40

5. Second mortgage in the sum of \$5000. interest 6% which has about one year to run, covering property No. 1.

Exhibits.

6. Second mortgage of \$5000. interest 6% which has about one year to run, covering property No. 2.

7. Second mortgage of \$5000. interest 6% which has about one year to run, covering property No. 3.

8. Second mortgage of \$5000. interest 6% which has about one year to run, covering property No. 4. 10

9. Such state of facts as an accurate survey may disclose.

For the purposes of adjusting the equities, the party of the second part shall, coincident with the interchangeable passing of titles, make, execute and deliver to the first party a purchase money bond and mortgage for a period of four years and two months interest payable quarterly, in the sum of \$62,000.00, which said mortgage is to be a second lien on the apartment house to be conveyed by the party of the first part to the party of the second part, and a third lien on the private dwelling to be conveyed by the party of the first part to the party of the second part. 20

It is further expressly understood and agreed by and between the parties hereto that the sum of \$25,000. in cash is to be paid by the party of the second part to the party of the first part upon the passing of title. 30

It is further understood and agreed by and between the parties hereto, that in the event any payments which may be paid on account of the principal of the first mortgage covering the premises to be conveyed by the party of the first part to the party of the second part, between the date hereof and date of passing title, then and in that event, the amount of said payment or payments on account of principal shall be added to the purchase money mortgage of \$62,000.00. aforementioned. 40

Exhibits.

All taxes, interest on mortgages, water rent, fire insurance premiums and rent from the respective premises shall be apportioned, adjusted and allowed as of the date of the passing of title.

10 It is further agreed by and between the parties hereto that the premises to be conveyed by the party of the second part to the party of the first part shall be untenanted and unoccupied upon the passing of title.

And it is further agreed that the said respective parties may interchangeably enter into possession of the said respective lands and premises on the date of passing title, next ensuing the date hereof and from thence take the rents, issues and profits to their own respective uses.

20 It is further understood and agreed that the title to the said lands and premises shall interchangeably be delivered and received, said sum of money paid and the said bond and mortgage executed and delivered at the office of the Steneck Trust Co., 95 River Street, Hoboken, N. J., between the hours of nine o'clock in the forenoon and five o'clock in the afternoon on the said twenty-ninth day of January, next ensuing the date hereof.

30 And for the performance of all and singular the covenants and agreements aforesaid, the said respective parties do hereby bind themselves, and their respective heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF, the first party has caused these presents to be signed by its President and its corporate seal to be affixed, attested by its Secretary, and the party of the second part has here-

Exhibits.

unto set her hand and seal the day and year first
above written.

GARDEN REALTY CORPORATION.

By HARRY L. SCHMULLING

President.

Attest MABEL W. WETJEN

Secretary.

MARY E. HADLEY (L. S.)

(Seal)

FRANCIS PORTER

as to Mary E. Hadley

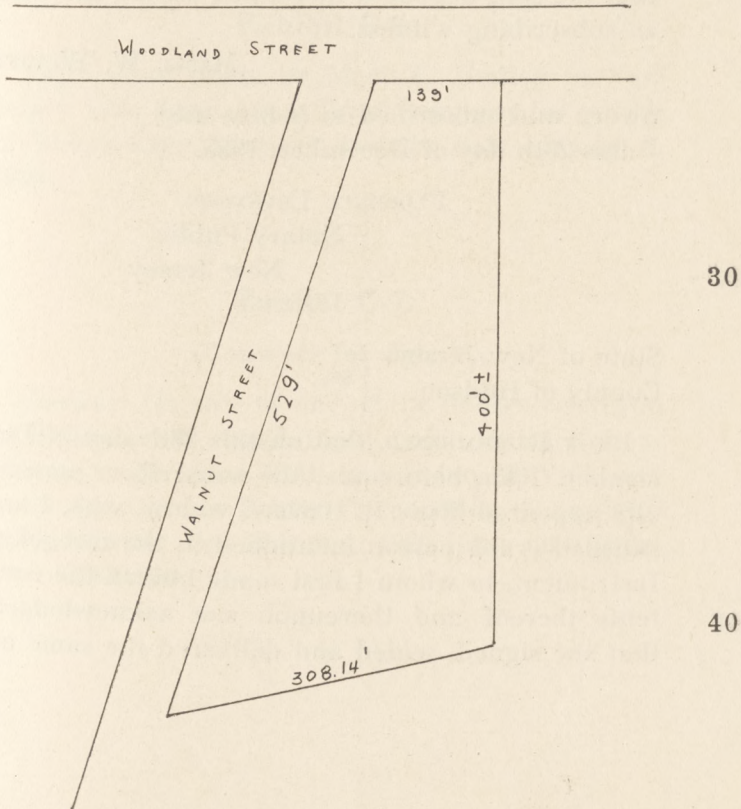
Signed, sealed and delivered
in the presence of

CHARLOTTE L. KLEIBER

(Seal)

10

20



Exhibits.

State of New Jersey, }
 County of Hudson, } ss.:

10 BE IT REMEMBERED, that on this 28th day of December, 1925, personally appeared Mabel W. Wetjen who being by me duly sworn doth depose and make proof to my satisfaction that she is the Secretary of, and well knows the corporate seal of the Garden Realty Corporation, the corporation mentioned in the foregoing Instrument, that the seal thereto affixed is the proper corporate seal of the said corporation, and that the same was so affixed thereto, and the said Instrument signed and delivered by Harry L. Schmulling who was at the date and execution thereof, President of said corporation, in the presence of said deponent, as the voluntary act and deed of the said corporation and that the said deponent thereupon signed the same as subscribing witness.

20

MABEL W. WETJEN

Sworn and subscribed to before me }
 this 28th day of December, 1925. }

FLORENCE LEVENSON
 Notary Public
 New Jersey

30

State of New Jersey, }
 County of Hudson. } ss.:

40 BE IT REMEMBERED, that on this 28th day of December, 1925, before me, the subscriber, personally appeared MARY E. HADLEY, widow, who, I am satisfied is the person mentioned in the foregoing Instrument, to whom I first made known the contents thereof and thereupon she acknowledged that she signed, sealed and delivered the same as

Exhibits.

her voluntary act and deed, for the uses and purposes therein expressed.

FRANCIS PORTER
Notary Public of N. J.

(Seal)

10**Exhibit C-5 for Identification.**

(Lease.)

Lease of apartment No. 27 in Weehawken apartment house, bearing date December 31, 1925, made between Garden Realty Corporation (complainant) and Mary E. Hadley (defendant).

20**Exhibit C-6.**

Application made by Mary E. Hadley to New Jersey Title Guaranty & Trust Company for search of Weehawken property, bearing date January 8, 1926.

30**Exhibit C-7.**

(Contract for Sale.)

Contract for sale of one of the houses conveyed by defendant to complainant under contract of exchange to Nicholas Volk and Helen M. Volk and made by Garden Realty Corporation (complainant), bearing date March 1, 1926 for a consideration of \$30,000.

40

*Exhibits.***Exhibit D-1.**

(Letter from Jos. J. Garibaldi to James Gannon,
Enclosing List of Expenses and Mortgages.)

Tel. Hoboken 1787

10

JOSEPH J. GARIBALDI

REALTOR

SIXTY-EIGHT AND SEVENTY HUDSON STREET

Hoboken, New Jersey

November 16, 1925.

Mr. James Gannon,
999 Bergen Ave.,
Jersey City, N. J.

20

Dear Mr. Gannon:—

At the request of Mr. Harry Schmulling, I am
enclosing herewith list of expenses and mortgages
of River Cliff Hall, Weehawken, N. J.

Kindly acknowledge receipt of same, and oblige

Very truly yours,

J. GARIBALDI

JJG:HF

Enc.

30

40

*Exhibits.***Exhibit D-2.**

**(List of Rents and Income of Property Conveyed
by Complainant to Defendant and Enclosed
with Letter, Exhibit D-1.)**

GARDEN REALTY CORPORATION

10

STENECK TRUST BUILDING

95 River Street, Hoboken, N. J.

RIVER CLIFF HALL

Rents	yearly	\$41,000.00	
Expenses			
Salary-Supt	"	3,000.00	
Coal	"	2,000.00	20
Water	"	700.00	
Elevator	"	240.00	
Light & Power	"	650.00	
Taxes	" House	400.14	
Taxes	" Apt.	4,669.41	
Telephone	"	27.00	
		\$11,686.55	

MORTGAGES

30

New Jersey Title Guarantee & Trust Co.	\$162,000.00
Katherine Muller	11,000.00

40

Exhibits.

10

Exhibits D-3a, D-3b, D-3c and D-3d.

(See four photographs following.)

20

**Exhibits D-5, D-6, D-7, D-8, D-9, D-10
and D-11.**

(See seven photographs of checks following.)

30

40



Exhibit D-3a.





Exhibit D-3b.





Exhibit D-3c.



Exhibit D-3d.



Johnson and Co.

(Photostatic copy of check marked "D-5" and endorsement.)

Payment acct of \$700 voting privilege to John J. West & later given him to Sears

D-5

THE PARK TRUST COMPANY 55-549

No. _____ WEEHAWKEN, N.J. July 1st / 1926

PAY TO THE ORDER OF *Riley Sears* \$ 1000.⁰⁰

One Thousand 100 ———— " ———— DOLLARS

PAR IN NEW YORK CITY

M. E. Hadley

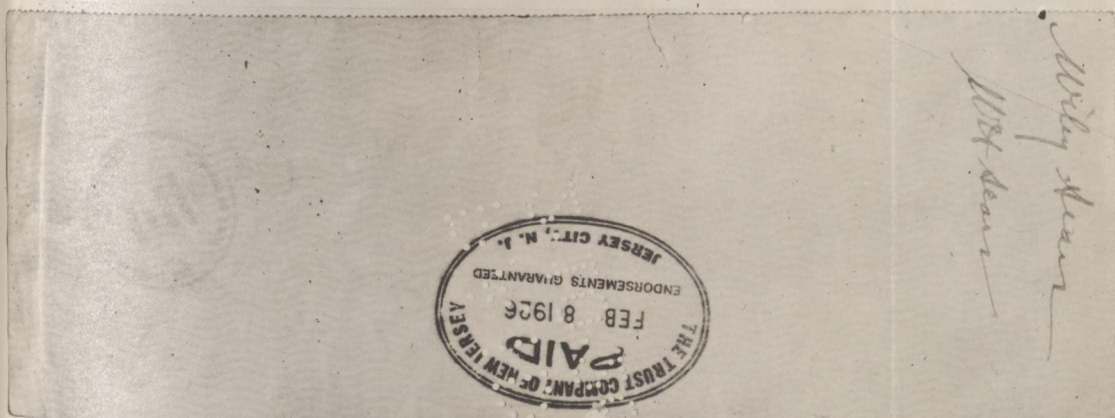


Exhibit D-6.

(Photostatic copy of check marked "D-6" and endorsement.)

D-6 CITY TRUST COMPANY OF PASSAIC 55-134
(FORMERLY FOURTH WARD TRUST CO.)
PASSAIC, N.J. March 1st 1926
PAY TO THE ORDER OF *Wilem J. Vears* \$ *2083.33*
Two thousand and eighty-three 33/100 DOLLARS
COLLECTIBLE AT PAR THROUGH THE FEDERAL RESERVE BANK OF NEW YORK
No. *Mary E. Bradley*

Exhibit D-6.

(Photostatic copy of check marked "D-6" and endorsement.)

55-40 MAR 4 1926
PAY TO THE ORDER OF
HANOVER NATIONAL BANK
NEW YORK
PRIOR ENDORSEMENT GUARANTEED
EMPIRE TRUST COMPANY
NEW YORK
MAR - 4 1926
PAY TO THE ORDER OF
ANY FEDERAL RESERVE BANK
PRIOR ENDORSEMENT GUARANTEED
1-33 HANOVER NATIONAL BANK
NEW YORK
33
Wiley Dean
W. Dean

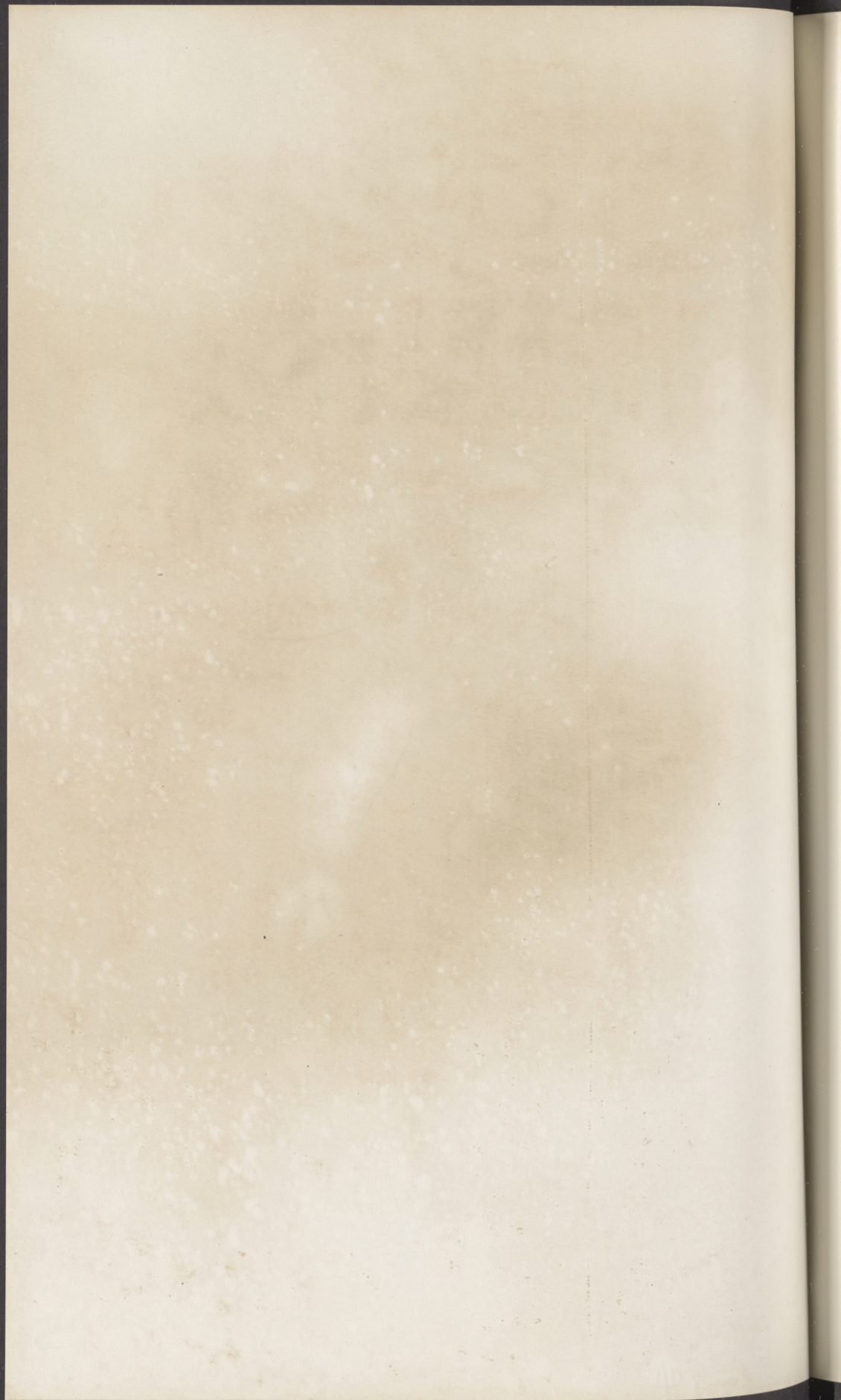


Exhibit D-7.

(Photostatic copy of check marked "D-7" and endorsement.)

