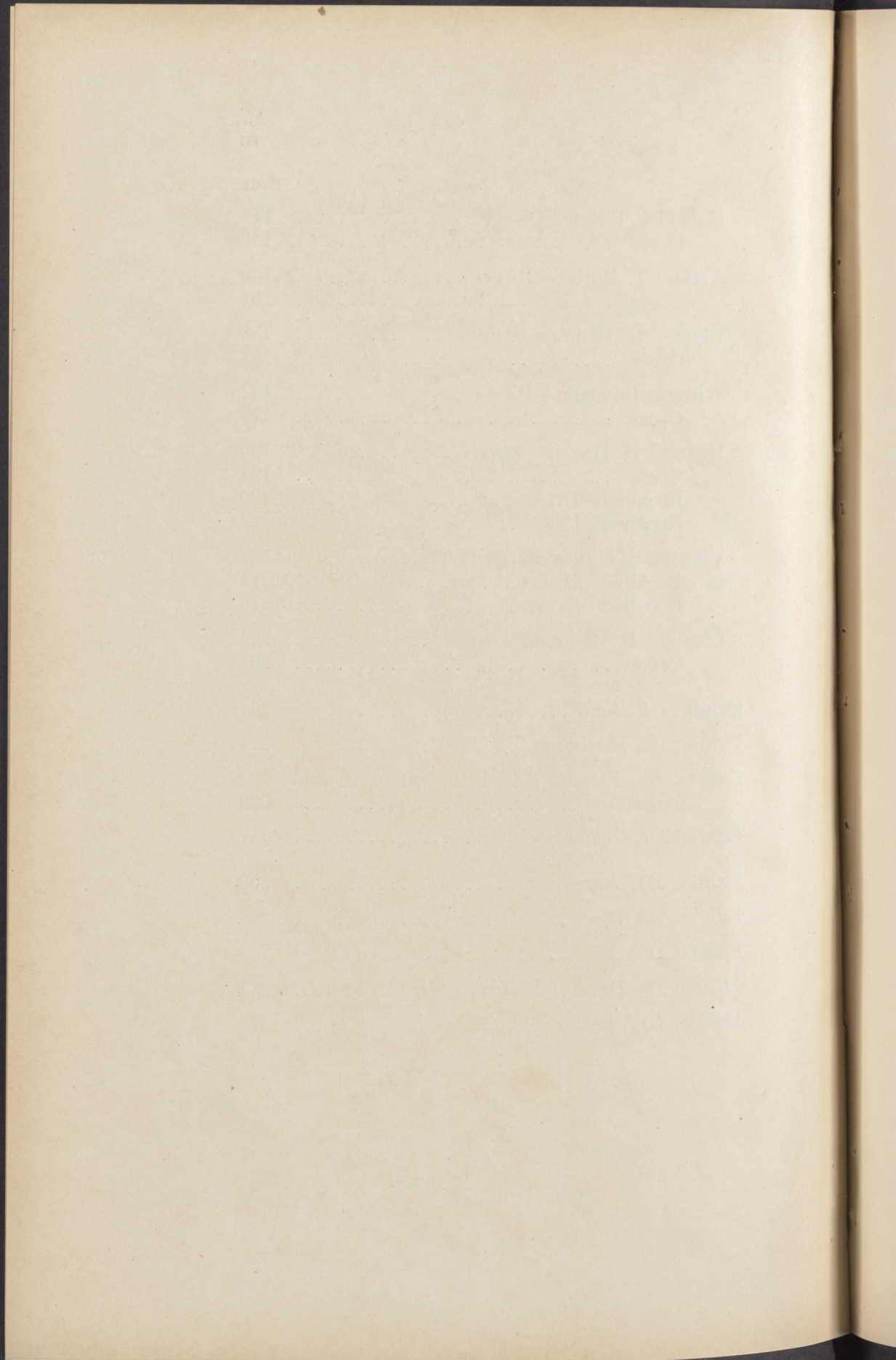


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BILL OF COMPLAINT.

(Filed September 28, 1927.)

IN CHANCERY OF NEW JERSEY.

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

10

The complainant, Atlantic-Brigantine Hotel and Pier Company, a corporation organized and existing under and by virtue of the Laws of the State of New Jersey, respectfully shows that:

1. Complainant, said Atlantic-Brigantine Hotel and Pier Company, was incorporated on or about the seventh day of May, 1925. Said corporation was organized for the purpose, among other things, of purchasing, holding, mortgaging and selling or otherwise disposing of the following described land and premises situate in the City of Brigantine, County of Atlantic and State of New Jersey, to wit:

20

BOUNDED on the North by Ocean Avenue, on the South by the High Water Line of the Atlantic Ocean, on the East by Thirty-second Street South, on the West by Thirty-third Street South;

BEING further known and designated as "Block 219" on map entitled "Revised Map of Portion of Beach Front as shown on Map No. 1A of lands located on Brigantine Beach made for Island Development Co. by H. I. Eaton, C.E., March 1925,"

30

TOGETHER WITH the land lying under water in front of the said described premises,

between the High Water Line of the Atlantic Ocean and the Interior Line of the City Park, said Interior Park Line, at said location, being situated at a distance of about fifteen hundred feet beyond the Interior Line of the proposed Boardwalk, between Thirty-second and Thirty-third Streets South.

10 WITH the additional benefit of warranty of Island Development Co. that the said premises oceanward of the said Block 219 and between Thirty-second Street and Thirty-third Street, South, were not and should never be encumbered by the City Park Deeds or restrictions for a distance of about fifteen hundred feet oceanward from the landward line of the Boardwalk, and that said tract under water in front of Block 219 aforesaid was and would forever remain unrestricted in order to provide a site for the construction of an ocean pier without being affected by the Ocean Front Park Ordinance of the City of Brigantine, nor 20 by the City Park Deeds; and that the only reservation or restriction on said land under water was and would forever remain solely a Right of Way for a Boardwalk, which Right of Way would be dedicated for said Boardwalk purpose; and that said premises under water in front of Block 219 oceanward of the inland line of the Boardwalk would permanently remain unencumbered and unrestricted, free and clear 30 for the construction of an ocean pier as aforesaid.

2. Prior to the actual incorporation of complainant company, a preliminary organization or syndicate existed which created complainant corporation on or about May 7, 1925.

3. On or about April 18, 1925, members of said syndicate conferred with Howard G. Harris, President, and with Vincent Haneman, Secretary, of Island Development Co., a corporation of this State, and who then and there made the definite representation that Island Development Co. could and would deliver said premises, with the warranties, as in paragraphs 1 and 9 of this bill set forth or described.

4. As a result of the said conference, defendant, Island Development Co., entered into a written agreement of sale. A copy of said agreement is hereunto annexed, and made a part hereof and marked Exhibit "A," the original of which is in the possession of complainant ready to be produced. Said agreement is with one Ulysses G. Hillman who was, within the knowledge of defendant corporation and its said officers, the authorized agent of the aforesaid syndicate and known by them to be acting in behalf of said syndicate. 10 20

5. The market value or selling price of parcels similar to that portion of said premises designated as Block 219 on the map aforesaid, at the time of the execution of said agreement did not exceed \$75,000, nor had any block similar thereto been sold by Island Development Co. for than \$75,000.

6. The fact recited in paragraph 5 above was common knowledge to said syndicate that afterwards created complainant corporation as aforesaid, to said Ulysses G. Hillman, and to said officers of Island Development Co. 30

7. The total sales price in said agreement named, for the premises described in paragraph 1 hereof,

was \$150,000, which included not only said Block 219 but also said land lying under water, and in addition the warranties in said paragraph 1 set forth.

8. The additional \$75,000 (which brought the total purchase price to \$150,000 as aforesaid) was represented by said Howard G. Harris and Vincent Haneman, on behalf of Island Development Co., to  
10 be the value of the Riparian Rights to said land under water and the value of the proposed dedication of said City Park and the promise that the land immediately oceanward of Block 219 would be and forever remain free, clear, unrestricted and vacant as aforesaid as a site for an ocean pier, and unencumbered by the City Park restrictions.

9. And as a further inducement to said purchaser, defendant, Island Development Co., through said  
20 Howard G. Harris and Vincent Haneman, covenanted that the remaining of the Brigantine Ocean Front between Eighth Street South, and Fourteenth Street South, between Fifteenth Street South and Thirty-second Street South, and between Thirty-third Street South and a point one hundred feet West of Fortieth Street South—extending from the Inside Line of the Boardwalk (which is co-incident with the inland line of the proposed City Park) to the Exterior Line established by the State of New  
30 Jersey, known as the Riparian Line, being the exterior line of said City Park—would be and forever remain subject to the restrictions of the City Park Deeds and in that manner dedicated to the public permanently as a City Park; and covenanted further that, to accomplish these results, to wit: the establishment of said City Park and the delivery to said purchaser of said land oceanward of Block 219

unrestricted and unencumbered, said Island Development Co. would forthwith acquire by purchase outright the Riparian Rights to the same, then immediately dedicate said City Park in the manner aforesaid, and forthwith convey to said purchasing syndicate or their nominee the said land oceanward of Block 219 unrestricted and unencumbered.

10. That shortly following the actual incorporation of complainant company, defendant, Island Development Co., confirmed to complainant corporation the said agreement, warranties and inducements aforesaid and induced complainant to take a deed therefor by virtue of an assignment from said Hillman to complainant, of which assignment defendant, Island Development Co., had notice; and which covenants, warranties and inducements Island Development Co. agreed to perform for complainant the same as it had theretofore covenanted with said syndicate through said Hillman as aforesaid. 20

11. On or about April 19, 1926, complainant, acting under said premises, warranties, and inducements, carried out all its undertaking as in said agreement set forth and paid the full purchase price of \$150,000 (which included a paid excess of \$75,000), in the following manner, that is to say: in cash \$75,000, and by the execution of a purchase money mortgage \$75,000. 30

12. Nevertheless, the defendant, Island Development Co., although often requested so to do, has failed to carry out its terms, agreements, promises and undertakings aforesaid, in that said Island Development Co. has failed to obtain said Riparian Rights or Grants, has wholly failed to carry out the

City Park Scheme aforesaid, and has wholly failed to deliver the aforescribed premises under water unrestricted and unencumbered, and has failed to deliver said land oceanward of Block 219 clear of the Rights of the State of New Jersey—all of which enumerated failures or defaults had been agreed to be delivered and all of which had been paid for by complainant as aforesaid.

10 13. Complainant further shows that after defendant, Island Development Co., had consistently failed for about seventeen months to carry out its said undertakings, although many times promising to do so immediately, complainant tendered back to said Island Development Co. on September 27, 1927, a deed reconveying the premises as they had theretofore been conveyed to complainant from Island Development Co. as aforesaid, and complainant then demanded the return of the cash of \$75,-  
20 000 theretofore paid as aforesaid, and demanded a cancellation of said purchase money mortgage. Said tender and demand were refused. A copy of the minutes of the meeting of the board authorizing said tender is annexed hereto and marked Exhibit "B." A copy of the deed so tendered is annexed hereto and marked Exhibit "C."

30 14. Complainant has ascertained that on or about March 29, 1927, defendant, Island Development Co., assigned said purchase money mortgage of \$75,000 to Chelsea National Bank, of Atlantic City, New Jersey, and complainant charges that said bank took said assignment with full knowledge and notice of the said covenants so neglected to be carried out by Island Development Co., and charges that said bank is bound by the same covenants so failing as aforesaid.

15. Complainant charges that defendant, Island Development Company, fraudulently induced the complainant to pay the said sum of \$150,000 for said land, privileges and rights hereinbefore recited, upon the representation that said Island Development Company would forthwith obtain the said Riparian Grants and would dedicate to the public the aforesaid City Park, and that defendant, Island Development Company has injured and defrauded this complainant in the amount of at least \$75,000 by failing, neglecting or refusing to obtain the said Riparian Rights hereinbefore described and by failing, neglecting or refusing to convey to Brigantine City for park purposes that part of said Riparian lands lying within the limits of said proposed Public Park and by failing, neglecting or refusing to carry out its other and sundry covenants aforesaid. 10

Complainant is without adequate remedy in the Courts of Law and therefore prays: 20

1. That Island Development Company and Chelsea National Bank of Atlantic City, New Jersey, who are the defendants to this suit, may answer this bill of complaint and each statement therein made.

2. That it may be decreed that said Island Development Company return to complainant the amount paid upon the aforesaid agreement, to wit: \$75,000 with interest from the date of the receipt thereof by Island Development Company, and cause to be cancelled of record and surrender to complainant the bond and mortgage aforesaid, in the amount of \$75,000 upon the reconveyance to Island Development Company of the tract aforesaid. 30

3. That Chelsea National Bank shall be decreed to cancel of record and surrender to complainant all right, title and interest, if any, which said Chelsea National Bank may have or claim to have in said bond and mortgage, without any charge to complainant.

4. And that complainant may have such other and further relief as to this Court shall seem equitable and just.

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

CARLTON GODFREY,  
*Solicitor for Complainant.*  
WM. I. GARRISON,  
*Of Counsel.*

20

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EXHIBIT "A."

ARTICLES OF AGREEMENT, made this eighteenth day of April, in the year of our Lord one thousand nine hundred and twenty-five, BETWEEN Island Development Company, a corporation under and by virtue of the Laws of the State of New Jersey, of the first part, and Ulysses G. Hillman, of the City of Woodstown, County of Salem, and State of New Jersey, of the second part, WITNESSETH, that the said party of the first part, for and in consideration of the sum of ONE HUNDRED AND FIFTY THOUSAND DOLLARS (\$150,000) to be paid and satisfied as herein-after mentioned and also in consideration of the

30

covenants and agreements hereinafter mentioned, made and entered into by the said party of the second part, doth agree to and with the said party of the second part, that it the said party of the first part, will well and sufficiently convey to the said party of the second part, his heirs and assigns by deed free from all encumbrance, on or before the eighteenth day of April, 1926, all that lot, tract, or parcel of land and premises hereinafter particularly described, situate, lying and being in the City of Brigantine, in the County of Atlantic, and State of New Jersey, bound and described as follows:

Bound upon the North by Ocean Avenue, on the South by the high water line of Atlantic Ocean, on the East by 32nd Street South, on the West by 33rd Street South, being Block 219, as shown on map hereunto attached, together with all the right, title, and interest of the party of the first part, in and to lands lying under the water in front of said described premises, between the high water line of the Atlantic Ocean and the interior line of the City Park, said interior line being located at a distance of about 1500 feet beyond the interior line of the proposed boardwalk, as shown on the blue print hereunto attached, between 32nd and 33rd Streets South, it being understood that the premises oceanward of the above named block and between 32nd and 33rd Streets South, are not incorporated within the boundaries of the City Park, for a distance of about 1500 feet, having been left vacant in order to provide site for the construction of an ocean pier without being affected by said Ocean Front Park Ordinance. It is fully understood and agreed, however, that a right of way for the Boardwalk, of the width of the proposed Boardwalk will be

dedicated across the above described premises at the location shown on the attached blue print. Said described premises are to be conveyed free and clear of any restrictions. Thirty-second and 33rd Streets from Ocean Avenue to the bulkhead constructed across said described premises are to be paved with gravel, and concrete sidewalks and curbs are to be constructed before day of settlement. Ocean Avenue will be paved with gravel, with concrete sidewalks and curbs before day of settlement. The land lying between the bulkhead and Ocean Avenue will be filled to grade before day of settlement.

AND the said Ulysses G. Hillman for himself, his heirs, executors, and administrators, doth covenant, promise and agree to and with the said party of the first part, its successors and assigns, that he the said party of the second part will pay and satisfy or cause to be paid and satisfied unto the said party of the first part the said sum of one hundred and fifty thousand dollars (\$150,000) as and for the purchase money of the foregoing described land and premises, in the following manner, that is to say:

Fifteen thousand dollars, receipt of which is hereby acknowledged.

Fifteen thousand dollars on July 18, 1925.

Fifteen thousand dollars on October 18, 1925.

Fifteen thousand dollars on January 18, 1926.

Fifteen thousand dollars on April 18, 1926, at which time settlement shall be made and title passed. At time of settlement, party of second part agrees to execute his bond, or the bond of his successors or assigns secured by first mortgage on said described premises for \$75,000,

said mortgage to be payable at any time within three years from the date thereof, and to bear interest at the rate of six per cent payable semi-annually.

It is further agreed by and between the parties hereto that should the party of the second part, his heirs, successors or assigns build or cause to be built upon said described premises, and open the public for entertainment on or before the 15th day of June, 1926, a hotel containing at least 150 bedrooms with at least 100 baths, costing not less than (\$400,000) **FOUR HUNDRED THOUSAND DOLLARS**, to be of fireproof, or semi-fireproof construction, and also to assume any expense incurred by this company for hotel plans ordered from McLanahan and Benkert, architects of Philadelphia; then, in that case, the \$75,000 mortgage will be cancelled of record and rebated unto the party of the second part, his heirs, successors, or assigns, as a discount on the purchase price herein named.

AND IT IS FURTHER AGREED, by the parties to these presents, that the said part of the second part, heirs and assigns, may enter into and upon the said land and premises on the \_\_\_\_\_ day of \_\_\_\_\_ and from thence take the rents, issues and profits to \_\_\_\_\_ and their use.

AND for the performance of all and singular the covenants and agreements aforesaid, the said parties do bind themselves and their respective heirs, executors and administrators; and they hereby agree to pay, upon failure to perform the same, the sum of \_\_\_\_\_ which they hereby fix and settle as liquidated damages therefor.

IN WITNESS WHEREOF, the said parties have hereunto interchangeably set their hand and seals the day and year first above mentioned.

ISLAND DEVELOPMENT COMPANY

By H. G. HARRIS

President

SIGNED, SEALED AND DELIVERED

in the presence of

(Island Development Company

10 Seal)

ATTEST: V. S. HANEMAN,

Secretary.

ULYSSES G. HILLMAN

Dated 1925

For value received, I hereby assign, transfer, set over and release all my right, title and interest in the within agreement to Atlantic-Brigantine

Hotel & Pier Co.

Ulysses G. Hillman

20 Witness:

C. B. Richman

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EXHIBIT "B."

A Special Meeting of the Board of Directors of Atlantic-Brigantine Hotel and Pier Company was held at the office of L. D. Horner at Woodstown, N. J., on September 21, 1927, at eight o'clock P. M.

30 All except one of the members of the Board of Directors were present, viz:

L. D. Horner,  
C. B. Richman,  
William Richman,  
David Colson,  
William H. Moore.

The President stated that this meeting had been called for the purpose of considering and taking action upon the neglect or refusal of the Island Development Co. to carry out its agreements and representations made by it at the time of the sale by Island Development Co. for the price of \$150,000 of the block of land lying oceanward of Ocean Avenue, in Brigantine, N. J., and between 32nd Street South and 33rd Street South.

The President stated briefly thereof to be as follows: Shortly prior to the actual incorporation of this company, the syndicate which later formed this corporation made an agreement with Island Development Co. to buy for \$150,000 Block 219 as shown on map entitled "Revised Map of Portion of Beach Front as shown on Map No. 1A of Lands located on Brigantine Beach made for the Island Development Co. by H. I. Eaton, C.E., March 1925" and also the lands lying under water in front of and running oceanward of said Block 219 about 1500 feet between parallel lines being the side lines of said Block if they were extended; that said lands under water were to be and forever remain unrestricted except for a dedication of a strip crossing the same for Boardwalk purposes; that the remainder of the ocean front between 8th Street South and 14th Street South, between 15th Street South and 32nd Street South, and between 33rd Street South and a point 100 feet West of 40th Street South—extending from the inside line of the Boardwalk (which is co-incident with the inland line of the proposed City Park) to the Exterior Line established by the State of New Jersey, known as the Riparian Line, being the exterior line of the said City Park, would be and forever remain subject to the restrictions of the City Park Deeds and in that manner dedicated to the public for said City Park;

that to accomplish this result, to wit: the establishment of said City Park and the delivery of said land oceanward of Block 219 unrestricted and unencumbered, Island Development Co. agreed to forthwith acquire the Riparian Rights of the same, to dedicate the said City Park, and to convey the said land oceanward of Block 219 unrestricted and unencumbered; that said agreement to buy Block 219 and said lands under water, was actually written  
10 between U. G. Hillman and Island Development Co. and bears date April 18, 1925; that shortly after that, this company was incorporated and after Island Development Co. had confirmed said agreement, especially with relation to the Riparian Rights, the City Park and the fact that the lands oceanward of Block 219 would be and remain unrestricted and unencumbered, this corporation took a deed therefor by virtue of an assignment of said agreement from Hillman to this corporation and  
20 Island Development Co. thereupon specifically extended to this company the benefits in all respects of said agreement as above briefly recited; that as a part of the purchase price, this corporation executed a mortgage to Island Development Co. of \$75,000 which mortgage was later assigned to Chelsea National Bank; that officers of said bank knew of the agreement aforesaid in every manner and consented thereto, taking the said assignment with notice thereof; that shortly thereafter this corporation made a demand that said covenants be immediately carried out and received a letter from Island  
30 Development Co. that this would be done promptly; that this corporation has now waited many months, made repeated demands in connection therewith and received numerous promises, but that, nevertheless, said covenants have not yet been complied with, the Riparian Rights have not been obtained by Island

Development Co., the said City Park has not been dedicated, the said land under water still remains subject to the Rights of the State of New Jersey therein and has not been delivered to this corporation in accordance with the said undertakings of Island Development Co. for which this corporation paid the full consideration of \$150,000, the default being in that the said lands under water extending about 1500 feet oceanward of the inland line of the Boardwalk were to have been unrestricted and unencumbered. 10

The situation as so described by the President was then discussed in detail and at length and it was the opinion of the Board, later put in resolution form as hereinafter quoted, that this corporation has been defrauded by Island Development Co. The fraud was described in this manner: Blocks similar to 219 were selling at the time of said purchase, for not more than \$75,000 and at no time did Island Development Co. sell a block similar to 219 for more than \$75,000. The excess over \$75,000 in the selling price to this corporation for the lands above described, including the land under water, was an additional \$75,000 making the total consideration \$150,000. This excess price was represented to be the value of the Riparian Rights thereto and the value of the promised dedication of the said City Park and the promise that the City Park would be and forever remain as above bounded and that the land immediately oceanward of Block 219 would be and remain excluded from said City Park and would be and remain unrestricted and unencumbered. 20 30

This scheme not being carried out as agreed, became the resultant fraud by which this corporation was mulcted out of \$75,000 for which it has as yet received only "all the right, title and interest of

Island Development Co. in and to said lands lying under water” whereas Island Development Co. did not at the time of the date of the said Deed, never did have and does not now have title thereto clear of the Rights of the State of New Jersey; said lands under water not being delivered as covenanted, to wit: unrestricted and unencumbered; but, on the contrary, Island Development Co. imposed upon this corporation by reason of the confidence of our  
10 Board of Directors in said Island Development Co. a Deed for all their “right, title and interest” in something they did not own but for which they collected \$75,000 from this corporation.

The President then asked the instructions of the Board in this predicament, and the following resolution was offered by David Colson, seconded by L. D. Horner, and unanimously carried, to wit:

WHEREAS, it is the opinion of this Board of Directors that this corporation has been taken advantage of and defrauded by Island Development  
20 Co. in that said Island Development Co. has caused this corporation to take a Deed from said Island Development Co. without complying with its said undertakings more fully discussed at this meeting and shown by the above minutes hereof:

NOW, therefore, BE IT RESOLVED that this corporation convey back to Island Development Co. said lands so acquired from said Island Development Co.; and that the officers of this corporation be and they are hereby authorized, empowered  
30 and directed to execute said Deed and to tender back the same to Island Development Co. and to demand the return of the money heretofore paid therefor, to wit: \$75,000 in cash and to further demand the return, cancellation and re-delivery of the mortgage of \$75,000 executed by this corporation to Island Development Co. assigned to Chelsea National

Bank; and that, in the event of said demands being refused, then counsel for this corporation is hereby directed to file or cause to be filed in the Court of Chancery, or such other Court as he may deem fit, such Bill for Rescission or other Bill of Complaint as may in his opinion be proper, having for its purpose to rescind the said transaction with Island Development Co., to recover said \$75,000, and to cause to be cancelled said mortgage (on the re-conveyance of said lands from this corporation to Island Development Co.) and to take such further steps, in law and equity, or otherwise, as he may think proper in any way whatsoever for the protection of the interest of this corporation in the premises. 10

There being no further business the meeting then adjourned.

Clement B. Richman,  
Secretary.

20

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EXHIBIT "C."

THIS INDENTURE, made the twenty-first day of September in the year of our Lord one thousand nine hundred and twenty-seven. Between ATLANTIC-BRIGANTINE HOTEL AND PIER CO., a corporation under and by virtue of the Laws of the State of New Jersey, of the first part, and ISLAND DEVELOPMENT CO., a corporation under and by virtue of the Laws of the State of New Jersey of the second part, 30

WITNESSETH, that the said party of the first part, for and in consideration of the sum of ONE

HUNDRED AND FIFTY THOUSAND DOLLARS lawful money of the United States of America, well and truly paid by the said party of the second part, to the said party of the first part, at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged has granted, bargained, sold, aliened, enfeoffed, released, conveyed, and confirmed, and by these presents does grant, bargain, sell, alien, enfeoff, release, convey and confirm unto the party of  
10 the second part, its successors and assigns,

ALL that certain tract or parcel of land and premises hereinafter particularly described, situate in the City of Brigantine, in the County of Atlantic and State of New Jersey bounded and described as follows:

BEGINNING at a point in the Southwest corner of 32nd Street South and Ocean Avenue, 80 feet wide; thence (1) Westwardly along the southerly  
20 line of Ocean Avenue a distance of two hundred and eighteen one-hundredths (200.18) feet to the Easterly line of 33rd Street South; thence (2) Southwardly along the said Easterly line of 33rd Street South a distance of five hundred and twenty-five (525) feet more or less to high water line of Atlantic Ocean; thence (3) Eastwardly along said high water line of Atlantic Ocean a distance of two hundred (200) feet more or less to its point of intersection with the westerly line of 32nd Street South;  
30 thence (4) Northwardly along the westerly line of 32nd Street South a distance of five hundred and ninety (590) feet more or less to the place of beginning.

TOGETHER WITH all the right, title and interest of the party of the first part hereto in and to all the lands lying under water located between the high water line of the Atlantic Ocean and the Ex-

terior Line of the City Park as established by Ordinance of the City Council of the City of Brigantine.

TOGETHER with all and singular, the buildings, improvements, woods, ways, rights, liberties, privileges, hereditaments, and appurtenances, to the same belonging, or in any wise appertaining, and the reversion or reversions, remainder and remainders, rents, issues and profits thereof, and of every part and parcel thereof: AND ALSO all the estate, right, title, interest, property, possession, claim and demand whatsoever, both in law and equity, of the said party of the first part, of, in and to the premises, with the appurtenances. 10

TO HAVE AND TO HOLD the said premises, with all and singular the appurtenances, unto the party of the second party, its successors and assigns, to the only proper use, benefit and behoof of the said party of the second part, its successors and assigns, forever.

AND the said Atlantic-Brigantine Hotel and Pier Co. its successors and assigns do by these presents covenant, grant and agree to and with the said party of the second part, its successors and assigns, that it the said party of the first part, its all and singular the hereditaments and premises herein above described and granted, or mentioned and intended to be so, with the appurtenances unto the said party of the second part, its successors and assigns, against it the said party of the first part, its successors and against all and every other person or persons whomsoever lawfully claiming or to claim the same or any part thereof by, from, through or under it, him, her, them or any of them, subject as aforesaid SHALL and WILL by these presents WARRANT and forever defend. 20 30

IN WITNESS WHEREOF, the said party of the first part has hereunto caused its President to sign,

its Secretary to attest and its corporate seal to be hereunto affixed.

ATLANTIC-BRIGANTINE HOTEL  
AND PIER CO.

Wm. Richman  
President

ATTEST:

Clement B. Richman  
Secretary

10 Signed, Sealed and Delivered  
in the presence of

STATE OF NEW JERSEY }  
ATLANTIC COUNTY } SS

20 BE IT KNOWN that on this twenty-second day of September, nineteen hundred and twenty-seven, before me, the subscriber, a Master in Chancery of New Jersey, personally appeared Clement B. Richman who, being by me duly sworn according to law, did on his oath say that he is the Secretary of the Atlantic-Brigantine Hotel and Pier Co., the grantor mentioned in the foregoing indenture; that he knows the seal of this corporation; that the seal affixed to the said indenture is the common seal of the said corporation; that William Richman is the  
30 President of said Corporation and did by its order sign, seal and deliver the said indenture as its voluntary act and deed in the presence of said deponent; and that the said deponent did, at the execution thereof subscribe his name as a witness thereto.

CLEMENT B. RICHMAN

Sworn and subscribed to  
before me this twenty-  
second day of September  
A. D. 1927

CARLTON GODFREY  
M. C. C. of N. J.

---

ANSWER OF ISLAND DEVELOPMENT CO. 10

(Filed October 22, 1927.)

IN CHANCERY OF NEW JERSEY.