CITY TRUST COMPANY OF PASSAIC 55-134
(FORMERLY FOURTH WARD TRUST CO.)
PASSAIC, N.J. *Feb 19th 1926*

PAY TO THE ORDER OF *Wiley Sears* \$ *1750.⁰⁰*
One thousand seven hundred and fifty 00 DOLLARS
COLLECTIBLE AT PAR THROUGH THE FEDERAL RESERVE BANK OF NEW YORK
No. *Mary E. Hadley*

Exhibit D-7.

(Photostatic copy of check marked "D-7" and endorsement.)

PAY TO THE ORDER OF
HANOVER NATIONAL BANK
NEW YORK
PRIOR ENDORSEMENT GUARANTEED
EMPIRE TRUST COMPANY
NEW YORK
FEB 23 1926
PAY TO THE ORDER OF
ANY FEDERAL RESERVE BANK
PRIOR ENDORSEMENT GUARANTEED
HANOVER NATIONAL BANK
NEW YORK

Wiley Sears
Mary E. Hadley

Exhibit D-8.

(Photostatic copy of check marked "D-8" and endorsement.)

D-8

CITY TRUST COMPANY OF PASSAIC 55-134
(FORMERLY FOURTH WARD TRUST CO.)

PASSAIC, N.J. *Nov 22nd* " 1926

PAY TO THE ORDER OF *Garden Realty Co.* \$ *5,000.00*

Five Thousand " **DOLLARS**

COLLECTIBLE AT PAR THROUGH THE FEDERAL RESERVE BANK OF NEW YORK

No. *Mary E. Hadley*

RECEIVED BY BANK OF NEW YORK

Exhibit D-8.

(Photostatic copy of check marked "D-8" and endorsement.)

For Deposit

GARDEN REALTY CORPORATION

PAY TO THE ORDER OF
ANY BANK, BANKER OR TRUST CO.
FOR DEPOSIT ONLY
NOV 24 1926
55-109

PAY ANY BANK, BANKER OR TRUST CO. OR ORDER
PRIOR ENDORSEMENT REQUIRED
NOV 24 1926
55-109

PAY ANY BANK, BANKER OR TRUST CO. OR ORDER
PRIOR ENDORSEMENT REQUIRED
NOV 24 1926
55-109

Exhibit D-9.

((Photostatic copy of check marked "D-9" and endorsement.))

D-9 Jersey City N.J. Feb 15th 1926 No. 1124716

The Trust Company of New Jersey 55-40
SIP AND BERGEN AVENUES

Pay to the order of *Wiley Sears* \$500.⁰⁰

Wiley Sears

PAID IN NEW YORK CITY THROUGH NORTHERN NEW JERSEY CLEARING HOUSE

Safe Deposit Boxes

Mary E. Hadley

pay money on acct of Wiley Sears

Exhibit D-9.

((Photostatic copy of check marked "D-9" and endorsement.))

Wiley Sears

PAID 215.00

MICROFILM UNIT CO.

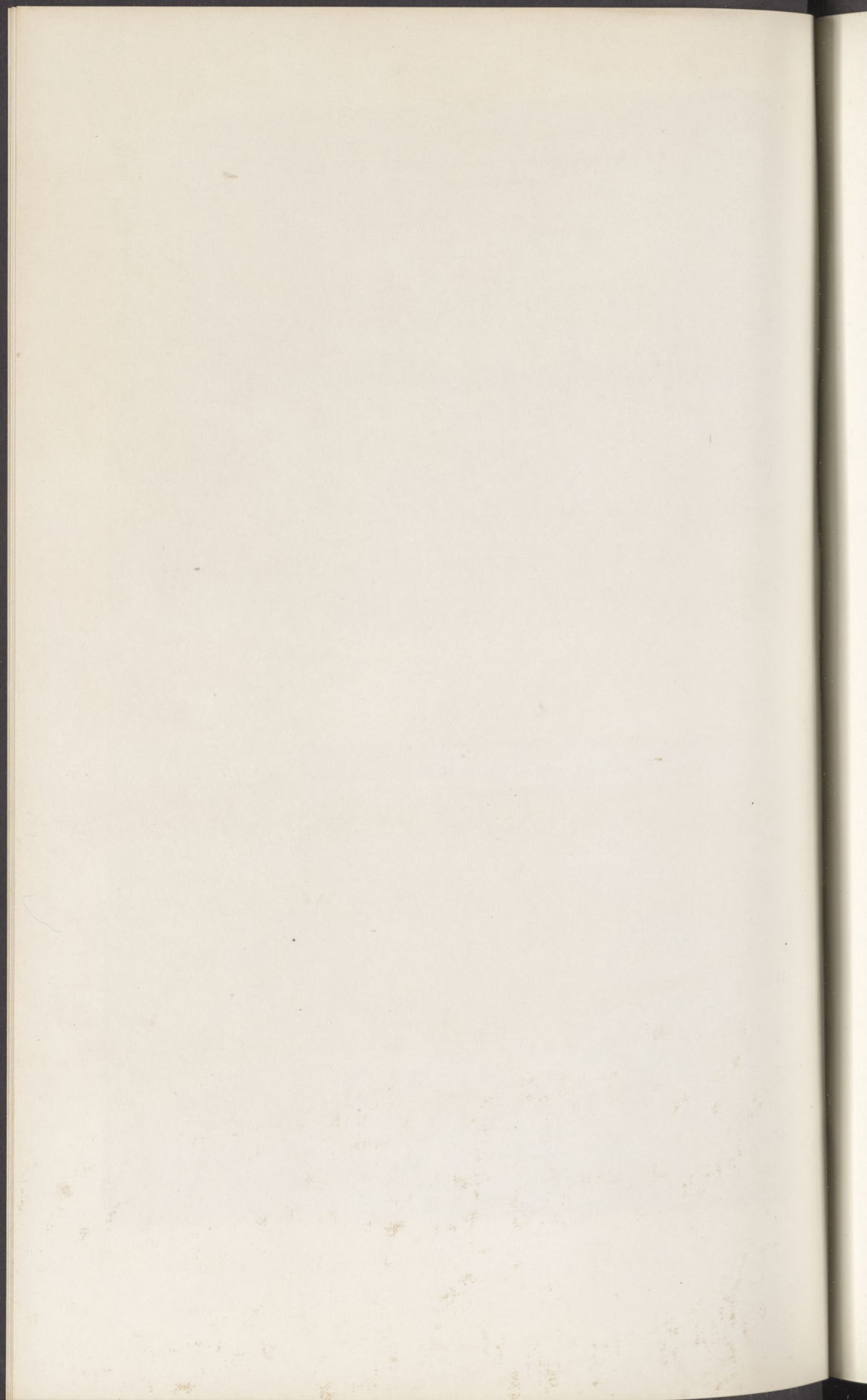


Exhibit D-10.

((Photostatic copy of check marked "D-10" and endorsement.))

D-10 Jersey City, N.J. July 15th 1926 To.

The Trust Company of New Jersey 55-40
SIP AND BERGEN AVENUES

Pay to the order of Joseph J. Garofalo \$4,500.⁰⁰

Four thousand and no/100 Hundred Dollars

PAR IN NEW YORK CITY THROUGH NORTHERN NEW JERSEY CLEARING HOUSE

Safe Deposit Boxes

Mary E. Garofalo

Exhibit D-10.

((Photostatic copy of check marked "D-10" and endorsement.))

PAID on acct. of Garofalo note for deposit June 22nd 1926

George J. Garofalo

THE TRUST CO. OF N.J.
JUL 17 1926

Exhibit D-11.

((Photostatic copy of check marked "D-11" and endorsement.))

*Payment on acct of
Note of Wm. H. Hiley
given to M. Hiley*

D-11

THE PARK TRUST COMPANY 55-549

No. *WEEHAWKEN N.J. Feb 15th 1926*

PAY TO THE ORDER OF *Hiley Hears*

One Thousand 00/100 \$ *1000.00*

Mary C. Hadley

PAID IN NEW YORK CITY

DOLLARS

Exhibit D-11.

((Photostatic copy of check marked "D-11" and endorsement.))

Wiley Hears

PAID FEB 15 1926

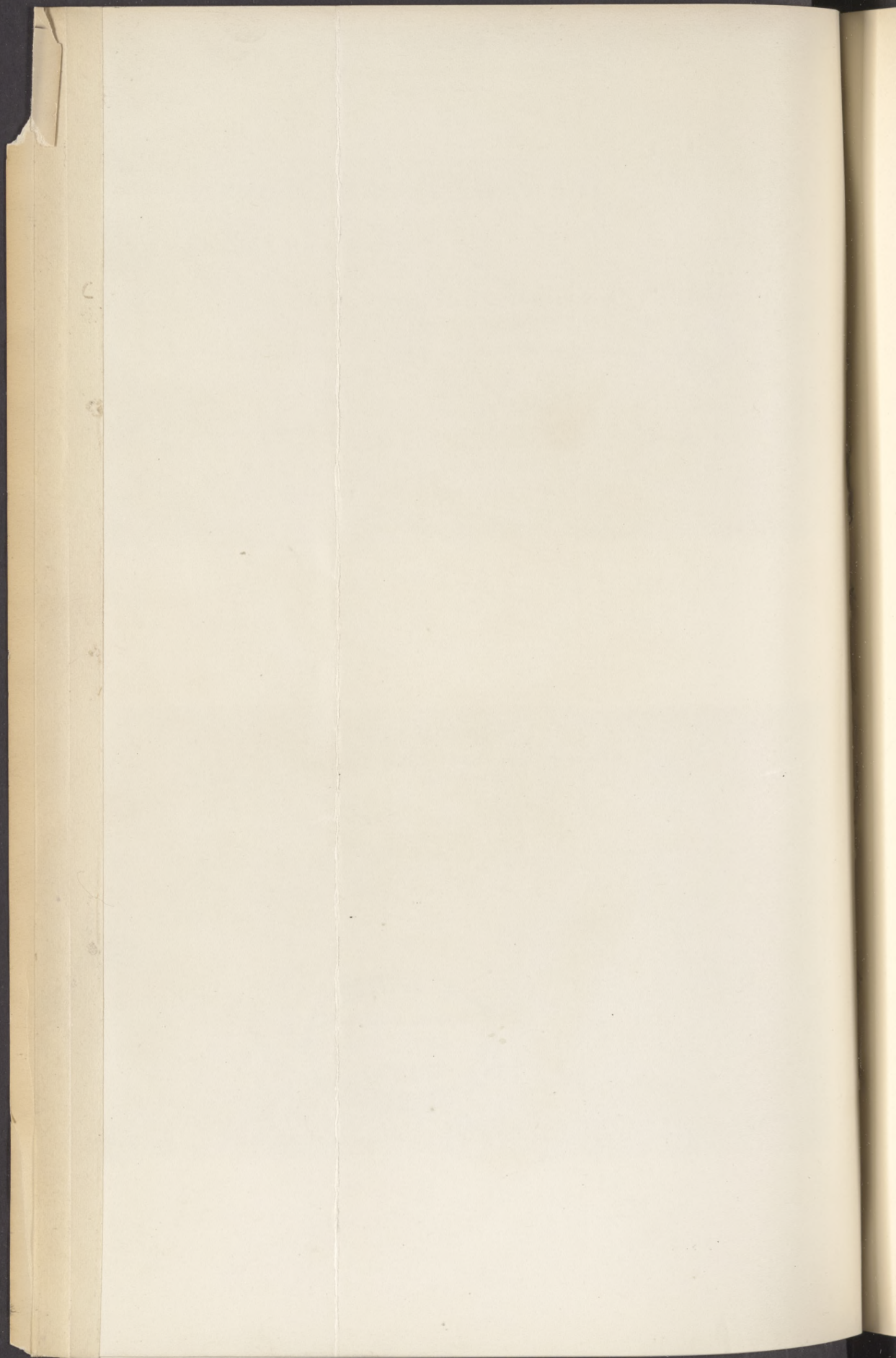
THE TRUST COMPANY OF NEW JERSEY

ENDORSEMENTS GUARANTEED

JERSEY CITY, N. J.

FOR DEPOSIT TO

MICHAEL J. MOORE CO.



*Exhibits.***Exhibit D-12.**

**(Tax bill for year 1926 of Town of Weehawken on property
conveyed by complainant to defendant under
contract of exchange.)**

Street	Block No.	Lot No.	Value of Land	Value of Building	Personal Property	Total Valuation	Total Amount of Taxes
Columbia Terrace	53	360	2500	7500	500		
		361	2500				
		362	3900				
County Road		363	3600				
		364	3600	165,000		192,700	6,561.44
		365	3600				

10

20

30

40

*Exhibits.***Exhibit D-13.**

(Written Authorization by Defendant to W. J. Lockwood of Sale of Defendant's Englewood Property.)

10 THE LEONIA HEIGHTS LAND COMPANY
ESTABLISHED 1905
ONE-EIGHTY-THREE BROAD AVENUE
Leonia, New Jersey
Telephone Leonia 827 W. J. Lockwood
Agent

November 21, 1925

Mr. W. J. Lockwood,
18 West 34th Street,
20 New York City.

30 In consideration of your immediately listing my four new houses at Woodland Avenue, Englewood, New Jersey, at the prices and according to the terms hereinafter set forth, I hereby authorize you to sell or exchange the property, and further agree to pay you a commission on these or any other prices accepted by me at the rate of 5% of the sale price. This agreement is intended to give you the exclusive agency for the sale of my property from the date hereof to May 1st, 1926, and in further consideration thereof, it is my understanding that you will actively offer the property for sale through your New York and New Jersey offices, and will pursue every proper method to stimulate the sale of my properties and that unless otherwise agreed, I shall be put to no expense for your services, except by payment of commission as above stated.

40 MARY E. M. HADLEY.

Accepted.
W. J. LOCKWOOD

*Exhibits.***Exhibit D-14.****(Agreement of Garibaldi to Split Commissions
with W. J. Lockwood.)**

Tel. Hoboken 1787

10

JOSEPH J. GARIBALDI

REALTOR

SIXTY-EIGHT AND SEVENTY HUDSON STREET

Hoboken, New Jersey

* December 28, 1925.

To W. J. Lockwood,
Leonias, N. J.

This is to certify that you are to receive from
me for your services in connection with the sale
of four one-family houses owned by Mrs. Hadley
at Walnut and Woodland Streets, Englewood,
N. J., to Garden Realty Corporation, and for the
sale of River Cliff Apartments at 875-877 Boule-
vard East Weehawken, N. J., from Garden Realty
Corporation to Mrs. Hadley, the sum of \$3625.00
from commissions to be paid to me by the said
Mrs. Hadley and Garden Realty Corporation, at
such time, and in the event that said commissions
are paid to me by said Mrs. Hadley and Garden
Realty Corporation.

20

30

JOSEPH J. GARIBALDI

I agree to the above
W. J. LOCKWOOD

40

Memorandum of Vice-Chancellor.

(Filed May 22, 1931.)

IN CHANCERY OF NEW JERSEY.

10	Between GARDEN REALTY CORPORATION, <i>Complainant,</i> and MARY E. M. HADLEY, <i>Defendant.</i>	} On Bill, &c. 75/718.
----	--	---------------------------

May 22, 1931.

20 Messrs. MATHEW J. TACKELLA and ABE
 LEVENSON for the Complainant.
 Messrs. M. LESTER LYNCH and HARRY LANE
 for the Defendant.

(This memorandum is not to be published in the
 official or unofficial reports.)

MEMORANDUM.

30 BIGELOW, V. C.:

 This is a bill for the foreclosure of a purchase
 money mortgage. The defendant Mrs. Hadley re-
 sists foreclosure and asks for the cancellation of
 the bond and mortgage, on the ground that the sale
 out of which the mortgage grew was tainted by
 fraudulent and false representations on the part
 of the complainant. The alleged representations
 were that the property was worth \$450,000, that it
 would produce an income of \$3,000 and that taxes
 40 were about \$3,000.

Memorandum of Vice-Chancellor.

Mrs. Hadley found before she took title or executed the mortgage, that taxes were about \$4,500. The correct amount was disclosed when the parties met for the purpose of passing title; the exact taxes were used as a basis for figuring the settlement. In spite of this knowledge Mrs. Hadley proceeded to close the deal.

10

As to the representations in respect to income, Mrs. Hadley's testimony was not very clear. But as I understood her, Mr. Schmulling for the Garden Realty Corporation, said that he was offering the property to her at a bargain price and in explanation of his willingness to do so, that he was not able to make a success of this property; but that if it were properly managed it would bring in an income of \$3,000, and that Mrs. Hadley had the ability to manage the property successfully. She also testified that before taking title she checked the income figures given her by Mr. Schmulling and found them wrong. I do not think that Mr. Schmulling represented to her that the actual income was at the rate of \$3,000 a year or that Mrs. Hadley so understood. Furthermore the only proof of the actual income from the property is Mrs. Hadley's testimony that after she took title there was no income and the further evidence that the gross rentals the preceding year were \$36,332.

20

30

The transaction under consideration was an exchange of properties. The figures \$415,000 and \$250,000 were used to represent the values of the properties which Mrs. Hadley was buying and selling. Both amounts were grossly excessive. Mr. Schmulling knew it and Mrs. Hadley suspected it. She testified that she lost confidence in him to some extent when he said his property was worth \$415,000. This was early in the negotiations. The

40

Memorandum of Vice-Chancellor.

10 difference between \$415,000 and \$250,000 is \$165,-
000 and this was the basis on which the exchange
was made. I think the actual difference in values
was about \$125,000; say \$150,000 for Mrs. Hadley's
property and \$275,000 for complainant's property.
Assuming that I am correct in this, Mrs. Hadley
had the worst of the bargain by \$40,000. Such a
discrepancy is not a ground for setting aside the
transaction. Equity does not interfere merely be-
cause a party makes an unwise deal. Representa-
tions by a seller as to the value of his property
are not usually a basis for a claim of fraud.
Robertson v. Criterion Construction Co., 6 N. J.
Misc. 91; 140 Atl. 574. Value is a matter of opinion.

20 I have not overlooked that Mrs. Hadley at the
time of the transaction was a woman seventy years
old. She is, however, a woman of intelligence and
education in full possession of her faculties. She
had had more than ordinary experience in real
estate and mortgages. She was accustomed to
dealing with lawyers and real estate agents. She
knew that the safe course was to seek the advice
of experts, but she preferred to rely upon her own
judgment.

30 I do not find in the transaction fraud or such
overreaching as would have justified a cancellation
or reduction of the mortgage, even if application
had been made to the court promptly—but the de-
fendant was not prompt. She took up the manage-
ment of the property when it was transferred to
her in January, 1926, and became immediately
aware of the exact state of the income. She put
the property into the hands of real estate agents
for sale and must have learned within a year that
40 it was not worth anywhere near \$415,000. She
paid interest and installments of principal on the
mortgage as late as August 1, 1929. She never af-

Final Decree.

tempted to assert her rights growing from the alleged fraud until February 3, 1930, when she filed her answer and counterclaim in this suit. This was more than four years after she took title to the property. Meanwhile, in November, 1929, Mr. Schmulling, who negotiated the transaction for the complainant had died and so the complainant has been deprived of the benefit of his evidence. These laches of defendant bar her counterclaim. Her delay in asserting her claim, together with the payments made by her after she learned the true situation, operated as a waiver and as a ratification of the transaction. *Mortgage and Investment Co. of N. J. v. Romel Realty Co.*, 106 N. J. E. 185; 150 Atl. 424. 10

There should be a decree for complainant. It will carry costs and the counsel fee usually allowed in uncontested foreclosures. 20

Final Decree.

(Filed April 27, 1931.)

IN CHANCERY OF NEW JERSEY.

Between

GARDEN REALTY CORPORATION,
Complainant,

and

MARY E. M. HADLEY,
Defendant.

75/718.

On Bill, etc.

30

This cause coming on to be heard in the presence of M. J. Tackella, solicitor of the complainant, and 40

Final Decree.

10 Abe D. Levenson, of counsel, and M. Lester Lynch, solicitor of the defendant, and Harry Lane, of counsel, and the Court having examined the pleadings and having taken proofs orally and in open Court, and having heard and considered the arguments of counsel, and being satisfied that the transaction out of which the mortgage, mentioned in the Bill of Complaint, grew was not produced by false representation, and that the laches of the defendant bars her counterclaim, and that her delay in asserting her claim, together with the payments made by her after she learned the true situation, operate as a waiver and as a ratification of the transaction, and that the facts do not justify a cancellation or reduction of said mortgage, and 20 the defendant not having substantiated her counterclaim the same should be dismissed. And it further appearing that there is now due on complainant's said mortgage the sum of \$58,500.00, with interest at 6% per annum from August 1st, 1929,

30 It is, on this 27th day of April, 1931, by Edwin Robert Walker, Chancellor of the State of New Jersey, ORDERED, ADJUDGED and DECREED, and the said Chancellor doth by virtue of the power and authority of this Court, hereby ORDER, ADJUDGE and DECREE that the counterclaim of the defendant be and the same hereby is dismissed, and it is further

40 ORDERED, ADJUDGED and DECREED that the said mortgaged premises be sold to raise and satisfy the moneys due to the complainant, that is to say, the sum of \$58,500.00, together with lawful interest thereon to be computed from August 1, 1929, and that a Writ of Fieri Facias do issue for that pur-

Final Decree.

pose out of this Court, directed to the Sheriff of the County of Hudson, commanding him to make sale according to law of said mortgaged premises, and that out of the money arising out of said sale he first pay to the complainant said debt, interest and costs, and in case more money should be raised from said sale than shall be sufficient to answer said several payments, then such surplus be brought into this Court to abide the further Order of the Court, unless otherwise previously disposed of by the order of the Court, and that the said Sheriff make return without delay of all proceedings by virtue of the said Writ. 10

And it is further ORDERED, ADJUDGED and DECREED that the defendant Mary E. M. Hadley stand absolutely debarred and foreclosed of and from all equity of redemption of, in and to the said mortgaged premises when sold as aforesaid, by virtue of this decree. 20

And it is further ORDERED, ADJUDGED and DECREED that a counsel fee of \$325.00, be allowed and paid to the solicitor of the complainant and that the same be included in the taxed bill of costs and collected with the other items of said Bill. 30

Respectfully advised:

E. R. WALKER,
C.

JOHN O. BIGELOW,
V. C.

Notice of Appeal.

(Filed April 30, 1931.)

IN CHANCERY OF NEW JERSEY.

10

Between

GARDEN REALTY CORPORATION,
Complainant,

and

MARY E. M. HADLEY,
Defendant.

75/718.

On Appeal, etc.

(Sat Below
WALKER, C.
BIGELOW, V. C.)

20

The above named defendant, Mary E. M. Hadley, does hereby appeal from an Order or Decree made by the Chancellor on the advice of Vice Chancellor Bigelow bearing date the 27th day of April, A. D. 1931, in the above entitled cause, and from every part thereof, to the Court of Errors and Appeals in the last resort in all causes.

Dated April 29, 1931.

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M. LESTER LYNCH,
Solicitor for Defendant.

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

HARRY LANE,
Of Counsel for Defendant.

(Duly served April 29, 1931.)

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Petition of Appeal.

(Filed May 14, 1931.)

NEW JERSEY COURT OF ERRORS AND
APPEALS.

Between

GARDEN REALTY CORPORATION,
Complainant-below,
Respondent,

and

MARY E. M. HADLEY,
Defendant-below,
Appellant.

On Bill, &c.

On Appeal from
Chancery.

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To the Honorable, The Court of Errors and Ap-
peals, in the Last Resort in all Causes:The petition of Mary E. M. Hadley, the appellant,
respectfully shows:

That your petitioner finds herself aggrieved by
a final order or decree made in the Court of
Chancery by His Honor Edwin Robert Walker,
Chancellor of the State of New Jersey, on the ad-
vice of Vice-Chancellor John O. Bigelow, bearing
date the 27th day of April, A. D. 1931, in that said
final order or decree recites and finds that the
transaction out of which the mortgage mentioned
in the bill of complaint grew, was not produced
by false representations, and that the laches of the
defendant bars her counterclaim, and that her de-
lay in asserting her claim, together with the pay-
ments made by her after she learned the true situa-
tion, operate as a waiver and as a ratification of

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Petition of Appeal.

the transaction, and that the facts do not justify the cancellation or reduction of said mortgage, and that the defendant, not having sustained her counterclaim, the same should be dismissed; and further in that the said final order or decree recites that there is now due on complainant's said mortgage the sum of \$58,500.00 with interest at six per cent. per annum from August 1, 1929.

And your petitioner finds herself aggrieved by said final order or decree bearing date the 27th day of April, A. D. 1931, in that the said final order or decree recites and orders, adjudges and decrees that the counterclaim of the defendant be dismissed.

And your petitioner finds herself further aggrieved by said final order or decree bearing date the 27th day of April, A. D. 1931, in that the said final order or decree recites and orders, adjudges and decrees that the mortgaged premises be sold to raise and satisfy the moneys due to the complainant, that is to say; the sum of \$58,500, together with lawful interest thereon to be computed from August 1st, 1929, and that a writ of fieri facias do issue for that purpose out of said Court of Chancery, directed to the Sheriff of the County of Hudson, commanding him to make sale according to law of said mortgaged premises, and that out of the money arising out of said sale be first paid to the complainant said debt, interest and cost, and in case more money should be raised from said sale than shall be sufficient to make said several payments, then such surplus be brought into the Court of Chancery to abide the further order of the Court, unless otherwise previously disposed of by the order of said Court; and that the said Sheriff make return without delay of all proceedings by

Petition of Appeal.

virtue of the said writ, and that the defendant, Mary E. M. Hadley, stand absolutely debarred and foreclosed of and from all equity of redemption of, in and to the said mortgaged premises when sold as aforesaid by virtue of said decree.

And your petitioner finds herself further aggrieved by the said final order or decree bearing date the 27th day of April, A. D. 1931, in that the said final order or decree recites and orders, adjudges and decrees that a counsel fee of \$325.00 be allowed and paid to the solicitor of the complainant, and that the same be included in the taxed bill of costs and collected with the other items of said bill. 10

And your petitioner appeals from the said final order or decree and from every part thereof, on the ground that the same is erroneous for that the said Chancellor should have by said final order or decree recited and adjudged that the transaction out of which the mortgage mentioned in the bill of complaint grew, was produced by false representations; that the defendant was not barred from obtaining the relief prayed for in her counterclaim by her laches; that any delay of the defendant in asserting her claim, together with payments made by her after she learned the true situation, did not operate as a waiver and as a ratification of the transaction; and that the facts proven justify a cancellation or reduction of the mortgage mentioned in the bill of complaint, and that the defendant was entitled to the relief prayed for in her counterclaim; and that there was nothing due on complainant's said mortgage, or that the amount found to be due on said mortgage should be reduced as prayed for in defendant's answer and counterclaim; and that the direc- 20 30 40

Petition of Appeal.

tion for the sale of the mortgaged lands and premises provided in said final order or decree, and directing that out of the proceeds of said sale there should be paid to the complainant the said amount found to be due, was erroneous, and that
10 the said final order or decree should have recited and adjudged that there was nothing due on said mortgage and that said mortgage should be delivered up for cancellation, or that the defendant was entitled to a credit on the amount due by reason of the fraud and misrepresentations of the complainant, its officers and agents, as set forth in the defendant's answer and counterclaim.

And your petitioner appeals from the said final order or decree bearing date the 27th day of April,
20 A. D. 1931, and from every part thereof, upon the ground that the same is erroneous for the following further reasons or grounds:

1. The bond and mortgage set forth in complainant's bill of complaint filed in this cause and sought thereby to be foreclosed, was given by this defendant to said complainant in part payment of the purchase price of the land and premises described in said mortgage and conveyed to this
30 defendant by complainant, by deed dated simultaneously with the execution of the aforesaid bond and mortgage.

2. Defendant was induced to accept the said conveyance and to execute said bond and mortgage through the fraud and misrepresentation of the complainant, which fraud and misrepresentation consists of the following:

(a) The complainant, through one of its officers,
40 viz., the President, willfully and fraudulently represented to this defendant prior to the aforesaid

Petition of Appeal.

conveyance and prior to the execution of the aforesaid bond and mortgage, that the said land and premises did not encroach upon other property;

(b) The President of the complainant company represented to this defendant that the premises were fully tenanted with the exception of probably two or three vacancies; 10

(c) The President of said company represented to this defendant that the price of \$415,000.00 was a bargain price and the property was being sold at a sacrifice at this price.

(d) Complainant, through its President, represented to this defendant that she, after acquiring this property, would have a comfortable net income from this property for the remainder of her life; 20

(e) The President of said company represented to defendant that the taxes on the said property were in the amount of \$4,000.00 a year;

(f) The complainant, through its agents, servants or employees, represented to this defendant that it was unnecessary for her to be represented by a lawyer at the signing of the contract by which she acquired the aforesaid property; 30

(g) The above statements and misrepresentations were known to said complainant, its agents, servants or employees, to be false and untrue and were wilfully and fraudulently made to induce this defendant to purchase the aforesaid premises and to execute the said bond and mortgage.

3. That at the time of the aforesaid representations and statements of the complainant, through its agents, servants or employees, the true facts were as follows, and were known to said complain- 40

Petition of Appeal.

ant, its agents, servants or employees to be as follows:

(a) The aforesaid premises encroached upon the public highway known as the Boulevard.

10 (b) The aforesaid premises contained sixteen vacancies.

(c) \$415,000.00 was an unfair, unreasonable, harsh, unconscionable and exorbitant price for the aforesaid land and premises.

(d) There was and could be no comfortable net income from this property to sustain the defendant for the remainder of her life.

20 (e) The taxes on the property were several thousand dollars more than \$4,000.00 per year.

(f) The defendant should have employed counsel to represent her at the drawing of the contract.

4. Defendant relied upon complainant's said false representations and accepted the said conveyance and executed the said bond and purchase money mortgage as a result of relying upon the said misrepresentations and false statements.

30 5. That complainant's mortgage was a purchase money mortgage on property conveyed by complainant to defendant in pursuance with a contract of exchange of properties entered into between complainant and defendant, and which was supposed to represent the difference in value of the equities of complainant and defendant in their respective properties.

40 6. That in said contract of exchange, complainant's property was valued at a sum largely in excess of its real value, to wit: The excessive valuation being approximately the amount of \$125,-

Petition of Appeal.

000.00, which was more than the amount of complainant's mortgage.

7. That according to the proofs, defendant was entitled to have said mortgage cancelled and to have a decree against complainant for such excessive over-valuation, or approximately the sum of \$46,500.00.

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8. That complainant's said mortgage was obtained by fraudulent representations which were untrue and which were relied upon by the defendant, without the benefit of independent advice.

9. That complainant's said mortgage was obtained through a harsh, and/or unconscionable contract.

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10. That complainant did not come into the Court of Chancery with clean hands, and that the doctrine of unclean hands will move the Court to deny relief.

11. That the Court of Chancery will not lend its aid to the enforcement of a fraudulent contract, and/or a contract obtained by fraudulent representations which were untrue and relied upon by the defendant, and/or a harsh, and/or unconscionable contract, and will not by its process grant relief to complainant to enforce its mortgage obtained as a result and through the instrumentality of such a contract.

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12. That there was no proof of laches on the part of the defendant.