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Between

ATLANTIC-BRIGANTINE HO-  
TEL AND PIER Co., a cor-  
poration,

*Complainant,*

and

ISLAND DEVELOPMENT Co.,  
a corporation, *et al.*,

*Defendants.*

On Bill, &c.  
Answer of Island  
Development  
Company.

20

---

Defendant, Island Development Company, answer- 30  
ing complainant's bill of complaint filed in the above-  
stated cause, says:

1. It neither admits nor denies the allegations  
contained in paragraph 1 of said bill, as it has no  
knowledge touching the same, and leaves complain-  
ant to prove the same.

22 *Answer of Island Development Company*

2. It neither admits nor denies the allegations contained in paragraph 2 of said bill, as it has no knowledge touching the same, and leaves complainant to prove the same.

10 3. It admits that Ulysses G. Hillman conferred with Howard G. Harris and Vincent Haneman, president and secretary, respectively, of the Island Development Company, but has no knowledge or information as to whether the said Ulysses G. Hillman was a member of a syndicate, or not. It denies that the said Howard G. Harris and Vincent Haneman, or either of them, made definite representation that Island Development Company could and would deliver the premises described in paragraphs 1 and 9 of said bill of complaint with warranties, as mentioned in paragraphs 1 and 9 of said bill; and says that the said Howard G. Harris and Vincent Haneman were without authority to bind this corporation to any warranties or representations, and that the only warranties or representations made by this defendant are such as appear in writing in the agreement made between this defendant and Ulysses G. Hillman, on the 18th day of April, 1925, an alleged copy of which is annexed to and made a part of said bill of complaint and marked "Exhibit A."

20 4. Defendant admits that this defendant entered into a written agreement of sale with Ulysses G. Hillman, an alleged copy of which agreement of sale is annexed to said bill and marked "Schedule A;" but denies that it had any knowledge that Ulysses G. Hillman was or claimed to be the authorized agent of a syndicate; and denies that it knew that said Hillman was acting in behalf of a syndicate.

5. It denies the allegations contained in paragraph 5, and says that said agreement was made on a rising market, and that the said Ulysses G. Hillman voluntarily, and without coercion or duress, agreed to pay for said lands the price mentioned in said agreement.

6. It has no knowledge or information concerning the common knowledge of the alleged syndicate mentioned in paragraph 6, or of the knowledge of the said Ulysses G. Hillman; and says that the price mentioned in said agreement for said lands was the price agreed to be paid by Ulysses G. Hillman for the purchase thereof, and agreed to be received by this defendant for the sale thereof. 10

7. It admits that the sale price in said agreement mentioned was \$150,000, and that for said \$150,000 this defendant agreed to convey Block 219; but denies that it agreed to convey the lands under water; and denies that there were any warranties set forth in said agreement, except such as were reduced to writing and form a part of said agreement; and says that it agreed not to sell the lands under water, but agreed to sell its right, title and interest in and to the lands lying under the water in front of Block 219 between high-water line of the Atlantic Ocean and the interior line of the City Park. 20

8. It denies the allegations contained in paragraph 8, and says that neither the said Howard G. Harris nor the said Vincent Haneman had any authority to make representations, as mentioned in paragraph 8 of complainant's bill; and denies that this defendant made any representations or warranties, except such as are contained in the agree- 30

ment between this defendant and Ulysses G. Hillman, bearing date the 18th day of April, 1925.

9. It denies the allegations contained in paragraph 9; and denies that Howard G. Harris and Vincent Haneman had authority to enter into the covenants alleged in said paragraph; and says that this defendant entered into no covenants or agreement except such covenants and agreements as are contained in the agreement of April 18th, 1925, made  
10 between this defendant and the said Ulysses G. Hillman.

10. It denies the allegations contained in paragraph 10; and denies that it is bound by any covenants, conditions or warranties, except such as are contained in the agreement between this defendant and the said Ulysses G. Hillman, bearing date the 18th day of April, 1925.  
20

11. It admits that on April 19th, 1926, complainant made settlement for said premises, acting under the warranties and inducements set forth in the agreement between this defendant and the said Ulysses G. Hillman, bearing date the 18th day of April, 1925.

12. It denies that this defendant has failed to carry out its agreement and each and every covenant and undertaking thereof. It admits that it has not obtained a riparian grant from the State; and says under said agreement it is not required so to do. It denies that the lands under water are restricted and unencumbered, but says that it was required only to convey its right, title and interest in and to said lands under water, which it did.  
30

13. It denies the allegations contained in paragraph 13, except that it admits that complainant tendered a deed to this defendant on or about September 27th, 1927, and requested a return of the purchase moneys for said lands, which tender and demand were refused. Further answering this defendant says, it has no knowledge or information as to whether or not "Exhibit B" is a copy of the minutes of complainant corporation.

10

14. It admits that it assigned the purchase money mortgage of \$75,000 to Chelsea National Bank on the 29th of March, 1927; but denies that the bank took said assignment with full knowledge or any knowledge or notice of any covenants, except those covenants contained in the deed of conveyance from defendant to complainant; and denies that this defendant had neglected to carry out any such covenants.

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15. It denies the allegations contained in paragraph 15.

BOURGEOIS & COULOMB,  
*Solicitors for and of Counsel  
with Defendant, Island Development Company.*

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## ANSWER OF CHELSEA NATIONAL BANK.

(Filed October 24, 1927.)

IN CHANCERY OF NEW JERSEY.

10

Between

ATLANTIC-BRIGANTINE HO-  
TEL AND PIER Co., a cor-  
poration,*Complainant,*

and

ISLAND DEVELOPMENT Co.,  
a corporation, *et al.,**Defendants.*On Bill, &c.  
Answer of Chelsea  
National Bank.

20

Defendant, Chelsea National Bank, answering complainant's bill of complaint filed in the above-stated cause, says:

1. It has no knowledge or information touching the allegations contained in paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13, and leaves complainant to prove the same.

2. It admits that on the 29th day of March, 1927, it took by assignment the mortgage mentioned in paragraph 14 of said bill, in the amount of \$75,000, for valuable consideration; but denies that it had any knowledge or notice that Island Development

Company had neglected to carry into effect any covenant; and denies that this defendant is bound by any failure if such there be, of Island Development Company.

3. It has no knowledge or information concerning the allegations contained in paragraph 15 of said bill; but says that it took said mortgage for a valuable consideration, and has valid title thereto.

H. WALTER GILL, 10  
*Solicitor for and of Counsel*  
*with Defendant, Chelsea*  
*National Bank.*

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REPLY TO ANSWER OF ISLAND  
DEVELOPMENT CO.

(Filed October 29, 1927.)

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IN CHANCERY OF NEW JERSEY.

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Between  
ATLANTIC-BRIGANTINE HO-  
TEL AND PIER Co., a cor-  
poration,  
Complainant,  
and  
ISLAND DEVELOPMENT Co.,  
a corporation, *et al.*,  
Defendants.)

On Bill, &c.  
Reply to Answer of  
Island Develop-  
ment Co.

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Complainant joins issue upon the answer filed by  
Island Development Co. in the above-entitled cause.

CARLTON GODFREY,  
*Solicitor for Complainant.*

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REPLY TO ANSWER OF CHELSEA  
NATIONAL BANK.

(Filed October 29, 1927.)

IN CHANCERY OF NEW JERSEY. 10

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Between	}	On Bill, &c. Reply to Answer of Chelsea National Bank.	20
ATLANTIC-BRIGANTINE HO- TEL AND PIER Co., a cor- poration,			
<i>Complainant,</i>			
and			
ISLAND DEVELOPMENT Co., a corporation, <i>et al.</i> ,	}		
<i>Defendants.</i>			

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Complainant joins issue upon the answer filed by  
Chelsea National aBnk in the above-entitled cause.

CARLTON GODFREY,  
*Solicitor for Complainant.*

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## ORDER OF REFERENCE.

(Filed March 13, 1928.)

IN CHANCERY OF NEW JERSEY.

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10 Between  
 ATLANTIC-BRIGANTINE HO-  
 TEL & PIER COMPANY,  
*Complainant,*  
 and  
 ISLAND DEVELOPMENT CO.,  
 and CHELSEA NATIONAL  
 BANK OF ATLANTIC CITY,  
*Defendants.*

On Bill, &c.  
 Order of Reference to  
 Vice-Chancellor.

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It is, on this 13th day of March, one thousand nine hundred and twenty-eight, on motion of Carlton Godfrey, solicitor of the complainant, ordered, that the above-stated cause be referred to the Honorable R. H. Ingersoll, one of the Vice-Chancellors of this Court, to hear the same for the Chancellor and to report thereon to him and advise what order or decree should be made therein.

30

E. R. WALKER,  
*Chancellor.*

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We consent to the making of the above order.

BOURGEOIS & COULOMB,  
*Solicitors for Defendants.*  
 CARLTON GODFREY,  
*Solicitor for Complainant.*

ORDER AMENDING BILL.

(Filed September 22, 1928.)

IN CHANCERY OF NEW JERSEY.

	—————	10
Between		
ATLANTIC-BRIGANTINE HO-	}	
TEL & PIER COMPANY, a		
corporation,		On Bill, &c.
<i>Complainant,</i>		Order Amending Bill.
and		
ISLAND DEVELOPMENT COM-		
PANY, a corporation, <i>et</i>		
<i>al.,</i>		20
<i>Defendants.</i>		
	—————	

The above cause coming on for hearing before the Honorable Robert H. Ingersoll, in the presence of George A. Bourgeois, counsel for the defendants, and August B. Repetto and Robert H. McCarter, counsel for complainant, and application during the taking of testimony being made on behalf of the complainant, and consented to by counsel for the defendants, to amend the bill of complaint in the following particulars. 30

It is on this 22 day of Sept., 1928, on motion of Carlton Godfrey, solicitor for the complainant, ordered that the third paragraph of the bill of complaint herein be amended by inserting on the first

line of said paragraph, after the word "about," the words "or in the month or six weeks preceding."

And it is further ordered that said bill be further amended by adding a new paragraph to be designated as paragraph 3a, reading as follows:

10 "3a. On or about the time mentioned in paragraph 3 of this pleading, the president and other officers of the Island Development Company further represented that said company had full pier rights, unencumbered and unrestricted, in the lands under water in front Block 219; and that the balance of the land under water in front of development No. 1 in Brigantine, except Block 201, was effectively dedicated for public park purposes, and that Block 219 was the only block in said development, except Block 201, in front of which a pier could be erected."

E. R. WALKER,

C.

20 Respectfully advised,  
R. H. INGERSOLL,  
V. C.

NOTICE OF MOTION TO STRIKE.

(Filed October 9, 1928.)

65/503.

IN CHANCERY OF NEW JERSEY.

10

Between

ATLANTIC-BRIGANTINE HOTEL AND PIER Co., a corporation,

*Complainant,*  
and

ISLAND DEVELOPMENT COMPANY, a corporation, *et al.,*

*Defendants.*

On Bill, &c.  
Notice of Motion to Strike.

20

Sir:

Take notice, that on Tuesday, the second day of October, 1928, at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard, motion will be made before the Court of Chancery, at Chancery Chambers, Atlantic City, New Jersey, to strike out the amendment, paragraph 3a of the bill of complaint, made by leave of the Court, by an order dated the twenty-second day of September, 1928, because said paragraph is immaterial, is without equity, and forms no defense to said suit.  
Dated September 24th, 1928.

30

To Carlton Godfrey, Esq.,  
Solicitor for Complainant.

BOURGEOIS & COULOMB,  
*Solicitors for Defendant, Island  
Development Company.*

10

[ENDORSED]

September 25, 1928.  
Service of copy of the within Notice  
is hereby acknowledged.

C. G.  
Solicitor for Complainant.

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30

ORDER DENYING MOTION TO STRIKE OUT  
AMENDMENT TO BILL.

(Filed October 11, 1928.)

IN CHANCERY OF NEW JERSEY. 10

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Between	}	D. 65—Pg. 503. On Bill, &c. Order Denying Mo- tion to Strike Out Amendment to Bill.	20
ATLANTIC-BRIGANTINE HO- TEL AND PIER Co.,			
<i>Complainant,</i>			
and			
ISLAND DEVELOPMENT COM- PANY, <i>et al.</i> ,			
<i>Defendants.</i>			

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This matter coming on to be heard on defendants' motion to strike out amendment to bill of complaint, in the presence of George A. Bourgeois, counsel for defendants, and of Robert H. McCarter, appearing for Carlton Godfrey, solicitor for complainant, and the Court having heard the respective arguments of counsel and considered the matter; and the Court being satisfied that said amendment ought to be permitted to remain: 30

It is, thereupon, on this 11th day of October, A. D. 1928, on motion of Carlton Godfrey, solicitor for the

complainant, ordered that defendants' motion to strike, aforementioned, be and the same is hereby denied with costs.

E. R. WALKER,  
C.

Respectfully advised,  
R. H. INGERSOLL,  
V. C.

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ANSWER TO AMENDMENT TO BILL.

(Filed November 9, 1928.)

65/503.

IN CHANCERY OF NEW JERSEY.

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20 Between

ATLANTIC-BRIGANTINE HO-  
TEL & PIER COMPANY, a  
corporation,

*Complainant,*  
and

ISLAND DEVELOPMENT COM-  
PANY, a corporation, *et*  
*al.,*

*Defendants.*

On Bill, &c.  
Answer to Amend-  
ment to Bill.

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Defendant, Island Development Company, denies the allegations contained in paragraph 3a of complainant's bill.

BOURGEOIS & COULOMB,  
*Solicitors for and of Counsel*  
*with Defendants.*

CONCLUSIONS.

(Filed March 19, 1929.)

IN CHANCERY OF NEW JERSEY.

Between ATLANTIC-BRIGANTINE HO- TEL AND PIER Co., <i>Complainant,</i> and ISLAND DEVELOPMENT COM- PANY, <i>et al.,</i> <i>Defendants.</i>	}	On Bill, &c. On Final Hearing. Conclusions.	10
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Mr. CARLTON GODFREY, for Atlantic-Brigantine Hotel and Pier Co. MESSRS. BOURGEOIS & COULOMB, for Island Devel- opment Company.	20
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INGERSOLL, V. C.:

On the 18th day of April, 1925, the defendant, 30  
 Island Development Company, entered into an agree-  
 ment with one, Ulysses G. Hillman, wherein it  
 agreed to convey to said Hillman for the consider-  
 ation of \$150,000 on or before the 18th day of April,  
 1926:

“All that lot, tract or parcel of land and  
 premises hereinafter particularly described, sit-

uate, lying and being in the City of Brigantine, in the County of Atlantic, and State of New Jersey, bound and described as follows: Bound upon the North by Ocean Avenue, on the South by the High water line of Atlantic Ocean, on the East by 32nd Street South, on the West by 33rd Street South, being Block 219, as shown on map hereunto attached, together with all the right, title, and interest of the party of the first part, in and to lands lying under the water in front of said described premises, between the high water line of the Atlantic Ocean and the interior line of the City Park.”

The said Hillman agreed to pay said consideration of \$150,000, as follows:

“Fifteen Thousand Dollars, receipt of which is hereby acknowledged.

Fifteen Thousand Dollars on July 18, 1925.

Fifteen Thousand Dollars on October 18, 1925.

Fifteen Thousand Dollars on January 18, 1926.

Fifteen Thousand Dollars on April 18, 1926, at which time settlement shall be made and title passed. At time of settlement, party of second part agrees to execute his bond, or the bond of his successors or assigns secured by first mortgage on said described premises for \$75,000, said mortgage to be payable at any time within three years from the date thereof, and to bear interest at the rate of six per cent payable semi-annually.

It is further agreed by and between the parties hereto that should the party of the second part, his heirs, successors or assigns build or cause to be built upon said described premises,

and open to the public for entertainment on or before the 15th day of June, 1926, a hotel containing at least 150 bed rooms with at least 100 baths, costing not less than (\$400,000) FOUR HUNDRED THOUSAND DOLLARS, to be of fire proof, or semi fire proof construction, and also to assume any expense incurred by this Company for hotel plans ordered from McLanahan and Benkert, Architects of Philadelphia; then, in that case, the \$75,000 mortgage will be cancelled of record and rebated unto the party of the second part, his heirs, successors, or assigns, as a discount on the purchase price herein named." 10

Hillman assigned said agreement by endorsement thereof as follows:

“Dated 1925

For value received, I hereby assign, transfer, set over and release all my right, title and interest in the within agreement to Atlantic-Brigantine Hotel & Pier Co. 20

Ulysses G. Hillman

Witness:

C. B. Richman”

By deed dated the 19th day of April, 1926 (but not recorded until October 14th, 1926), the said Island Development Company conveyed to the said assignee, The Atlantic-Brigantine Hotel & Pier Co., 30 by metes and bounds, said premises bounded on the north by Ocean Avenue, on the south by the high-water line of Atlantic Ocean, on the east by 32nd Street south, on the west by 33rd Street, south; together with all the right title and interest of the party of the first part, &c.

It is conceded that Hillman, the assignor of said agreement and C. B. Richman, the witness thereto, were members of a syndicate, and that Richman was acting on behalf of said syndicate, and that the members thereof were the incorporators of the complainant company.

On September 28th, 1927, the complainant filed its bill, praying:

10       “2. That it may be decreed that said Island Development Company return to complainant the amount paid upon the aforesaid agreement, to wit, \$75,000 with interest from the date of the receipt thereof by Island Development Company, and cause to be cancelled of record and surrender to complainant, the bond and mortgage aforesaid, in the amount of \$75,000 upon the reconveyance to Island Development Company of the tract aforesaid.

20       3. That Chelsea National Bank shall be decreed to cancel of record and surrender to complainant all right, title and interest, if any, which said Chelsea National Bank may have or claim to have in said bond and mortgage, without any charge to complainant.”

The substance of the charges made by the complainant is contained in clause 15 of the bill as follows:

30       “Complainant charges that defendant, Island Development Company, fraudulently induced the complainant to pay the said sum of \$150,000 for said land, privileges and rights hereinbefore recited, upon the representation that said Island Development Company would forthwith obtain the said riparian grants and would dedicate to the public the aforesaid City Park, and

that defendant, Island Development Company has injured and defrauded this complainant in the amount of at least \$75,000 by failing neglecting or refusing to obtain the said riparian rights hereinbefore described and by failing, neglecting or refusing to convey to Brigantine City for park purposes that part of said riparian lands lying within the limits of said proposed public park and by failing, neglecting or refusing to carry out its other and sundry cove- 10  
nants aforesaid."

The gravamen of the proof as presented by the complainant and as set out in its brief is: That block No. 219, the land in question, "was not by said map cut up into lots, and as displayed upon said map (there was) an empty space on the ocean side of the upland, described as pier site"; that Butler, a licensed real estate broker, who at one time was a member of the purchasing syndicate, was given by 20  
the Island Development Company or some officer thereof a so-called price list dated April 1, 1925, which among other things stated:

"Block 219

With full pier rights, unrestricted, sale price \$100,000, or to a purchaser who will build pier 500 ft. long costing \$100,000, during coming summer, the price will be \$75,000, with \$15,000 cash payment. This offer withdrawn after June 1, 1925, or on notice at any time." 30

That Harris, the president, represented to Butler that the Island Development Company had "full pier rights in Block 219, and that the balance of the beach front in front of Brigantine with the exception of 201 had been dedicated to the City of Brig-

antine by deed of dedication for public park purposes, and that we, in buying this block, had the only block where a pier could be constructed, with the exception of block 201."

Mr. Richman, when asked about conversation with or remarks made by Harris, testified: "That this block, had full pier rights."

Continuing quotations from the brief of the complainant:

10 "The position that the Brigantine Company takes is that both by the evidence of the verbal declarations made, the statement in the price list, and the language used in both the agree-  
ment and the deed to the Brigantine Company, it was expressly stated that the development company had full pier rights at the time of the agreement for purchase \* \* \*. Also an open  
20 effective dedication of the land under water in front of the entire section, save in front of Blocks 219 and 201, had been made for a park, and that a boardwalk, as shown on the map, was to be erected. All of this is untrue, was most material, and the Brigantine Company, is therefore, justified in contending that the tender of its deed (Exhibit D3) made and refused, was justified."

I find nothing in any written exhibit which would be evidential of any agreement or statement by the  
30 Island Development Company that it had procured the riparian rights of the land under water oceanward of the land in question.

The testimony of Butler, that Harris made such a statement is specifically denied by Harris, and Richman, one of the syndicate, knew that the Island Development Company did not have the riparian

rights, and actually wrote, as president of the complainant, the following letter:

“September 24, 1925

Mr. H. I. Eaton, C. E.  
Island Development Company,  
1201 Atlantic Avenue,  
Atlantic City, N. J.

My Mr. Eaton:

Kindly obtain at our expense the Riparian Rights on Block 219, Brigantine Beach. This grant may be taken out in the name of the Island Development Company and included in our deed when we make settlement. We will pay all expenses and cost involved for obtaining same. 10

Very truly yours,  
Atlantic Brigantine Hotel & Pier Co.  
Wm. Richman  
President.”

It is manifest that the president of the complainant, knew that the Island Development Company did not have the riparian rights and that those rights were not to be included in the deed from that company. 20

After that time payment of the \$15,000, last payment to be made, and the fee for recording deed of \$2.40 was made as evidenced by the receipt of Island Development Company, dated June 15th, 1926 (Exhibit D9).

The insistence of the complainant is that the use of the words in the price list, “with full pier rights, unrestricted,” was a declaration by the company to the purchaser, that the company had a grant from the State for the riparian rights in the lands lying under water oceanward of Block 219. 30

I cannot find as a fact that Harris represented to

Butler that the Island Development Company had "full pier rights." Nor do I find that if Harris stated to Richman "that this block had full pier rights," increased the effect of the statement upon the price list.

The contract is specific and precise. The company was to convey Block 219 "together with all the right title and interest of the party of the first part in and to lands lying under water between the high-  
10 water line of Atlantic Ocean and the interior line of the City Park, said interior line being located at a distance of about 1500 feet beyond the interior line of the proposed boardwalk, as shown on the blue-print hereunto attached, between 32nd and 33rd Streets south, it being understood that the premises oceanward of the above named block and between 32nd and 33rd Streets, south, are not incorporated within the boundaries of the City Park, for a distance of about 1500 feet, having been left vacant in  
20 order to provide site for the construction of an ocean pier without being affected by said Ocean Front Park ordinance. It is fully understood and agreed, however, that a right of way for the boardwalk of the width of proposed boardwalk, will be dedicated across the above described premises at the location shown on the attached blue-print. Said described premises are to be conveyed free and clear of any restrictions. 32nd and 33rd Streets from Ocean Avenue to the bulkhead constructed across said de-  
30 scribed premises are to be paved with gravel, and concrete sidewalks and curbs are to be constructed before day of settlement. Ocean Avenue will be paved with gravel, with concrete sidewalks and curbs before day of settlement. The land lying between the bulkhead and Ocean Avenue will be filled to grade before day of settlement." The contract could not be more specific.

There was, evidently, no misrepresentation or claim on the part of the company that it owned such riparian rights. In fact, as above stated, the complainant company knew that it was not obtaining a conveyance of riparian rights already obtained from the State, but that it was obtaining all the rights of the company to obtain such a grant.

“The general rule appears to be that in the absence of fraud, when a sale of real estate has been consummated by the execution and delivery of a deed of conveyance, the purchaser’s measure of protection in matters of title to the land is to be found in the covenants which he exacts from his vendor, and such covenants are not to be deemed as broken until eviction. In buying without covenants of title, the doctrine of *caveat emptor* must apply, and neither failure of, nor defects in title, in the absence of fraud, affords ground for relief \* \* \*.”

10  
20

But in addition to the claim of failure of title to the riparian rights, the complainant alleges fraud on the part of defendant, and seeks a decree “\* \* \* rescinding the transactions between the parties by having the deed which was made to him by complainant and the mortgage which was made by him to complainant cancelled, and also prays for a restoration to him of all moneys paid by him to complainant and also seeks recovery of certain moneys which have been expended by him for improvements on the property in question.”

30

A broad and well-defined distinction exists between the relief that can be awarded to a vendee of real estate who has been injured by reason of misrepresentations of his vendor touching material matters relating to the physical condition of the prop-

erty and the relief that can be awarded by reason of statements made by a vendor, declaring his title to be good. For the former class of misrepresentations in an action at law for deceit, a fraudulent intent must be shown; in a court of equity, relief may be granted although the false representations were innocently made. *Crowley v. Smith*, 46 N. J. Law 380; *Eibel v. Von Fell*, 63 N. J. Law 3; affirmed, 64 N. J. Law 364; *Eibel v. Von Fell*, 55 N. J. Eq. 670; 10 *DuBois v. Nugent*, 69 N. J. Eq. 145 \* \* \*.

But when a vendee accepts a deed of conveyance containing a warranty of title which is expressly limited to claim under the vendor, and thus specifically defines the extent of the vendor's liability, the negative element of the covenant, which in effect declares that the vendor will not warrant against a title paramount, so forcefully appears as the final contractual measure of the vendor's obligations and as in effect merging declarations of the vendor 20 touching his title into the restricted covenant (as suggested in *Bihon v. Morris*, and *Andrus v. St. Louis Smelting Co.*, supra), that nothing short of fraudulent intent on the part of the vendor in representing his title to be good, or concealment where the duty of disclosure exists can appropriately be made the foundation of relief. This appears to be the view generally, though not uniformly, adopted. \* \* \*” *Hawthorne v. Odeson*, 94 Eq. 588.

The use of the words “right, title and interest” 30 clearly gave notice to the grantee, that the grantor did not, or might not, have had a fee in the lands under water. They did not have the grant from the riparian commissioners, but have the right to obtain such a grant.

To support a grant from the riparian commissioners, the grantee must be the owner of the ripa when it is made. *Kirk v. Dempsey*, 85 N. J. L. 304.

The complainants knew this, and in writing requested the company to obtain such grant (while it still retained title to the ripa) at the cost and expense of the complainant.

This situation suggests the advisability of and necessity of including in the contract for sale, of words, "title, interest, &c."

In the event of a dedication by the company to the city of lands for a park, and the creation of the park by the city, the city may obtain a grant from the riparian commissioners. 4 Comp. Stat. 4393, Sec. 31. 10

I find that the complainants have failed to support the allegations of the bill, and will advise its dismissal.

## DECREE OF DISMISSAL.

(Filed March 19, 1929.)

65/503.

## IN CHANCERY OF NEW JERSEY.

10	Between ATLANTIC-BRIGANTINE HO- TEL AND PIER Co., <div style="text-align: center;"><i>Complainant,</i></div> and ISLAND DEVELOPMENT COM- PANY, <i>et al.</i> , <div style="text-align: center;"><i>Defendants.</i></div>	} On Bill, &c. Final Decree.
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20 This matter coming on to be heard on the fourteenth day of January, 1929, in the presence of Carlton Godfrey, Esquire, solicitor of complainant, and Bourgeois & Coulomb, Esquires, solicitors of defendant, Island Development Company, and the testimony of the witnesses having been taken and the pleadings and testimony and argument of counsel having been duly considered, and the Court being of the opinion that the complainant is not entitled to the relief prayed for:

30 It is, on this nineteenth day of March, 1929, ordered, adjudged and decreed, that complainant's bill be and it is hereby dismissed, with costs.

E. R. WALKER,  
C.

Respectfully advised,  
 R. H. INGERSOLL,  
 V. C.

NOTICE OF APPEAL.

(Filed March 23, 1929.)

IN CHANCERY OF NEW JERSEY.

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Between  
ATLANTIC-BRIGANTINE HO-  
TEL AND PIER COMPANY,  
Complainant,  
and  
ISLAND DEVELOPMENT COM-  
PANY, *et al.*,  
Defendants.

On Bill, &c.  
Notice of Appeal.

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The complainant, Atlantic-Brigantine Hotel and Pier Company, hereby appeals from the order made by the Chancellor on the advice of Honorable Robert H. Ingersoll, one of the Vice-Chancellors of this Court, in the above-entitled cause on the nineteenth day of March, 1929, and from the whole and every part thereof, to the Court of Errors and Appeals, the last resort in all causes.

Dated March 22, 1929.

REPETTO & GODFREY,  
*Solicitors for Complainant.*

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

LOUIS A. REPETTO,  
*Of Counsel with Complainant.*

## PETITION OF APPEAL.

(Filed April 13, 1929.)

NEW JERSEY COURT OF ERRORS  
AND APPEALS.

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Between

ATLANTIC-BRIGANTINE HO-  
TEL & PIER Co.,*Complainant-  
Appellant,*

and

ISLAND DEVELOPMENT Co.,  
*et als.,*

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*Defendants-  
Appellees.*On Appeal from the  
Court of Chancery.  
Petition of Appeal.