13. That any delay on the part of the defendant to apply for relief was, under the proofs in this case, excused by the actions and representations of the complainant and its officers and agents.

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Petition of Appeal.

14. That defendant under the proofs in this case, was entitled to an abatement of the mortgage debt or a reduction of the mortgage debt.

10 15. That complainant was not entitled to recover a counsel fee and taxed costs against defendant, but that defendant was entitled to recover a counsel fee and taxed costs against complainant.

Your petitioner therefore prays that the said final order or decree may be reversed, rescinded and for nothing holden, and that your petitioner may have the relief prayed for in her counterclaim, and such further relief as may be meet.

20 M. LESTER LYNCH,
Solicitor for Appellant.

HARRY LANE,
Of Counsel with Appellant.

(Copy duly served.)

30

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27 FEB.T.1932

New Jersey Court of Errors and Appeals

Between

GARDEN REALTY CORPORATION,
Complainant-Respondent,

and

MARY E. M. HADLEY,
Defendant-Appellant.

On Bill, &c.

On Appeal from
Chancery.

BRIEF OF APPELLANT.

Statement.

The bill of complaint was filed for the foreclosure of a mortgage held by the complainant on property owned by the defendant in Weehawken, N. J. The mortgage was originally in the principal sum of \$78,500, but \$20,000 had been paid on account thereof, leaving a balance due of \$58,500, together with interest from August 1, 1929 (pp. 1-6).

The answer and counterclaim filed by the defendant briefly set up the following:

That the bond and mortgage set forth in the bill of complaint was given by defendant in part payment of the purchase price of the lands and premises described in the mortgage and conveyed to defendant by complainant by deed dated and delivered simultaneously with the execution and delivery of the mortgage. That defendant was

5-8-41
New Jersey State Library

induced to accept said conveyance and to execute the mortgage through the fraud and misrepresentations of the complainant, the alleged fraudulent representations being as follows:

1. That the lands and premises did not encroach upon other property.

2. That the premises were fully tenanted with the exception of probably two or three vacancies.

3. That the price of \$415,000 fixed in the contract as the value of the property, was a bargain price for the property and it was being sold as a sacrifice at this price.

4. That defendant after acquiring the property would have a comfortable net income from the property for the remainder of her life.

5. That the taxes on the property were only \$4,000 a year.

6. That it was not necessary for defendant to be represented by a lawyer.

The answer further sets forth that the above representations were false and in particular, that \$415,000 was an unfair, unreasonable, harsh, inconceivable and exorbitant price; that there was and can be no comfortable net income from the property to sustain defendant for the remainder of her life; that the premises encroached upon the public highway; that the taxes were several thousand dollars more than \$4,000 per year, and that the defendant relied upon complainant's false representations.

Annexed to the answer is a counterclaim wherein the defendant repeats the material allegations of the answer and further sets forth that:

On December 28, 1925, the complainant and the defendant entered into a contract for the exchange of the lands and premises of the complainant set forth in the bill of complaint, and in the mortgage for certain lands and premises of the defendant, consisting of four one-family houses located in Englewood, N. J.

That the property of the complainant was put in this exchange at a price or valuation of \$415,000, and the property of the defendant at a price or valuation of \$250,000. That the said valuation of complainant's property was exorbitant and unconscionable, and that the fair and reasonable value of complainant's lands and premises at the time of the exchange was not more than \$250,000. That but for the fraudulent and false representations of complainant through its president, the defendant would not have made the contract of exchange, accepted the conveyance or executed and delivered the bond and mortgage, and that complainant relied upon such fraudulent representations.

Further, that in addition to having four or five real estate brokers and salesmen continually calling upon defendant at her home, the president of complainant company, himself, called upon the defendant at her home four or five times each week during the three or four weeks prior to the making of the contract, and at each time spent approximately one or two hours arguing with defendant as to the reasons why she should exchange her property for complainant's property at the price of \$415,000; that on these occasions he told defendant that he was doing her a special favor and bestowing upon her a great benefit in selling the defendant the property at that price because at that price the property would provide defendant with a comfortable net income for the remainder of her life; also, he pleaded with defendant to

have confidence in him, leave the matter to him and he would make a good deal for her; that he would not impose upon or take advantage of a widow of her age. That as a result of his talks and persuasions to defendant, she reposed her confidence in him and trusted in him to the extent of relying upon him and his representations.

In her counterclaim, defendant prayed for the following relief:

1. That the contract of exchange be reformed.

2. That the deed given by complainant to defendant be reformed.

3. That complainant deliver up the bond and mortgage so that same may be cancelled.

4. That complainant be decreed to account to defendant for the money representing the difference between the fair and reasonable value of the property and the price of \$415,000 and be decreed to pay defendant the amount so found to be due.

5. That if the Court finds that the principal of complainant's mortgage is now due, the amount so found to be due to ^{defendant} complainant may be credited on the mortgage debt, and if more than ⁱⁿ the mortgage debt, that complainant may be decreed to pay defendant the excess and deliver up the bond and mortgage for cancellation.

The answer of complainant to defendant's counterclaim consisted of a general denial of the alleged fraudulent representations and special defenses to the effect that complainant was guilty of laches; that she is estopped by her conduct, statements and actions from obtaining the relief

prayed for in her counterclaim, and that the Court of Chancery was without jurisdiction to afford the relief prayed for in her counterclaim (pp. 19-21).

The case came on for trial before Vice-Chancellor BIGELOW. There can be no question from the evidence submitted but that defendant was imposed upon in the making of this contract of exchange. The testimony of all of the witnesses clearly indicates that complainant's property, which in the contract was valued at \$415,000, was not worth more than \$250,000 to \$300,000. Even real estate experts who had signed affidavits for complainant on the application for the appointment of receivers wherein complainant claimed that the property could not be sold at a forced sale for more than \$200,000, and who were called on behalf of defendant, testified that the property at the time of the exchange was not of any greater value. Even Mr. Garibaldi, an officer of complainant company, who was paid the brokerage by defendant, and who did not disclose to her that he was interested in the property, testified to a value of \$315,000 for the property. Complainant attempted to prove that although complainant's property was in the contract of exchange valued at \$100,000 more than it was worth, defendant's property was likewise overvalued. The value at which defendant's property was placed in the contract was \$250,000, and the uncontradicted testimony is to the effect that the cost of the erection of the houses together with the value of the land was at least this amount. Even Mr. Lockwood, a witness produced on behalf of the complainant, testified that the three Englewood houses, erected on the side street, cost between thirty-five to forty-five thousand dollars each to construct, with the exception of the one house on the corner which cost more (p. 125, ll. 10-20).

The Vice-Chancellor after hearing the testimony was of the opinion that the actual difference in values was about \$125,000; \$150,000 for defendant's property and \$275,000 for complainant's property, which would result in defendant having the worst of the bargain by \$40,000 (p. 166, l. 10).

The president of complainant company wormed his way into her confidence. Even the real estate broker to whom she paid the commission, and whom she did not know was interested in complainant's property, held a one-third interest in complainant corporation. It was attempted to be shown that Mrs. Hadley had independent expert advice in having Mr. Lockwood examine complainant's property. The testimony of Mr. Lockwood, a witness called by the complainant, clearly shows that he gave her no independent advice. Indeed, it is doubtful from a reading of his testimony as to whether he ever inspected this property with the view of advising Mrs. Hadley as to its value. He says that he never told her that it was worth \$415,000. He further testified that of the commission which Mrs. Hadley paid to Garibaldi of \$12,500, he received \$3,625. Apparently all he was interested in was to be sure to receive some commission, Mrs. Hadley having prior thereto executed to him an exclusive agency to sell the property. On cross examination he quibbled as to whether or not he told Mrs. Hadley that he was receiving any of the commission which she had paid to other brokers, but finally stated that he did not (p. 122, ll. 30-40).

There can be no question but that Mrs. Hadley was persuaded to enter into this contract of exchange by reason of the representations made to her particularly by the president of complainant company. It was shown by the evidence that all of the real estate men involved, although they were

supposed to be working in the interest of Mrs. Hadley, were, as a matter of fact, working in their own personal interest or in the interest of complainant, the man to whom the commission was paid by Mrs. Hadley (Mr. Garibaldi) being an undisclosed one-third owner of the stock of complainant company.

The result of this unconscionable contract with Mrs. Hadley, if the decree of the Court of Chancery is sustained, will be that the defendant has been deprived of her Englewood property and will be deprived of the property conveyed to her by complainant upon a foreclosure sale, and undoubtedly there will be a large deficiency for which complainant will be entitled to a personal judgment against defendant, and in addition she has at least expended out of her own moneys, in addition to the commission paid by her upon the sale, of at least \$20,000 paid by her on account of the mortgage since the closing of the title.

Mrs. Hadley was an elderly woman, about seventy years of age, a widow, and in this transaction she had no independent expert advice (pp. 30-37-45).

Indeed a sorry picture for the complainant to have the effrontery to come into a court of equity and pray for the use of its process to obtain the foreclosure of the mortgage obtained in the transaction consummated by such unconscionable means as the evidence discloses.

ARGUMENT.

I.

Mrs. Hadley was induced to enter into the contract of exchange by fraudulent representations made to her by officers or representatives of complainant.

The evidence disclosed that Mrs. Hadley, a woman of approximately seventy years of age, was persuaded by persons representing the complainant, which representation was not in some instances disclosed to her, to enter into the contract of exchange. The representations were made principally by Mr. Schmulling, the president of complainant. Mr. Schmulling conducted what might be called "high pressure salesmanship." He realized the condition the Englewood property, on which Mrs. Hadley had erected houses at a cost of \$260,000, was in. In his talks with Mrs. Hadley, he was informed of her worrying about this property and her ability to carry it, she not having been able to sell any of the houses. The complainant had this apartment house property in Weehawken, which was a burden to it, and which it desired to get rid of, and which it had in fact offered to real estate brokers for sale at \$250,000. He took advantage of Mrs. Hadley's worried condition, and in endeavoring to persuade her to take this Weehawken property in exchange for her Englewood property, he represented and caused to be represented to her that said property was worth the exorbitant price of \$415,000, which was \$165,000 more than the price at which complainant had placed it in a real estate agent's hands for sale the year previous. He also told her that the property was a good renting property having

only three vacancies at the time, whereas such was not the fact. Also, that the taxes were only \$4,000 per year, whereas they were largely in excess of this amount. Numerous real estate agents worked upon Mrs. Hadley to get her to go ahead with the deal, and finally, to persuade her, Mr. Schmulling told her that if she took the property she would be assured of an annual net income of \$3,000. The extent to which they went in order to persuade Mrs. Hadley to go ahead with the contract is further shown by the fact that out of the commission which was paid by Mrs. Hadley of \$12,500, and which commission was paid to Mr. Garibaldi, who then owned a one-third interest in complainant company, but which fact was not disclosed to Mrs. Hadley, there was paid, without Mrs. Hadley's knowledge, to Mr. Lockwood, a real estate agent of Englewood to whom Mrs. Hadley had given an exclusive right of sale for six months, the sum of \$3,625. Complainant had the effrontery to call Mr. Lockwood as a witness in an endeavor to show that she had expert advice as to the value of the Weehawken property. Furthermore, they assured Mrs. Hadley that it would not be necessary for her to have her own lawyer and the contract was actually drawn up by counsel for the complainant and executed without Mrs. Hadley having either the benefit of independent legal advice or of the advice of a real estate expert. It was attempted to be proven by complainant that at the time of the closing of title, Mrs. Hadley had independent legal advice, but while it is true that she had a lawyer present at the closing, the proofs show that all that the lawyer did, or was called in for, was to attend to the actual details of the closing of the title, and the adjustment of the figures and accounts relating to the transaction. *The foisting of a more unconscionable contract*

upon a poor, defenseless and trustful woman in the manner shown by the evidence is hard to conceive!

The evidence is conclusive that the price at which the Weehawken property was fixed, and which was represented to be its true value, was grossly exaggerated.

There can be no dispute as to this. The evidence of witnesses on both sides is to this effect.

Mr. James F. Gannon, an independent real estate agent who was subpoenaed by Mrs. Hadley, testified that in 1925, complainant, through Mr. Schmulling, placed the Weehawken property on his books for sale at a price of \$250,000 (p. 25, l. 35; p. 26, l. 1).

Mr. Percy N. Limouze, a real estate expert called on behalf of Mrs. Hadley, testified that in January, 1926, the market value of the property was \$260,000 (p. 72, l. 30). Counsel for Mrs. Hadley called as witnesses to the value real estate men who had signed affidavits on an application of complainant for the appointment of a receiver in this suit.

C. Alfred Burhorn fixed the market value as of April, 1930, at \$199,200 (p. 75, l. 1), and stated that the builder sold it shortly after its construction in 1924, for \$250,000.

Henry Frank, 3rd, testified that \$250,000 was the market value in 1926 (p. 76, l. 30).

Joseph J. Garibaldi, the undisclosed owner of a one-third interest in complainant, testified that he did not value the property at \$415,000 at the time of the exchange but that the value he put on it was \$315,000 (p. 88, l. 10).

Mrs. Hadley testified that Mr. Schmulling stated to her that the property was located on the Boule-

vard, which was the principal street in that section; that the street was controlled by the County, and that it was to be greatly improved immediately opposite the house, where there was to be created a beautiful park, of which he showed her a diagram. That there were forty-five apartments and an excellent janitor who would take excellent care of her interest if she acquired it. That it had good paying tenants and that he would work with her and for her and do everything to make the property a paying proposition. That she asked Mr. Schmulling that if it were such a good paying proposition, why he did not keep it himself, that he was a young man and she an old lady, and he said that he was in politics and was likely to be deeply involved, and could not hold the property, and only for that reason was getting rid of it (p. 35). That the property would yield a net income of \$3,000 per year (p. 34, l. 25; p. 36, l. 15). Also, that the taxes were in the vicinity of \$4,000 whereas they were near \$7,000 (p. 36, l. 30).

Mrs. Hadley further testified that she was told that she did not need any lawyer of her own (p. 37, l. 15). Mr. Schmulling deprecated the suggestion of Mrs. Hadley that she would have a real estate man look at the property (p. 44, l. 35). He further told her that the matter would have to be put through in a hurry if it were done at all as he had tickets in his pocket for a trip to the South, which he showed to her (p. 38, l. 10). He further told her that she could trust him as other people trusted him enough to make him a commissioner in Hoboken (p. 38, l. 25). That she did not know that Mr. Garibaldi had any interest in complainant (p. 39, l. 15). That Mr. Schmulling emphasized the fact that he would always give her more assistance than otherwise because she was a widow, and he would see that her interests were in every way conserved (p. 39, l. 20).

That Mr. Schmulling said that the property was a bargain at the price of \$415,000; that there was a great future for the property and he would surely stand by this figure and not modify it (p. 45, l. 48).

That Mr. Schmulling had entire charge of the Weehawken property and the entire transaction with Mrs. Hadley is further evidenced by the testimony of Henry C. Steneck on pages 97-98. At page 97 he testified that he had nothing to do with the exchange at all; that all he knew about it was the meeting they had to authorize the exchange of the property for property in Englewood:

"Q. As a matter of fact, in relation to this matter, you left everything to Mr. Schmulling, didn't you? A. I would say Mr. Schmulling and Mr. Garibaldi.

"Q. As far as making the contract with Mrs. Hadley or making the sale, you didn't have anything to do with it? A. Nothing to do with it" (p. 97, l. 35).

And on page 98, at line 30:

"The Court: You left things for Mr. Schmulling to run.

"The Witness: He had to do with the apartments. I think we had only two other pieces. As far as the apartments, Mr. Schmulling had entire charge."

There can be no question from a reading of the evidence but that the representations made as to the market value, the income, and the taxes paid on this property were false and that the representations were fraudulently made for the purpose of inducing Mrs. Hadley to enter into a contract, and that she relied upon the representations and relied upon the truth of the statements made to her by Mr. Schmulling and that she trusted him. Further the evidence discloses that the property encroaches on the public highway which greatly affects its market value.

II.

The value of Mrs. Hadley's Englewood property was not overstated in the contract, and certainly not to any such extent as was complainant's property.

As heretofore shown, the value fixed in the contract for complainant's property was exaggerated to the extent of over \$150,000. Even Joseph J. Garibaldi, the owner of a one-third interest in complainant corporation, admitted that it was overvalued to the extend of \$100,000 (p. 88, l. 5). He stated, however, that this was offset by the fact that Mrs. Hadley's Englewood property was valued at \$100,000 in excess of its real value.

The undisputed testimony as to the cost of the Englewood property is that it was \$260,000 (p. 31, l. 3).

Joseph M. Boyd, a real estate expert in Bergen County, fixed the value of the Englewood property as of 1926, at \$205,000 (p. 140, l. 20).

John J. Lockwood, the real estate man from Bergen County called by the complainant on page 119, line 20, stated that he felt \$150,000 would represent Mrs. Hadley's Englewood property, although on page 125 he stated that the three houses on the side street were worth between forty and forty-five thousand dollars each, and the value of the land \$2,000. He had already testified that the corner house was worth more. So even at these figures the Englewood property would be worth at least approximately \$200,000. That the Englewood houses were good, substantial houses is shown by the photographs offered in evidence, Exhibits D-3a, D-3b, D-3c and D-3d inserted on page 160 in the record.

There can be no question but that even assuming that the Englewood property was placed in the contract at a value of \$50,000 over its true value, the Weehawken property of complainant was overvalued to the extent of at least \$150,000, making a difference in overvaluations alone of \$100,000 in favor of complainant. The Vice-Chancellor in his memorandum fixes the discrepancy at \$40,000, but from a consideration of all of the evidence and the testimony of the witnesses on both sides, we feel that in fixing such a discrepancy the Vice-Chancellor was too lenient to the complainant.

III.

Mrs. Hadley did not have the benefit of independent expert advice, or in fact, any independent advice.

The evidence shows conclusively that all of the real estate experts who were engaged in this transaction, and to whom Mrs. Hadley paid commission on the sale, were in fact working in the interests of complainant. The real estate agent to whom the check for the commission was made out by Mrs. Hadley, Joseph J. Garibaldi, was in fact the owner of a one-third interest in the complainant corporation, which fact he did not disclose to her.

Counsel for complainant evidently recognizing the weakness of his case in this particular, made a futile effort to prove by Mr. Lockwood that he gave Mrs. Hadley independent expert advice. Cross examination of Mr. Lockwood on this point was necessarily quite lengthy, and proved that instead of Mrs. Hadley receiving independent expert advice from Mr. Lockwood, that she actually

received no advice from him, and that all he was interested in was his personal interest in seeing that the contract went through so that he could secure part of the commission.

He was asked the specific question as to whether he gave Mrs. Hadley independent advice:

"Q. Would you say that you gave Mrs. Hadley independent advice as to the buying of this property? A. No.

"Q. I don't know whether or not you testified, did you tell Mrs. Hadley you were splitting the commission with the other brokers? A. I did not, no.

"Q. You don't know? A. I don't know, I imagine so; I don't know.

"Q. You imagine? A. It seems to me I would have.

"Q. I am asking you whether you did or did not? A. The answer is no" (p. 122, ll. 25-38).

And on page 123:

"Q. Will you tell us why you agreed to give part of the commission to the other broker, if you were representing Mrs. Hadley? A. My answer to that is clear.

"Q. Let us have it. A. I didn't do anything to start it for Mrs. Hadley. If I had demanded the whole commission I don't suppose there would have been a deal.

"Q. There is no question that you were representing Mrs. Hadley,—you didn't represent the Garden Realty Company? A. I certainly did not.

"Q. You say it was within your right, without the knowledge of this defendant, that you were to pay part of the commission of the brokers on the other side? A. I could have paid the whole commission to the other side" (p. 123, ll. 3-22).

Although Mr. Lockwood testified that he gave Mrs. Hadley no independent advice, he did testify that he went to the property with Mrs. Hadley. He

was questioned closely as to this on cross examination and his testimony in that respect is very unsatisfactory, but the fact is that whether or not he went to the property with Mrs. Hadley, *he did not give her any independent advice*. Mrs. Hadley flatly denied that she ever inspected the apartment house with Mr. Lockwood and stated that she did not receive from Mr. Lockwood at any time any advice as to whether or not she should go into the transaction (p. 143, l. 30). Further, that she never received any advice from anybody other than Commissioner Schmulling (p. 144, l. 1).

IV.

The law is well settled that in an action brought to foreclose a mortgage which was given as part of an alleged fraudulent transaction, that in defense to the suit defendant can set up the alleged fraud and misrepresentations and ask for cancellation or reformation of the contract and a cancellation of the bond and mortgage.

The case directly in point is the case of *Curtiss-Warner Corp. v. Thirkettle*, 99 N. J. Eq. 806 (Opinion by Vice-Chancellor BERRY).

The first, second and third syllabi are as follows:

“1. An abatement may be allowed on foreclosure of a mortgage where fraud at its inception resulting in an increase in the amount of that mortgage is shown.

“2. Set-off is a purely statutory right and is strictly limited to liquidated damages. Recoupment is a common law right and applies to unliquidated as well as liquidated damages. Counterclaim may include either set-off or recoupment or both.

"3. Where one agrees to sell and convey a corner lot, knowing at the time that the lot described is not a corner lot, and thereafter conveys the lot described and the vendee accepts the deed not knowing that the lot conveyed is an inside lot and not a corner lot, the unperformed part of the executory contract does not merge in the deed."

On page 813, Vice-Chancellor BERRY deals with the question of abatement, citing numerous cases. He says:

"The principle that abatement may be allowed on foreclosure of a purchase-money mortgage on account of fraud is well settled."

He also refers to the following language of Chief Justice BEASLEY in the case of *O'Brien v. Hulfish*, 22 N. J. Eq. 472, to wit:

"I think there is no doubt that where a sale of real property is effected by deceit, and a mortgage given for the whole or a part of the purchase-money, relief in equity will be given to the party defrauded in a suit on the mortgage, whenever such course is necessary to reach a just result. Fraud, as a general rule, gives jurisdiction to a court of equity, and there can be no reason why, when the process of foreclosure is being used as a means of giving effect to a deception, such process should not be restrained and controlled as to prevent an injustice."

On pages 814, etc., he refers to the distinction between set-off on an independent contract and the right of recoupment.

There is no doubt but that this case is on all fours with the case at bar and sustains the right of defendant to the relief prayed for in her counterclaim.

This case was affirmed by the Court of Errors and Appeals in an opinion reported in 101 N. J.

Eq. 279. The Court sustained the conclusions of Vice-Chancellor BERRY, with the addition that it sets forth that the rule in this State as to damages is that the purchaser is entitled to recover his actual loss, and that this loss is measured by the difference between the price paid and the actual value of the property received.

Mr. Justice LLOYD, writing the opinion, said:

"Whatever of variance there may be in other states from the rule above stated, there has been no departure therefrom in our own. *Crater v. Benninger*, 33 N. J. Law 513; *Duffy v. McKenna*, 82 N. J. Law 67; *Martin v. Baldwin*, 90 N. J. Law 244; *Mitchell v. Bassett*, 99 N. J. Law 113."

The second and third syllabi in the case of *O'Brien v. Hulfish* (Court of Errors and Appeals), 22 N. J. Eq. 471, cited by Vice-Chancellor BERRY in *Curtiss-Warner Corp. v. Thirkettle*, is as follows:

"2. But where the vendee has been defrauded, the court will not permit, in a proper case, the mortgages to compel the payment of the money without deduction, if such fraud and resulting damage are made to appear in the proper mode.

"3. Such fraud, when the vendee is not in a position to rescind, must be set up by a cross-bill."

On page 473, the Chief Justice says:

"If it be true, as he asserts, that he has been cheated into an agreement to pay more for the title to this property than it is worth, a court of conscience will not permit the excess over what is justly due to be exacted."

The Chief Justice, on page 475, upholds the practice of defendant's remedy being by counter-claim.

At the foot of page 475 he says:

"The defendant, as he is not in a situation to rescind the contract, must seek to have his damages assessed, and such other relief as the circumstances may require; and this would not be interposing a mere defense to the complainant's demand of the money, but would be asking affirmative relief. In accordance with the strict rules of equity practice, assistance of this character can be obtained only by means of an original or cross-bill."

In the case of *Ratkewisz v. Kara*, 89 N. J. Eq. 203, the Court of Errors and Appeals cites with approval the case of *O'Brien v. Hulfish*.

The eleventh syllabus in the case of *Hawthorne v. Odenson*, 94 N. J. Eq. 588 (Opinion by Vice-Chancellor LEAMING), is as follows:

"11. Where a purchaser was entitled to rescind his purchase because of fraud of the vendor, he is entitled to a cancellation of the purchase-money mortgage given by him, and a return of the payments already made, and also to compensation for expenditures by him, against which he will be charged for the reasonable value of the use of the premises during the period of his possession."

Vice-Chancellor LEAMING, in the case of *Brownbach v. Spangler*, 101 N. J. Eq. 388, following *O'Brien v. Hulfish*, held that in a suit to foreclose a purchase-money mortgage, just relief may be afforded defendant-mortgagor for injuries he has suffered through fraudulent representations or fraudulent conduct upon the part of his grantor, irrespective of the covenants contained in the deed of conveyance, and further, that courts of equity relaxed the established rule of law to the effect that moral delinquency is an essential element of deceit or fraud.

V.

The misrepresentations as to value were substantial and the value represented so exorbitant as to shock the conscience of the Court and to move it to set the transaction aside.

The Vice-Chancellor held that in his opinion Mrs. Hadley had the worse of the bargain by \$40,000 (p. 166). We submit that under the evidence Mrs. Hadley had the worse of the bargain to the extent of approximately \$100,000. That she had the worse of the bargain there can be no question, and whether by \$40,000 or \$100,000, or whatever other figure in between this Court may determine to be the proper figure, we submit that the discrepancy was substantial and sufficient ground for setting aside the transaction. It is true, as stated by the Vice-Chancellor, that equity will not interfere merely because the party makes an unwise deal, and that representations by a seller as to the value of his property are not usually a basis for a claim of fraud. The Vice-Chancellor relied upon the case of *Robertson v. Criterion Const. Co.*, 6 Misc. Rep. 91, 140 Atl. 574. A reading of the decision by Vice-Chancellor BACKES in that case shows that the facts in that case did not measure up to the facts in the case at bar. Without going into detail, Vice-Chancellor BACKES found that there was actually no fraud. The Vice-Chancellor, however, qualified his statement that a mere expression of opinion as to value is not a fraud, by stating that it is not a fraud unless the person making it knew at the time that in consequence of the relations of trust and confidence existing between himself and the person

to whom it was made, he would rely upon it and be controlled by it, which is exactly the situation which we submit the evidence shows existed in the case at bar. There can be no doubt that not only did complainant's representatives do all in their power to persuade Mrs. Hadley to really believe that the price of \$415,000 was a fair market price for the property, but they further did all in their power to get the confidence and trust of Mrs. Hadley and even went to the extent of cutting Mr. Lockwood in on the commission.

VI.

Question of Laches.

Laches is a relative term. There is nothing definite or exact about it, or its application by the Courts of this State. It is not like a statute of limitation. Its application to any particular case depends upon the particular circumstances of the case. In some cases the Court has held that delay of several years is not a bar, while in other cases delay of a very short period is a bar.

In this case the Vice-Chancellor held that in his opinion Mrs. Hadley's delay in ascertaining her claim operated as a waiver and as a ratification of the transaction, citing the case of *Mortgage & Investment Company of N. J. v. Romel Realty Co.*, 106 N. J. Eq. 185 (p. 167). However, the facts in the case at bar are clearly distinguishable from that case. In the *Romel Realty Co.* case the misrepresentation alleged was on account of a zoning restriction, which at the time of the sale was merely an apparent cloud on the title *and which would have been promptly removed at the instance of an intending builder by peremptory mandamus.* Instead of immediately electing to rescind the sale,

the purchasers busied themselves in attempts at negotiations with the city authorities, *and by the time that such negotiations had definitely failed it was too late to take effective proceedings to override the ordinances.* This Court further pointed out that the purchasers *were skilled in real estate matters.*

Neither of these facts, or corresponding facts, appears in the case at bar, and further than that the delay was caused by further representations made by the president of complainant company.

On page 40 Mrs. Hadley testified that when she found out about the taxes and called the matter to Mr. Schmulling's attention, that he said that all she had to do was to go before the commission on a revaluation of the property (l. 25). On page 40, that she had several talks with Mr. Schmulling (l. 41) and that Mr. Schmulling said that he would secure a buyer, and when she asked what would happen if he did not, that he said "We will take it off your hands," and that that was a tremendous relief to her (l. 35). And on page 42, that Mr. Schmulling said to her that she had not given it a fair trial. "What could I expect to do in a year or so. That it would take a good deal longer than that to get it on a paying basis" (l. 25). That in September, 1928, Mr. Schmulling said "Hold on, hold on, I will help you" (p. 43, l. 35). That she told Mr. Schmulling to take the property back time and time again (p. 49, ll. 20-30). That she left the property in November, 1929, and did not collect any rents or anything else since that time (p. 49, l. 15).

We submit that in view of all of the evidence in the case and in view of the assurances of Mr. Schmulling, as testified to by Mrs. Hadley, and in view of the fact that Mrs. Hadley is a woman over seventy years of age, a widow, and had apparently

no one to properly advise her until she retained a lawyer when this foreclosure suit was instituted, that the facts are clearly distinguishable from those of the *Romel Realty Co.* case, and that under the particular circumstances, that this Court will not hold that Mrs. Hadley is barred from the relief prayed for in her counterclaim by laches. Delay under such circumstances is not a waiver (*Curtiss-Warner Corp. v. Thirkettle*, 99 N. J. Eq. 806, at p. 818).

This case is clearly distinguishable from the case of *Industrial Savings & Loan Co. v. Plumer*, 84 N. J. Eq. 184, where this Court in affirming a decree in favor of the complainant, at page 186, referred to the fact that there was no relation of confidence existing between the parties and that the defendant examined the property and its entire environment, *and no effort, artifice or subterfuge seems to have been employed to pervert their judgment or becloud their sense of observation and discernment, and that they were dealing at arm's length.* This Court in that case, at page 187, further referred to the fact that the equitable status of the defendants was further complicated by the fact that for three years and over they occupied the mortgaged premises, *and during that period made no claim and uttered no protest to fortify themselves in the attitude they took in that case as the alleged victims of fraud-doers.*

We do not deem it necessary to cite the numerous cases on the question of laches, for after all, as stated above, they all hold that laches is not measured by any set, hard and fast rule, but is governed by the facts of each individual case.

VII.

A court of equity will not permit its process to be used as a means of giving effect to a deception or to permit a suitor to obtain its aid in the consummation of a fraudulent transaction.

The equitable maxim that "one who comes into equity must come with clean hands" is based on conscience and good faith, and is as old as equity jurisprudence.

We submit that even though it might be held if this suit had been originally instituted by Mrs. Hadley for a complete rescinding of the contract because of the fraudulent representations, that a different determination might be made on the same facts, where, as in this case, suit is being brought in a court of equity by the fraud-doer to secure relief by foreclosure of a mortgage obtained as part of the consideration for this unconscionable and fraudulent contract. In brief, as was pointed out by Mr. Justice PARKER in the *Romel Realty Co.* case, while Mrs. Hadley might be barred from a rescission of the contract, she might still at least be entitled to an abatement on the mortgage of the amount of the fraudulent representations as to value, which amount we submit in this case, would be in excess of the balance unpaid on the face of the mortgage, and would result at least in a cancellation of the bond and mortgage, even though it be determined that she could not go further and obtain affirmative relief against complainant.