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*To the Honorable, the Court of Errors and Appeals  
in the Last Resort in All Causes:*

The petition of Atlantic-Brigantine Hotel and  
Pier Co., the appellant in the above-entitled cause,  
respectfully shows that:

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1. Petitioner finds itself aggrieved by a final de-  
cree made in the Court of Chancery by his Honor,  
Edwin Robert Walker, Chancellor of the State of  
New Jersey, after having been advised by Honor-  
able Robert H. Ingersoll, one of the Vice-Chancel-  
lors, bearing date March nineteenth, 1929, in a cer-  
tain cause in the said Court of Chancery wherein

the said Atlantic-Brigantine Hotel and Pier Co. was complainant and the said Island Development Co. and Chelsea National Bank were defendants, in this respect, to wit, that the said decree adjudges that the bill of complaint be and it was thereby dismissed with costs to be taxed in favor of the defendants or one of them and against the complainant; while said decree should have sustained the prayers of complainant's bill.

2. And petitioner appeals from the said final decree of the said Chancellor, which decrees as aforesaid, upon the ground that the same is erroneous in that said decree should have sustained complainant's bill and granted the prayers of said bill and particularly should said decree have ordered that defendants deliver up for cancellation the mortgage mentioned in said bill of complaint upon the reconveyance to the defendant, Island Development Co., of the lands and premises in said bill set forth, and also should said decree have granted unto the complainant the repayment of the moneys paid in cash by complainant to the Island Development Co. on account of the purchase price of the said lands and premises, and also should said decree have awarded to complainant its costs and reasonable counsel fee to be collected against the defendants. 10 20

Petitioner therefore prays that the said final decree of the said Chancellor may be, in the particulars aforesaid and wholly reversed, set aside, and for nothing holden, and that petitioner may have such other relief in the premises as to this Court may seem proper. 30

REPETTO & GODFREY,  
*Solicitors for Appellant.*  
LOUIS A. REPETTO,  
*Of Counsel.*

## BILL OF COMPLAINT.

(Filed October 22, 1927.)

## IN CHANCERY OF NEW JERSEY.

10        *To his Honor, Edwin Robert Walker, Chancellor of  
              the State of New Jersey:*

Complainants, Island Development Company, a corporation of the State of New Jersey, and Chelsea National Bank, of Atlantic City, New Jersey, respectfully show:

20        1. That on the 19th day of April, 1926, Atlantic-Brigantine Hotel & Pier Company, a corporation of the State of New Jersey, being indebted to Island Development Company in the sum of seventy-five thousand dollars (\$75,000.00) executed to it a bond of that date, to secure that sum, payable within three (3) years from the date thereof, with interest at the rate of six per cent (6%) per annum, payable half yearly from the date of the bond.

30        2. To secure payment of the bond, the said Atlantic-Brigantine Hotel & Pier Company executed to the said Island Development Company a mortgage, of even date with the bond, and thereby conveyed to it in fee the lands hereinafter particularly described, on the express condition that such conveyance should be void if payments should be made according to the terms of the bond. Which mortgage, having been first duly acknowledged and the certificate of acknowledgment duly endorsed thereon, was recorded in the Clerk's Office of At-

Atlantic County, at May's Landing, New Jersey, in Book No. 845 of Mortgages, p. 81.

3. The mortgaged premises are described as follows:

ALL that tract or parcel of land, situate in the City of Brigantine, County of Atlantic and State of New Jersey, bounded and described as follows:

BEGINNING in the Southwest corner of 32nd Street South and Ocean Avenue, 80 ft. wide, and extending thence (1) Westwardly, along the Southerly line of Ocean Avenue, 200.18 ft. to the Easterly line of 33rd Street South; thence (2) Southwardly, along the same, 525 ft., more or less, to the high water line of Atlantic Ocean; thence (3) Eastwardly, along the said high water line of Atlantic Ocean 200 ft., more or less, to its point of intersection with the Westerly line of 32nd Street South; thence (4) Northwardly, along the Westerly line of 32nd Street South 590 ft., more or less, to the place of beginning.

Together with all interest of party of the first part in and to lands lying under water located between the high water line of Atlantic Ocean and Interior line of City Park as established by ordinance of City Council of Brigantine, and the Westerly line of 32nd Street South, and the Easterly line of 33rd Street South, which interior line of said City Park in block between 32nd and 33rd Streets is 2379.12 ft. South from Ocean Avenue, when measured along the Westerly line of 32nd Street and 2380.88 ft. when measured along the Easterly line of 33rd Street.

4. Both the bond and mortgage contained an agreement that if any installment of interest should remain unpaid for thirty (30) days after the same should fall due, then the whole principal sum, with all unpaid interest, should, at the option of the mortgagee, its representatives or assigns, become immediately due.

10 5. That on the 29th day of March, 1927, Island Development Company transferred and assigned said bond and mortgage to Chelsea National Bank, of Atlantic City, N. J., as collateral security for a loan made by said bank to the Island Development Company, which assignment was duly recorded in the Clerk's Office of Atlantic County, at May's Landing, New Jersey, in Book No. 89 of Assignments, p. 184.

20 6. That the lien of the Chelsea National Bank under said mortgage is prior to the lien of the Island Development Company thereunder to the extent of the unpaid indebtedness that the said mortgage was assigned to secure to said Chelsea National Bank.

30 7. That on October 19th, 1926, one-half year's interest fell due on the above-mentioned bond and mortgage, and remained unpaid for more than thirty (30) days thereafter, and no part thereof has as yet been paid; on the 19th day of April, 1927, one-half year's interest fell due on the above-mentioned bond and mortgage, and remained unpaid for more than thirty (30) days thereafter, and no part thereof has as yet been paid; on the 19th day of October, 1927, one-half year's interest fell due on the above-mentioned bond and mortgage, and re-

mains unpaid, and no part thereof has as yet been paid.

8. Complainant has elected that the whole principal sum, with all unpaid interest, shall be now due.

9. Atlantic-Brigantine Hotel & Pier Company has always been in possession of the mortgaged premises.

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10. The whole amount of said principal, with interest thereon from the date thereof, to wit, April 19th, 1926, is due upon complainant's bond and mortgage.

Complainants are without adequate remedy in the Courts of Law, and therefore pray:

1. That Atlantic-Brigantine Hotel & Pier Company, who is defendant in this suit, may answer this bill of complaint, without oath, and each statement therein made.

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

3. That defendant, Atlantic-Brigantine Hotel & Pier Company, may be decreed to pay to complainants the amount so found due, with interest and costs, by a short day to be appointed by this Court, and that in default of such payment it be debarred and foreclosed of all equity of redemption in said lands; or

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4. That a decree may be made for the sale of the mortgaged premises to raise and pay to the com-

plainants the amount so found due on said mortgage, with interest and costs.

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.

BOURGEOIS & COULOMB,  
*Solicitors for and of Counsel*  
*with Complainants.*

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ANSWER AND COUNTER-CLAIM.

(Filed November 19, 1927.)

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IN CHANCERY OF NEW JERSEY.

Between

ISLAND DEVELOPMENT Co.,  
*et als.,*

*Complainants,*  
and

ATLANTIC-BRIGANTINE HO-  
TEL AND PIER COMPANY,

*Defendants.*

} On Bill to Foreclose.  
Answer and Counter-  
Claim.

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Defendant Atlantic-Brigantine Hotel and Pier Company answers the bill of complaint filed in the above-entitled cause as follows:

1. Defendant admits executing the bond set forth in paragraph 1 of said bill, but denies being indebted to Island Development Co. on April 19, 1926, in the sum of \$75,000 or any other amount; and further answering paragraph 1 thereof says that the consideration for said bond was never performed and that it was entirely lacking in consideration and obtained by fraud, the facts and circumstances of which fraud are embodied in a counter-claim hereunto appended. 10

2. Defendant admits executing the mortgage set forth in paragraph 2 of said bill, but denies that said mortgage secured payment of anything; and further answering paragraph 2 thereof says that the consideration for said mortgage was never performed and that it was entirely lacking in consideration and obtained by fraud, the facts and circumstances of which fraud are embodied in a counter-claim hereunto appended. 20

3. Paragraph 3 of said bill is admitted.

4. Paragraph 4 of said bill is admitted.

5. Paragraph 5 of said bill is admitted.

6. Defendant has no knowledge or information sufficient to form a belief as to the allegations contained in paragraph 6 of said bill and leaves complainants to such proof there of as may be relevant. 30

7. All the allegations contained in paragraph 7 of said bill are denied. There never was any principal debt due on said bond or mortgage, nor any interest whatsoever.

8. Paragraph 8 is denied. Complainant never had the right to elect that the whole principal sum shall be due, as there was never any sum whatever due on said bond and mortgage.

9. Paragraph 9 is admitted.

10. Paragraph 10 is denied. There is no sum whatever due on said bond and mortgage.

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#### SPECIFIC DEFENCE.

Upon this cause coming on for final hearing, defendant will move that complainant's bill be dismissed for the reason that the subject matter of this suit, to wit: a \$75,000 bond and mortgage is the subject matter, with other things, of another certain suit previously commenced, entitled Atlantic-Brigantine Hotel and Pier Company vs. Island Development Co. and Chelsea National Bank (D65, Pg. 503), wherein all the same parties are in Court as are made parties to the suit at bar, and wherein it is prayed that said \$75,000 bond and mortgage be cancelled of record and surrendered to Atlantic-Brigantine Hotel and Pier Co., the mortgagor, as fraudulent and because it was issued without consideration.

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#### COUNTER-CLAIM.

By way of counter-claim against the complainants above named, this defendant, Atlantic-Brigantine Hotel and Pier Company, respectfully shows that:

1. Defendant, said Atlantic-Brigantine Hotel and Pier Company, was incorporated on or about the seventh day of May, 1925. Said corporation was organized for the purpose, among other things, of purchasing, holding mortgaging and selling or otherwise disposing of the following described land and premises situate in the City of Brigantine, County of Atlantic and State of New Jersey, to wit:

BOUNDED on the North by Ocean Avenue, 10  
on the South by the High Water Line of the  
Atlantic Ocean, on the East by Thirty-second  
Street South, on the West by Thirty-third  
Street South;

BEING further known and designated as  
"Block 219" on Map entitled "Revised Map of  
Portion of Beach Front as shown on Map No.  
1A of Lands located on Brigantine Beach made  
for Island Development Co. by H. I. Eaton,  
C.E., March 1925," 20

TOGETHER WITH the land lying under  
water in front of the said described premises,  
between the High Water Line of the Atlantic  
Ocean and the Interior Line of the City Park,  
said Interior Park Line, at said location, being  
situated at a distance of about fifteen hundred  
feet beyond the Interior Line of the proposed  
Boardwalk, between Thirty-second and Thirty-  
third Streets South.

WITH the additional benefit of warranty of 30  
Island Development Co. that the said premises  
oceanward of the said Block 219 and between  
Thirty-second Street and Thirty-third Street,  
South, were not and should never be encum-  
bered by the City Park Deeds or restrictions  
for a distance of about fifteen hundred feet  
oceanward from the landward line of the

10 Boardwalk, and that said tract under water in front of Block 219 aforesaid was and would forever remain unrestricted in order to provide a site for the construction of an ocean pier without being affected by the Ocean Front Park Ordinance of the City of Brigantine, nor by the City Park Deeds; and that the only reservation or restriction on said land under water was and would forever remain solely a Right of Way for a Boardwalk, which Right of Way would be dedicated for said Boardwalk purpose; and that said premises under water in front of Block 219 oceanward of the inland line of the Boardwalk would permanently remain unencumbered and unrestricted, free and clear for the construction of an ocean pier as aforesaid.

20 2. Prior to the actual incorporation of defendant company, a preliminary organization or syndicate existed which created defendant corporation on or about May 7, 1925.

30 3. On or about April 18, 1925, members of said syndicate conferred with Howard G. Harris, President, and Vincent Haneman, Secretary, of Island Development Co., a corporation of this State, and who then and there made the definite representation that Island Development Co. could and would deliver said premises, with the warranties, as in paragraphs 1 and 9 of this counter-claim set forth or described.

4. As a result of the said conference, complainant, Island Development Co., entered into a written agreement of sale. A copy of said agreement is hereunto annexed, and made a part hereof and

marked Exhibit "A," the original of which is in the possession of defendant ready to be produced. Said agreement is with one Ulysses G. Hillman who was, within the knowledge of Island Development Co. and its said officers, the authorized agent of the aforesaid syndicate and known by them to be acting in behalf of said syndicate.

5. The market value or selling price of parcels similar to that portion of said premises designated as Block 219 on the map aforesaid, at the time of the execution of said agreement did not exceed \$75,000 nor had any block similar thereto been sold by Island Development Co. for more than \$75,000. 10

6. The fact recited in paragraph 5 above was common knowledge to said syndicate that afterward created defendant corporation, as aforesaid, to said Ulysses G. Hillman, and to said officers of Island Development Co. 20

7. The total sales price in said agreement named, for the premises described in paragraph 1 hereof, was \$150,000 which included not only said Block 219 but also said land lying under water, and in addition the warranties in said paragraph 1 set forth.

8. The additional \$75,000 (which brought the total purchase price to \$150,000 as aforesaid) was represented by said Howard G. Harris and Vincent Haneman, on behalf of Island Development Co., to be the value of the Riparian Rights to said land under water and the value of the proposed dedication of said City Park and the promise that the land immediately oceanward of Block 219 would be and forever remain free, clear, unrestricted and vacant 30

as aforesaid as a site for an ocean pier, and unencumbered by the City Park restrictions.

9. And as a further inducement to said purchaser, complainant, Island Development Co., through said Howard G. Harris and Vincent Haneman, covenanted that the remaining of the Brigantine Ocean Front between Eighth Street, South and Fourteenth Street South, between Fifteenth Street South and Thirty-second Street South, and between  
10 Thirty-third Street South and a point one hundred feet West of Fortieth Street South—extending from the inside line of the Boardwalk (which is coincident with the inland line of the proposed City Park) to the exterior line established by the State of New Jersey, known as the Riparian Line, being the exterior line of said City Park—would be and forever remain subject to the restrictions of the City Park deeds and in that manner dedicated to  
20 the public permanently as a City Park; and covenanted further that, to accomplish these results, to wit: the establishment of said City Park and the delivery to said purchaser of said land oceanward of Block 219 unrestricted and unencumbered, said Island Development Co. would forthwith acquire by purchase outright the Riparian Rights to the same, then immediately dedicate said City Park in the manner aforementioned, and forthwith convey to said purchasing syndicate or their nominee the  
30 said land oceanward of Block 219 unrestricted and unencumbered.

10. That shortly following the actual incorporation of defendant company, complainant, Island Development Co., confirmed to defendant corporation the said agreement, warranties and inducements

aforesaid and induced defendant to take a deed therefor by virtue of an assignment from said Hillman to defendant, of which assignment complainant, Island Development Co., had notice; and which covenants, warranties and inducements Island Development Co. agreed to perform for defendant the same as it had therefore covenanted with said syndicate through said Hillman as aforesaid.

11. On or about April 19, 1926, defendant, acting 10  
under said promises, warranties, and inducements, carried out all its undertaking as in said agreement set forth and paid the full purchase price of \$150,000 (which included a paid excess of \$75,000), in the following manner, that is to say: in cash \$75,000, and by the execution of a purchase money mortgage \$75,000.

12. Nevertheless, complainant, Island Development Co., although often requested so to do, has 20  
failed to carry out its terms, agreements, promises and undertakings aforesaid, in that said Island Development Co. has failed to obtain said Riparian Rights or Grants, has wholly failed to carry out the City Park scheme aforesaid, and has wholly failed to deliver the aforescribed premises under water unrestricted and unencumbered, and has failed to deliver said land oceanward of Block 219 clear of the rights of the State of New Jersey—all 30  
of which enumerated failures or defaults had been agreed to be delivered and all of which had been paid for by defendant as aforesaid.

13. Defendant further shows that after complainant, Island Development Co., had consistently failed for about seventeen months to carry out its said

undertakings, although many times promising to do so immediately, defendant tendered back to said Island Development Co. on September 27, 1927, a deed reconveying the premises as they had theretofore been conveyed to defendant from Island Development Co. as aforesaid, and defendant then demanded the return of the cash of \$75,000 theretofore paid as aforesaid, and demanded a cancellation of said purchase money mortgage. Said tender and demand were refused. A copy of the minutes of the meeting of the board authorizing said tender is annexed hereto and marked Exhibit "B." A copy of the deed so tendered is annexed hereto and marked Exhibit "C."

14. Defendant has ascertained that on or about March 29, 1927, complainant, Island Development Co., assigned said purchase money mortgage of \$75,000 to Chelsea National Bank, of Atlantic City, New Jersey, and defendant charges that said bank took said assignment with full knowledge and notice of the said covenants so neglected to be carried out by Island Development Co., and charges that said bank is bound by the same covenants so failing as aforesaid.

15. Defendant charges that complainant, Island Development Company, fraudulently induced the defendant to pay the said sum of \$150,000 for said land, privileges and rights hereinbefore recited, upon the representation that said Island Development Company would forthwith obtain the said Riparian Grants and would dedicate to the public the aforesaid City Park, and that complainant, Island Development Company has injured and defrauded this defendant in the amount of at least \$75,000 by

failing, neglecting or refusing to obtain the said Riparian Rights hereinbefore described and by failing, neglecting or refusing to convey to Brigantine City for Park purposes that part of said Riparian lands lying within the limits of said proposed Public Park and by failing, neglecting or refusing to carry out its other and sundry covenants aforesaid.

Defendant therefore prays:

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1. That complainants, Island Development Co. and Chelsea National Bank of Atlantic City, New Jersey, may answer this counter-claim and each statement therein made.

2. That it may be decreed that said Island Development Co. and Chelsea National Bank cause to be cancelled of record and surrender to defendant the bond and mortgage aforesaid in the amount of \$75,000, upon the reconveyance by defendant to Island Development Co. of the tract aforesaid.

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3. That defendant may have such other and further relief as to this Court shall seem equitable and just.

4. That a writ of subpoena shall issue commanding complainants to answer this counter-claim, and to abide by such decree as this Court may make in the premises.

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CARLTON GODFREY,  
*Solicitor for Defendant.*

## EXHIBIT "A."

ARTICLES OF AGREEMENT, made this eighteenth day of April, in the year of our Lord one thousand nine hundred and twenty-five, BETWEEN Island Development Company, a corporation under and by virtue of the Laws of the State of New Jersey, of the first part, and Ulysses G. Hillman, of the City of Woodstown, County of Salem, and State of New Jersey, of the second part, WITNESSETH, that the said party of the first part, for and in consideration of the sum of ONE HUNDRED AND FIFTY THOUSAND DOLLARS (\$150,000) to be paid and satisfied as hereinafter mentioned and also in consideration of the covenants and agreements hereinafter mentioned, made and entered into by the said party of the second part, doth agree to and with the said party of the second part, that it the said party of the first part, will well and sufficiently convey to the said party of the second part, his heirs and assigns by deed free from all encumbrance, on or before the eighteenth day of April, 1926, all that lot, tract, or parcel of land and premises hereinafter particularly described, situate, lying and being in the City of Brigantine, in the County of Atlantic, and State of New Jersey, bound and described as follows:

Bound upon the North by Ocean Avenue, on the South by the high water line of Atlantic Ocean, on the East by 32nd Street South, on the West by 33rd Street South, being Block 219, as shown on map hereunto attached, together with all the right, title, and interest of the party of the first part, in and to lands lying under the water in front of said described premises, be-

tween the high water line of the Atlantic Ocean and the interior line of the City Park, said Interior line being located at a distance of about 1500 feet beyond the Interior line of the proposed boardwalk, as shown on the blue print hereunto attached, between 32nd and 33rd Sts. South, it being understood that the premises oceanward of the above named block and between 32nd and 33rd Streets South, are not incorporated within the boundaries of the City Park, for a distance of about 1500 feet, having been left vacant in order to provide site for the construction of an ocean pier without being affected by said Ocean Front Park Ordinance. It is fully understood and agreed, however, that a right of way for the Boardwalk, of the width of the proposed Boardwalk will be dedicated across the above described premises at the location shown on the attached blue print. Said described premises are to be conveyed free and clear of any restrictions. 32nd and 33rd Streets from Ocean Avenue to the bulkhead constructed across said described premises are to be paved with gravel, and concrete sidewalks and curbs are to be constructed before day of settlement. Ocean Avenue will be paved with gravel, with concrete sidewalks and curbs before day of settlement. The land lying between the bulkhead and Ocean Avenue will be filled to grade before day of settlement.

AND the said Ulysses G. Hillman for himself, his heirs, executors, and administrators, doth covenant, promise and agree to and with the said party of the first part, its successors and assigns, that he the said party of the second part will pay and satisfy or cause to be paid and satisfied unto the said party

of the first part the said sum of one hundred and fifty thousand dollars (\$150,000) as and for the purchase money of the foregoing described land and premises, in the following manner, that is to say:

Fifteen thousand dollars, receipt of which is hereby acknowledged.

Fifteen thousand dollars on July 18, 1925.

Fifteen thousand dollars on October 18, 1925.

Fifteen thousand dollars on January 18, 1926.

10 Fifteen thousand dollars on April 18, 1926, at which time settlement shall be made and title passed. At time of settlement, party of second part agrees to execute his bond, or the bond of his successors or assigns secured by first mortgage on said described premises for \$75,000, said mortgage to be payable at any time within three years from the date thereof, and to bear interest at the rate of six per cent payable semi-annually.

20 It is further agreed by and between the parties hereto that should the party of the second part, his heirs, successors or assigns build or cause to be built upon said described premises, and open to the public for entertainment on or before the 15th day of June, 1926, a hotel containing at least 150 bedrooms with at least 100 baths, costing not less than (\$400,000) FOUR HUNDRED THOUSAND DOLLARS, to be of fireproof, or semi-fireproof construction, and  
30 also to assume any expense incurred by this Company for hotel plans ordered from McLanahan and Benkert, Architects of Philadelphia; then, in that case, the \$75,000 mortgage will be cancelled of record and rebated unto the party of the second part, his heirs, successors, or assigns, as a discount on the purchase price herein named.

AND IT IS FURTHER AGREED, by the parties to these presents, that the said part of the second part, heirs and assigns, may enter into and upon the said land and premises on the day of and from thence take the rents, issues and profits to and their use.

AND for the performance of all and singular the covenants and agreements aforesaid, the said parties do bind themselves and their respective heirs, executors and administrators; and they hereby agree to pay, upon failure to perform the same, the sum of which they hereby fix and settle as liquidated damages therefor. 10

IN WITNESS WHEREOF, the said parties have hereunto interchangeably set their hand and seals the day and year first above-mentioned.

ISLAND DEVELOPMENT COMPANY

By H. G. HARRIS

President 20

SIGNED, SEALED AND DELIVERED

in the presence of  
(Island Development Company  
Seal)

ATTEST: V. S. HANEMAN,  
Secretary.

ULYSSES G. HILLMAN

Dated 1925

For value received, I hereby assign, transfer, set over and release all my right, title and interest in the with agreement to Atlantic-Brigantine Hotel & Pier Co. 30

Ulysses G. Hillman

Witness:

C. B. Richman

## EXHIBIT "B."

A Special Meeting of the Board of Directors of Atlantic-Brigantine Hotel and Pier Company was held at the office of L. D. Horner at Woodstown, N. J., on September 21, 1927, at Eight o'clock P. M.

All except one of the members of the Board of Directors were present, viz:

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L. D. Horner,  
C. B. Richman,  
William Richman,  
David Colson,  
William H. Moore,

The President stated that this meeting had been called for the purpose of considering and taking action upon the neglect or refusal of the Island Development Co. to carry out the agreements and representations made by it at the time of the sale by Island Development Co. for the price of \$150,000 of the block of land lying oceanward of Ocean Avenue, in Brigantine, N. J., and between 32nd Street South and 33rd Street South.

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The President stated briefly the facts thereof to be as follows: Shortly prior to the actual incorporation of this company, the syndicate which later formed this corporation made an agreement with Island Development Co. to buy for \$150,000 Block 219 as shown on map entitled "Revised Map of Portion of Beach Front as Shown on Map No. 1A of Lands located on Brigantine Beach made for the Island Development Co. by H. L. Eaton, C.E., March, 1925" and also the lands lying under water in front of and running oceanward of said Block 219 about 1400 feet between parallel lines being the side lines of said Block if they were extended; that

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said lands under water were to be and forever remain unrestricted except for a dedication of a strip crossing the same for Boardwalk purposes; that the remainder of the Ocean front between 8th Street South and 14th Street South, between 15th Street South and 32nd Street South, and between 33rd Street South and a point 100 feet West of 40th Street South—extending from the inside line of the Boardwalk (which is co-incident with the inland line of the proposed City Park) to the Exterior Line established by the State of New Jersey, known as the Riparian Line, being the exterior line of the said City Park, would be and forever remain subject to the restrictions of the City Park Deeds and in that manner dedicated to the public for said City Park; that to accomplish this result, to wit: the establishment of said City Park and the delivery of said land oceanward of Block 219 unrestricted and unencumbered, Island Development Co. agreed to forthwith acquire the Riparian Rights of the same, to dedicate the said City Park, and to convey the said land oceanward of Block 219 unrestricted and unencumbered; that said agreement to buy Block 219 and said lands under water, was actually written between U. G. Hillman and Island Development Co. and bears date April 18, 1925; that shortly after that, this company was incorporated and after Island Development Co. had confirmed said agreement, especially with relation to the Riparian Rights, the City Park and the fact that the lands oceanward of Block 219 would be and remain unrestricted and unencumbered, this corporation took a deed therefor by virtue of an assignment of said agreement from Hillman to this corporation and Island Development Co. thereupon specifically extended to this company the benefits in all respects of said agreement as above briefly recited; that as

a part of the purchase price, this corporation executed a mortgage to Island Development Co. of \$75,000. which mortgage was later assigned to Chelsea National Bank; that officers of said Bank knew of the agreement aforesaid in every manner and consented thereto, taking the said assignment with notice thereof; that shortly thereafter this corporation made a demand that said covenants be immediately carried out and received a letter from  
10 Island Development Co. that this would be done promptly; that this corporation has now waited many months, made repeated demands in connection therewith and received numerous promises, but that, nevertheless, said covenants have not yet been complied with, the Riparian Rights have not been obtained by Island Development Co., the said City Park has not been dedicated, the said land under water still remains subject to the Rights of the State of New Jersey therein and has not been delivered  
20 to this corporation in accordance with the said undertakings of Island Development Co., for which this corporation paid the full consideration of \$150,000., the default being in that the said lands under water extending about 1500 feet oceanward of the inland line of the Boardwalk were to have been unrestricted and unencumbered.

The situation as so described by the President was then discussed in detail and at length and it was the opinion of the Board, later put in resolution form as hereinafter quoted, that this corporation has been defrauded by Island Development Co.  
30 The fraud was described in this manner: Blocks similar to 219 were selling at the time of said purchase, for not more than \$75,000. and at no time did Island Development Co. sell a block similar to 219 for more than \$75,000. The excess over \$75,000. in the selling price to this corporation for the lands

above described, including the land under water, was an additional \$75,000. making the total consideration \$150,000. This excess price was represented to be the value of the Riparian Rights thereto and the value of the promised dedication of the said City Park and the premise that the City Park would be and forever remain as above bounded and that the land immediately oceanward of Block 219 would be and remain excluded from said City Park and would be and remain unrestricted and unencumbered. 10.

This scheme not being carried out as agreed, became the resultant fraud by which this corporation was mulcted out of \$75,000. for which it has as yet received only "all the right, title and interest of Island Development Co. in and to said lands lying under water" whereas Island Development Co. did not at the time of the date of the said Deed, never did have and does not now have title thereto clear of the Rights of the State of New Jersey; said lands 20 under water not being delivered as covenanted, to wit: unrestricted and unencumbered; but, on the contrary, Island Development Co. imposed upon this corporation by reason of the confidence of our Board of Directors in said Island Development Co. a Deed for all their "right, title and interest" in something they did not own but for which they collected \$75,000. from this corporation.

The President then asked the instructions of the Board in this predicament, and the following resolution was offered by David Colson, seconded by L. D. Horner, and unanimously carried, to wit: 30

WHEREAS, it is the opinion of this Board of Directors that this corporation has been taken advantage of and defrauded by Island Development Co. in that said Island Development Co. has caused this corporation to take a Deed from said Island

Development Co. without complying with its said undertakings more fully discussed at this meeting and shown by the above Minutes hereof:

NOW, therefore, BE IT RESOLVED that this corporation convey back to Island Development Co. said lands so acquired from said Island Development Co.; and that the officers of this corporation be and they are hereby authorized, empowered and directed to execute said Deed and to tender back  
10 the same to Island Development Co. and to demand the return of the money heretofore paid therefor, to wit: \$75,000. in cash and to further demand the return, cancellation and re-delivery of the mortgage of \$75,000. executed by this corporation to Island Development Co. assigned to Chelsea National Bank; and that, in the event of said demands being refused, then counsel for this corporation is hereby directed to file or cause to be filed in the  
20 Court of Chancery, or such other Court as he may deem fit, such Bill for Rescission or other Bill of Complaint as may in his opinion be proper, having for its purpose to rescind the said transaction with Island Development Co., to recover said \$75,000., and to cause to be cancelled said mortgage (on the re-conveyance of said lands from this corporation to Island Development Co.) and to take such further steps, in law and equity, or otherwise, as he may think proper in any way whatsoever for the protection of the interest of this corporation in the  
30 premises.

There being no further business the meeting then adjourned.