In 1871, this Court in the case of *O'Brien v. Hulfish*, 22 N. J. Eq. 471, held that when the process of foreclosure is being used as a means

of giving effect to a deception, such process should be so restrained and controlled as to prevent an injustice. In this case, as in the case at bar, suit was instituted for the foreclosure of a mortgage given for the purchase-money of a conveyance of real property, which had been effected by deceit.

Vice-Chancellor BERRY in the case of *Curtiss-Warner Corp. v. Thirkettle*, 99 N. J. Eq. 806, affirmed by this Court, 101 N. J. Eq. 279, cited and followed *O'Brien v. Hulfish*, as did also Vice-Chancellor LEAMING in the *Hawthorne* and *Brownbach* cases.

As to this point we can do no better than to quote from the decision of Vice-Chancellor BERRY in the case of *Gluck v. Rynda Development Company*, 99 N. J. Eq. 788, where at the foot of page 797 he says:

"This doctrine of clean hands is of ancient origin (*Bentley v. Tibbals*, 223 Fed. Rep. 247) and broad application. 21 Corp. Jur. 182.

"In *Deweese v. Reinhard*, 165 U. S. 386 (41 Lawyers' ed. 757), Mr. Justice BREWER said:

" 'A court of equity acts only when and as conscience commands, and if the conduct of the plaintiff be offensive to the dictates of natural justice, then, whatever may be the rights he possesses and whatever use he may make of them in a court of law, he will be held remediless in a court of equity.'

"In *Eaton* Eq. 74, it is said:

" 'Equity will refuse its aid in the enforcement of a contract where the plaintiff has practiced fraud on the defendant, and also where the plaintiff has been guilty of any unconscionable conduct which does not amount to legal fraud.'

"In *Pom. Eq. Jur.* §398, it is said:

" 'Whatever may be the strictly accurate theory concerning the nature of equitable

interference, the principle was established from the earliest days, that while the court of chancery could interpose and compel a defendant to comply with the dictates of conscience and good faith with regard to matters outside of the strict rules of the law, or even in contradiction to those rules, while it could act *upon the conscience* of a defendant and force him to do right and justice, it would never thus interfere on behalf of a plaintiff whose own conduct in connection with the same matter or transaction had been unconscientious or unjust, or marked by a want of good faith, or had violated any of the principles of equity and righteous dealing which it is the purpose of the jurisdiction to sustain. While a court of equity endeavors to promote and enforce justice, good faith, uprightness, fairness and conscientiousness on the part of the parties who occupy a defensive position in judicial controversies, it is no less stringently demands the same from the litigant parties who come before it as plaintiffs or actors in such controversies. This fundamental principle is expressed in the maxim "He who comes into a court of equity must come with clean hands."

"And further, in §404:

"It is not alone fraud or illegality which will prevent a suitor from entering a court of equity; any really unconscientious conduct, connected with the controversy to which he is a party, will repel him from the forum whose very foundation is good conscience."

"In *Primeau v. Granfield*, 193 Fed. Rep. 911, 913 (56 Lawyers' ed. 1267), the court said, in discussing the application of this maxim:

"The court must consider it, not because it is a matter of defense to the defendant, but because it is against public policy to hear the case if the charge be established.

The court acts for its own protection rather than for the protection of the defendant. When fraud or illegality is disclosed in a case public policy requires a court to refuse its aid irrespective of the state of the pleadings and regardless of the fact that with fraud and illegality absent the plaintiff might appear entitled to relief.'

"In *Houtz v. Hellman*, 228 Mo. 655, 671; 128 S. W. Rep. 1001, the court said:

"The maxim is enforced by the chancellor *ex mero motu* and because of public policy, when the facts call it into use, though the disclosures are made at the trial as happened in this case. Sometimes it is applied where both plaintiff and defendant have knowingly made a contract tainted with illegality; sometimes it is applied where only the party seeking to enforce is in fault; but it proceeds always on the theory that the dignity of the court is touched to the quick, and that courts of equity will not countenance inequity.'"

And also at the foot of page 796, where the Vice-Chancellor says:

"The complainants have sought relief in a court of equity. A court of equity is a court of conscience. The conscience of the applicant for relief in this court is always open to the scrutiny of the chancellor. One of the most wholesome and beneficent principles of a court of equity finds voice in the maxim that 'he who comes into equity must come with clean hands,' and this maxim means that, not only must one seeking equitable relief *enter* the portals of this court with clean hands, but he must *keep* them clean after his entry and until the final determination of the issue."

This Court in its affirmance of Vice-Chancellor BERRY's decision, 100 N. J. Eq. 554, said that it agreed with the findings of fact as made by the

Vice-Chancellor, and also agreed with his application of the legal principles.

The books are replete with cases holding that he who comes into equity must come with clean hands, and that a court of equity will not permit its process to be used in aid of a fraudulent transaction. Numerous New Jersey authorities are collected in Volume 13, New Jersey and Atlantic Digest, Section 65, under the title of "Equity."

An instance is, where it appears that a person has conveyed his property by deed to another in order to defraud his creditors, even though it be conceded that the property was only conveyed in trust and without any consideration, the courts of this State will not permit the coming into equity and having the third party declared to be a trustee for the benefit of a grantor even though on the same facts it will grant relief to a judgment-creditor and set the transaction aside.

CONCLUSION.

In conclusion, we respectfully submit that the defendant, Mrs. Hadley, is entitled to relief in view of all of the circumstances of this case. There is no doubt that Mrs. Hadley was induced to enter into this transaction by fraudulent representations, particularly as to an exorbitant overvaluation of the property of complainant, which was so found by the Vice-Chancellor at least to the extent of where he determined that in his opinion she had gotten the worst of the bargain to the extent of \$40,000. This overvaluation was the consideration for the fixing of the amount of the purchase-money bond and mortgage now sought to be foreclosed. Except for this overvaluation of complainant's property, there was absolutely no consideration for complainant's

bond and mortgage. In a suit to foreclose a mortgage, if it be proven that the mortgagee had not advanced the amount of mortgage, then it could not have a decree, or would only have a decree for the amount actually advanced on the mortgage. *Likewise, where, as in this case, it is shown that there was actually, in view of the overvaluation of the property, no consideration for this purchase-money bond and mortgage, a court of equity will not grant complainant a decree.* Particularly, in view of the fact that the effect of the granting of the decree will be not only the complainant receiving back all of the consideration, to wit: the Weehawken property, but complainant will retain the amount received by it for complainant's Englewood property and the amount of \$20,000 paid on account of the principal of the mortgage by Mrs. Hadley, and in addition, will, on a deficiency at a sale, give complainant a cause of action against Mrs. Hadley for an additional large sum of money. That there would be a large deficiency on a sale we feel that we are justified in asserting in view of the evidence of complainant's own real estate experts who signed affidavits for complainant on its application for the appointment of a receiver (p. 18), which real estate experts were called and testified in the cause as well as other experts, on the part of defendant.

We respectfully submit that the delay of Mrs. Hadley in applying for the relief will not, under all of the circumstances of this case, be held by a court of equity to be a bar to her right to relief. We further respectfully submit that even if this Court might feel that it would not be justified, because of this delay, in granting Mrs. Hadley affirmative relief if she were the moving party in this cause, *this Court will not grant to the complainant affirmative relief to enable it to obtain*

the fruit of this unconscionable contract and will not permit the process of a court of equity to be used for the carrying out of a fraudulent and unconscionable transaction.

While it is true that a court of equity is bound by certain rules and precedents, nevertheless it is also true that equitable jurisprudence was established with the sole purpose of administering justice where justice, under the hard and set rules of law, could not be properly administered. Complainant comes into this court of equity and prays for relief. It does not come in with clean hands and justice to Mrs. Hadley cries out and demands that this inequitable relief prayed for by complainant be denied.

We respectfully submit that the decree of the Court of Chancery be reversed, and that defendant be granted the relief prayed for in her answer and counterclaim.

Respectfully submitted,

M. L. LYNCH,
Solicitor for Defendant-Appellant.

ROBERT CAREY,
HARRY LANE,
Of Counsel.

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27 FEB.T.1932

New Jersey Court of Errors and Appeals

Between

GARDEN REALTY CORPORATION,
Complainant-Respondent,

and

MARY E. M. HADLEY,
Defendant-Appellant.

75-718.

On Bill, Etc.

BRIEF OF THE RESPONDENT.

A bill of complaint was filed for the foreclosure of a mortgage held by the complainant, on property owned by the defendant in Weehawken, New Jersey. The mortgage was originally in the principal sum of \$78,500, but \$20,000 has been paid on account therefor, leaving a balance due of \$58,500, together with interest from August 1, Nineteen Hundred and Twenty-nine (pp. 1-6).

An answer and counterclaim was filed by the defendant briefly setting up the following:

That the bond and mortgage set forth in the bill of complaint was given by the defendant in part payment of the purchase price of the lands and premises described in the mortgage and conveyed to defendant by complainant by deed, dated and delivered simultaneously with the execution and delivery of the mortgage; that defendant was induced to accept the conveyance and to execute the mortgage through fraud and misrepresentations of the complainant. The alleged fraudulent representations being as follows;

1. That the lands and premises did not encroach upon other property.

2. That the premises were fully tenanted with the exception of probably two or three vacancies.

3. That the price of \$415,000 fixed as the value of the property was a bargain price for the property.

4. That defendant, after acquiring the property would have a comfortable net income from the property for the remainder of her life.

5. That the taxes on the property were \$4,000 a year.

6. That it was not necessary for defendant to be represented by a lawyer at the signing of the contract by which she acquired the property.

The answer further sets up that the whole of the representations were false and in particular that \$415,000 was an unfair, harsh and exorbitant price; that there was no comfortable net income from the property to sustain defendant for the remainder of her life; that the premises encroached upon a public highway, known as the Boulevard; that said premises contained sixteen vacancies; that the defendant should have employed counsel to represent her at the drawing of the contract; that the taxes were several thousand dollars more than four thousand dollars per year; and that the defendant relied upon complainant's false representations and accepted said conveyance and executed said bond and mortgage.

Annexed to the answer is a counterclaim, in which the defendant repeats the material allegations of the answer and further sets forth that on December 28, Nineteen Hundred and Twenty-five, complainant and defendant entered into a contract for the exchange of lands and premises, and the complainant sets forth in the bill of complaint that certain other lands and premises of the defendant consisting of four one-family houses, located at

Englewood, New Jersey; that the property of the complainant was put in this exchange at a price or valuation of \$415,000 and the property of the defendant, at a price or valuation of \$250,000; and that the fair and reasonable value of complainant's lands and premises, at the time of the exchange was not more than \$250,000; that but for the fraudulent and false representations of complainant, through its president, the defendant would not have made the contract of exchange, accepted the conveyance or executed and delivered the bond and mortgage; and that the complainant relied upon such fraudulent representations and that unknown to defendant and without her consent, the complainant inserted in the aforesaid contract and the aforesaid deed, a clause that the conveyance of the complainant's property to defendant was subject "to such state of facts as an accurate survey may disclose"; that the encroachment of the premises on the public highway renders it less valuable and difficult, if not practically impossible to resell. Said counterclaim further sets up in general terms that it was through the influence and persuasion of the complainant, through its officers, that defendant finally accepted said property.

In her counterclaim, the defendant prayed for the following relief:

1. That the contract of exchange be reformed.
2. That the deed given by complainant to defendant be reformed.
3. That complainant deliver up the bond and mortgage so that same may be cancelled.
4. That complainant be decreed to account to defendant for the money representing the difference between the fair and reasonable value of the

property and the price of \$415,000, and be decreed to pay the defendant the amount so found due and that the damages of the defendant be ascertained and the complainant be decreed to pay the same.

5. That if the Court finds that the principal of complainant's mortgage is now due, the amount so found due, to complainant, may be credited on the mortgage debt and if granted, that complainant may be decreed to pay the defendant the excess and deliver up the bond and mortgage for cancellation.

The answer of the complainant to defendant's counterclaim consisted of a general denial of the alleged fraudulent representations and special defenses to the effect that defendant had been guilty of laches, in that, the matters and things set forth in said answer and counterclaim, if the same were true, came to the knowledge of the defendant more than four years ago, and that after said matters and things came to the knowledge of the defendant, she paid the sum of \$20,000 on account of the principal sum of complainant's mortgage and also continued to make payments of interest on said mortgage and defendant delayed her claim to an abatement to the point of waiver and is thereby estopped from now asserting said claim (pp. 19-21).

The case came on for trial before Vice-Chancellor Bigelow on April 14th and 15th, Nineteen Hundred and Thirty-one. The general evidence of the case shows as follows:

That defendant wanted to dispose of her property in Englewood, New Jersey, and offered the same to several real estate men of that town, among whom was Mr. D. Young (p. 32, ll. 36-40); that Mr. Young said that he would do better by making an exchange and to that end he looked at several properties himself; that Mr. Young

brought these properties to the attention of the office of Michel & Moore, real estate people in Jersey City, New Jersey, and that this property upon which defendant executed a bond and mortgage, was first brought to the attention of the defendant early in November of Nineteen Hundred and Twenty-five (p. 33, ll. 1-21); that the contract for the sale and exchange of properties was signed December 28, Nineteen Hundred and Twenty-five (p. 38, ll. 18-23, Exhibit C-4); that before the defendant bought this property, she had seen it twice, having gone there once with Mr. Sears of the office of Michel & Moore, which office represented her (p. 56, ll. 35-40; p. 57, ll. 1-20, 31-34); that prior to the signing of the contract, the alleged false representations were made by one Harry Schmulling, who was then president of the complainant corporation (p. 33, ll. 32-40; p. 35); that before defendant signed the contract, she read it and showed it to Mr. Porter, her secretary, who is a certified public accountant (p. 53, ll. 10-20); that a few days after this, January 8, Nineteen Hundred and Twenty-six, which was about two weeks prior to the taking of title, defendant made application to a title company for changing title for title policy, at which time defendant testified she became dissatisfied; and that at that time, defendant did not have complete confidence in Mr. Schmulling, that she lost confidence in Mr. Schmulling when he told her that the property was fully worth \$415,000 (p. 55, ll. 25-40; p. 56, ll. 1-5, 14-18); that she had somewhat lost confidence in Mr. Schmulling before signing the contract (p. 56, ll. 26-33); that before the defendant took title to the property, she checked figures of expenses that the said Harry Schmulling had given her and found them to be wrong (p. 58, ll. 12-22); that defendant told said Mr. Schmulling that she did not like his values, when they first

began talking about the property (p. 61, ll. 16-20); that defendant believed that Harry Schmulling was not making the property pay and still she took title to the same (p. 66, ll. 34-36); that at the time of closing title for this property there were present with defendant, a Mr. Harty and Mr. Porter, her secretary and that Mr. Harty made up the figures of adjustments at that time; and that defendant had every confidence in Mr. Porter and he had gone to the title closing at the direction of the defendant (p. 59, ll. 7-14; p. 55, ll. 13-22); that Mr. Harty was from the firm retained by Mrs. Hadley, the defendant, to represent her at this closing (p. 95, ll. 21-38); that the adjustments of insurance, taxes, etc., for this property were made by Mr. Harty while the defendant was at the title closing; and that Mr. Harty went over these adjustments with Mr. Porter, the defendant's secretary (p. 96, ll. 8-21); and that within a year after defendant took title to this property, she tried to sell the same (p. 64, ll. 11-15); and that after taking title to the property and becoming aware of the alleged false representations, she paid interest on this mortgage and also paid \$20,000 on the principal of the same (p. 44, ll. 22-26; p. 60, ll. 33-34).