Clement B. Richman  
Secretary.

EXHIBIT "C."

THIS INDENTURE, made the twenty first day of September in the year of our Lord one thousand nine hundred and twenty seven. Between ATLANTIC-BRIGANTINE HOTEL AND PIER CO., a corporation under and by virtue of the Laws of the State of New Jersey, of the first part, and ISLAND DEVELOPMENT CO., a corporation under and by virtue of the Laws of the State of New Jersey of the second part,

WITNESSETH, that the said party of the first part, for and in consideration of the sum of ONE HUNDRED AND FIFTY THOUSAND DOLLARS lawful money of the United States of America, well and truly paid by the said party of the second part, to the said party of the first part, at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged has granted, bargained, sold, aliened, enfeoffed, released, conveyed, and confirmed, and by these presents does grant, bargain, sell, alien, enfeoff, release, convey and confirm unto the party of the second part, its successors and assigns,

ALL that certain tract or parcel of land and premises hereinafter particularly described, situate in the City of Brigantine, in the County of Atlantic and State of New Jersey bounded and described as follows:

BEGINNING at a point in the Southwest corner of 32nd Street South and Ocean Avenue, 80 feet wide; thence (1) Westwardly along the southerly line of Ocean Avenue a distance of two hundred and eighteen one-hundredths (200.18) feet to the Easterly line of 33rd Street South; thence (2)

Southwardly along the said Easterly line of 33rd Street South a distance of five hundred and twenty-five (525) feet more or less to high water line of Atlantic Ocean; thence (3) Eastwardly along said high water line of Atlantic Ocean a distance of two hundred (200) feet more or less to its point of intersection with the westerly line of 32nd Street South; thence (4) Northwardly along the westerly line of 32nd Street South a distance of five hundred and ninety (590) feet more or less to the place of beginning.

10 TOGETHER WITH all the right, title and interest of the party of the first part hereto in and to all the lands lying under water located between the high water line of the Atlantic Ocean and the Exterior Line of the City Park as established by Ordinance of the City Council of the City of Brigantine.

20 TOGETHER with all and singular, the buildings, improvements, woods, ways, rights, liberties, privileges, hereditaments, and appurtenances, to the same belonging, or in any wise appertaining, and the reversion or reversions, remainder and remainders, rents, issues and profits thereof, and of every part and parcel thereof: AND ALSO all the estate, right, title, interest, property, possession, claim and demand whatsoever, both in law and equity, of the said party of the first part, of in and to the premises, with the appurtenances.

30 TO HAVE AND TO HOLD the said premises, with all and singular the appurtenances, unto the party of the second part, its successors and assigns, to the only proper use, benefit and behoof of the said party of the second part, its successors and assigns, forever.

AND the said Atlantic-Brigantine Hotel and Pier Co. its successors and assigns do by these presents

covenant, grant and agree to and with the said party of the second part, its successors and assigns, that it the said party of the first part, its all and singular the hereditaments and premises herein above described and granted, or mentoned and intended to be so, with the appurtenances unto the said party of the second part, its successors and assigns, against it the said party of the first part, its successors and against all and every other person or persons whomsoever lawfully claiming or to claim the same or any part thereof by, from through or under it, him, her, them or any of them, subject as aforesaid SHALL and WILL by these presents WARRANT and forever defend. 10

IN WITNESS WHEREOF, the said party of the first part has hereunto caused its President to sign, its Secretary to attest and its corporate seal to be hereunto affixed.

ATLANTIC-BRIGANTINE HOTEL  
AND PIER CO. 20

Wm. Richman  
President

ATTEST:

Clement B. Richman  
Secretary

Signed, Sealed and Delivered  
in the presence of

\_\_\_\_\_

30

STATE OF NEW JERSEY }  
ATLANTIC COUNTY } ss.

BE IT KNOWN that on this twenty-second day of September nineteen hundred and twenty-seven, before me, the subscriber, a Master in Chancery of

New Jersey, personally appeared Clement B. Richman who, being by me duly sworn according to law, did on his oath say that he is the Secretary of the Atlantic-Brigantine Hotel and Pier Co. the grantor mentioned in the foregoing indenture; that he knows the seal of this corporation; that the seal affixed to the said indenture is the common seal of the said corporation; that William Richman is the President of said Corporation and did by its order sign, seal  
10 and deliver the said indenture as its voluntary act and deed in the presence of said deponent; and that the said deponent did, at the execution thereof subscribe his name as a witness thereto.

CLEMENT B. RICHMAN

Sworn and subscribed to  
before me this twenty-  
second day of September  
A. D. 1927.

20 CARLTON GODFREY  
M. C. C. of N. J.

REPLICATION AND ANSWER TO COUNTER-CLAIM.

(Filed December 8, 1927.)

65-702

IN CHANCERY OF NEW JERSEY. 10

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Between  
ISLAND DEVELOPMENT  
COMPANY and CHELSEA  
NATIONAL BANK OF  
ATLANTIC CITY,  
*Complainants,*  
and  
ATLANTIC-BRIGANTINE HO-  
TEL & PIER COMPANY,  
*Defendant.*

} On Bill to Foreclose,  
Replication and  
Answer to Counter-  
Claim. 20

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Complainants join issue on the answer of defendant.

30

ANSWER TO COUNTER-CLAIM.

1. Complainant, Island Development Company, neither admits nor denies the allegations contained in paragraph 1 of the counter-claim, and leaves defendant to prove the same.

2. Complainant, Island Development Company, neither admits nor denies the allegations contained in paragraph 2 of the counter-claim, and leaves defendant to prove the same.

10 3. Complainant, Island Development Company, admits that Ulysses G. Hillman conferred with Howard G. Harris and Vincent Haneman, president and secretary respectively of Island Development  
20 Company, on or about the 18th day of April, 1925, but had no knowledge or information as to whether the said Ulysses G. Hillman was a member of a syndicate or not. Complainant Island Development Company denies that the said Howard G. Harris and Vincent Haneman, or either of them, made definite representations that Island Development Company could and would deliver the premises described in paragraphs 1 and 9 of said counter-claim of defendant, with warranties as mentioned in paragraphs 1 and 9 of said counter-claim; and says that the said Howard G. Harris and Vincent Haneman were without authority to bind Island Development Company to any warranties or representations, and that the only warranties or representations made by Island Development Company are such as appear in writing in the agreement made between Island Development Company and Ulysses G. Hillman, on the 18th day of April, 1925, an alleged copy of which is annexed to and made a part of said counter-claim.  
30

4. Complainant Island Development Company admits that this complainant entered into an agreement with Ulysses G. Hillman, a copy of which is annexed to said counter-claim; but denies that it had any knowledge that Ulysses G. Hillman was or claimed to be the authorized agent of a syndicate;

and denies that it knew that said Ulysses G. Hillman was acting in behalf of a syndicate.

5. Complainant Island Development Company denies the allegations contained in paragraph 5 of said counter-claim, and says that said agreement of sale was made on a rising market, and that Ulysses G. Hillman, with whom said agreement was made, voluntarily, and without coercion or duress, agreed to pay for said lands the price mentioned in said agreement. 10

6. Complainant Island Development Company has no knowledge or information concerning the common knowledge of the alleged syndicate mentioned in paragraph 6, or of the knowledge of the said Ulysses G. Hillman; and says that the price mentioned in said agreement for said lands was the price agreed to be paid by Ulysses G. Hillman for the purchase thereof, and agreed to be received by Island Development Company for the sale thereof. 20

7. Complainant Island Development Company admits that the sale price in said agreement mentioned was \$150,000, and that for said \$150,000, Complainant Island Development Company agreed to convey Block 219; but denies that it agreed to convey the lands under water; and denies that there were any warranties set forth in said agreement, or otherwise, except such as were reduced to writing and form a part of said written agreement; and says that it agreed not to sell the lands under water, but agreed to sell its right, title and interest in and to the lands lying under water in front of Block 219, between high-water mark of the Atlantic Ocean and the interior line of the City Park. 30

8. Complainant Island Development Company denies the allegations contained in paragraph 8 of the counter-claim, and says that neither the said Howard G. Harris nor Vincent Haneman had any authority to make representations on behalf of Island Development Company, as mentioned in paragraph 8 of the counter-claim; and denies that complainant Island Development Company made any representations or warranties except as are  
10 contained in the agreement between complainant Island Development Company and Ulysses G. Hillman, bearing date the 18th day of April, 1925.

9. Complainant Island Development Company denies the allegations contained in paragraph 9 of the counter-claim, and denies that Howard G. Harris and Vincent Haneman had authority to enter into the covenants alleged in said paragraph; and  
20 says that this complainant entered into no covenants and agreement except such covenants and agreements as are contained in the agreement of April 18th, 1925, made between this complainant and the said Ulysses G. Hillman; and says that verbal agreements, if made, are not binding upon either of the complainants, because contrary to the statute of frauds in such case made and provided.

10. Complainant Island Development Company denies the allegations contained in paragraph 10 of the counter-claim, and denies that complainants, or  
30 either of them, are bound by any covenant, condition or warranties, except as are contained in the agreement and deed of conveyance between complainant Island Development Company and the said Ulysses G. Hillman, bearing date the 18th day of April, 1925.

11. Complainant Island Development Company admits that on the 19th day of April, 1926, defendant made settlement for said premises, acting under the terms, conditions, warranties and inducements set forth in the agreement in writing between complainant Island Development Company and the said Ulysses G. Hillman, bearing date the 18th day of April, 1925.

12. Complainant Island Development Company 10  
denies that it has failed to carry out the agreement, and each and every covenant and undertaking thereof. It admits that it has not obtained a Riparian Grant from the State of New Jersey; and says that under the terms of said agreement of sale, it is not required to do so. It denies that these said lands under water are restricted or encumbered; and says that it was required only to convey its right, title and interest in and to said lands under water, which it did. 20

13. Complainant Island Development Company denies the allegations contained in paragraph 13, except that it admits that defendant tendered a deed to complainant Island Development Company on or about September 27th, 1927, and requested a return of the purchase moneys for said lands so purchased by it, which tender and demand were refused. Further answering, complainant Island Development Company says that it has no knowledge or information as to whether or not Exhibit B is a copy of the minutes of defendant corporation; but says that said minutes are in no manner binding upon this complainant. 30

14. Complainants admit that Island Development Company assigned the purchase money mortgage of

\$75,000 to Chelsea National Bank on the 29th day of March, 1927; but Chelsea National Bank denies that the bank took such assignment with full knowledge, or any knowledge, or notice of such covenants except those covenants contained in the deed of conveyance from Island Development Company to Atlantic-Brigantine Hotel & Pier Company; and denies that complainants have neglected to carry out any of said covenants.

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15. Complainants deny the allegations contained in paragraph 15 of the counter-claim.

BOURGEOIS & COULOMB,  
*Solicitors for and of Counsel  
with Complainants.*

20

30

ORDER OF REFERENCE.

(Filed February 23, 1928.)

IN CHANCERY OF NEW JERSEY.

65/702

10

Between

ISLAND DEVELOPMENT  
Co. and CHELSEA NA-  
TIONAL BANK OF AT-  
LANTIC CITY,

*Complainants,*  
and

ATLANTIC-BRIGANTINE HO-  
TEL & PIER COMPANY,  
*Defendant.*

On Bill, &c.  
Order of Reference  
to Vice-Chancellor. 20

It is, on this 23rd day of February, one thousand nine hundred and twenty-eight, on motion of Bourgeois & Coulomb, of counsel with the complainants, ordered that the above stated cause be referred to the Honorable R. H. Ingersoll, one of the Vice-Chancellors of this court, to hear the same for the Chancellor and to report thereon to him and advise what order or decree should be made therein. 30

E. R. WALKER,  
*Chancellor.*

We consent to the making of the above order.

CARLTON GODFREY,  
*Solicitor for Defendant.*  
 BOURGEOIS & COULOMB,  
*Solicitor for Complainants.*

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10 ORDER AMENDING COUNTER-CLAIM.

(Filed September 22, 1928.)

IN CHANCERY OF NEW JERSEY.

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20	Between ISLAND DEVELOPMENT COMPANY, a corpora- tion, <i>et al.</i> , <i>Complainants,</i> and ATLANTIC-BRIGANTINE HO- TEL & PIER COMPANY, a corporation, <i>Defendant.</i>	On Bill, &c. Order Amending Counter-Claim.
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30 The above cause coming on for hearing before the Honorable Robert H. Ingersoll, in the presence of George A. Bourgeois, counsel for the complainants, and August B. Repetto and Robert H. McCarter, counsel for the defendant, and application during the taking of testimony being made on behalf of the defendant, and consented to by counsel

for the complainants, to amend the counter-claim in the following particulars,

It is, on this 22 day of Sept., 1928, on motion of Carlton Godfrey, solicitor for the defendant, ordered that the third paragraph of the counter-claim herein be amended by inserting on the first line of said paragraph, after the word "about," the words "or in the month or six weeks preceding."

And it is further ordered that said counter-claim be further amended by adding a new paragraph to be designated as paragraph 3a, reading as follows: 10

"3a. On or about the time mentioned in paragraph 3 of this pleading, the president and other officers of the Island Development Company further represented that said company had full pier rights, unencumbered and unrestricted, in the lands under water in front of Block 219; and that the balance of the land under water in front of development No. 1 in Brigantine, except Block 201, was effectively 20 dedicated for public park purposes, and that Block 219 was the only block in said development, except Block 201, in front of which a pier could be erected."

E. R. WALKER,  
C.

Respectfully advised:

R. H. INGERSOLL,  
V. C.

## NOTICE OF MOTION TO STRIKE OUT.

(Filed October 9, 1928.)

65/702.

IN CHANCERY OF NEW JERSEY.

10

Between

ISLAND DEVELOPMENT  
COMPANY, a corpora-  
tion, *et al.*,*Complainants,*  
andATLANTIC-BRIGANTINE HO-  
TEL & PIER COMPANY, a  
corporation,*Defendant.*On Bill, &c.  
Notice of Motion to  
Strike.

20

Sir:

Take notice, that on Tuesday, the second day of October, 1928, at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard, motion will be made before the Court of Chancery, at Chancery Chambers, Atlantic City, New Jersey, to strike out the amendment, paragraph 3a of the counter-claim, made by leave of the Court, by an order dated the twenty-second day of September, 1928, because said paragraph is immaterial, is without equity, does not support the answer, and forms no defense to said suit.

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*Notice of Motion to Strike Out* 89

Dated September 24th, 1928.

BOURGEOIS & COULOMB,  
*Solicitors for Complainants.*

To CARLTON GODFREY, ESQ.,  
*Solicitor for Defendant.*

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[ENDORSED]

10

September 25, 1928.

Service of copy of the within notice is  
hereby acknowledged.

Carlton Godfrey,  
Solicitor for Defendant.

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ORDER DENYING MOTION TO STRIKE OUT  
AMENDMENT TO COUNTER-CLAIM.

(Filed October 11, 1928.)

10                    IN CHANCERY OF NEW JERSEY.

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	Between	
	ISLAND DEVELOPMENT	} On Bill to Foreclose: Order Denying Mo- tion to Strike Out Amendment to Counter-Claim. D. 65—Pg. 702.
	COMPANY, <i>et al.</i> ,	
	Complainants,	
	and	
20	ATLANTIC-BRIGANTINE HO-	} Defendant.
	TEL & PIER COMPANY,	
	Defendant.	

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30      This matter coming on to be heard on complainants' motion to strike out amendment to counter-claim, in the presence of George A. Bourgeois, counsel for complainants, and of Robert H. McCarter, appearing for Carlton Godfrey, solicitor for defendant, and the Court having heard the respective arguments of counsel and considered the matter; and the Court being satisfied that said amendment ought to be permitted to remain:

It is, thereupon, on this 11th day of October, A. D. 1928, on motion of Carlton Godfrey, solicitor for the defendant, ordered that complainants' motion

to strike, aforementioned, be and the same is hereby denied with costs.

E. R. WALKER,  
C.

Respectfully advised:  
R. H. INGERSOLL,  
V. C.

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ANSWER TO AMENDMENT TO COUNTER-CLAIM. 10

(Filed November 9, 1928.)

65/702.

IN CHANCERY OF NEW JERSEY.

Between

ISLAND DEVELOPMENT  
COMPANY, a corpora-  
tion of the State of  
New Jersey, *et al.*,

*Complainants,*

and

ATLANTIC-BRIGANTINE HO-  
TEL & PIER COMPANY, a  
corporation,

*Defendant.*

On Bill, &c.  
Answer to Amend-  
ment to Counter-  
Claim.

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Complainant Island Development Company, answering paragraph 3a of defendant's counter-claim, says:

3a. It denies the allegations contained in said paragraph, in whole and in part.

BOURGEOIS & COULOMB,  
Solicitors for and of Counsel  
with Complainants.

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CONCLUSIONS.

10

(Filed March 19, 1929.)

IN CHANCERY OF NEW JERSEY.

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20	Between ISLAND DEVELOPMENT COMPANY, <i>et al.</i> , <i>Complainants,</i> and ATLANTIC-BRIGANTINE HO- TEL AND PIER Co., <i>Defendant.</i>	} On Bill, &c. On Final Hearing. Conclusions.
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30	MESSRS. BOURGEOIS & COULOMB, for Island Devel- opment Company, <i>et al.</i> MR. CARLTON GODFREY, for Atlantic-Brigantine Hotel and Pier Co.
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INGERSOLL, V. C.:

This is a bill to foreclose the mortgage given by the Atlantic-Brigantine Hotel and Pier Co. to the

complainant as a part of the purchase price of lands in Brigantine.

The defense is the same as is set out as the cause of complaint in Atlantic-Brigantine Hotel and Pier Co. v. Island Development Company, *et al.* (The two causes being heard together).

Following the reasoning in that cause, a decree will be advised for complainant.

10

FINAL DECREE.

(Filed March 19, 1929.)

65/702.

IN CHANCERY OF NEW JERSEY.

20

Between	}	On Bill, &c. Final Decree.
ISLAND DEVELOPMENT		
Co., <i>et al.</i> ,		
Complainants,		
and		
ATLANTIC-BRIGANTINE HO-	}	
TEL & PIER COMPANY,		
Defendant.)		

30

This matter coming on to be heard on the fourteenth day of January, 1929, in the presence of Bourgeois & Coulomb, Esquires, solicitors of complainants, and Carlton Godfrey, Esquire, solicitor of defendant, Atlantic-Brigantine Hotel & Pier

Company, and the testimony of the witnesses having been taken, and the pleadings, testimony and argument of counsel having been duly considered; and the Court being of the opinion that the complainants are entitled to the relief prayed for; and it appearing that complainant, Island Development Company, has assigned its interest in said mortgage to complainant, Chelsea National Bank, as security for the payment of certain bonds, but retains a re-  
10 versionary interest therein:

It is, thereupon, on this 19th day of March, 1929, 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 there is due on said mortgage for principal and interest thereon the sum of \$75,000 for principal, with interest thereon from April 19th, 1926, to the date hereof, amounting to \$13,125, in  
20 all \$88,125; and that the said mortgaged premises be sold to raise and satisfy to complainant, Chelsea National Bank, its interest in said mortgage moneys, amounting at this time as appears by the record, to the aforesaid sum of \$88,125; and in the event of the complainant, Chelsea National Bank, being satisfied of its claim from other sources than this mortgage, then in the second place to satisfy complainant, Island Development Company, the aforesaid sum of \$88,125, or such part or portion  
30 thereof as remains after the claim of the complainant, Chelsea National Bank, shall have been satisfied, together with lawful interest thereupon, as aforesaid, with their costs to be taxed; and that a writ of *feri facias* do issue for that purpose out of this court directed to the Sheriff of the County of Atlantic, directing him to make sale, according to law, of the said mortgaged premises, and that

out of the moneys arising from said sale he pay to complainant, Chelsea National Bank, or its solicitor, the said debt, interest and costs, and also to the aforesaid complainant, Island Development Company, subject to the foregoing proviso, its debt, interest and costs; and in case more moneys should be raised by the said sale than shall be sufficient to answer such several payments, that such surplus be brought into this court to abide the further order of the Court, unless otherwise previously disposed of by the order of this Court; and that said sheriff make return, without delay, of his proceeding by virtue of said writ; and

10

It is further ordered, adjudged and decreed that the defendant, Atlantic-Brigantine Hotel & Pier Company, stands 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.

E. R. WALKER, 20  
C.

Respectfully advised:

R. H. INGERSOLL,  
V. C.

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## NOTICE OF APPEAL.

(Filed March 23, 1929.)

IN CHANCERY OF NEW JERSEY.

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10 Between  
 I S L A N D D E V E L O P M E N T  
 C O M P A N Y,  
*Complainant,*  
 and  
 A T L A N T I C - B R I G A N T I N E H O -  
 T E L A N D P I E R C O M P A N Y,  
*Defendant.*

On Bill, &c.  
 Notice of Appeal.  
 65-702.

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20 The defendant, Atlantic-Brigantine Hotel and Pier Company, hereby appeals from the order made by the Chancellor on the advice of Honorable Robert H. Ingersoll, one of the Vice-Chancellors of this court, in the above entitled cause on the nineteenth day of March, 1929, and from the whole and every part thereof, to the Court of Errors and Appeals, the last resort in all causes.

Dated March 22, 1929.

30

REPETTO & GODFREY,  
*Solicitors for Defendant.*

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

LOUIS A. REPETTO,  
*Of Counsel with Defendant.*

PETITION OF APPEAL.

(Filed April 13, 1929.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between ISLAND DEVELOPMENT Co., <i>et als.</i> , <i>Complainants-Appellees,</i> and ATLANTIC-BRIGANTINE HO- TEL AND PIER Co., <i>Defendant-Appellant.</i>	}	On Appeal from the Court of Chancery. Petition of Appeal.	10
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*To the Honorable, the Court of Errors and Appeals  
in the Last Resort in All Causes:*

The petition of the Atlantic-Brigantine Hotel and Pier Co., the appellant in the above entitled cause, respectfully shows that:

1. Petitioner finds itself aggrieved by a final decree made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, after having been advised by Honorable Robert H. Ingersoll, one of the Vice-Chancellors, bearing date March nineteenth, 1929, in a certain cause in the Court of Chancery wherein the said Island Development Co. and Chelsea National

30

Bank were complainants and the said Atlantic-Brigantine Hotel and Pier Co. was defendant, in this respect, to wit: that the said decree adjudges that the mortgaged premises bounded and described in the bill of complaint be sold to raise and satisfy the several sums of money due to the complainants for principal, interest and costs upon a certain mortgage in said bill of complaint more particularly referred to, and that a writ of *feri facias* do issue for that purpose out of this court, according to the usual practice of this Court, with costs in favor of the complainants and against the defendant; while said decree should have ordered the dismissal of complainants' bill and granted the affirmative relief sought by the defendant, that is to say, the cancellation of the said mortgage.

2. And petitioner appeals from the said final decree of the Chancellor, which decrees as aforesaid, upon the ground that the same is erroneous in that said decree should have dismissed complainants' bill and granted defendant's counter-claim, and particularly should said decree have ordered the dismissal of complainants' bill, and further ordered that complainants deliver up for cancellation the mortgage mentioned in the bill of complainant upon the re-conveyance to Complainant Island Development Co. of the lands and premises in said bill set forth, and also should said decree have granted unto the defendant the re-payment of the moneys paid in cash by defendant to the Island Development Co. on account of the purchase price of the said lands and premises, and also should said decree have awarded to the defendant its costs and reasonable counsel fee to be collected against the complainants.

Petitioner therefore prays that the said final decree of the said Chancellor may be, in the particu-

lars aforesaid and wholly reversed, set aside, and for nothing holden, and that petitioner may have such other relief in the premises as to this Court may seem proper.

REPETTO & GODFREY,  
*Solicitors for Appellant.*  
LOUIS A. REPETTO,  
*Of Counsel.*

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20

30



APPEARANCES:

For the Island Development Company, MESSRS.  
BOURGOIS AND COULOMB.

For the Chelsea National Bank, H. WALTER GILL,  
Esq.

For Atlantic-Brigantine Hotel and Pier Company,  
CARLTON GODFREY, Esq., A. B. REPETTO, Esq.,  
and ROBERT H. McCARTER, Esq.

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10

Mr. Bourgeois: If your Honor please, the execution of the bond is admitted so I will offer it in evidence.

(Bond offered, received in evidence and marked Exhibit C1.)

Mr. Bourgeois: Execution of the mortgage is also admitted. 20

(Mortgage offered, received in evidence and marked Exhibit C2.)

Execution of the assignment is admitted and that is offered in evidence.

(Assignment offered, received in evidence and marked Exhibit C3.)

30

Mr. Bourgeois: If your Honor pleases, I have two people. Maybe they will admit nothing has been paid. The answer practically admits it is so, that no money has been paid. There is no contest excepting the fact that you say there is fraud in the original contract?

Mr. McCarter: I don't think there is any contest here with reference to the non-payment of the mortgage. I do think there is purpose in showing what interest the Chelsea National has in the mortgage, because both parties are concerned, and we are entitled to know how much of the mortgage is in fact assigned.

10 Mr. Bourgeois: Then it is admitted that there has no principal or interest been paid on the mortgage from the Atlantic and Brigantine Hotel Company to Island Development Company. I will have Mr. Besore here in a minute to show how much is due to the bank.

Mr. McCarter: We can introduce some proof to save time if it is desired.

20 Mr. Bourgeois: I only have one witness, Mr. Besore to show how much is due.

Mr. McCarter: Will he be right in or shall we wait?

Mr. Bourgeois: He is coming from the bank.

The Court: I think we better proceed.

30 Mr. McCarter: We offer in evidence the articles of agreement made the 18th of April, 1925, between the Island Development Company and Ulysses G. Hillman, which on its foot, under a blank date contains an assignment, "I hereby assign, transfer, set over and release all my right, title and interest in the within agreement to Atlantic-Brigantine Hotel and Pier Company;" signed by Mr. Hillman and witnessed by Mr. Richman.

(Agreement admitted in evidence and marked Exhibit D1.)

Offer in evidence deed from Island Development Company to the Atlantic-Brigantine Hotel and Pier Company, dated April 19, 1926, purporting to be acknowledged the same day before Franz Voelker, notary public, recorded in Mays Landing on the 14th of October, 1926.

10

(Deed admitted in evidence and marked Exhibit D2.)

I offer in evidence the deed from the Atlantic-Brigantine Hotel and Pier Company to Island Development Company, a corporation, dated the 21st of September, 1927, acknowledged the 22nd of September, 1927, being the deed that was tendered on the rescission of the contract.

20

(Deed admitted in evidence and marked Exhibit D3.)

Mr. Bourgeois: We have no objection to this to show a tender.

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HARRY R. TOOKER, SWORN.

30

Direct examination.

By Mr. McCarter:

Q. With what office, Mr. Tooker, are you connected?

A. Board of Commerce and Navigation.

Q. How long have you been connected with that office?

A. Since 1915.

Q. You were subpoenaed to produce certain papers, maps and other documents here?

A. I was.

Q. I refer to the map that is on the desk by your side. Do you know who sent that map to the—  
10 that map taken from the files of the board of commerce and navigation?

A. Yes, sir.

Q. Can you tell us when and from whom that map was received?

A. Received from the Island Development Company when the application was submitted for riparian rights.

Q. Will you produce the application that was filed that accompanied that map?

20

(Application produced.)

Q. The document, at the bottom of the file which you hand me, purports to be an application of the Island Development Company addressed to the board of commerce and navigation. Is that the application that you have just referred to in your evidence?

A. It is.

30

PHILIP N. BESSOR, SWORN.

Direct examination.

By Mr. Bourgeois:

Q. Mr. Bessor, you are cashier of the Chelsea National Bank in Atlantic City?

A. I am.

10

Q. I show you an assignment of a mortgage from the Island Development Company to the Chelsea National Bank of Atlantic City, the mortgage being for the sum of \$75,000. That is your bank?

A. Yes, sir.

Q. Will you tell the Court what is the amount of indebtedness due from the Island Development Company to the Chelsea National Bank for which that mortgage is pledged as collateral security, if it is collateral security? Is it collateral security pledged? 20

A. Pledged as collateral security.

Q. Now, then, what is the amount of money due from the Island Development Company to the Chelsea National Bank for which that mortgage is pledged as collateral security?

A. The full amount.

Q. The full amount?

A. Full amount.

Cross-examination.

30

By Mr. McCarter:

Q. Full amount of what, of the mortgage?

A. Full amount of the mortgage as stated on the mortgage.

Q. What is the indebtedness, in what form is the indebtedness of the Island Development Company to the Chelsea National Bank?

A. They put up bonds as security for a bond issue of the Brigantine Hotel Company.

Q. Now, Mr. Bessor, as I understand it, the Island Development Company owes the Chelsea National Bank, does it?

A. As trustee for a bond issue.

10 Q. Won't you tell me the transaction which resulted in or included the giving of that assignment between your company and the Island Development Company?

A. The Brigantine Hotel Company erected a hotel in Brigantine. The Island Development Company gave to the Chelsea National Bank as trustee to secure the payment of a six hundred thousand dollar bond issue against the hotel, and they deposited with the Chelsea National Bank as trustee six hundred thousand dollars' worth of mortgages, owned

20 by them, to secure the payment of the bond issue.

Q. The bond issue was the bond issue of the hotel company?

A. The hotel company.

Q. And the Island Development Company did what?

A. Deposited these bonds to secure the payment of the mortgage bond.

30 The Court: You say deposited these bonds, do you mean the bonds and mortgages?

A. Deposited the mortgages to secure the payment of the bonds.

Q. Of course, the Brigantine Hotel Company and the Island Development Company are not one and the same, are they?

A. They are separate companies.

Q. And as I understand it there was a bond issue by the Brigantine Hotel Company of which the Chelsea Concern, your bank, was trustee, is that right?

A. Right.

Q. And that issue was to what extent?

A. \$600,000.

Q. Now, what was the next step in the transaction?

A. There were issued six hundred thousand dollars worth of bonds. 10

Q. And those bonds, I suppose, were floated?

A. They were sold.

Q. Now, you spoke of some collateral being given to the trustee of mortgages, is that right?

A. Six hundred thousand dollars worth of mortgage bonds, mortgages.

Q. Mortgages given by the Island Development Company?

A. Yes. 20

Q. What?

A. Yes, sir.

Q. There is nothing mysterious about this, is there?

A. I said yes, sir.

Q. And this was one of the six hundred thousand dollars worth of mortgage?

A. It was.

Q. To the Chelsea National Bank as collateral for the payment of the bonds? 30

A. Yes, sir.

Q. Have the bonds defaulted?

A. No, sir.

Q. In addition to the assignment before you, assignment for six hundred thousand dollars, five hundred odd thousand dollars of other mortgages were made, is that right?

A. Yes, sir.

Q. As a matter of fact the Chelsea Company has not advanced a dollar, has it?

A. No, sir.

Q. And the Chelsea National Bank has no personal interest whatever in this particular mortgage other than as trustee?

A. As trustee only.

10 Q. Who negotiated, on behalf of the Island Development Company, this six hundred thousand dollar transfer of mortgages to your bank, who represented the Island Development Company in that matter?

A. Proper officers.

Q. Of course, that doesn't mean anything.

A. The proper officers.

Q. Who were they?

A. I couldn't just say that off-hand, I would have to refresh my memory on that.

20 Q. Did you have to do with the transaction yourself personally?

A. Only indirectly.

Q. Trust officer?

A. Trust officer mostly.

Q. Who is the trust officer?

A. Mr. Smith, Mr. Archie Smith.

Q. You had nothing to do really, personally, did you, Mr. Bessor, with either the arrangement for the Chelsea National Bank as trustee —

30 A. Very little.

Q. — or anything else.

A. Very little.

Q. Then, clipped of all verbiage, the real situation is that the Chelsea National Bank, trustee on a bond issue by the Brigantine Hotel Company of five hundred thousand dollars—six hundred thousand dol-

lars of bonds, hold as collateral several mortgages, including this one?

A. They do.

By Mr. Bourgeois:

Q. Mr. Bessor, what became of the bonds after they were certified by the bank, the six hundred thousand dollars worth of bonds were, of course, certified by the trustee, what became of those bonds? 10

A. They were sold by the Brigantine Hotel Company.

Q. To whom?

A. To various people throughout the country.

Q. What was the object of the bank taking collateral for the payment of 'hem, what was that transaction, I don't want the object, I want to know the transaction?

Mr. McCarter: He told us what the transaction 20 was, they took in addition as collateral six hundred thousand dollars worth of mortgages.

Mr. Bourgeois: Won't you let him tell it to me?

The Court: I will permit it. You may proceed.

A. There was a mortgage placed against the hotel and the Island Development Company was to pledge additional security of mortgages to secure the payment of the bonds when they became due. 30

Q. Then, these mortgages that were pledged with you to the amount of six hundred thousand dollars are pledged with you as collateral security for the payment of those bonds of the Brigantine Hotel Company?

A. Yes, sir.

Q. I show you a mortgage and ask you if that is the same mortgage of which you spoke?

A. It is.

(Trust mortgage offered, received in evidence and marked Exhibit C4.)

10 Q. I also show you an agreement bearing date the fifteenth of August, between Island Development Company and Chelsea National Bank, of Atlantic City, touching this same transaction, and ask you if you produced this agreement and this is a document belonging to the bank?

A. It is.

(Agreement offered, received in evidence and marked Exhibit C5.)

20 Q. Mr. Bessor, your bank is trustee for these bonds; have any of these bonds been paid?

A. Twelve thousand I believe have been paid.

Q. Do you know how many of them were sold?

A. I believe all of them were sold.

Q. Then, there is due \$588,000 of those bonds for which this mortgage among other mortgages was pledged as collateral?

A. Yes, sir.

Q. To you as trustee?

A. Yes, sir.

30

By Mr. McCarter:

Q. Well, you don't mean to say those bonds have matured?

A. No, sir.

Q. The twelve thousand that has been paid have matured? Is that it?

A. No, sir; they have not, but they were paid off by people paying the mortgages and the bonds drawn by lot.

Q. How long are those bonds to run?

A. I think they were for three years.

Q. I beg pardon?

A. I think they were for three years.

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10

HARRY R. TOOKER, resumed.

Direct examination.

By Mr. McCarter:

Q. Attached to that application is a letter on the letter head of the Island Development Company to Mr. Victor Gelenau, director of the state board of commerce and Navigation, dated May 14, 1926, and purporting to be signed, "H. I. Eaton, Engineer." Did that letter accompany the application? 20

A. It did.

Mr. McCarter: That is conceded to be Mr. Eaton's signature?

Mr. Bourgeois: Yes.

Q. Annexed to the file seems to be kind of a 30 printed schedule with writing, what is that?

A. That is a schedule we use to see if all the information is filed in the application.

Q. That is made up by the board and not by the Island Development Company?

A. By the board.

Mr. McCarter: We call upon the other side to produce a letter dated May 18, 1926, from Mr. Gelenau, director of the board, to Mr. Harold I. Eaton, civil engineer, Island Development Company.

Mr. Bourgeois: We have no such letter.

Q. Was a letter, which the paper now shown in the file is a copy sent to Mr. Eaton?

10

Mr. Bourgeois: May I cross-examine this young man just a little bit?

The Court: Yes.

By Mr. Bourgeois:

Q. What is your position with the board of commerce and navigation?

20

A. Senior engineer in charge of riparian rights.

Q. What do you have to do with the filing of these papers, these letters that come into the board, anything?

A. Anything on riparian rights is referred to me.

Q. What say?

A. Anything on riparian rights is referred to me.

Q. What do you have to do in connection with the—what do you know about that particular letter, anything?

30

A. Yes, I know that is the letter, because went out of our office signed by the boss.

Q. What?

A. By Mr. Gelenau.

Q. Did you see it when it went out, or is it just something you found attached to the file?

A. Something I found attached to the file and recognized same.

Q. Other than that you know nothing about it?

A. No.

Q. And that is true with these other letters, isn't it, the other letters you have you simply found them attached to the file, that is all you know about them, is that so?

A. No, I checked the application.

Q. You checked the application and that is as far as your authority goes, isn't it?

A. As far as you have gone now, yes. 10

Q. You have nothing to do with keeping the letters and the files of the board of commerce and navigation, have you?

A. I have charge of the filing system to see that everything is filed right.

Q. That is fine. Was everything filed right?

A. So far as I know.

Mr. McCarter: I will withdraw this witness temporarily and call Mr. Eaton. 20

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HAROLD I. EATON, SWORN.

Direct examination.

By Mr. McCarter:

Q. Are you the Mr. Eaton whose name is attached 30 to the map on the easel as engineer of the Island Development Company?

A. I don't think there is any name attached to it.

Q. Are you the Mr. Eaton that was and is the engineer of the Island Development Company?

A. I am.

Q. Did you make the map of which the blue-print

A. I had it made.

Q. Made under your direction?

A. Under my direction.

Q. You are responsible for it?

A. I am responsible.

Q. I show you a letter in the file that was alluded to in the evidence of the preceding witness, dated  
10 May 14, 1926, is that sent by you by direction of the Island Development Company to the board of commerce and navigation?

Mr. Bourgeois: If the Court please, there are two questions together there, and I object to it. He can only answer one of them.

The Court: Yes, if it was sent by him is the first question, I take it.

20

A. This letter was sent by me.

Q. The letter was sent by you?

A. Yes.

Q. That is the letter dated May 14, 1926, signed Island Development Company, by H. I. Eaton, civil engineer?

A. Yes, sir.

Q. I show you a copy of a letter dated May 18, 1926, addressed to Harold I. Eaton, civil engineer, 1201 Atlantic Avenue, Atlantic City, New Jersey.  
30 Please look at that copy and see if you do not recall having received the original of it?

A. I probably received the original. I received so many letters from the state board, that that particular one I can't recall definitely.

Q. Do you remember having some correspondence with reference to this application?

A. Yes, sir.

Q. You enclosed the application, that is the first paper in this file, at the time that the original letter which you have identified was sent, did you not?

A. Yes, sir.

Q. Do you recall now, by refreshing your recollection, receiving information to the effect that the letter was received too late to be put on the calendar at the desired time?

A. No, I don't recall that particular letter, but there were a number of those, that letter might have got in too late for a certain meeting, and be postponed to a later meeting. 10

Q. I show you a copy of a letter dated May 20, 1926, purporting to be directed to you and signed by Mr. Gelenau. Do you remember seeing that letter?

A. Yes.

Q. Did you, in reply to that letter, write the letter dated May 21, 1926, on the letterhead of the Island Development Company signed by Island Development, by yourself as engineer? 20

A. I did, yes, sir.

Q. I show you a letter dated June 16, 1926, look at that and see if you sent that?

A. I did.

Q. Did you receive the reply of June 17th, that is in the file?

A. I think so. I won't be positive.

Q. Now, do you remember an original application for two blocks, 219 and 201 as are specified in that letter were sent? 30

A. I am under the impression that it was, but I can't be certain until I consult my files.

Q. Will you consult your files during the day and let us know definitely?

A. Yes.

Mr. McCarter: I offer in evidence now this file with the exception of the little schedule that is made up in the office which don't have anything to do with the matter.

Mr. Bourgeois: I object, if your Honor please. They have offered in evidence their agreement of sale, they have offered in evidence their deed, and in neither of them is there any reference whatever  
10 to any riparian right, therefore, this question is irrelevant and immaterial.

The Court: I will admit it.

(File received, admitted in evidence and marked Exhibit C6.)

Mr. McCarter: There seems to be a question of difficulty here. Mr. Tooker says these cases have  
20 to go back.

The Court: That can be arranged for.

Mr. McCarter: Mr. Tooker, can we have copies made to use?

Mr. Tooker: Sure.

The Court: Of course, I take it if the Court orders them to remain they will remain regardless of  
30 whether the board wants them back or not.

Mr. McCarter: Can they be left with the Sergeant at Arms?

The Court: I think we better have copies. I think that is the better practice.

Q. Now, Mr. Eaton, you are familiar with that map?

A. I am.

Q. When was that map made, the map on the easel, on the wall?

A. I think it was made in the summer and fall of 1926.

Q. Well, the application is dated the twelfth of May, 1926. It was made before this, wasn't it, because it was sent with that.

10

A. I don't think so. I think there is a letter in my file that states —

Q. Never mind.

A. I don't think it was made when that thing was sent.

Q. You mean to say that map did not go with that application?

A. I do not think it did.

Q. Are you sure about that?

20

A. I am not positive.

Q. Now, the map, so much of the map that is shown there, is what is known as the first development of Brigantine?

A. The first development lies between the line which you see there, the Braddock line, that line right here, 41st Street, up to 14th Street South.

Q. Now, block 219 is there, is it not, on this map?

A. Yes, sir.

Q. And now, what is that protuberance that sticks 30 out in front, finger, that sticks out in front of it?

A. That is the interior park line as established by the city of Brigantine, and the Island Development Company.

Q. Interior park line?

A. Interior park line.

Q. What is the finger that sticks out in front of block 201?

A. That is the inter park line also.

Mr. McCarter: Have you with you, of course, Mr. Bourgeois, a copy of the deed of the Island Development Company to the city of Brigantine of that park?

10 Mr. Bourgeois: Yes, we have.

(Produces deed.)

Mr. McCarter: I offer in evidence deed dated the 15th of April, 1925, between the Island Development Company and the city of Brigantine, acknowledged and recorded on the 6th of June, 1925, in the County Clerk's office.

20 (Deed admitted in evidence and marked Exhibit D5.)

Q. You are familiar with that deed, Mr. Eaton?

A. I think so.

Q. Identify the premises described in that deed.

A. Beginning at a point in the easterly line of 41st Street South, if extended oceanward, distance 980 feet southwardly from the southerly line of Brigantine Avenue —

30 Q. Somewhere about there? You couldn't get it exact?

A. That is Brigantine Avenue, 980 —

Q. Go on from there.

A. Eastwardly, that would be this point here, to a point in the easterly line of 33rd Street South, if extended oceanward, 1420 feet from the southerly line of Brigantine Avenue—that is this point here—then

southward along the easterly line of 33rd Street south, if extended oceanward, to a point 3120 feet to the southerly line of Brigantine Avenue—which is this point here—thence eastwardly to a point in the westerly line of 32nd Street south, which is this point here, distant 3110 feet from the southerly line of Brigantine Avenue, thence northwardly along the westerly line of 32nd Street south, if extended oceanward, to a point distant 1460 feet from the southerly line of Brigantine Avenue, thence eastwardly to a point in the center line of 30th Street south, which is this point here, if extended oceanward, distant 1550 feet southerly, thence eastwardly to a point in the easterly line of 15th Street south, to a point 2920 feet from the southerly line of Brigantine Avenue, that is along this interior line at this point here, easterly line of 15th Street south, if extended oceanward, 1420 feet from the southerly line of Brigantine Avenue, thence along the easterly line of 15th Street to a point 2920 feet from the southerly line of Brigantine Avenue, which is this point right here, thence eastwardly to a point in the easterly line of 14th Street, south, if extended oceanward, distance 2910 feet from the southerly line of Brigantine Avenue, thence northwardly along the westerly line of 14th Street south, if extended, to a point 1410 feet from the southerly line of Brigantine Avenue, thence eastwardly to a point in the center line of Third Street south, if extended oceanward, 1200 feet from the southerly line of Brigantine Avenue. That is the description of the interior park line.

Q. I don't ask you to necessarily ask you to give us each course and distance, the question I put to you and which I really want is to have you identify on the map what is purported to be conveyed by that deed. You are familiar with it, instead of reading each course, aren't you?

A. I thought you wanted it identified on the map by the courses and distances.

Q. You are familiar with the map, go on and show now what further is included in it.

A. All right.

Q. That part you have given us at present, up to date, is what, how do you epitomize it?

A. As a description of the interior park line.

Q. Interior park line?

10 A. Yes.

Q. Is that inside or oceanward of the outside line of the boardwalk?

A. It is oceanward of the outside line of the boardwalk.

Q. Oceanward of the outside line of the boardwalk?

A. Wait a minute, the interior park line is the inside line of the boardwalk.

Q. Go on.

20 A. Now, follows a description of the park.

Q. That is what I want to get. Can't you give it to us as shown on that map without giving each description?

A. Yes, this description now starts at the same point and follows the same course I have read to this point, then it goes on over here, extends out here and back to here, and back to the beginning.

Q. How many feet from the boardwalk?

30 A. 3500 feet on 30th Street, 3500 feet from Brigantine Avenue, and that will have to be figured.

Q. About how much from the —

A. About 2000 feet.

Q. From the outside line of the boardwalk?

A. About 2000 feet.

Q. Is the proposed boardwalk shown on this map?

A. Yes, sir.

Q. Where is it, between what?

A. Along here.

Q. Between the two lines?

The Court: Running from 34th Street to 13th?

Mr. Bourgeois: What are there, three parallel lines or two?

A. Two. The interior park line.

Q. So that by that deed the Island Development Company purported to convey to the city of Brigantine, which is a municipality, in which this land shown on the map, the upland lies, the point within the bounds of the description you have given, is that right? 10

A. Yes.

Q. And also the boardwalk, or was the boardwalk a part of the tract?

A. The board walk had not been built.

Q. But this, of course, included it? 20

A. It included the boardwalk site.

Q. And that at that time was the proposed boardwalk?

A. At that time.

Q. So that at that time, though that —

Mr. Bourgeois: The deed speaks for itself. I don't want to be bound by these answers of Mr. Eaton.

30

Q. On the fifteenth of February, 1925, the date of the deed in question, the Island Development Company did not own the riparian rights oceanward of the upland did it?

A. I don't believe they did.

Q. You know they didn't?

A. They didn't own it through any grant from the State.

Q. Can you point out on the map approximately the high water mark?

A. This is the approximate high water mark at the time of the making of this map.

Q. This heavy line running above the shore line of the proposed boardwalk?

A. Yes, sir.

10 Q. Mr. Eaton, you have testified that what I call the finger in front of block 219 represented the interior line of the parkway, that is to say the deed of the parkway went around that so-called finger, the public park. I show you a map purporting to be a map of part of this tract, it bears your name. Was that map compiled under your direction?

A. Yes, sir.

Q. Look at block 219, which says there, "pier site," do you say —

20 A. Yes, sir.

Q. Is it not a fact that the finger, so called, on the map upon the easel illustrates the proposed pier that is referred to on the map before you as the pier site?

Mr. Bourgeois: I object, if your Honor please. It isn't for him to say that. He can testify, if the map is admissible it can go in evidence, but he can't give his conclusions.

30 The Court: If he knows he may say so. If he doesn't know he may say so. I will permit the question.

A. This map was made in March, 1925, very much ahead of that map. My understanding —

Mr. McCarter: Let me offer this map in evidence, and have this one marked.

Mr. Bourgeois: I object as irrelevant and immaterial.

The Court: Sustain the objection to the offer of the map now before the witness, don't connect that in anyway.

10

Mr. McCarter: I will say to your Honor that this map was attached to the agreement which he received.

The Court: That is a different thing. I notice the agreement called for a map, and there is none attached.

Mr. Bourgeois: If that is attached, it is admitted with the agreement, I have no objection if it is attached to the agreement. 20

Mr. McCarter: As I understand that is the fact.

The Court: The agreement called for a blue-print, and there is no blue-print attached to the one I have.

Mr. McCarter: I understand this was the map which was not attached except by indication. 30

The Court: Indication something was so attached.

Mr. Bourgeois: If that is true, that is admitted, but the agreement speaks for itself.

(Map admitted in evidence and marked Exhibit D1A.)

Mr. McCarter: I would like to offer the map on the easel.

(Map admitted in evidence and marked Exhibit D6.)

10 (Former question repeated.)

Mr. Bourgeois: I object to that as a conclusion, and the deed with the map will speak for themselves.

The Court: Here is the draftsman of the map. I will permit him to testify what it indicates.

A. What you call the finger or protuberance on  
20 that map indicates the site reserved for a future pier.

Q. And was above —

A. But is the interior park line.

Q. I understand, the park line goes around it. The same thing is true of what I call the finger upon the exhibit upon the easel in front of the block 201, is it not?

A. Yes, sir.

Q. I show you another map purporting to be dated  
30 November 10, 1925, and characterized as high water line survey, Island Development Company, Brigantine, New Jersey, November 10, 1925. Please look at it and see if you can identify that as having been made under your direction?

A. That was made under my direction.

Q. How long previous to November 10, 1925, if you can tell?

A. Well, if it is dated November 10, 1925, the survey for that must have been made on that day.

Mr. McCarter: I offer this in evidence.

Mr. Bourgeois: I object.

The Court: I don't know what this is.

Mr. McCarter: It is between the agreement and 10 deed.

The Court: 18th day of April, 1925.

Mr. Bourgeois: All right, I don't object.

(Map admitted in evidence and marked Exhibit D7.)

The Court: Mr. McCarter, you don't need the 20 trust mortgage or the assignment to the Chelsea, the trust mortgage?

Mr. McCarter: That is all right, we don't want to keep them now. We may want to look at them later, but I thought they ought to go back to the bank.

The Court: Yes, the Court don't care to have them. 30

Q. You are familiar with this map?

A. Yes, sir.

Q. It shows the upland of block 219 and what is the protuberance oceanward of high water shown on this particular map?

A. The protuberance consists of the interior park line and these two lines extended to meet it.

Q. Well, is that an enlargement oceanward of the high water line of the site of the proposed pier?

A. This is an enlargement of the block and the interior park line in front of it.

Q. Between the two interior lines in which the pier was to be, is that right?

A. Any future pier would be built.

10

Cross-examination.

By Mr. Bourgeois:

Q. Mr. Eaton, you said, I think maybe inadvertently, that the interior line of the park is co-incident with the interior line of the boardwalk. Is that true in front of blocks 219 and 201?

20

A. No, because the easements were granted in the deeds conveying those blocks.

Mr. McCarter: I don't think the witness ought to characterize what had been conveyed, if there has been a conveyance we want the deeds. I suppose the question can be answered yes or no.

(Question repeated.)

30

The Court: Now, it seems to me that perhaps I got the wrong impression, my understanding was that that was simply closing practically the description that he gave. Am I correct in that, here are the interior lines?

A. The answer to the question is no.

Q. How far distant is the interior line of the

park line from the boardwalk in front of block 219, approximately?

A. About 1700 feet.

Q. In front of block 201 it is how far distant approximately?

A. About 1500 feet.

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HARRY R. TOOKER, recalled.

10

Direct examination.

By Mr. McCarter:

Q. Mr. Tooker, has any riparian grant been issued by the board of commerce and navigation pursuant to these applications that have been presented here?

A. No.

Q. Is that also true of the fact that there has been no leases? 20

A. Not to the Island Development Company.

Q. Beg pardon?

A. No grant or lease of any kind.

Q. Beg pardon?

A. Not to the Island Development Company.

Q. In the city of Brigantine.

A. In the city of Brigantine.

Mr. Bourgeois: Has there been to the city of Brigantine? 30

Q. Has any grant or lease been made by the board to the city of Brigantine?

A. Yes.

Q. What?

A. Only on a joint application.

- Q. Have you got that application here?  
A. No. I wasn't asked to produce that.  
Q. What was it?  
A. I believe there were two small lots, two other owners where a joint application was made.  
Q. By other holders and the city of Brigantine?  
A. And the city of Brigantine.  
Q. Covering the so-called parkway or park?  
A. Yes, sir.  
10 Q. The whole thing?  
A. Not the whole thing.  
Q. Tell us what it is.  
A. In front of these two particular lots.  
Q. You don't remember what those lots were?  
A. I don't remember off-hand.  
Q. But with that exception?  
A. No.  
Q. No, with the exception of those two specific  
20 lots, no lease or grant of the riparian right has been  
made either to the Island Development Company  
or to the city of Brigantine?  
A. No, sir.  
Q. Can a boardwalk be erected oceanward of the  
high water mark without the, legally without the  
consent of the board of commerce and navigation?

Mr. Bourgeois: I object.

30 The Court: How is that admissible? I would  
like to hear you on that, Mr. McCarter. How is  
that admissible.

Mr. McCarter: I suppose it is a question of law.

The Court: Exactly.

Mr. McCarter: All right. I think so too.

The Court: I don't care to be bound by the judgment of some one else.

Q. Has any permission, grant or license or consent of any kind been given by the board of commerce and navigation for the erection of a boardwalk along the oceanfront in front of this first development of Brigantine proper?

Mr. Bourgeois: I object.

10

The Court: I will permit that.

A. There has not.

Cross-examination.

By Mr. Bourgeois:

Q. Mr. Tooker, you haven't those grants that you say have been made, before you? Do you recall if it is a fact that the grant was made from the high water mark to the inland line of this park to the individual and to the city of Brigantine from the interior line of the park out to the outside line of the boardwalk?

20

A. Correct.

The Court: Were either of these two grants upon the land oceanward of block 219?

30

A. They were not.

ARTHUR T. BUTLER, SWORN.

Direct examination.

By Mr. McCarter:

Q. You live where, Mr. Butler?

A. Absecon, New Jersey.

10 Q. Are you a licensed real estate broker?

A. Yes, sir.

Q. Were you such in 1925?

A. Yes, sir.

Q. Under what name did you carry on your business?

A. Butler Investment Company.

Q. Were you given the privilege of selling for a commission property in Brigantine by the Island Development Company?

20 A. Yes, sir.

Q. When was that?

A. That was in the spring of—well, I had a right to sell the —

Q. Will you answer my question. When were you endowed with the right to go on and see if you could sell the property at Brigantine by the Island Development Company, which property is connected with this litigation, namely block 219?

A. Do you mean this block?

30 Q. I mean block 219.

A. In the spring of 1925.

Q. Who, on behalf of the Island Development Company, authorized or employed you?

A. H. G. Harris.

Q. And he was the president of the company?

A. Yes, sir.

Q. Did you see, about that time, a so-called price-list of this development?

A. Yes, sir.

Mr. Bourgeois: That is objected to as irrelevant and immaterial.

The Court: I will permit it as preliminary.

Mr. Bourgeois: If your Honor please, I want to get my objection so as not to impose on your Honor. As I understand an agent has no authority unless his agency is reduced to writing or else he has a writing from his principal pertaining to the particular property he is going to sell. Now, we don't want to be bound by what this man may say he understood or found out from H. G. Harris or anybody else unless it is reduced to writing in some form either as agency signed or the terms are in writing. 10 20

The Court: I will permit the present question.

Q. Where?

A. Why it was the price list that was put out by the Island Development Company to the various agents.

Q. Were you given one?

A. Yes, sir.

Q. By the Island Development Company? 30

A. Yes, sir.

Q. Have you got your copy?

A. No, sir.

Q. Have you looked for it?

A. Yes, sir.

Mr. McCarter: I call upon the other side to produce the price list so-called.

Q. What other name would be given to such a document as that but price list?

A. Price list on the beach front blocks was the name on the list. They had a list of various developments when they were put on the market for sale.

10

(Price list produced by Mr. Bourgeois.)

Mr. Bourgeois: If your Honor please, that is objected to because it is irrelevant and immaterial. I don't know what this price list they are talking about is, but assuming it is a price list in the spring of 1925 and the price list said they were going to sell this block 201 for \$14, and these people came along and they made a sale to them for \$150,000, and they  
20 reduced their agreement to writing, what difference does it make what the price list says when telling the truth. The price list is not binding upon these people in the place of a written agreement between these parties to this suit as to what price was going to be paid for it.

Mr. McCarter: Now, might as well be perfectly  
30 frank with the Court and counsel about that, altogether apart now from the representations contained in the deed itself, and the agreement too, for that matter, the great point that Mr. Bourgeois is dwelling on, so much is the fact that the deed and the agreement too, I think, although I say now the deed speaks only of the right, title and interest of the parties in the property oceanward of the high water line, and the great point made is if they had

no right, title and interest that didn't convey anything, that is the theory, as I apprehend it, that underlies Mr. Bourgeois' point. Now, we propose to show that on the so-called price list was a representation with reference—I don't want to put words in the mouth of the witness—with reference to what they did have oceanward of the high water mark and that that representation went out on this authenticated printed price-list, so called, of the company, showing an ownership oceanward of the boardwalk, of the high-water line, but that it was also continued later by verbal representation made by them, so that when we took a deed with their rights, title and interest, we had a right to believe at least that they had what they represented they had, that the right, title and interest that they purported to convey conveyed something. Now, it appears to the Court that at the time, and indeed down to today, there was no grant from the State of anything oceanward, and therefore, a fraudulent situation exists which justifies, as we contended, altogether. Now, regardless of the language of the deed, with reference to other deeds to which I shall direct your Honor's attention at the proper time, justifying the rescission of this contract, in other words, if I have a lot of land on one particular street, and I am negotiating a sale of that lot to your Honor, and I state that I have a right of way over my neighbor's lot, which is of moment to your Honor, and your Honor then takes a deed from me with all my right, title and interest in that right of way, and it turns out that I have nothing whatever legally, am I not defrauded—are you not defrauded? In other words, is not a purchaser under a deed which purports to convey the right, title and interest of the grantor in a certain property justified in relying upon a representation made by the owner, or by word of mouth that that right, title

and interest consists of a certain thing, or that he has a pier right, that he has a riparian right, that he has this, and that, and when a warranty deed later follows with the right, title and interest in that thing and it turns out that he had not a thing, can the grantor avoid the position he is in by having led the grantee to suppose by representation that he had an interest there when it turns out he hadn't anything of the kind? And it is along that line that we offer  
10 now to show in the first place what this price-list said. I don't want to put language in the mouth of the witness, and also what further evidence we shall offer in that direction.

Mr. Bourgeois: If your Honor please, that directly contradicts the statute of frauds, and the second is that there is no relation whatever between Mr. McCarter's statement about the right of way and easement and what they were doing here. These  
20 people may have put out a price-list, I don't know whether they did or not, I don't know what is said, but I do know that these people came, and they contracted, entered into a contract to buy certain land, and the title and interest of some other people, I mean that these people had, in another piece of land that was then under water. Now, if your Honor please, misrepresentations with regard to real estate are not like misrepresentations with regard to personal property. They can go to the records them-  
30 selves, so I say they can find out whether they had any rights in this land or not, but after the term had expired, April, 1925, until 1926, six months had expired, within which they could have made their search, they come along and accept a deed with exactly the same thing, right, title and interest, and I say to your Honor that they cannot go on, is my proposition, and attempt to show what may have

been said before. They had a right to do these things. If your Honor please, they are endeavoring to engraft upon a written instrument apparently the case of Leonard against Ocean City Association which was not a written instrument at all, but a public sale. They are talking about a negative covenant, but it has no application to the case where the agreement is reduced to writing, and the deed followed.