The testimony as to the values of these various properties shows as follows: Mr. Garibaldi testified that the Weehawken property was worth \$315,000 (p. 99, ll. 36-40); that he considered the value of the Englewood property at \$150,000 (p. 100, ll. 1-10); that Mr. Lockwood, defendant's own broker, testified that he told defendant that the price asked for the apartment house was too high, but that the price she put on her house was too high and in the question of trading the equities figure, trades being based on the actual equity above the mortgages (p. 106, ll. 24-31); and that he told her about these values, as far as he could

arrive at; and that he particularly wanted her to consult her attorney (p. 114, ll. 19-34) and Mr. Lockwood testified that he felt \$150,000 would represent defendant's property (p. 119, ll. 18-21; p. 124, ll. 16-19) and Mr. Percy M. Limouze, defendant's own witness, testified that the Weehawken property, at a forced sale, would bring \$260,000, and at ordinary market value \$300,000 (p. 73, ll. 8-10). The Englewood property, belonging to defendant, was sold by complainant several months after receiving same from the defendant for the sum of \$140,000 (p. 99, ll. 1-24).

The testimony showed, as to the business experience of the defendant, as follows: That the defendant was trustee for the Simmons Estate for nearly forty years and that this estate loaned money on mortgages and that defendant had examined some of the property upon which money had been loaned by this estate (p. 53, ll. 21-29). Mr. Arthur S. Corbin, a member of the Bar of New Jersey, who had known the defendant for thirty-five or forty years, in reply to the question "What have you to say as to Mrs. Hadley's ability to conduct her business affairs" answered "I say she had good ability" (p. 132, ll. 33-36) and further testified that the defendant had considerable business experience in the handling of property (p. 133, ll. 31-38).

ARGUMENT.

I.

Mrs. Hadley did not rely upon the alleged false representations of Harry Schmulling, president of the complainant corporation.

The evidence disclosed, as before summarized, that about two months before the defendant actually took title to this Weehawken property, that negotiations had been started for the sale and exchange of the same. During this period, the defendant had ample opportunity to fully apprise herself of the facts, and defendant's own testimony shows that she visited this apartment twice before finally accepting the same; and that on one occasion she had requested Mr. Sears of the office of Michel & Moore (which office represented her in this transaction) to accompany her to this property. The defendant must have, at this time, known whether or not the statement of Mr. Schmulling, as to the number of vacancies in this apartment, was true or not. Defendant also shows by her own testimony that upon checking certain figures given her by Mr. Schmulling before taking title, she found them to be wrong. It is further shown by her testimony that about January 8, 1926, which was two weeks before the closing of the title, she became dissatisfied and at this time did not have complete confidence in Mr. Schmulling, and that she lost confidence in him when he told her that the property was fully worth \$415,000. She, herself, says that she told him that she did not like his values when they first began talking about this property and further that she believed that Mr. Schmulling was not making this property pay and still she took

title to the same. Mrs. Hadley was a woman of considerable business experience as shown by her own testimony, having handled property for the Simmons Estate for a number of years and had, in some instances, examined property for this estate when money was being loaned on the same. Defendant, in spite of her advanced age, was a woman of intelligence and education and in full possession of her faculties. She, as stated by the Vice-Chancellor in his opinion, preferred to rely upon her own judgment, instead of seeking the advice of experts. Her own statements show that she doubted Mr. Schmulling and therefore, it cannot be said that she relied upon his representations.

As to the values of the property, Mr. Lockwood, to whom Mrs. Hadley had given the exclusive agency for her Englewood property, testified that he told her that the Weehawken property was over valued, but that her property was also over valued, which clearly indicates that she did not rely upon the alleged false representations of Mr. Schmulling, as this information was given to her by Mr. Lockwood, even before she signed the contract. The evidence further shows that, when the defendant signed the contract, she gave the same to Mr. Porter, who was a certified public accountant and secretary for her in the Simmons Estate, to examine the same and defendant says herself, that she had every confidence in him. Mr. Porter was also at the title closing, as was Mr. Harty, her attorney, to explain to her anything that she might ask and which parties were there to protect her interest.

The price fixed for both properties did not represent the true values and was only used for the purposes of the exchange.

The properties in this case were, at the time of the exchange, fixed at \$415,000 for property of complainant in Weehawken, and \$250,000 for property of defendant in Englewood. The testimony shows considerable conflict as to the exact values of these properties, but there is no doubt that they were both greatly exaggerated. Mr. Lockwood, the broker who had exclusive agency for the defendant's Englewood property, testified that he valued the same at \$150,000. Mr. Garibaldi also testified that he valued them at the same amount. The testimony also showed that the value of the complainant's property was approximately about \$300,000, Mr. Garibaldi having testified that he valued it at \$315,000 and Mr. Percy N. Limouze, defendant's own witness, testified that the market value of this property was about \$300,000 as heretofore mentioned in the summarized testimony. Mr. Lockwood also testified that he told defendant that the price asked for the apartment house was too high, but the price defendant was putting on her house was too high also and in the question of trading the equities figure, trades being based on the actual equity above the mortgages. Mr. Lockwood further testified that tradings are made frequently with respective figures much higher than prior sales (p. 118, ll. 38-40). Even Vice-Chancellor Bigelow, after hearing all the evidence concluded that the values of both properties were greatly excessive and, in his opinion, figured the defendant's properties at \$150,000 and complainant's property at \$275,000, in which case the defendant would have had the worst of the bargain by \$40,000.

Both parties knew that their properties were over valued and the main object of this trade or exchange was for the benefit of the equities. That the defendant did not believe that \$415,000 to be the true value of the Weehawken property, is shown by the testimony heretofore mentioned, that she stated to Mr. Schmulling that she did not like his values. This was early in the negotiations.

Even admitting that the value given to Mrs. Hadley by the complainant was \$415,000 and that Mr. Schmulling knew that the same was not the true value, still this, of itself, is not evidence of fraud.

In the case of *Robertson, et al. vs. Criterion Construction Co.*, 140 Atlantic, 574, at page 576, the Court, citing *Wise vs. Fuller*, 29 N. J. Equity 257, says:

“Statements of value made by a vendor during the negotiation between parties, although known to be excessive, do not ordinarily constitute a warranty or fraud. * * * The fact that a price in excess of its market value is paid for a thing, standing alone, is never evidence of fraud. Mere inadequacy of consideration will never substantiate a charge of fraud.”

If Mrs. Hadley, the defendant, did not have the benefit of independent advice, it was because of her refusal to seek the same and not because of any reliance upon Mr. Schmulling.

Mrs. Hadley could have had the benefit of considerable independent advice if she so chose, but instead, she decided, as was said by the Vice-Chancellor, to rely upon her own judgment. She was a woman of considerable business experience, having been sole trustee for the Simmons estate for a number of years, in which position she had

dealt considerably with real estate and therefore, no doubt, felt that she was well-qualified to handle her own affairs. She went to this property before she took title, with Mr. Sears of Michel & Moore's office, who represented her in this transaction. Surely, Mr. Sears could have, at this time, given her the benefit of his knowledge and experience had she solicited the same. Even her own broker, Mr. Lockwood, testified, "I did not advise her to buy it and I particularly wanted her to consult her attorney" (p. 114, ll. 26-28). Instead, according to her own testimony, she continued to rely upon her own judgment. Whatever other independent advice she might have had, is not revealed by the testimony. She may or may not have had independent advice from others, but refused to disclose the same at the hearing of this cause. This being a matter peculiarly within her own knowledge, it would be a difficult matter for the complainant to know when and how the defendant had sought advice, if she did so, and not having knowledge of the same, it would be impossible to produce this evidence and testimony at the trial. However, the defendant shows that even at the time that she signed the contract, the same was shown to Mr. Porter, who was secretary for the Simmons estate and allowed him to inspect the same. Even later, at the closing of the title, she was represented by Mr. Harty, attorney of this State, and also by Mr. Porter, who is a certified public accountant, and these men went into the details of the closing and knew at that time the amount of taxes, insurance, rent adjustments, etc., and were there to protect her interests, and the defendant had the benefit of their independent advice as to this information and no doubt received the same from them.

The law is well settled in this State that where there has been an alleged fraudulent transaction and the injured party has an election to rescind, he must rescind promptly, and, having elected, must abide by his decision and that failure to rescind within a reasonable time is plenary evidence of his election not to do so.

In the case of *Ginsberg vs. Wolters, et ux.*, 121 Atlantic, 730, which was a suit to foreclose a purchase money mortgage, given as a result of exchange of properties, the defendants filed an answer and counterclaim in which they alleged that by false and fraudulent misrepresentations and by the concealment of material facts and by artifice and deception practiced on the defendants and by the exercise of undue pressure and importunity the defendant was induced to purchase or to trade a contingent interest in his father's estate for the mortgaged premises at the grossly excessive value of \$300,000 and to execute the bond and mortgage in suit. In this case, the alleged false representations which were set up in the answer and counterclaim, were as to the rents, upkeep, monthly income from the property, excessive values, expenses, etc. The Court, in this case, at page 733 said:

“From the facts recited and others not mentioned from this lengthy record, there is ample proof not only of defendants' delay in electing to rescind promptly after learning of the alleged fraud, but we have, in addition, conclusive proof of what the Courts call conduct, evidence of defendants' election to abide by this bargain and to enjoy the benefits of it. The first undisputed offer to rescind is made by the answer filed in March, 1921, eight months after the transaction, five months after they discovered the fraud in October,

two months after defendants state they knew completely to what extent they had been defrauded, over a month after they had used the rents from the property, and this offer was made only after they had been restrained from collecting further rents.

Applying to this situation, the rule of the cases, in this Court and the Court of Errors and Appeals (*Dennis vs. Jones*, 44 N. J. Equity, 513, 14 Atlantic, 913, 6 American State Reports 899; *Clampitt vs. Doyle*, 73 N. J. Equity, 678, 70 Atlantic, 129; *Faulkner vs. Wassmer*, 77 N. J. Equity, 537, 77, Atlantic, 341, 30 L. R. A. (N. S.) 872 and *Reed vs. Soap Co.*, 81 N. J. Equity, 182, 86 Atlantic 263), it must be held that defendants did not promptly elect to rescind and that their failure to rescind within a reasonable time is plenary evidence of their election not to do so, and therefore the attempted rescission made by the answer was made too late, as it was made after defendants, by their conduct, had elected, with complete knowledge of the alleged fraud, to ratify and to keep the benefits of the transaction."

In *Luff vs. Nevins*, 150 Atlantic, 834, the facts were as follows: Complainant, on August 27, 1925, entered into an agreement in writing with the defendant, wherein they agreed to purchase from the defendant, the premises described in the bill of complaint for the sum of \$12,000, part cash and part notes, notes to be secured by mortgage deed on the premises. Complainant procured a survey in December, 1925, showing pools of water on the premises. In April, 1926, the complainant paid semi-annual installment of interest due at that time. On October 7, 1927, a reconveyance was offered Mr. Nevins and some time thereafter bill was filed. The Court in this case, at page 835, cites *Ginsberg vs. Wolters*, 94 N. J. Equity, 532, 121 Atlantic, 730, and applying the rule of that case, held that the defendants had not promptly

elected to rescind and that their failure to rescind within a reasonable time was plenary evidence of their election not to do so and the Court continues by citing *Faulkner v. Wassmer*, 77 N. J. Equity, 537, 77 Atlantic 341, and says that the doctrine to treat the contract as valid did not arise upon the doctrine of laches but upon the ground that the lapse of such time, under the circumstances, afforded plenary proof of an election not to rescind, to which conclusive effect should have been given.

In *Maioran vs. Calabrese, et al.*, 135 Atlantic, 69, which was a case in which there was an exchange of property, the Court of Errors and Appeals said in the syllabus:

“Party alleging fraud in exchange of property must either rescind and restore property obtained and recover what she parted with, or affirm contract and recover damages; dismissing bill in equity for decree for losses through alleged fraud, in exchange of property and for lien on property conveyed was proper.”

And further said:

“Party claiming to have been defrauded in exchange of property, who waited eight months after knowledge of fraud, lost right to elect whether she would rescind.”

Court cites:

Faulkner vs. Wassmer, 77 N. J. E. 537,
77 A. 341;

Dennis v. Jones, 44 N. J. E. 513, 14 A.
913;

Clampitt v. Doyle, 73 N. J. E. 678, 70,
A. 129.

In *Faulkner vs. Wassmer*, 77 Atlantic 341, a bill was filed for rescission. The deed was made on July 1, 1908. By August 1, 1908, it alleges, grantee was fully aware of falsity of vendor's statements

and those facts upon which her right to elect to rescind the sale arose. No election to rescind was made until complainant filed bill, which was in November of the same year. The opinion of Vice-Chancellor Howell shows that the defense of laches was set up by defendants in their answer and the Vice-Chancellor then said at page 343, after mentioning *Dennis v. Jones*, 44 N. J. E. 513, 14 A. 913:

“I do not think a delay from August until November is such a delay as would admit the defense of laches. It is not shown that during that period the defendant’s situation was changed at all, and it does not appear that the delay has caused the defendants any damage.”

The upper Court said, at page 344, that:

“Authorities cited by Chancellor McGill had settled the law ‘that the defrauded party to a contract has but one election to rescind, that he must exercise that election with reasonable promptitude after the discovery of the fraud, and that once he elects, he must abide by his decision’.”

“Other cases cited in the opinion had held that ‘delay in the rescission of the contract is evidence of a waiver of the fraud and an election to treat the contract as valid.’ The approval and adoption of both of these lines of decision by this Court resulted in *Dennis vs. Jones*, in our holding ‘that, after the appellants had knowledge of all the substantial features of the alleged fraud and were fully aware of the deceit which had been practiced upon them, they so acted as to afford plenary evidence of an election to abide by their contract’, and that ‘their election thus made was irrevocable.’ *It is this rule, and not the doctrine of laches, that Dennis v. Jones lays down and illustrates: ‘To the same effect is the more recent case of Clompitt vs. Doyle, 73 N. J. Equity 678, 70 Atlantic 129.’*”

The Court said:

“In the instant case ‘an election that could in reason have been made within a few days, or at most, a few weeks after the right to make it arose and was without any adequate excuse that was consistent with promptitude of action delayed for months. It is precisely this conduct that affords plenary proof of an election to abide by the contract, which is irrevocable’ and therefore denied relief.”

In *Mortgage and Investment Co. of N. J. vs. Romel*, 150 Atlantic 424, which was a suit to foreclose a purchase money mortgage, defendant set up in the answer and counterclaim that it was induced to take a deed and make a mortgage by fraudulent misrepresentations. The Advisory Master advised a decree for the balance due on the mortgage and interest. The Court said that in that case there was no attempt to obtain a rescission, doubtless because of the authority of this line of cases, that there must be rescission within a reasonable time in the cases of fraud. Defendant, however, attempted to stand on the conveyance and claim damages because of alleged misrepresentations preceding and inducing the purchase, but the Court, even in this contention of the complainant, applied the general rule and denied relief. On page 426 of this case, the Court stated that the purchaser, by its conduct, had given satisfactory evidence of an election to stand by the conveyance, subject to zoning ordinance, and the mortgage, notwithstanding the fraud and that the conduct of the defendant indicated a waiver of the same. The period between the time of the making of the mortgage and the foreclosure of the same was about one year, and the Court cites the general rule as contained in *Dennis vs. Jones*, 44 N. J. Equity, 513; 14 Atlantic, 913, and other cases.