The Court: I will sustain the objection to this 10  
question. I am not ruling Mr. McCarter is not in  
a position to define what was meant by right, title  
and interest in this. Whether or not that is am-  
biguous is the question I am not ruling upon at the  
present time, I think that can be proven by oral testi-  
mony. The question however, apparently has no  
connection whatever with the grantee in the deed.

Mr. McCarter: I will say to your Honor perhaps  
this will cover what is in your Honor's mind, that 20  
this gentleman was employed by the Island Develop-  
ment Company to sell this land and was paid a com-  
mission or the right to have commission, and he  
gathered certain information from this price-list and  
from verbal statements from Mr. Harris( the pres-  
ident of the company, in reference to what the com-  
pany had, and passed those representations to the  
purchaser. I think that was a very important omis-  
sion which is not included and which we ought to  
have shown. 30

Mr. Bourgeois: If your Honor please, may I  
answer that if you are through?

The Court: Your allegations in your bill are en-  
tirely that these allegations were made by Howard

G. Harris, president, and Vincent Haneman, at a conference between the members of the syddicate and those gentlemen on or about April 18th, 1925. Apparently there is no other allegation of any other representation except that.

10 Mr. McCarter: Now, we are trying to show that a representation exists by a price-list issued by this company to the effect that they had these riparian rights and the pier rights in front of this block 219 and that those rights gave an additional value to block 219 which the other lots, whose price was less, had not had. Now, not only was this gentleman who is on the stand, Mr. Butler, an agent employed by the Island Development Company for the sale of this property, and to that extent personally representing them, but he was himself a member of the syndicate which afterwards was developed into the Atlantic-Brigantine Hotel and Pier Company, and  
20 the third paragraph of the answer and counter-claim, and I think it is the same in the bill, says that on or about April 18th, 1925, that members of the syndicate conferred with Howard G. Harris( president, and Vincent Haneman, secretary, who then and there made the definite representation that Island Development Company would deliver such premises with the warranties and so forth, and it seems to me, your Honor, that we ought to be able to show not only the specific matter that is set out, but any representation  
30 made by the company which came to the knowledge of the purchaser, to speak practically the words, "right, title and interest" subsequently used amounted to something, exactly, as I said, if a demonstration were made of a certain piece of property described by metes and bounds, and representations made that they also had a right of way or

riparian right, or some appurtenant right in connection with that property, and relying upon that representation the property is made, the purchase made in a deed which says the right, title and interest in that appurtenant property, and it turns out they had not a scintilla of right, title and interest would'nt that justify the rescission? Now, I would like to ask this witness one or two more questions anticipating some facts that I know, but have not been brought out, and I want to also, in answer to 10 the further objection that Mr. Bourgeois made, that we went on six months afterwards and took a deed or a year afterwards, we propose to show by letters we have got of the representations they made which induced us to take that deed.

The Court: This question is probably admissible under the clause, which alleges that the market value or selling price of property similar to that portion of said premises designated as block 219 at the time 20 of the execution of that agreement did not exceed \$75,000 which is denied in the answer —

Mr. McCarter: If the Court please, in answer to that may I cite to your Honor a case which I think puts this out entirely?

Q. Mr. Butler, did you finally effect a sale of this property?

A. I did. 30

Q. Was there afterwards a syndicate which became incorporated in this Atlantic-Brigantine Hotel and Pier Company?

Mr. Bourgeois: I object as immaterial and irrelevant.

The Court: I will permit it.

A. Yes.

Q. Who composed the syndicate to whom the agreement of sale was made and what position did Mr. Hillman have in that syndicate?

A. He was the trustee for the company to be formed to take title to this property and after the company was formed the treasurer of the syndicate.

10 Q. Who constituted the syndicate originally?

A. There was —

Q. Mr. Bourgeois: I object to that as irrelevant and immaterial.

The Court: I will permit it.

A. William Richman, U. G. Hillman, L. D. Horner, David Colson, William H. Moore, Casper Hitchner,  
20 Clement B. Richman and myself.

Q. Afterwards the complainant corporation, the Atlantic-Brigantine Hotel and Pier Company was formed?

A. Yes, sir.

Q. Who is the executive president of that company?

A. William Richman.

Q. Who was and is treasurer of that company?

A. U. G. Hillman.

30 Q. Both of them were connected with the syndicate?

A. Yes, sir.

Q. Who constituted the stockholders of that company, the rest of the syndicate?

Mr. Bourgeois: I object.

The Court: I will permit that if he says the rest of the syndicate.

Q. Rest of the syndicate.

A. Yes, sir.

Q. Now, you were a member of the syndicate then?

A. I was secretary at that time.

Mr. Bourgeois: Let me get my objection because I think this as all irrelevant and immaterial. I am reading the case of the Court of Errors and Appeals, *Entis v. Townsend*, 139 Atlantic, page 10. 10

(Reading the above case.)

If your Honor please, there is no claim made, no effort made to reform this contract, no effort made to reform the deed, and so long as that contract remains as the contract made between the parties, it can't be varied by oral testimony, and so long as that deed remains in the form it now is, they can't contradict it or vary it by oral testimony. 20

Mr. McCarter: Mr. Bourgeois, we are not seeking to do that at all. That rule, of course, is well settled.

Mr. Bourgeois: Certainly you are trying to do it, that is the effect of it. 30

Mr. McCarter: This is an action to rescind the contract of sale and the deed of sale. We say that we were fraudulently induced to enter into this contract. The deed which we say—and bear in mind that I am going to offer to show that further on,

that at the time this deed was made, certain representations were made in writing in reference to this very lot, by letter, but we can't prove our whole case at once. I am calling your attention to the language of the deed conveying by a warranty deed all that certain contract or parcel of land and premises being the upland, together with all the right, title and interest of the party of the first part in and to all lands lying under water, and so forth, 10 being out front. It is understood that the land lying southwardly from the interior line of said city park so established in the block between 33rd and 32nd Street, and the high-water line is subject to the exterior park deed, further understood that the above land under water is subject to the encumbrances or right of way of a boardwalk. So that the deed purports to convey by warranty a certain specific upland, by metes and bounds, and follows with a description by the additional tentative conveyance of all the right, title and interest of the first 20 party in and to this outside land, which is subject to an easement of the boardwalk, and also is subject to the park.

The Court: Is it subject to the park? The park is excluded, it is not subject to the park.

30 Mr. McCarter: Refers to the park, here, land lying southerly from the interior line of said city park, and the exterior line of said park, subject to the operation of said park deed.

Mr. Bourgeois: That has nothing to do with water line.

Mr. McCarter: That shows I think by direct

representation that there is a park, and it shows also that there is a boardwalk.

The Court: No, a right of way for a boardwalk.

Mr. McCarter: But a representation that there is a boardwalk.

Mr. Bourgeois: That don't say that in the deed, does it? 10

Mr. McCarter: Understood that the land lying southwardly together with all the right, title and interest of the party of the first part in the land lying under water, etc., together with all the right, title and interest of the party of the first part, in and to the land lying under water located between the high-water line of the Atlantic Ocean and the interior line of the city park as established by the ordinance of the City Council of Brigantine, and the westerly line of 32nd Street, and the easterly line of 33rd Street, which interior line of said city park in the block between 32nd and 33rd Streets is so many feet southwardly from the southerly line of Ocean Avenue when measured along the westerly line of 32nd Street. 20

Now, there is a representation that there is a park, not that the land is a part of the park, but that there is a park, it is understood that the land lying southwardly from the interior line of said city park as so established in the block between 32nd and 33rd Streets and the exterior line of the city park is subject to the operation of the said park deed. Further understood subject to a right of way for boardwalk purposes. So that there is then this suggestion, as I look at it, and carefully studying that deed, a con- 30

- veyance of the upland, then this carries a clause conveying all the right, title and interest of the first party in and to what I will call the riparian rights—I am not seeking to attack the language, I am simply trying to avoid repeating a lot of distances and courses—which language indicates that this property oceanward of the high-water line is in the first place subject to a boardwalk and also bears certain relations which it is not necessary,
- 10 I think now to define, to a park established in front of that property. Now, it now appears in the case that no legal boardwalk is there and no park is there by right under the particular case here which says that a dedication or effort to make land oceanward of the high-water mark in the absence of a grant from the board is futile. Now, counsel reiterates and relies constantly upon the idea that this being a deed of simply the right, title and interest, if there had been any right, title and interest then it didn't
- 20 amount to anything. Now, we contend that if before and continuing down to the time when the deed is made, the representation is made that they have the riparian rights, that they have pier rights, we had a right to accept a deed which spoke particularly of warranty of character of all their right, title and interest and to rely on the representations that they had made, if you will, that they had things which they did not in fact possess.
- Now, the record shows at present that they had,
- 30 before this deed was applied for, or given, written a letter, "Please add to our recent application for a riparian grant on the beach front blocks 219 and 201 which we would like included in the grant," and they were applying for that, but they never got it, carried it out, and as I understand the rule of law, with reference to parole evidence, we are not seeking to change this deed, we are not seeking to change or

modify it, we are seeking to show a representation of fact with reference to the article sold which was false and that representation was that they had things which they purported to convey by right, title and interest. If there had not been any representation there would be no basis for the claim, but being that representation we have a right to suppose and believe, as we did, that a conveyance of all the right, title and interest particularly in connection with this included a conveyance of the interest that they said 10 they had, and if they didn't have it, then we had a right to rescind the contract.

The Court: Shortly your argument is that when an agreement or deed specifies right, title and interest, you are justified to produce oral testimony to show the quantum of that right, title and interest?

Mr. McCarter: To show that a representation was made that they had a certain interest which we 20 had a right to suppose was the right, title and interest referred to.

The Court: This entire argument I don't think is applicable at all to the present question. The present question, I think without doubt is admissible under the fifth clause of the bill which I have referred to specifically, and which fifth clause is denied. It strikes me a statement made in a bill and denied in the answer that it is admissible in evi- 30 dence. It may have no value. I don't know. It wasn't stricken on their side.

(Question repeated.)

Q. The only question is concerning this price-list.

Mr. Bourgeois: The answer to that is that the price-list that was on the market at the time of this agreement, the price was certainly a part of the agreement that was made on the 18th of August, 1925, and it cannot be varied, cannot be contradicted. They have agreed upon a certain price they will give for the land.

10 Mr. McCarter: We are not trying to vary the price. This price-list contained some other information.

The Court: I am simply now admitting price-list, not what else may be upon that price-list.

Mr. McCarter: Have you got that price-list?

20 Mr. Bourgeois: I don't know whether we have or not. Maybe we have.

(Price-list produced.)

Mr. Bourgeois: I submit that is not relevant.

(Price-list handed to Court.)

The Court: I take it the other side is entitled to see it. (Handing price list to Mr. McCarter.)

30 Q. I show you a document produced by counsel in response to a demand or request of counsel, and I ask you if this is the so-called price-list to which you alluded in your testimony?

A. It is.

Q. And you were furnished by the defendant with one of them?

A. Yes, sir.

Mr. McCarter: I offer this price-list in evidence.

Mr. Bourgeois: I object on the ground it is irrelevant and immaterial.

The Court: I will permit it.

(Price-list admitted in evidence and marked Ex- 10  
hibit D8.)

Mr. McCarter: May I be permitted to read into the evidence so much of the price-list that bears upon the misrepresentation of block 219, "Block 219 with full pier rights, unrestricted, sales price \$100,000, or to a purchaser who will build pier 500 feet long, costing \$100,000 during coming summer, the price will be \$75,000, with \$15,000 cash payment. This offer withdrawn after June 1, 1925, or on notice at any time." 20

Mr. Bourgeois: It also contains this language, "Subject to change with notice."

Mr. McCarter: We offer in evidence, don't have it here, Mr. Bourgeois, but imagine no point will be made of that, a certified copy of the articles of incorporation —

Q. Were you paid a commission by the Island De- 30  
velopment Company for the sale that was made of this block, 219?

A. Yes, sir.

Mr. Bourgeois: That is objected to as irrelevant and immaterial.

The Court: Permit it.

Q. Do you know whether or not the deed, which is dated the 19th of April, 1926, was delivered as early as that time?

A. I don't know, sir.

Q. You don't know?

A. No.

Q. Are you still connected with Atlantic-Brigantine Hotel and Pier Company?

A. No, sir.

Q. When did you retire?

A. I sold my interests out September second, 1925.

Q. 1925?

A. Yes, sir.

Q. Now, in negotiating the sale of this property to the syndicate, with whom did you treat?

20 Mr. Bourgeois: I object, if your Honor please. We have got nothing to do with the syndicate. This deal was between him and the person who was going to buy it.

30 Mr. McCarter: The agreement, your Honor, purports on its face an agreement between the Island Development Company and Hillman who was trustee for the syndicate, and the deed of the company; now the agreement was made with a syndicate, and we want to show with whom the agreement was made, and that it was assigned afterwards by Mr. Hillman to the hotel company, as the agreement itself shows, I want to show who the members of the syndicate were and what representations were passed on, if any, by the agent of the vendor in making the sale, negotiating the sale.

Mr. Bourgeois: If your Honor please, the agreement is made between Island Development Company, a corporation under the laws of the State of New Jersey, of the first part, and Ulysses G. Hillman, of the city of Woodstown, State of New Jersey of the second part. We had nothing whatever to do with the formation of this syndicate, who composed it or anything.

The Court: I will sustain the objection to the 10 present question.

Q. Did you have any negotiations with Mr. Hillman?

A. Yes, sir.

Q. You did?

A. Yes, sir.

Q. Did Mr. Harris before or during the negotiations that you had with Mr. Hillman make any representations to you, he being the president of Island Development Company, with reference to the rights that the Island Development Company had oceanward of the high-water line, and if so, what were they? 20

Mr. Bourgeois: I object as irrelevant and immaterial and not within the issue. We are not here to meet something he said to this man. We are here under your pleadings to meet what they said, that is what Mr. Harris and Mr. Haneman said to Mr. Hillman, according to your pleadings. 30

Mr. McCarter: I think the word, member of the syndicate —

The Court: Members of the syndicate is the phrase, that is in clause three, and this is admitted

to the extent that Ulysses G. Hillmann conferred with Harris.

Mr. Bourgeois: That is after the agreement was signed, if your Honor please.

The Court: No, that wasn't the allegation.

10 Mr. Bourgeois: The agreement doesn't provide anything about any syndicate. The agreement is between Island Development Company and Ulysses G. Hillman.

The Court: Yes, but the allegation is on or about April 18, 1925, which was the date of the agreement, the members of a certain syndicate —

20 Mr. Bourgeois: If your Honor pleases, we are only bound by the terms of that agreement. If they carry that agreement into effect that is all there is to it.

The Court: I will permit the question.

(Question repeated.)

A. He did.

Q. What were they?

30 Mr. Bourgeois: When was this?

The Court: Time and place he is entitled to.

Q. When and where, as far as you can recall, were these representations made, as near as you can recall, and where you were when they were made.

A. In the office of the Island Development Company at the time we were going over the, talking together about selling this block, about me going up in Woodstown and selling the block to people up in Woodstown, with the idea of buying a block and building a hotel.

Q. About when was that?

A. Well, that was probably six weeks before this agreement.

Q. About six weeks before the agreement? 10

A. Yes, took about six weeks to sell it.

Mr. Bourgeois: If your Honor please, I think your Honor overruled that question and allowed it to go in on the theory he was part of the syndicate, and the syndicate had not yet been formed.

The Court: Overruled it on that ground, I don't think that is within the pleading, on or about April 18th, isn't broad enough to incorporate six weeks 20 or more prior to that time.

Q. Did you have more than one conference with Mr. Harris?

A. Yes, sir.

Q. How many conferences did you have in which these representations that you speak of were made?

A. I don't recall the exact number of conferences. I was in and out of the office maybe two or three 30 times a week talking about this deal, as we were getting various subscriptions in from various members of the syndicate. Telling him about how I was progressing in selling this lot.

Q. Before any subscriptions were made whatever by anybody and your interest was invoked, what representations did Mr. Harris make to you with

reference to the property oceanward of the high water line of block 219?

Mr. Bourgeois: I object to that.

The Court: Sustain the objection.

Mr. McCarter: Your Honor rules —

10 The Court: I have ruled that it is not within your pleadings for the simple reason you have limited your pleadings to a certain time when these representations were made which was on or about April 18th, 1925.

Mr. McCarter: Suppose the witness now can remember the specific dates?

20 The Court: He says it was at least six weeks before and I have ruled that was too long a time to come within these pleadings.

Q. Confining yourself to, as near as you can recall, Mr. Butler, the signing of the agreement, which seems to have been on or about the 18th of April, 1925, what were the representations that were made as near to that time as you can state?

Mr. Bourgeois: I object to that.

30

The Court: Sustain the objection until the time is limited, unfortunate, perhaps.

Mr. McCarter: Then I move an amendment to the bill, if Your Honor takes that view, I don't think that we ought to be concluded. It is not when it is

on or about, I supposed that the specification of the time and place was desired, not because of the ruling, but because of the ruling that you have got to contradict a specific time and place, so Mr. Harris can come here and say he didn't do it. Now we have specified that place and we are getting it as near as we can, but we can't say that it was on the 17th, 16th or 15th, but it was before the agreement was made, while the negotiations were on, and about that time, before we completed with our dealings. If not, can we amend our pleadings? 10

The Court: If you do that it would be admissible, but you didn't do that, you asked him to tell what representations, in effect, were nearest to that time, without specifying any time at all.

Mr. McCarter: In the first place I move now to amend the bill, the allegations to which your Honor has alluded, but adding on or about or in the month preceding the 18th of April, 1925. 20

Mr. Bourgeois: This is preceding or after the date of the agreement?

Mr. McCarter: Preceding.

Mr. Bourgeois: I have no objection so far as the amendment is concerned on that, because I do not think it cuts any figure to my opinion of the law. 30

The Court: Amendment being made, I will permit the question.

Mr. Bourgeois: Your Honor, let me call your attention to that Yentiss case.

The Court: Yes.

Q. What were the representations?

Mr. Bourgeois: I want to make one other objection—this is before the agreement —

(Question repeated.)

10 A. We were given to understand —

Mr. Bourgeois: I object.

The Court: Yes. The effect of the question is what did Mr. Harris tell you?

Q. Say?

20 A. He said that we had full pier rights in 219 and that the balance of the beach front in front of Brigantine with the exception of 201 had been dedicated to the City of Brigantine by deed of dedication for public park purposes, and that we, in buying this block, had the only block where a pier could be constructed, with the exception of block 201.

Q. Did you bring those statements of Mr. Harris that you thus referred to to the attention of Mr. Hillman?

A. Yes, sir.

Q. You did?

30 A. Yes, sir.

Q. And you were not at this settlement, in fact, you got out of the syndicate in 1925, I think?

A. I sold my interest September 2, 1925.

Q. Your interest in the matter ceased from that time?

A. Yes, sir.

Q. Were you present when the agreement was signed?

A. Yes, sir.

Q. Can you — Who else was present?

A. Clement B. Richman.

Q. Mr. Richman?

A. Clement B. Richman.

Q. There are two Richmans, are there?

A. There are two Richmans, one William Richman and the other Clement B. 10

Q. After the agreement was signed in duplicate by the Island Development Company, how was the signature of the other Mr. Richman obtained—Hillman?

A. We took the agreement up to Woodstown and had it signed by Mr. Hillman.

Mr. Bourgeois: Who is we?

A. Clem Richman and myself. 20

Q. You took both copies up?

A. Took both copies up.

Q. Do you recall whether or not the map that is marked D1-A was attached to the agreement?

A. Yes, sir, there was a map attached to each copy of the agreement.

Q. Each copy?

A. Yes, sir.

Q. How was it fastened, do you know?

A. With a clip, not fastened by a punch, but just 30 by a clip, a legal clip, just a little clip that goes in there.

Cross-examination.

By Mr. Bourgeois:

Q. Mr. Butler, to whom did you sell your interest in this property?

A. Mr. William Richman.

Q. Were you interested in it at the time the purchase was made from the Island Development Company, at the time the negotiations for buying were  
10 made?

A. Yes, sir.

Q. Then did you sell — Who paid your commission?

A. Who paid the commission?

Q. Yes?

A. Island Development Company.

Q. Did you tell to them at the time you were buying the property that you were one of the purchasers, or did you represent yourself as an agent?  
20

A. At the time that I put the deal up to them I represented myself as an agent.

Q. As an agent?

A. Yes, sir.

Q. And they had given you permission to sell the property as an agent, that is right, is it?

A. Well, Mr. Harris was reluctant to sell the property.

Q. I didn't ask you that.

30 Q. I ask you if you were given permission to sell the property?

A. On certain representations made by me to Mr. Harris.

Q. What was the commission you were to receive?

A. Ten per cent.

Q. Under those circumstances you would receive ten per cent. and you sold the property to these peo-

ple, excepting the portion you held yourself, is that right?

A. I divided my commission with Clement B. Richman, we sold it together, yes, sir.

Q. I don't care so much about that.

A. That is the reason he sold property.

Q. You became one of the purchasers and didn't tell the Island Development Company that you were purchasing it for yourself, did you?

A. They didn't ask me anything about it. 10

Q. I know, but you didn't tell them, did you?

A. No, I didn't tell them anything about it.

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ULYSSES G. HILLMAN, SWORN.

Direct examination.

By Mr. McCarter:

20

Q. You live where, Mr. Hillman?

A. In Woodstown, New Jersey.

Q. Are you the Ulysses G. Hillman that is the name of the proposed purchaser of this property?

A. Yes, sir.

Q. And you were a member of the syndicate?

A. Later, yes.

Q. And are interested as a stockholder in the corporate complainant?

A. Yes, sir. 30

Q. What position do you hold?

A. Treasurer.

Q. Who interested you in the proposition to purchase block 219 with the rest of whatever went with it?

A. Mr. Butler.

Q. Before you agreed to purchase did Mr. Butler tell you anything with reference to statements or declarations by Mr. Harris as to what the Island Development Company owned oceanward of the Boardwalk, of the high water line?

Mr. Bourgeois: I object.

The Court: I will permit it. You may answer.

10

A. Mr. Butler didn't tell me anything Mr. Harris said, he only told me the instructions he had from the Island Development Company.

Q. What was it he told you?

A. He said that with this block 219 there went a full pier right, with this site, 219, unencumbered and unrestricted.

Q. Did he say anything about the park?

20 A. No, he didn't say anything to me about the park that I remember.

Q. Was there anything said as to how many other pier rights existed or could exist on this number one development?

A. Yes.

Q. What did he say about that?

A. He said there was only one other right in this division, No. 201.

30 Q. Were you made familiar with the price by the Island Development Company of the very next door block to 219?

Mr. Bourgeois: I object.

The Court: I will permit it.

Q. What were such prices?

A. I have a one-eighth interest in block 220.

- Q. Beg pardon?
- A. Two hundred twenty you spoke of?
- Q. Any of those.
- A. I have an interest in block 220, a one-eighth interest.
- Q. What was the price of that?
- A. Fifty thousand dollars.
- Q. Is that the same size as 219?
- A. With the exception of the line in front, there is a bulkhead line that is a little shorter. 10
- Q. Now, you are familiar with this property, aren't you, Mr. Hillman?
- A. Yes, sir.
- Q. Is there a boardwalk erected, and if so, from where to where?
- A. From the— it embraces the front of 220 on up to block 201, as near as I can tell you, I don't know exactly, but it embraces block 220, I am interested in, it is in front of block 220.
- Q. Does it go in front of 219? 20
- A. Yes, sir.
- Q. Where does it commence?
- A. Block 220.
- Q. Two hundred twenty is the other side?
- A. Yes.
- Q. I thought it was the other way. Beg pardon. I show you what purports to be a voucher of the Island Development Company for the final payment of the purchase money on this property. Is that such a voucher? 30
- A. Yes, sir.
- Q. By referring to that voucher can you tell when it was that the final payment was made?
- A. It is receipted on June 16, 1926.
- Q. Had the deed been delivered previous to that final payment?
- A. No.

(Voucher offered, received in evidence and marked Exhibit D9.)

Cross-examination.

By Mr. Bourgeois:

Q. Mr. Hillman, the Atlantic Development Company, whatever the name —

10 A. Hotel and Pier Company.

Q. Yes, never filed its bill in this matter until after the first payment of interest became due and was unpaid, first payment of interest became due and unpaid, did it?

A. I don't recollect.

Mr. McCarter: Have you got the date the bill was filed, Mr. Bourgeois?

20 Mr. Bourgeois: Bill was filed September 27, 1927.

(Recess taken until 1:15 o'clock P. M.)

AFTERNOON SESSION.

Trial of the cause resumed at 1.15 P. M.

HARRY R. TOOKER, recalled.

Direct examination.

By Mr. McCarter:

10

Q. Mr. Tooker, when you were on the stand this morning I forgot to ask you if a petition and application was presented by the Island Development Company to the Board of Commerce and Navigation for leave to erect a boardwalk —

Mr. Bourgeois: That is objected to as irrelevant and immaterial.

20

Q. — and if so will you produce the application?

Mr. Bourgeois: I object to that as irrelevant and immaterial because the boardwalk appears already to have been built.

The Court: Sustain the objection.

Mr. McCarter: Will your Honor hear me on that? 30

The Court: Yes. I thought I had before on that point. All right, I will be very glad to hear you.

Mr. McCarter: I didn't know this point had been discussed before.

The Court: The boardwalk point had, I thought. All right, proceed.

Mr. McCarter: Your Honor sees in the analysis of the deed that has already been made that there are certain representations leading to, I think, the inevitable conclusion that a boardwalk shall be legally there and that the premises in question will have certain relations to that boardwalk. Now they  
10 never have had any license to erect a boardwalk, and, of course, whether that is necessary isn't for this witness to say, but I think it is germane to the suit for us to show that as a part and parcel of the scheme which we construed it to be, leaving out now any verbal representations or price list representations, they had gone so far as to apply for permission to build the boardwalk, thereby manifesting, to that extent at least, their realization that it was up to them to get such permission, but they never in  
20 fact got it. In other words, if a deed contains a representation with reference to an existing or to be created boardwalk, which is a material thing, because, of course, a boardwalk erected in front of a property, upland property, is of value and the proper construction of that deed is that it presupposes the creation of a boardwalk, we have shown that a boardwalk is created and built by them. We now want to show that they went so far as to apply to the Board of Commerce and Navigation on the theory that they had to have their permission, and  
30 that such permission was never granted, so that the boardwalk is there subject to litigation and could be removed at any time by the state authorities, and it would seem to me that the fact that the company had, in recognition of their obligation, as we construed it, under this phraseology in the deed, had placed a boardwalk there, subject to the line of

which our grant was made, is important as indicating that they themselves recognized that fact, and went so far as to apply for it, but for some reason or other could not get it. That is all it is offered for.

The Court: I will still make the same ruling on the record.

Mr. McCarter: I would like to have the witness 10  
—I don't want to bring him down here again if I can avoid it—send a certified copy of the application and grant that was made within this district on the lateral lots that he testified about this morning, having been made on the joint application, I think you said, of an individual named Hamilton, or something else, and the Island Development Company, was it?

A. City of Brigantine.

20

Mr. McCarter: Will that do, Mr. Bourgeois, excepting the relevancy of the thing?

Mr. Bourgeois: Yes. I want to ask this young man something he probably knows. I want to ask why it was made on the joint application. He knows, I suspect.

By Mr. Bourgeois:

30

Q. Why was the riparian grant made on the joint application, do you know?

A. According to the ruling of the board, recognizing the park area existed by the Island Development Company, they decided to make a grant to the individual to the inland line of the park and grant to the

City of Brigantine from the inland line of the boardwalk to the exterior line.

Q. They couldn't make a grant within this park area to anybody but the city, could they?

A. No, not recognizing the deed.

Mr. McCarter: I suppose that is a matter of law.

Q. And made the grant to the man on the inside,  
10 from the high water line to the inside of the line of the boardwalk to the riparian owner?

A. That is right.

Mr. McCarter: Will you send a certified copy of that whole proceeding?

A. I will.

Mr. McCarter: May we offer that nunc pro tunc  
20 so as not to bring this young man down here?

The Court: Yes, subject to its relevancy. Gentlemen, are you through with the files and this map?

Mr. McCarter: This gentleman can't get away for some time anyway, perhaps you better wait a little longer.

---

30 WILLIAM RICHMAN, SWORN.

Direct examination.

By Mr. McCarter:

Q. You live where, Mr. Richman?

A. Sharpstown, New Jersey.

Q. Were you formerly a stockholder and director of the Island Development Company?

A. Yes, sir.

Q. When did you cease being a director?

A. October or November of 1927, as near as I could tell without the exact date.

Q. 1927?

A. Yes.

Q. How long had you been connected with the board of the Island Development Company previous to October, 1927, when you retired? 10

A. Early in 1924.

Q. Were you interested with the other gentlemen who have been named by a previous witness in a syndicate in the acquisition of block 219?

A. Yes, sir.

Q. Did you become a stockholder of the Atlantic-Brigantine Hotel and Pier Company?

A. Yes, sir.

Q. And officer?

20

A. Yes, sir.

Q. What?

A. President.

Q. Are you still president?

A. Yes, sir.

Q. Now, wasn't the fact that the Island Development Company claimed that they had acquired the pier rights, and that there was to be no other pier in front of section number one and in front of block 201 besides 219, brought to your attention during the negotiations that led up to the purchase agreement signed by Mr. Hillman? 30

Mr. Bourgeois: I object. That is irrelevant and immaterial.

A. That might have been brought to his attention by me. He didn't know anything about it.

The Court: I will permit the question as a preliminary question. You may answer.

A. We felt that ——

Q. No, just answer the question yes or no.

(Question repeated.)

A. I would like to qualify that.

10 Q. Well, I am not asking you to qualify or unqualify anything. I am asking you to tell us what the fact is. If you want to give a partial answer, give it. I don't want you to say yes, then I want to qualify. Say it as a fact.

A. The question, was it called to my attention that this was an exclusive pier right?

(Question repeated.)

20 Q. You understand that question?

A. Well, I knew they hadn't the riparian rights.

Q. You think that answers the question?

(Question repeated.)

Mr. Bourgeois: It seems to me the answer to that is yes or no.

Q. Yes or no?

A. I would have to answer no.

30 Q. Did you ever see the price list that has been offered in evidence?

A. No.

Q. When was your attention first called in that talk to the fact that the Atlantic-Brigantine Hotel and Pier Company claimed that the failure of the Island Development Company to have acquired the

pier rights in front of block 219 and the park rights in front of the other number on section number one, except block 201, was in derogation, and the violation of the rights of the Island Development Company under their contract and deed? When did you first hear of that?

Mr. Bourgeois: That is objected to. There is no foundation for that at all. Doesn't appear that they ever had any claim. 10

The Court: I will permit the question.

A. November and December of 1925, which was the time that I think would answer your question.

Q. Did you, on behalf of the Brigantine Hotel and Pier Company, make any demands or requests of Mr. Harris, the president of the Island Development Company, with reference to these matters; and if so, when? 20

A. I was continually following that up until the time it was time for us to settle, and even two months after the time settlement was had, on the 19th of April. We had made our fourth payment, but the fifth payment we refused to make until we felt satisfied that the company would carry out their representations.

Q. Now, I show you a series of checks, which I believe are in connection with the last voucher, the checks that were made, and if you recognize them I will offer them all in evidence and then, by refreshing your recollection therefrom, you can tell when the payments were respectively made. 30

A. Yes, sir, these are the checks.

Mr. McCarter: I would like to offer the five checks and the last voucher is already in evidence.

Mr. Bourgeois: I don't understand about the draft and check. There are only four payments there, I assume.

Mr. McCarter: I haven't looked at them.

A. There is no check in connection with the fifth payment, just got the company's receipt there.

Q. We have the voucher for the last payment?

10 A. They wouldn't give the voucher unless they got the money.

Q. That is already in evidence.

Mr. Bourgeois: I don't see the object of the draft there at all. That has nothing to do with a gentleman, for money, I suppose, for the first payment.

Q. Explain these checks or drafts. You have in the first place a draft.

20 A. First check was made out by U. G. Hillman for a draft on the First National Bank in Woodstown, which draft was handed to them in first payment.

Q. That represents the first payment?

A. Yes. That was for the draft, the draft represented the first payment.

Mr. Bourgeois: The first payment is there for the same date?

30 A. This wasn't handed to the Island Development Company, but the cashier of the bank gave them a bank draft, I suppose a draft on Philadelphia or New York.

Q. And that is it, isn't it?

A. No.

Q. The next one?

A. Yes, that is it.

Q. The draft and the first check represent the first payment, don't they?

A. Yes, sir.

Q. The first check being a cashier's check and this being a draft, the basis for which is the cashier's check?

A. Yes.

Mr. Bourgeois: I don't see any connection of the 10 draft with this transaction at all.

The Court: The point is this, the draft is by Mr. Hillman personally, the other is by Mr. Hillman as cashier of the bank. It is the same item, only two transactions in the same item.

Q. So the first payment was made when?

A. April 18th, 1925.

Q. Now, the second payment was made when? 20

A. July 23, 1925.

Q. Go on, the third payment?

A. October 15, 1925.

Q. The fourth payment?

A. February 15, 1926.

Q. And the last payment?

A. June 16, 1926.

(Checks offered, received in evidence and marked Exhibit D10.)

30

Q. Now, in your evidence a moment ago you stated something that occurred before the third payment. Do you remember what you said?

A. I was dissatisfied with what the company was doing.

(Former testimony repeated.)

Q. That is the last payment, the fifth payment?

A. Yes, sir.

Q. What protestations as these payments were made from time to time did you make, and what did Mr. Harris on behalf of the Island Development Company say?

A. Would you like to introduce the letter?

10 Q. I will come to that later.

Mr. Bourgeois: If your Honor please —

(Question repeated.)

(Former testimony repeated.)

Mr. Bourgeois: I object on the ground it is irrelevant and immaterial.

20 The Court: Permit it.

Q. You say you were continually following that up. I want to know what you were doing when you were continually following that up. What were you doing, what went on?

A. Protesting to Mr. Harris and the board that we needed the riparian rights.

Q. What would he say?

A. Doing all within their power to secure them.

30 Q. I show you a copy of a letter dated June 7, 1926, addressed to the Brigantine Hotel and Pier Company and purporting to be signed by the Island Development Company, Secretary, which copy is handed me through the courtesy of Mr. Haneman, we having lost the letter. You remember receiving a letter of which that is a copy?

A. Yes, sir.

(Copy of letter offered, received in evidence and marked Exhibit D11.)

(D11 read by Mr. McCarter as follows: "June 7th, 1926. Brigantine Hotel and Pier Company, 315 Guarantee Trust Building, Atlantic City, N. J. Attention of Mr. William Richman. Dear Sir: In confirmation of our conversation recently held, I am writing this letter to assure you that the Island Development Company is doing all within its power 10 to assist the City of Brigantine in obtaining the riparian rights for the City Park in the so-called first development. The city expects to obtain same within the next few weeks.

"Would like to assure you as Assistant City Solicitor of the City of Brigantine that we are making every effort to obtain these riparian grants.

"Trusting this is satisfactory, I am, Very truly yours, Island Development Company.")

20

Mr. Bourgeois: Who is that signed by?

Mr. McCarter: It says secretary. It isn't signed, of course. The answer then is the letter was signed by Mr. Haneman, the secretary.

Q. After that letter was received was the final payment made on the 16th of June and the deed taken?

A. Final payment was made.

30

Q. On the faith of that letter?

A. Yes, sir.

Q. When did you personally first see the deed, do you know?

A. Mailed to me after it came back from Mays Landing.

Q. Well, after the deed was given did you still continue to make any efforts to have the Island Development Company procure these rights?

A. Yes, sir.

Q. What did you do?

A. Talked it over with the Executive Committee, with the directors.

Q. Of the Island Development Company?

A. Yes, sir.

10 Q. Go on, and what did they say?

Mr. Bourgeois: Who were they?

A. The executive committee of the Island Development Company. The executive committee of the board.

Q. Who was the executive committee?

A. Mr. Bacharach, Mr. Murtland, Mr. Harris and Mr. Victor Fisher.

20 Q. Big Vic?

A. No, Little Vic at that time. Of course that changed from time to time.

Q. And what reply would be given to your requests made thus to the executive committee of the Island Development Company?

A. They were ignored.

Q. Did you on March 14th, 1927, receive a letter of that date, which I now show you?

A. Yes, sir.

30 Mr. McCarter: I offer that in evidence.

(Letter admitted in evidence and marked Exhibit D12.)

Mr. McCarter: This is on the letterhead of the Island Development Company, dated: "March 14, 1927. Addressed to Brigantine Hotel and Pier Com-

pany, attention Mr. William Richman, Dear Sir: In view of the fact that a certain letter which I wrote you dated June 7, 1926, seems to have miscarried, I am writing the present letter to conform with what I said in the past. I desire at this time to assure you that the Island Development Company is doing all within its power to assist the City of Brigantine in obtaining riparian grants for the City Park in front of the so-called first development. I should like to assure you further as assistant solicitor of the City of Brigantine that the city is making every effort to obtain these riparian grants itself. In accordance with your request I should at this time like to inform you that all the land lying between Eighth Street south to 14th Street south, and from 15th Street south to 32nd Street south, and between 33rd Street south and a point 100 feet westwardly from 40th Street south, extending from the landward or interior line of the boardwalk, which line is coincident with the landward or interior line of the city park, and the exterior line of said city park is and will continue to be subject to and encumbered by the provisions and conditions of the said park deed or agreement between Island Development Company and the City of Brigantine, dated April 15th, 1925, and that the strip of land lying between 32nd and 33rd Streets south, and extending southeastwardly 1700 feet from the interior line of the boardwalk, measured along 33rd Street south and 1650 feet measured along 32nd Street south, is not a part of said city park. It is free and clear of all restrictions and conditions excepting as set forth in the deed from Island Development Company to the Brigantine Hotel and Pier Company, the strip lying between 32nd and 33rd Streets south as above described. Very truly yours, Island Development Company, V. S. Haneman, Secretary."

Q. It already appears that no riparian rights of any kind have ever been obtained. Now, how soon was it, if you recall, after the receipt of this letter of March 14th that you consulted counsel?

A. July.

Q. Had in the meantime anything occurred between you on the behalf of the Atlantic-Brigantine Hotel and Pier Company and any of the officers or directors of the Island Development Company with  
10 reference to this matter, seen them again?

A. No action.

Q. I don't know why you won't answer my questions, Mr. Richman.

(Question repeated.)

Q. Had you seen them?

A. Had further consultations with them.

Q. Were you still in hopes that they would carry  
20 out the arrangements?

A. Yes, sir.

Q. Did they do it?

A. No, sir.

Q. So that in what month was it you consulted  
counsel?

A. As near as I can say it would be July.

Mr. Bourgeois: What year?

30 A. Twenty-seven.

Q. This bill was filed the following September?

A. Yes.

Cross-examination.

By Mr. Bourgeois:

Q. Mr. Richman, did I understand you to say that you were insisting that the Island Development Company, as a part of their agreement, should secure the riparian grant for this tract of land between 32nd and 33rd Streets?

A. I was insisting on them securing the riparian rights on the whole number one division. 10

Q. You can answer that question, can't you, for me?

A. Was I insisting on them securing the rights for this particular block?

Q. (Question repeated.)

A. And even further than that, yes, sir.

Q. I didn't ask you that. That you insisted on?

A. Yes.

Q. And that was the basis of your complaint and is the basis of your complaint now, is that right? 20

A. Not altogether.

Q. What is the basis of your complaint?

A. That our title policy and what we bought don't mean anything unless the riparian rights are secured in the whole number one division and dedicated properly.

Q. Then your contention is that the Island Development Company under its agreement was required to procure a riparian grant for all of the land described in the park, in the first division, or first section, is that right? 30

A. Yes, sir.

Q. Including the right for this lot?

A. We offered to buy that ourselves.

Q. You were going to buy that?

A. We offered to, to help the thing along.

Q. Then you were not going to—you were not just fighting for that, in other words you were going to pay that, you were going to apply for the riparian grant between 32nd and 33rd Streets?

A. We didn't apply, no.

Q. I know, but you were going to apply?

A. No, we were not.

Q. Who was going to make that application?

A. I gave the company a letter asking them to apply for it and charge it to us at the settlement.

Q. You thought it was going to be yours, you were going to get the riparian grant, were you?

A. Mr. —

Q. Withdraw that question. Was the reason that you asked them to get that riparian grant for you because you made this request of them between the time the agreement of sale was entered into and the time the settlement for the property was made, and at the time when the title to the ripa was in the Island Development Company?

A. We asked them to secure the riparian rights and charge it to us at settlement.

Q. Let's see what you did say. That is your signature?

A. Yes, sir. Want me to read it?

Q. If you will. You can, maybe, read it better than I can.

A. It is addressed to H. I. Eaton, Island Development Company. "Kindly obtain at our expense riparian rights on block 219, Brigantine Beach. This grant may be taken in the name of the Island Development Company and included in our deed when we make settlement. We will pay all expenses and costs involved for obtaining same."

(Letter offered, received in evidence by consent and marked Exhibit C6.)

Q. What difference did it make to you, Mr. Richman, whether there was a grant made by the state for the riparian rights to the other portion of the land than that immediately in front of your property, your upland, what did you care whether there was a riparian grant or not for the land within the park?

A. I wanted our title and deed to be something we could sell, I wanted it to be exclusive.

10

Mr. McCarter: How is that?

A. I wanted our deed and title policy, property we were buying, to be exclusive right outside of the boardwalk in the number one division, with the exception of 201.

Q. Now what difference does it make about the riparian grant, in your judgment, that is the riparian grant for other land than in front of your particular lot or block?

20

A. I felt other property owners would have pier rights just as much as we do unless the property was bought and paid for.

Q. And you went to a lawyer about that?

A. Yes, sir.

Q. And did you tell him your feeling about that?

A. Yes, sir.

Q. As you told me?

A. Yes, sir.

Q. Did he tell you that under the law, the state law, that nobody but the city could obtain the riparian right within the park area?

30

Mr. McCarter: The conversation between counsel and this witness is privileged and cannot be testified to by this witness unless waived, and I do not

think counsel consulted ever gave any such advice, because I don't understand it is the law.

Mr. Bourgeois: If your Honor please, I think we may because he says he thought he was suffering an injury and he called on the lawyer, and that the lawyer undoubtedly would have told him.

The Court: Sustain the objection.

10

Q. Did anybody ever tell you that under the law the riparian commissioners might not make a riparian grant within the limits of the park act, I mean of the park, did anybody tell you that?

Mr. McCarter: How can there be a park if there had never been an acquisition of the right of way?

Mr. Bourgeois: There can under the act of 1894.  
20 We have a park in Atlantic City, but we have not all the riparian grant.

Mr. McCarter: It has been held the park is not good against people who did not sign the park deed.

Mr. Bourgeois: Whoever said that?

Mr. McCarter: Court of errors.

Mr. Bourgeois: I tried to get them to say it for  
30 John White one time, but I didn't succeed. But, if your Honor please, that park is laid out and the Court has held when the city adopts an ordinance prescribing for the formation of that park, the park is there.

Mr. McCarter: You mean to say, Mr. Bourgeois,

that the law is settled in this state that a park can be created by the upland owner whether it be a municipality or a lot of individuals over a territory that is outside of the high-water mark without a grant by the state?

Mr. Bourgeois: I mean to say, if your Honor please, that the owners of land along the high-water mark of the Atlantic Ocean of a municipality, when the municipality passes an ordinance and the city joins in the passage of that ordinance or the dedication of the land for park purposes and lay that out beyond the high-water mark, that park is established, the park is there, it cannot be used for anything except the purposes that is designed under the act of 1894, which was still an open space. That is what I think you can have below the high-water mark. 10

The Court: That is an argument between counsel. 20

Mr. Bourgeois: Nothing at all, just an ordinary conversation is all.

Q. Mr. Richman, this agreement I notice, of purchase, which was signed between Mr. Hillman and the Island Development Company, and which was taken over by the Brigantine Hotel and Pier Company —

30

Mr. McCarter: Atlantic-Brigantine Hotel and Pier Company.

Q. — contains a proviso about the consideration, consideration should be \$150,000, part of it was to be on mortgage. Now, it contained the proviso, I

think, did it not, with relation to the building of the hotel?

A. Yes, sir.

Q. Do you remember that?

A. Yes, sir.

Q. It says that "It is further agreed by and between the parties hereto that should the second part, his heirs, successors or assigns, build or cause to be built upon the said described premises and  
10 open to the public on or before the 15th of June, 1926, a hotel containing at least 150 bedrooms, with 100 baths, costing not less than \$400,000, to be fireproof, or semi-fireproof construction, and also to assume any expense incurred by this company for the hotel plans prepared by Lenahan and Baker, architects, in Philadelphia, then in that case the \$75,000 mortgage will be cancelled of record and repudiated unto the party of the second part, his heirs, successors and assigns, as a discount on the  
20 purchase price." Was that hotel ever built?

A. No, sir.

Q. As I understood you in your direct examination the first dispute about this riparian right came up in November or December after the making of the agreement?

A. Yes, sir.

Q. And that continued to be a matter of dispute until the date of final settlement, June 16th, when the deed was delivered and the moneys were paid?

30 A. We paid the money, we didn't get the deed.

Q. You got it with the exception of the record, you took it to someone to record it?

A. No, all we took was that receipt for our money, all we got.

Q. I beg pardon?

A. All we got for our money was the receipt for the money.

- Q. What became of the deed?  
A. That was in their hands to put on record.  
Q. In their hands only as your agent to put it on record?  
A. We left it in their hands.  
Q. For record, for them to record for you?  
A. Yes.  
Q. As soon as it was recorded it was to be sent to you, was that true?  
A. It was undertaken to keep here. 10  
Q. I didn't ask you that at all.

(Question repeated.)

- A. Yes, sir.  
Q. In other words, they were to have it recorded for you?  
A. Yes, sir.  
Q. And send it to you?  
A. Yes, sir. 20  
Q. That was done?  
A. Yes, sir.  
Q. Now, Mr. Richman, there is one other thing I have forgotten. After that deed was delivered in 1926, did the Island Development Company offer to take that property back off your hands and pay you your money back?

Mr. McCarter: I object to the question. There is no such allegation in any of the pleadings or any point in it at all, directly immaterial. What difference does it make? 30

Mr. Bourgeois: This comes up with regard to the tender in the pleadings.

The Court: I will permit it.

A. Not to my knowledge.

Q. You never heard of it, or did you hear of it?

A. I said not to my knowledge. It wasn't made to me.

Q. Who was it made to?

A. Mr. Butler.

Q. And Mr. Butler made it to you?

A. He spoke of it in a general way, to all the directors for the company.

10 Q. And they refused, didn't they?

A. Yes, sir.

Q. That is all.

By Mr. McCarter:

Q. What was the offer as you understand it? What was the basis of it and what was the basis of the refusal?

20 A. Mr. Butler can answer that better than I.

Q. What was said to you? What did you know about it? Did you know anything about it? No offer was made to you, was it?

A. No, sir, and it is all verbal, it is all word of mouth, I haven't seen anything in writing.

Q. I didn't care anything about that. Did anybody from the company, the Island Development Company, talk to you about having tendered the deed?

30 A. In a general way at the directors' meeting it was talked over.

By Mr. Bourgeois:

Q. Directors' meeting, which company?

A. Of the Island Development Company.

By Mr. McCarter:

Q. When was that?

A. As near as I can remember, it would have been, well, I would say around August or September, 1925.

Q. The deed wasn't given?

A. No.

Q. The question is whether after the deed was delivered in 1926?

10

A. No, they never offered to take it back.

Q. What offer, not what mere loose talk about the proposition, what offer was made to you or brought to your attention before the deed was delivered? Just listen to that question. I don't mean loose talk about the project, but what offer, if any, before the deed was delivered, was made about retiring from this deal?

A. I didn't see anything definite, but the general understanding was that they were willing to refund the money.

20

Q. Won't you answer my question? Was any offer made before the deed was delivered to you by anybody authorized to speak for the Island Development Company about retiring from this deal, and if so, what?

A. No.

Q. Now, referring to this letter of September 2nd, 1925, in which you, speaking for the Atlantic Hotel and Pier Company, September 24, 1925: "Kindly obtain at our expense the riparian rights on block 219, Brigantine, New Jersey. This grant may be taken out in the name of the Island Development Company and included in our deed when we make settlement. We will pay all expenses and costs for obtaining same." As I understand your evidence, your construction, was right or wrong, but

30

your construction of the situation as it existed between the Island Development Company and your company was to the effect that the only pier right that could exist and should exist in front of section number one were in front of your lot 219 and lot 201, and that the rest was to be always open for park purposes, and that your claim was and is that the only way to keep that open and clear it for park purposes was by the proper person, namely the  
10 owner of the upland, to apply for the riparian grant of all that land, is that right?

A. Yes, sir.

Q. Now, having that view in mind, did you finally, in your talks with the people, in your endeavors to bring that situation about, go so far as to agree to pay for the expenses of that whole riparian grant that should be given in front of that land.

A. Of that one block, yes, sir.

Q. Of that one block?

20 A. Yes, sir.

Q. That was the compromise, wasn't it?

Mr. Bourgeois: I object.

The Court: Sustain the objection.

Q. What was that? How did you happen to do that? What led up to the conversation between you and the other people, they were saying what?

30 A. In conversation with Mr. Harris I says we want these riparian rights. Mr. Harris says all right, he says we will apply for them, Mr. Harris says we will apply for them under your instructions. Mr. Harris dictated that letter, writes that letter, in our own place, and I signed it, that is a copy which you have there.

Q. What insistence were you making at the time that you wrote that letter?

A. That we absolutely needed the riparian rights to make our title good and valid, and secure, that we could sell something that would be worth while.

Q. What riparian rights are you speaking of now?

A. Well, I am speaking of 219, also the whole division, but, of course, we are particularly talking about in front of block 219.

Q. Did you ever recede from the position, as you constituted the arrangement with them, in order to give you the exclusive pier right in 219, and the only other pier right being on block 201, that the riparian rights for the intermediate part should be obtained from them? Did you ever recede from that position?

10

A. No, sir.

Q. Had you ever, previous to this letter, agreed to pay, in so much of that riparian grant as was in front of your property?

20

A. No, sir.

Q. What led you to that proposal?

A. For this company to secure the balance of them.

Q. What?

A. For this company to secure the balance of them, Island Development Company.

Q. Did they say they would, if you did?

A. Never definitely.

30

Q. I beg pardon?

A. Never definitely.

Q. What did they say definitely or indefinitely?

A. These letters that we have answers the questions, they were trying to get the City of Brigantine, trying to secure them for the City of Brigantine.

Q. Did you hear the prices of the cost of a grant or riparian right in front of the entire section number one mentioned?

A. It was discussed in a general way that they could secure it at seven and a half a front foot, taking a leasehold.

Q. Talking about how much?

A. \$1500 a block.

Q. And that is forty or fifty thousand dollars, is  
10 it?

A. Yes, sir.

Mr. Bourgeois: How much?

A. Between forty-five and fifty thousand dollars.

Q. Had you ever, previous to writing the letter of September 24th, 1925, assumed or in any way manifested a willingness to pay the cost of so much of that grant that would be in front of 219?

20 A. No, sir.

Mr. Bourgeois: Objected to as immaterial.

The Court: Sustain the objection.

Q. Why then did you write the letter of September 24th, 1925?

A. I was anxious to get some action.

Q. Some action on what, you say?

30 A. From the Island Development Company on riparian rights.

Q. What riparian rights?

A. The whole number one division.

By Mr. Bourgeois:

Q. Mr. Richman, is it your contention that under

the agreement of April 18, 1925, if that is the date, 18th of April, 1925, the Island Development Company had agreed to secure the riparian rights in front of this entire first division? Is that your contention?

A. My contention is that the agreement they made with us don't mean anything unless they do secure the riparian rights in the whole number one division.

Q. I didn't ask you that at all. 10

(Question repeated.)

A. Yes.

Q. Is it not a fact that after this agreement had been made you understood that you were to secure the riparian rights yourself, that is the Atlantic-Brigantine Hotel and Pier Company was to secure the riparian rights for itself between 33rd and 32nd Streets? 20

Mr. McCarter: I object to that question. I don't think what he understood, if there was an arrangement that is proper, but this witness can't, on behalf of the Pier Company, give us an understanding of what was understood, or what was the idea. I think the question is inartistic and improper. If there was any arrangement that our company was to do, that would be proper, the record shows —

30

The Court: He has signed the letter concerning the riparian grant and the payment by his company, or his syndicate, I think now that it is proper on cross-examination to ascertain what his understanding of that matter was.

Mr. McCarter: I don't understand the question is directed now to this letter at all.

The Court: I will permit it.

(Question repeated.)

A. I will say no in the first place.

Q. Then why did you use this language: "Kindly obtain at our expense the riparian rights on block 219, Brigantine Beach, which may be taken out in the name of the Island Development Company?"

10 A. Because nothing had been done by the company.

Q. What?

A. Because nothing had been done by the company.

Q. And your company wasn't in a position where it could make the application itself, is that true?

A. We was in no position to make the application until we had the deed, and we hadn't the deed.

20 Q. Mr. Richman, wasn't that the reason that you wrote this letter to Mr. Eaton to take them out in the name of Island Development Company because your company was not at that time organized and did not have the title so it could make the application?

A. Our company was organized but we didn't have the title.

Q. That was the reason you didn't make the application yourself because you didn't have the title, isn't that true?

30 A. Not the whole reason.

Q. That was one reason, wasn't it?

A. No reason that they, Mr. Eaton —

Q. I didn't ask you that, I said that was one reason, wasn't it?

A. What?

Q. That you didn't take them out yourself, that

you were willing to have them taken out in the Island Development Company's name.

A. We had no right to take them out, no right to make an application for them.

Q. I know, but it was because you couldn't get them yourselves that you asked the Island Development Company to take them out for you and you would pay the expenses for it, isn't that true?

A. Partly.

Q. Isn't it wholly true?

10

A. No.

Q. Is it true as far as it goes?

A. Yes.

Q. But you had some other excuse, had you? You can answer that yes or no?

A. Yes or no don't give you a full answer.

Q. Yes it does.

Mr. McCarter: Go ahead, answer yes or no. I will give you a chance.

20

(Question repeated.)

A. Why we offered to pay for it?

Q. No.

A. Why we offered them?

Q. To get it?

A. Why we asked them to get it?

Q. In their name, yes.

A. No, nothing definite.

30

By Mr. McCarter:

Q. Now you said that one of the reasons that induced you to write that letter was that your company at that time had not title?

Mr. Bourgeois: I object, if your Honor please. He didn't say that. He said that one of the reasons he asked to take them out in the Island Development Company's name was after the writing of the letter.

Mr. McCarter: The language of the letter —

10 Mr. Bourgeois: — was because your company hadn't title to the upland. I ask you if there was any other reason than that, and if so, what it was? You said that was only a partial reason.

A. We felt that Mr. Eaton and Mr. Haneman were in contact with the department and they would get quicker action, secure more satisfaction than we would, being entirely in the outside parties, and not having a contract with the department.

20 Q. Were you aware of the fact that on the 16th of June, 1926, the Island Development Company applied to the Board of Commerce and Navigation for a grant in front of 219 and 201?

A. No, sir.

Q. Didn't know that?

A. No, sir.

Mr. McCarter: That is our case, except that offer.

30 Mr. Bourgeois: I want to offer in evidence a copy of an ordinance of the City of Brigantine.

Mr. McCarter: I should say that this offer is inadmissible, because, if I understand the certification, it was introduced on the fourth of August, 1924, and was not passed until the 18th of August,

1928, what it says. Now certainly an ordinance passed —

Mr. Bourgeois: If your Honor please, it was passed on the 18th of August, 1924. This certification was made on September 18th, 1928. That is when it was passed.

Mr. McCarter: "This is to certify the above is a true and correct copy of an ordinance regularly introduced on August 4, 1924, and regularly passed on August 18, 1928, by the Common Council of the City of Brigantine and approved by the Mayor on August 18th, 1928." 10

Mr. Bourgeois: The certification is wrong. It says at the top there passed first and second reading August 4th, 1924, passed the third and final reading August 18th, 1924, approved by the Mayor August 18th, 1924, so may I have this in and I will have this certification fixed. 20

(Certified copy received in evidence and marked Exhibit C7.)

Mr. Bourgeois: I have sent for a copy of the certificate of incorporation of the Island Development Company for the purpose of offering it in evidence to show that the Island Development Company has power to guarantee these bonds to the Chelsea National Bank. 30

HOWARD G. HARRIS, SWORN.

Direct examination.

By Mr. Bourgeois:

10 Q. Mr. Harris, I show you D8 and ask you to examine that price list and tell me whether or not that was the price list that was in effect when the sale, or when the agreement was made between the Island Development Company and Hillman that calls for the price of this block 219 being \$100,000?

A. It evidently was not the price list in force at that time. We issued price lists very rapidly in those earlier days.

Q. And the agreement provides for the consideration being \$150,000?

A. Yes, sir.

20 Q. Was there ever any statement by you made to Mr. Butler or to Mr. Richman that this agreement of August 18, 1925, was to include your securing the riparian grant for any of the land in front of Brigantine?

A. No.

Mr. McCarter: I object. That wasn't the evidence of those gentlemen.

30 Mr. Bourgeois: That was what Mr. Richman said and what Mr. Butler said, only Mr. Butler didn't make his quite so broad.

The Court: Mr. Butler's wasn't as broad as that.