In *Robertson, et al. vs. Criterion Construction Co.*, 140 Atlantic, 574, which was a suit to rescind a contract for exchange of properties in which the owner of the complainant company charged that she was induced to make the contract by false representations of the owner of the defendant corporation as to the value, etc., and, it was shown by the testimony, that each of the parties had put a fancy trading price on his property and there was the usual dealer's talk and the complainant alleged that she was an inexperienced confiding woman and was duped into relying upon representations of the two builders and a broker who schemed to cheat her (p. 575). The Court went into the question of fraud in considerable detail and at page 577 of said opinion, says, speaking of the complainant:

"Furthermore, she knew early in March that the representations were false, if they were false, and she did not file her bill until May 1. Such conduct is not only an election to affirm the contract, but it is highly persuasive that the complainant was not fraudulently imposed upon. The law is well settled in this State that to rescind a contract for fraud, the injured party must act promptly after discovering the fraud, and that, if he elects to affirm he cannot have a second election to disaffirm, and that he will be held to affirm unless he acts promptly to disaffirm, citing *Dennis vs. Jones*, 44 N. J. Equity, 513; 14 Atlantic, 913, in which case the Court said, 'Delay in rescission of the contract is evidence of a waiver of the fraud, and an election to treat the contract as valid * * *. So, payments of purchase money, after knowledge of the fraud, are evidence to the same effect * * *. And so also is the continued dealing

with the property purchased and in reference to the fraudulent transaction as if the contract was subsisting and binding."

The Court then continued to cite further cases along this point.

In *Berger vs. Harrison Improvement Co.*, advanced sheets No. 35, page 558, August 29, 1931, which was a suit to rescind on account of fraud, the Court said:

"A delay of four or five months is usually fatal."

In *Kaufhold vs. Cador Construction Co.*, advanced sheets No. 39, page 1, September 26, 1931, the Court said:

"Delay in rescission of the contract is evidence of a waiver of fraud and an election to treat the contract as valid. An unreasonable delay is fatal to such rescission."

In *Herder vs. Garman*, 106 N. J. Equity, 13, the Court said:

"In a suit to rescind a contract for fraudulent representation equity will not grant relief to one, who being put upon or having resorted to inquiry could have with ordinary care, discovered that the facts were not as represented. Equity does not aid one whose indifference contributed materially to the injury he complains of."

To the same effect as above cases are

Arnold vs. Hagerman, 45 N. J. Equity 186, 17 A. 93;

Tierney vs. Parker, 58 E. 117, 44 A. 151.

The statements as to value of the properties were merely trader's talk and used only for the purpose of the exchange.

There is no doubt but that both the values of the Weehawken property and Englewood property were excessive, although the evidence is in conflict as to the true value of the respective properties. The testimony of the experts on both sides bears out the assertion that the values were exaggerated. The defendant, Mrs. Hadley, seeks relief on the ground that the excessive value of the Weehawken property was greater than that of her Englewood property. Mere inadequacy of consideration is not of itself fraud. Equity does not extend relief to all those who have made a bad bargain. In *Wise vs. Fuller*, 29 N. J. Equity, 257, on page 262 it was held:

“No definition of fraud can be framed which will serve as a safe test in every case, the best effort in that direction must prove abortive. Each case must be determined on its own peculiar facts. It is not every untruthful statement that will invalidate a contract. Avarice is so strong in the average man that he naturally extols what he desires to sell, and depreciates what he wants to buy. All bargaining is conducted on the principle that each party is at liberty to get such advantages in the transaction as are allowed by the morals of trade. A contract is rarely made where each party strives to give the other all the benefit to be derived from the transaction. Gain or profit is the fundamental object of all traffic. Generally mere expressions of opinion, estimate or judgment, even if false, do not constitute fraud. * * * Statements of value made by a vendor during the negotiation between the parties, although known to be excessive, do not ordinarily constitute a warranty or a fraud. A mere expression of

opinion as to value, although the amount stated is known to be excessive is not a fraud, unless the person making it knew at the time that in consequence of the relations of trust and confidence existing between himself and the person to whom it was made, he would rely upon it and be controlled by it. A purchaser is not entitled to relief against a vendor for false affirmation of value, it being deemed his own folly to credit a nude assertion of that nature. Besides, value consists in judgment, and estimation, in which men necessarily differ. * * * The fact that a price in excess of its market value is paid for a thing, standing alone is never evidence of fraud, mere inadequacy of consideration will never substantiate a charge of fraud. In equity, inadequacy of value is, in general, of itself, no ground for impeaching a contract."

That Mrs. Hadley did not rely upon Mr. Schmulling's statement as to the value of the Weehawken property is borne out by the testimony heretofore recited. Both parties knew that the respective values of their properties had been exaggerated. The mere fact that a bad bargain might have been made by one of the parties is not grounds for setting aside a contract.

Question of Laches.

The cases heretofore cited have enunciated the proposition, that where there is fraud and a party fails to act promptly to rescind after knowledge of the fraud has come to his attention that the same offers plenary proof of his decision to abide by the contract and it is this conduct on his part that denies him a recovery and not the question of laches. There is, however, in this case, laches upon the part of the defendant, Mrs. Hadley. The alleged fraud of this transaction was not brought

to the attention of the Court until about four years after the same came to the knowledge of the defendant. At that time, the party alleged to have made the false representations had died and the complainant was, therefore, without the benefit of his testimony.

In *Van Houton vs. Van Winkle*, 46 N. J. Equity, 380, *Holzer vs. Thomas*, 69 N. J. Equity, 515, 520; 61 Atlantic, 154, the Court said:

“Where a complainant, who holds documentary evidence by which a *prima facie* case may be made, fails to bring suit in equity for many years and until the death of witnesses, whose testimony might have rebutted the case thus made, she must, in her bill, explain and sufficiently excuse her laches.”

In *TenBroeck v. Jackson*, 69 Atlantic, 488; 71 N. J. Equity, 582, affirmed 69 Atlantic, 490; 73 N. J. Equity, 734, it was held that:

“Laches in bringing a suit until it has become impossible to hear both parties and to ascertain the exact facts bars a recovery in equity.”

In *Le Gendre vs. Byrnes*, 44 N. J. Equity, 372, 14 Atlantic, 621, the Court said:

“Bill will be dismissed where complainant has delayed suing for so long a time after his cause of action arose that he has, by his delay, placed himself in a position where he has gained an unfair advantage over his adversary.”

The delay of the defendant in this case, Mrs. Hadley, in failing to assert her rights at the time that the knowledge came to her attention and having waited until a time when the party alleged to have made false representations had died, is therefore guilty of laches, for the reason that she has, by such conduct, obtained an unfair advantage over her adversary.

There is nothing in this case that might, under the equitable maxim of clean hands, prohibit the affirmance of the decree of the Court of Chancery or that entitles the defendant to any abatement of the mortgage under foreclosure in this suit.

The defendant, Mrs. Hadley, after having failed to assert any rights she might have had by reason of certain alleged false representations, now seeks to set up the defense that the complainant has not come into equity with clean hands. Equity always aids the vigilant. The testimony heretofore recited shows that the defendant did not rely upon the alleged false representations, but conceding, although admitting that she had, the same came to her knowledge soon after she took title to the Weehawken property. This was about four years prior to the time that these alleged false allegations were first set up in the answer and counterclaim in this suit. The defendant, by her conduct, gave plenary evidence that she had ratified the contract and her continued dealing with it, operated as a waiver of the alleged fraud. Having once elected to abide by the contract, she now seeks to disaffirm the same by setting up the defense of unclean hands as a last resort and final hope to obtain the aid of this Court. The cases heretofore cited have shown that where a person once elects to abide by the contract, he cannot have a second election to disaffirm, as the first election is irrevocable. The continued dealing with this property by the payments of the interest and part of the mortgage under foreclosure in this suit, as well as the further conduct on the part of the defendant, in trying to sell this property within a year after she had knowledge of the alleged fraudulent representations and with the further conduct on her part of having dealt with this

property for a period of four years without asserting any rights she might have had until a time when the person alleged to have made the false representations had died, is such conduct on her part as would create an estoppel.

“The principle of equitable estoppel proceeds upon the ground that he who has been silent as to his alleged rights when he ought in good faith to have spoken, shall not be heard to speak when he ought to be silent. *Todd vs. Exeter Land Co.*, 146 Atlantic, 303”.

The defendant, Mrs. Hadley, by these actions, has thus obtained an unfair advantage over the complainant and should not now be allowed to speak. She, however, now seeks to accomplish, by indirect means, what she might once have had by direct means, that is, to ask the Court to grant to her the relief which is tantamount to rescission.

Defendant now claims that she is entitled to an abatement on the mortgage under foreclosure and relies upon *O'Brien vs. Hulfish*, 22 N. J. Equity, 471. The facts of that case, however, differ greatly from the instant one. In the *O'Brien* case, the defendant had purchased a piece of property, the title to which was defective, complainant owning only three-fifths ($\frac{3}{5}$ ths) of the property, but he had represented to the defendant, knowing the same to be false, that he had entire title to the property. A purchase money mortgage was given to secure a part of the purchase price. Defendant went and improved the property, by building upon it. It was, therefore, almost impossible to undo the contract or for the injured party to rescind, without causing himself great loss by reason of having placed a building on the property. Under these circumstances, the Court felt that to further the ends of justice that the defendant should be allowed an abatement on the purchase

money mortgage. The Court did not, in this case, however, sanction the rule that where there is fraud that the injured party need not rescind within reasonable time, but could wait until the mortgage was foreclosed. This rule is only applicable to cases where the defendant cannot, or is in no position to rescind, without causing himself great loss. A reading of the case shows this. In the instant case, Mrs. Hadley could have rescinded at any time after the alleged fraudulent representations came to her knowledge, but failed and neglected to do so and now seeks the same relief as allowed the defendant in the O'Brien case.

Another case relied upon by the defendant is *Curtiss-Warner Corp. vs. Thirkettle*, 134 Atlantic, 299; 99 N. J. Equity, 806. The facts in this case also differ greatly from the instant one. This was also for the foreclosure of a purchase money mortgage. In that case, the vendor agreed to sell and convey a corner lot, knowing at the time that the lot described was not a corner lot and thereafter conveyed the lot described and the vendee accepted the deed, not knowing that the lot conveyed was an inside lot and not a corner lot, as per agreement. Upon her complaint, defendant was assured that a street would be cut through, making her lot a corner one. She continued to complain almost up to the time of the filing of the bill, but was again and again repeatedly assured by the officers of the complainant that she would receive what she had bought. Under these special circumstances that the lot agreed upon had never been conveyed to her and because the lot at the time of purchase was on an undeveloped tract, without streets cut through so that defendant believed the lot conveyed was a corner one and because she had been charged \$1,000 more on account of the lot being a corner lot and because

the defendant had made valuable improvements on the property and that she had continued her complaints about this property almost up to the time of the bill and had been assured by the officers of the complainant that a street was to be cut through, the Court of Equity, therefore allowed an abatement on the mortgage. That the facts of the instant case are different, is without question. Mrs. Hadley got the property agreed upon. There is nothing in her case, from the testimony heretofore recited, that would warrant the relief granted in the *Curtiss-Warner Corp. vs. Thirkettle* case.

Conclusion.

In conclusion, we respectfully submit that the defendant, Mrs. Hadley, is not entitled to relief, in view of all the circumstances of the case. The evidence shows that about two months before the defendant took title to the Weehawken property in exchange for her Englewood properties that negotiations had been started. She, therefore, had ample opportunity to fully apprise herself as to the truth of many of the alleged false representations. She had visited this property twice before taking title. Her own statements are that a few days before she took title, she had become dissatisfied; that she had not complete confidence in Mr. Schmulling, having lost confidence when he told her that this property was fully worth \$415,000 and that this was before the signing of the contract. She further stated that before taking title, she had checked certain figures of expenses given to her by Mr. Schmulling and found them to be wrong; that she had told Mr. Schmulling when they first began talking about the Weehawken property, that she did not like his values and that she did not believe, at that time, that Mr.

Schmulling was making this property pay. In view of all this, it cannot be said that the defendant relied upon the representations of Mr. Schmulling. The testimony of the real estate experts as to the values of these properties varied greatly, showing that even among these men value was a matter of opinion. That both properties were over-valued, however, is without question and the defendant knew this, having been so informed by Mr. Lockwood. The Vice-Chancellor, in his opinion, figured the values of the respective properties as \$275,000 for complainant's property and \$150,000 for defendant's property. Equity does not interfere merely because a party makes an unwise deal. *Robertson vs. Criterion Construction Co.*, 140 Atlantic, 574, "value is a matter of opinion". At the time that the title was closed, Mrs. Hadley was represented by an attorney and by Mr. Porter, her secretary, as trustee for the Simmons estate and in whom, according to her own statement, she had every confidence. These men had gone there at the defendant's direction to protect her interests. They went over the figures for insurance, taxes, rents, etc., in order that they might make an adjustment of these figures as of the date of closing. Mrs. Hadley was present at the closing. No doubt discussions arose concerning these adjustments, which she must have heard. This was not something that was new to her. She had been trustee for the Simmons estate for forty years and handled properties for this estate. She knew what the purpose of a title closing was. The figures for rents, taxes, etc., were available to her at that time. She, nevertheless, went ahead with the deal. These men representing her were there to explain anything that she might not understand. A statement of the closing was prepared which was given to her attorney and Mr. Porter. Immediately after taking title to the property,

Mrs. Hadley must have known the truth or falsity of the statements concerning rents, etc., nevertheless, she continued to deal with this property for four years and paid interest and a part of the principal of the mortgage in suit and within a year after knowledge of the alleged fraud, she made attempts to sell this property. This conduct on her part was plenary evidence of her election to abide by the contract, which was irrevocable and also operated as a waiver of the alleged fraud. Having once made an election, she was bound by it, and it is this conduct which shows evidence to abide by the contract and denies her recovery and not the theory of laches. (*Faulkner vs. Wassmer*, 77 Atlantic, 341.) The defendant was also guilty of laches, in that she failed to assert any rights she might have had by reason of the alleged fraudulent representations until after the death of the party supposed to have made the same, thus giving her an unfair advantage over her adversary and making it impossible for a Court to hear the full testimony. The complainant, also as a result of such conduct, has lost the benefit of Mr. Schmul-ling's testimony, which might have refuted some of Mrs. Hadley's testimony at the trial. Mrs. Hadley was a woman of considerable business and real estate experience, having handled property for a number of years for the Simmons estate and Mr. Corbin, who has known her for thirty-five or forty years says she had good business ability and that her work in connection with the Simmons estate had given her considerable real estate experience. For this reason, the defendant no doubt felt that she was well-qualified to handle her own affairs, and as the Vice-Chancellor said in his opinion, she chose to rely upon her own judgment rather than that of experts. The defendant would also have the Court believe that because Mr. Lockwood, the broker who had the exclusive agency of

her Englewood property, received a part of the commissions, that there was fraud and that such fraud was chargeable to the complainant. Having this agency, he no doubt felt that he was entitled to some commission upon the disposition of these properties and had he not received the same at that time, the properties would have been out of his hands. The sale could not have gone through without his approval and for this reason a part of the commission was paid to him. There is no fraud in this conduct. The fact that the property might have encroached slightly upon the public highway is no ground for relief, in the absence of a special provision in the contract. *Harrington Co. vs. Kadrey, et al.*, 148 Atlantic, 3. The Vice-Chancellor, after hearing the complete testimony, stated in his opinion that he did not find in the transaction, fraud or such over-reaching as would have justified a cancellation or reduction in the mortgage, even if application had been made to the Court promptly, but the defendant was not prompt.

We, therefore, respectfully submit that there is nothing that now entitles the defendant to relief, for the reason that the cases cited by the defendant are entirely different than the instant case, as has been heretofore set out in detail.

We respectfully submit that the Decree of the Order of Chancery be affirmed and that the defendant be denied the relief prayed for in her answer and counterclaim.

Respectfully submitted,

M. J. TACKELLA,
Solicitor of Complainant-Respondent.

ABE D. LEVENSON,
Of Counsel.



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