Mr. Bourgeois: He confined his to block 219.

The Court: Sustain the objection.

Q. Did you ever make any statement to Mr. Butler that the Island Development Company would secure the riparian rights for the land between 32nd and 33rd Streets and beyond the high-water mark?

A. I did not.

Q. Did you ever make any statement to Mr. Richman that the Island Development Company would secure for the Atlantic-Brigantine Hotel and Pier Company the riparian grant for the land lying in front of block 219? 10

A. At our expense?

Q. Yes, at your expense?

A. I did not.

Q. Did you ever make any promise to him that the Island Development Company would secure the riparian grants within the limit of the park act in front of the first division?

A. I did not. 20

Cross-examination.

By Mr. McCarter:

Q. How many previous price lists, Mr. Harris, were there than the one that has been offered in evidence and which you looked at?

A. Previous to this one I think there were three.

Q. And what is there about this that enables you to give the date when it was issued? 30

A. The price list is dated, but the difference in price that is quoted on there and the price we sold for shows there was another price list prevailing.

Q. You mean the price of block 219?

A. Yes, sir.

Q. Will you say that there was any difference between previous price lists and this one with reference to block 219 than the purchase price?

A. You mean in reference to special terms? My recollection is block 219 was not quoted prior to this price list coming out, and directly after this came out we had, as a company, made up our mind we would construct a hotel thereon and had our plans from Lenahan and Baker, of Philadelphia.

10 Q. Have you any of the previous price —

Mr. Bourgeois: Wait a minute. He hasn't finished his answer yet.

A. During that period this purchaser appeared on the scene and wanted to buy the block and carry through our undertaking. The company was glad to be relieved of the construction of a hotel, and created a reward to them if they would carry it  
20 through by rebating half of the price under certain conditions.

Q. Has the company, you or anybody connected with the company any of those previous prices?

A. I couldn't answer that. I am no longer connected with the company as an officer.

Q. Well, did they keep a file?

A. They were supposed to keep a file of all price lists.

30 Mr. McCarter: Will you ask the gentlemen to produce the file of all prices?

Q. Are you positive that the previous price list did not refer to block 219?

A. Not positive, no, just recollection.

Q. Is it your idea that this price list is subsequent to what?

A. Prior to this sale.

Q. Prior to this sale?

A. Yes, sir.

Q. Which is it?

A. Prior to the sale.

Q. Prior to the sale?

A. Yes.

Mr. Bourgeois: That is what he said before.

10

Mr. McCarter: Yes, that is what I thought.

Q. How long prior?

A. What is the date of that agreement?

Mr. Bourgeois: Eighteenth of August, 1925.

The Court: No, eighteenth of April, not August.

Mr. Bourgeois: Eighteenth of April, 1925.

20

A. This price list is dated April, also, if I remember.

Q. This price list seems to be dated April 1, 1925, two—M—two thousand, doesn't it?

A. Yes.

Q. So this price list evidently was printed in quantity two thousand and on the first of April, 1925?

A. Yes, two weeks prior to this sale.

30

Q. Now, do you say that between the first of April, 1925, and the 17th of April, 1925, there was another price list?

A. There might have been. It isn't likely that close together, though we were issuing them pretty close.

Q. So that then at least on the first of April, 1925, this price list was issued by the company?

A. Yes.

Q. Block 219 with full pier rights, unrestricted, what did that mean?

A. Our interpretation of that was this, that a full pier right, the same as in Atlantic City, meant that it had no control that would prohibit taking various admissions, making sales, rentals and so forth, on  
10 the oceanward side of the boardwalk.

Q. You didn't say anything about pier rights in front of block 207, did you, or 8, 9, or 15, or 16, or 17, did you?

A. They didn't carry pier rights.

Q. Exactly, but block 219 you do make the representation that is contained in print?

A. Yes, sir.

Q. And it would be sold for \$100,000 to a purchaser who would build a pier, couldn't build a pier  
20 without pier rights, could you?

A. That price list —

Q. Will you answer my question?

A. On the date of the issue of that price list, which was authorized by the Board of Directors, that was the price of the block of land.

Q. Yes, \$100,000 to a purchaser of block 219 who will build a pier 500 feet long, and you knew perfectly well that such a pier could not be built unless the right to build it had been obtained?

30 Mr. Bourgeois: I object, if your Honor please, question of law.

The Court: Sustain the objection.

Q. Mr. Harris, where was it contemplated that

there should be a pier on this first development besides in front of block 219?

A. On the present site where the pier is constructed, block 202, I think, is the number.

Q. 201?

A. 201.

Q. And they were to be the only two piers erected on the entire development number one?

A. On the number one development, yes, sir.

Q. They were to be the exclusive piers? 10

A. Yes, sir.

Q. I show you exhibit D5, which is the deed of the Island Development Company to the City of Brigantine. Do you recognize it?

A. Yes, sir.

Q. This was a conveyance for park purposes?

A. Yes, it was.

Q. At the time that that deed was made the Island Development Company owned this land on all of the first development? 20

A. It did.

Q. Did you at that time realize that it was up to your company to get a riparian grant —

Mr. Bourgeois: I object.

Q. One moment—for the property covered by the park?

Mr. Bourgeois: I object as irrelevant and immaterial. 30

The Court: Sustain the objection.

Q. You knew, did you not, Mr. Harris, that the company had first applied to the board of commerce and navigation for a grant for the whole of the prop-

erty in the first development except block 219 and 201, did you not?

A. I don't think the company ever applied for the full riparian grant of number one that you mention except to get a price on that, so we could quote to the people to whom we had sold.

Mr. McCarter: One moment. I move that answer be stricken out as not responsive, the purpose of the  
10 application is utterly irresponsive.

The Court: Sustain the objection.

Q. I show you the application that is offered in evidence (D4) the whole file marked Exhibit D4. You were familiar with the fact that application was made?

A. I don't recall it.

Q. You don't recall?

20 A. No.

Q. I call your attention to your letter of June 16th, 1926, I say your letter, the letter signed by Mr. Eaton to the board of commerce and navigation to the effect, "Will you please add to our recent application for riparian grants on the beach front blocks 219 and 201 which we would like included in the grant." Were you aware of that?

A. Well, Mr. Eaton received his authority directly from the board, and my recollection on it is not clear  
30 as to dates. I know such authority was issued.

VINCENT S. HANEMAN, SWORN.

Direct examination.

By Mr. Bourgeois:

Q. Mr. Haneman, you are secretary of the Island Development Company?

A. Yes, sir.

10

Q. I show you what purports to be a certified copy of the certificate of incorporation of the Island Development Company and ask you if that is a certified copy of that certificate of incorporation?

A. Yes, sir.

Q. Is that the certificate of certification that came with it from the Secretary of State's office?

A. That is right.

Q. Tell me whether or not the pages following that certificate are the original pages that came from the Secretary of State's office?

20

A. They are.

Q. Not a recopy of them, but the original papers?

A. The original papers that were sent to the Secretary of State for certification.

(Certified copy offered in evidence.)

Mr. McCarter: What is the materiality?

30

Mr. Bourgeois: They have it in their minute book. I never have seen it that way before. Maybe it is customary to do it. May be my ignorance.

The Court: Mr. McCarter asked what is the materiality?

Mr. Bourgeois: I offer it, Attorney General, to show the authority of the Island Development Company to guarantee the bonds of the hotel company.

(Certified copy admitted in evidence and marked Exhibit C8.)

TESTIMONY CLOSED

10

HOWARD G. HARRIS, recalled.

Direct examination.

By Mr. Bourgeois:

Q. Mr. Harris, you have lived in Atlantic City or around Atlantic City how long?

20 A. Since 1880.

Q. Have you seen maps, earlier maps of Brigantine than those within the last four or five years?

A. Yes, indeed.

Q. Will you tell me where the high-water line of Brigantine was say back 1880 or those early maps as compared with the present high-water line?

Mr. McCarer: I object.

30 Mr. Bourgeois: I don't mean to limit it exactly, but I want to know whether further inland or further out.

Mr. McCarter: I can't see what difference it makes, what has it got to do with this case?

The Court: Do you object?

Mr. McCarter: Yes, sir.

The Court: Sustain the objection.

Mr. Harris, can you tell me whether or not there were large areas of land, lying oceanward of the present high-water mark of the Atlantic Ocean in front of Brigantine that was washed away by severe storms within the last forty years?

Mr. McCarter: Object to the question.

10

The Court: Sustain the objection.

Mr. Bourgeois: I want to explain to your Honor what it is for, if you want me to.

The Court: I think I understand.

Mr. McCarter: Is the minute book in evidence, do I understand?

20

Mr. Bourgeois: No, just the certificate of incorporation.

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VINCENT S. HANEMAN, recalled.

Direct examination.

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By Mr. McCarter:

Q. Do the minutes contain any authority or resolution with reference to the price-list of April first, 1925?

A. My recollection is no.

Q. Look and see.

A. It would be rather a long job to look through all these minutes, we had a meeting every week, and sometimes two meetings a week, but I can state with accuracy that there is no reference to these prices as such fixed in the minutes. That was left with the executive committee with power to act.

Q. Did the executive committee keep a set of minutes?

10 A. No.

Q. Who were members of that committee?

A. At what time, in 1925?

Q. In 1925.

A. Why John Murtland, Mr. Fisher, Victor S. Fisher, Isaac Bacharach and H. G. Harris.

Q. Do the minutes disclose any action by the board with reference to the application for a riparian grant that is dated 12th of May, 1926?

20 A. I would have to look through the minutes to find that. My recollection is that a blanket authority was given to Mr. Eaton in 1923 or 24 and subsequently to myself to transact business with the board of commerce and navigation. We were having considerable trouble with them.

Q. Never mind about your trouble. Please refer to your blanket resolution.

A. When is that, 1925?

Mr. Bourgeois: 1926.

30

Q. 1926 is the application.

A. That will take considerable time for me to thumb through the minutes from the inception of the company here.

Q. You take the time.

A. The first resolution I find here is one dated

March 16th, 1923. "Following resolution was offered and read and on motion adopted as read, 'Be it resolved that Joseph Thompson be and he is hereby authorized to apply to the board of navigation for a lease of the riparian rights around the entire Island of Brigantine, said lease to carry the option to purchase said rights.' "

Q. What is your next authority?

A. I should say, without going through these minutes, that that was the authority from 1923 until 10 date, either Mr. Eaton or Judge Thompson or myself have acted under Judge Thompson's direction, under this resolution, but I will continue to run through.

Q. I wish you would.

A. All right.

(Witness withdrawn.)

20

CLEMENT B. RICHMAN, SWORN.

Mr. McCarter: The evidence of this witness, your Honor, I can't honestly say I think is strictly rebuttal. I didn't know that the witness knew certain facts that have been called to my attention since we closed our main case, and I would like an opportunity to examine him upon what representations 30 were made by Mr. Harris to him at the time of the purchase, although that is not strictly rebuttal. I didn't know that the witness —

The Court: I think you may be permitted to do so, and Mr. Bourgeois has the opportunity to rebut. Proceed.

Direct examination.

By Mr. McCarter:

Q. Were you one of the syndicate that was interested in the purchase of this property?

A. Yes.

Q. Previous to the signing of the agreement did you have any conversations with or hear any remarks made by Mr. Harris, president of the Island Development Company, with reference to the land under water oceanward of the high-water line, if so, what?

Mr. Bourgeois: Objected to as irrelevant and immaterial and not competent.

The Court: I will permit it. You can answer the question.

20

A. Yes, about that time Mr. Butler and I both, there was representations made to me as well as Mr. Butler, that this block had full pier rights, and block 201 with full rights, also the block 201, all other beach front was excepted, or was dedicated, had been dedicated to city park, and these would be the exclusive pier sites in division number one.

Q. When you said this property, which property did you refer to?

30 A. 219.

Q. Do you know—perhaps you do and perhaps you don't—the prices at which the lots other than 219 and 201 were listed and sold?

Mr. Bourgeois: Objected to as irrelevant and immaterial.

The Court: Sustain the objection as the question is now formulated.

Mr. McCarter: It is in support of the allegation of the bill to which your Honor directed attention this morning.

The Court: Yes, but you don't limit to any time at all.

Q. I mean anterior to the agreement of April 19, 1925, do you know the price listed by the Island Development Company for these front blocks on the ocean other than 219 and 201?

10

A. Yes.

Mr. Bourgeois: My objection goes to that.

The Court: Certainly.

20

Q. What was it?

A. What prices quoted? Well, I directly know from the price-list and also —

Q. What was the price?

A. 220 which was directly alongside of, absolutely know that that was sold for \$50,000, also 218, saw it on price-list of \$50,000, and understood a man by the name of Patterson bought that lot, an up Jersey man.

Q. I show you Exhibit D8, and ask you if you recall ever having seen one of these price-lists previous to the agreement of April 19, 1925?

30

A. Yes.

Q. Do you know when and where you saw it?

A. I judge where.

Q. Who gave it to you?

A. I got it at the office, was sent to me, they were sent to me, have been sent to me at times.

Q. By whom?

A. By the Island Development Company, I got most of them right from the office, but I have had one sent to me, one or two.

Cross-examination.

10 By Mr. Bourgeois:

Q. Do you know about the Island Development Company offering to buy that property back again in 1926 from you?

Mr. McCarter: Objected to, not cross-examination

20 The Court: Sustain the objection, not cross-examination.

Q. How do you know the price of these lots, what they were sold for?

A. The price of the lots?

Q. Yes, blocks, you said one block was sold for \$50,000, you know, how do you know it?

A. I was one of the purchasers of block 220.

Q. How about the other block?

30 A. The other block I knew by seeing the formal price-list, number 220 at the price-list of \$50,000.

Q. That is all you know about it, price-list?

A. Price-list, and know that I bought one of them.

Q. But you didn't buy 218, how did you know what that brought?

A. On the price-list, also I conferred with a man that bought it by letter.

Q. I see, hearsay.

A. Conferred with him by letter.

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HOWARD G. HARRIS, recalled.

Direct examination.

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By Mr. McCarter:

Q. Can you give us a price in April, 1925 of the blocks in the first development on the ocean front other than 219 and 201?

Mr. Bourgeois: Objected to as irrelevant and immaterial.

20

The Court: Permit it.

A. During 1925? We first offered beach front blocks in 19—I am sure the date, we first offered them at thirty thousand a block, our next schedule price was fifty thousand a block.

Q. I am asking you in April, 1925?

A. I wouldn't confine myself to date.

Q. Have you no recollection of the block prices for lots of this character other than the particular pier lots in April, 1925?

A. I have not.

Q. Sir?

A. I have not. We have so many scheduled prices I can't—price-lists will speak for themselves.

Cross-examination.

By Mr. Bourgeois:

Q. Mr. Harris, what was your next price after \$50,000 a block?

A. I think for a short time, week or two we had a schedule of \$75,000 a block.

Q. And then what?

10 A. Then a hundred thousand a block, and so on up.

Q. To how much?

A. I was a member of a syndicate paid a hundred and eighty-five thousand dollars for a block.

Q. That wasn't block 219 nor block 201?

A. It was block 206 is my recollection of it.

Q. But it wasn't either of those two?

A. No.

20 Q. Now, you made an offer to repurchase this block 219 from the Atlantic-Brigantine Hotel and Pier Company in 1926, as I understand the testimony is?

A. Yes.

Q. What was the state of the market, the real estate market over there at that time?

Mr. McCarter: I object.

Mr. Bourgeois: If your Honor please, I think this is relevant.

30

The Court: I will hear you, Mr. McCarter.

Mr. McCarter: Do I understand that is the state of the market in what year?

Mr. Bourgeois: 1926.

Mr. McCarter: At the time of this deed?

Mr. Bourgeois: After this deed, a few months after the deed.

Mr. McCarter: What is the materiality?

Mr. Bourgeois: If your Honor please, the materiality is that they have examined him with regard to price-list, I want to find out what the price-list was afterwards, is cross-examination, he is asking about some particular lots, he is asking about prices. 10

The Court: Sustain the objection.

Mr. Bourgeois: I am going to ask this question for some other reason.

Q. What was the state of the market, that is the selling price of lots over there in 1927, in September I think, 1927, as compared with 1926 sometime? 20

Mr. McCarter: I object, our motive for bringing our suit, taking our position has nothing to do with the case at all, may have gone up or may have gone down, and the evidence shows that a correspondence was going on and these people were consulting with reference to this thing, to say the least at the time, down until a month before counsel were consulted, and I think the state of the market in the meantime is of no avail. 30

The Court: Sustain the objection.

VINCENT S. HANEMAN, recalled.

Direct examination.

By Mr. McCarter:

10 A. On February 24th of 1925 a motion duly made and seconded and adopted by a vote of the board of directors, that Harold I. Eaton, engineer, was instructed to make a survey of Braddock Thoroughfare and make application, together with Joseph Thompson for riparian grants.

The Court: Of course, that doesn't help us:

A. That is not particularly in point there. There are several others and not generally in point either.

20 Q. Any other resolutions concerning the beach front?

A. No, not up until March of 1925.

Mr. McCarter: After that time are there any other applications made down to June 16th, 1926? I would like to know if any resolutions were passed with reference to applications for riparian rights down to June 16th, 1926.

A. That is just on the beach front?

30 Q. Certainly, that is the one we are talking about.

A. There are a number of others. Under date of April 6, 1925, on motion duly made and seconded and adopted by a vote of the board, Mr. Eaton and Judge Thompson were authorized to apply for all riparian grants that the company might require.

Q. Go on, any more?

(Witness withdrawn.)

HOWARD G. HARRIS, recalled.

Direct examination.

By Mr. McCarter:

Q. Mr. Harris, you testified to a purchase by you as a member of a syndicate of a certain block for a large sum of money. That purchase wasn't direct from the Island Development Company, was it? 10

A. No, sir.

Q. It was from whom?

A. I don't recall.

Q. What?

A. I don't recall.

Q. But you know as a matter of fact this same block had been sold sometime before to persons to whom or under whom you had purchased for fifty thousand dollars, don't you? 20

A. Probably thirty.

Q. Thirty?

A. I don't know what price they paid.

Q. And your purchase was when?

A. Sometime in 1926.

Q. Sometime?

A. July and August.

Mr. Bourgeois: Have you sold it? 30

A. Oh, yes, we cut it up in lots and sold it and realized \$250,000.

Mr. McCarter: Your Honor, please, I have just had my attention directed to the fact that the allegations of our bill of complaint in our suit and of

the counter-claim in the other suit are hardly as broad as I think they should be, and as the evidence indicates the facts to have been with reference to the character of representations that were made and upon which we relied. For instance, the third paragraph of the bill of complaint in our case, which is the statement of what the representation was, reads as follows: "On or about April 18, 1925, members of the syndicate conferred with Howard G. Harris, president and Vincent Haneman, secretary of Island Development Company, who then and there made the definite representation that Island Development Company could and would deliver said premises with warranties as in paragraphs one and nine of this bill set forth or described." And I think the only other allegation in the bill that appears upon the character of the representations is found in paragraph nine, "And has by their inducement to said purchaser, defendant Island Development Company, through said Howard G. Harris, president, covenanted that the remaining Brigantine ocean front between 8th Street south and 14th Street south, between 15th Street south and 32nd Street south, and between 33rd Street south and a point 100 feet of 40th Street south, extending from the inside line of the boardwalk, which is coincident with the inland line of the proposed city park, and the exterior line established by the State of New Jersey, known as the riparian line, being the exterior line of said city park, would be and forever remain subject to the restriction of the city park deed, and in that manner dedicated to the public permanently as a city park, and covenanted further that to accomplish these results, to wit, the establishment of said city park, would deliver to said purchaser of said land oceanward of block 219, an unrestricted and unencumbered site, and said Island Development Company would war-

rant and purchase the riparian rights to the same; and then immediately dedicate the said city park in the manner aforesaid, and forthwith convey to said purchasing syndicate, in their name, the said land oceanward of block 219, unrestricted and unencumbered."

I think those are the only allegations or misrepresentations that the bill contains and that they are practically the same in the counter-claim. Now, I respectfully ask leave to amend these two statements or to add a further one, to cover the representations that were made as to what had been done as to an addition to, or what would be done making that general distinction. Your Honor will recall that we have shown by the evidence of at least three witnesses that certain representations were made with reference to having had the pier rights, and that thereby that pier right, with the exception of block 201 were to be exclusive, and that thereby the intervening property would, as we contend, necessarily have to be a park, and in pursuance of that scheme the park deed was made. Now, the evidence is in. I don't want it to be claimed hereafter that there was no allegation to cover that phase of the case, and I am perfectly willing that any new evidence should be offered by counsel if he wants to. We are content with the evidence that is already in on the subject, but I don't want hereafter to be met with the claim that the proof went further than the allegation—and therefore, to that extent was improper.

Mr. Bourgeois: If you will reduce that amendment to writing or dictate it so I can know exactly what the amendment is to be, then I can tell whether or not I want to offer any evidence on it.

Mr. McCarter: I will do that right away, Mr. Bourgeois, but I can't do it at this moment.

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VINCENT S. HANEMAN, recalled.

Direct examination.

10 By Mr. McCarter:

A. On September 21, 1925, motion duly made and seconded and adopted by vote of the board that the board that the office of the Island Development Company were authorized and instructed to enter into a lease with the board of commerce and navigation for the beach front of Brigantine at \$7.50 per foot, for 25 years, bearing interest at 7% a year. January 18, 1926, Mr. Harris made a report on the situation of  
20 the board of commerce and navigation and the War Department in reference to riparian grants. On motion duly made and seconded and adopted by a vote of the board, the question of settlement with the board of commerce and navigation and the War Department and terms thereof, was left with the president with power to act, particularly in reference to riparian grants.

The Court: Anything further, Mr. Haneman?  
30

A. No, I have gotten up to June of 1926, there is nothing further.

Mr. McCarter: How about through June?

A. Well, that is as far as I have in this book, up to June first, 1926.

By Mr. Bourgeois:

Q. How far were those applications for? Did it got to the exterior line or only to the interior line of the boardwalk?

Mr. McCarter: They will have to speak for themselves.

(Further testimony adjourned until September 28, 10 1928.)

Atlantic City, New Jersey.

November 22, 1928.

(Trial of the cause resumed at 9:15 A. M.)

(Appearances as before noted.)

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VINCENT HANEMAN, recalled.

Direct examination.

By Mr. Bourgeois:

Q. Mr. Haneman, you have testified that you were some employe of the Island Development Company?

A. That is right; secretary.

20 Q. Did you, within a month prior to the 12th day of April, or on the 18th day of April, which was the date of the agreement between Island Development Company and Mr. Hillman, for the sale of block 219, ever state to Mr. Hillman or any other person that the Island Development Company had full pier rights unencumbered and unrestricted in the lands under water in front of block 219?

A. No.

30 Mr. McCarter: One moment, before that question is answered I want to object to it. Your Honor will recall that we asked for that amendment touching the past situation. Our evidence was already in. We had offered no new evidence in support of our amendment and the only proof that we have offered in support of our amendment is the evidence with

reference to what Mr. Harris, the president, said and the evidence of the price-list which had certain representations printed on it. We haven't given any testimony to the effect that Mr. Haneman made any such representations and it seems to me, therefore, in view of the fact that we have offered no evidence in support of the idea that Mr. Haneman made the representations, it is improper and irrelevant for Mr. Haneman to deny what has not been proven.

Mr. Bourgeois: Your Honor, their amendment is this, when the testimony went in before, this question of the pier rights was just general, and after the testimony was in then they wanted to amend, and I agreed that they might amend if the amendment were reduced to writing, and if it was new matter we should have the right to answer it. Their amendment is this, "On or before the time mentioned in paragraph three of this pleading, the president and other officers"—now, that wasn't in the original bill at all—"of Island Development Company further represented that said company had full pier rights, unencumbered and unrestricted, in the lands under water in front of block 219."

Now, if they have put their evidence in so as to cover that phase of it and then amended their pleadings to meet it, I certainly have a right to deny it, and then they go on, "And that the balance of the property in front of Development Number 1 in Brigantine, except block 201, was effectually dedicated for public park purposes." Now, they have put in there, "effectually." The testimony shows, as I recall, that there was a deed made by the Island Development Company to Brigantine for lands lying outside of the boardwalk, inland line of the boardwalk, excepting block 201 and 219, but whether effectually dedicated or not, that has not been in

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this case at all, and the other clause is that block 219 was the only block in said development, except block 201, in front of which a pier could be erected, and I confess I don't know what their testimony was because I had in mind to see whether this applied to this generally, they may have put in their testimony that would affect this amendment, and if that is so I certainly have the right to deny it.

10 The Court: Yes, but if Mr. McCarter now states on the record that there is no such testimony, and he waives it, could the —

Mr. Bourgeois: If that is the case, if I may rely that there is no such testimony to support this in the case.

Mr. McCarter: To support what?

20 Mr. Bourgeois: No testimony in the case to support the proposition that there was a statement made by the officers or directors that the land sold to Mr. Hillman was sold with full pier rights, unencumbered and unrestricted in the lands under water.

30 Mr. McCarter: No, I don't say that. What I say is that there is no evidence, we offered no evidence showing that Mr. Haneman—if that is the gentleman's name—made any such representation. That is the point. We rely on the proof that is in. Now, counsel has had that proof in his possession six weeks and he knows just as well as I do what is what. We offered the amendment to support it and it doesn't seem to me, in view of the hurry your Honor is in to get this other case on, that we ought to now spend time having other people, whom we

haven't said anything about, come here and say they didn't say anything.

The Court: Upon the statement of Mr. McCarter that there has been no testimony that this witness ever made such a statement, I will exclude the question.

Q. In any meeting of the directors or the executive committee or officers of the Island Development Company did you ever hear any statement made to Mr. Hillman or any other person within a month prior to the 18th of April, 1925, to the effect that the Island Development Company had full pier rights, unencumbered and unrestricted, in the lands under water in front of block 219? 10

Mr. McCarter: Object to that for the same reason.

20

The Court: I will admit that.

A. No.

Q. Did you at any time prior to the 18th of April, 1925, or within a month prior thereto, ever any person state, that is, any director or member of the executive committee, state that the lands under water of development number 1, except in front of block 201 and 219, was effectually dedicated for public park purposes? 30

A. No.

Cross-examination.

By Mr. McCarter:

Q. Well, Mr. Haneman, you, I think, were secretary of the company?

A. That is correct.

Q. Who was the president at the time in April, was it, 1920, whatever it was?

10 A. 1925.

Q. 1925?

A. H. G. Harris.

Q. What other occupation had you outside of secretary of this company?

A. Well, I was an attorney-at-law at that time and in the nature of a resident counsel, if you want to class it that way.

Q. You attended to your private business as well as secretaryship of this company?

20 A. Well, I had such a little private business that it was negligible.

Q. Were you the city counsel for the municipality of Brigantine?

A. That is right.

Q. You were not always with Mr. Adams?

A. Mr. Harris?

Q. Mr. Harris, I mean. You don't follow him around like a dog?

A. No, that is true.

30 Q. You were not always in the office of the company?

A. Not every minute of the day, no.

Q. About that time, namely in April, say, 1925, what was the permanent office force?

A. How many, do you mean, how many were there on the permanent office force, or who composed it?

Q. Yes.

A. An accountant and his assistant, both males, four girls, in addition to Mr. Harris and myself.

Q. And the office was over on the island?

A. No, the office was the corner of North Carolina and Atlantic Avenues.

Q. Here?

A. That is right.

Q. Where did you live at that time?

A. I lived at—well, about that time there 6 South Bartram Avenue, Atlantic City, or else at Victoria 10 and Atlantic, Ventnor.

Q. In Atlantic City?

A. In Atlantic City or Ventnor.

Q. Where was your law office?

A. In the same office as the Island Development Company office.

Q. There has been offered in evidence by Mr. Bourgeois, on behalf of the Island Development Company, a deed made the 15th of April, 1925, between the Island Development Company and the 20 city of Brigantine. I have in my hand a copy of that deed and exhibit, and I see it purports to be attested, so far as the Island Development Company is concerned, by V. S. Haneman, is that you, secretary?

A. That is correct.

Q. In fact, you prepared that deed, didn't you?

A. I believe I did prepare that deed. It was either prepared by myself or by Thompson & Hanstein.

Q. Well, you looked it over before you attested 30 it and were familiar with it?

A. That is right.

Q. Now, Mr. Bourgeois has also offered in evidence a copy of an ordinance that seems to have been approved by the Mayor of Brigantine on the 18th of August, 1924, with reference to the dedication of the park, did you prepare that ordinance?

A. No, sir.

Q. You were familiar with it?

A. I am familiar with it now. I wasn't familiar with it at the time.

Q. In August, 1924, you had no relation with this enterprise?

A. None at all.

Q. When did you become the Brigantine solicitor?

10 A. In 1925.

Q. When did you first see or become familiar with that ordinance?

A. With the ordinance? About the time of the deed.

Q. That is what I mean.

A. At the time of the date of the deed.

Q. At the time of the making of the deed by the company, dated April, 1925, you, of course, with relation to the ordinance, became familiar with the  
20 ordinance?

A. That is correct.

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HOWARD G. HARRIS, recalled.

Direct examination.

30 By Mr. Harris:

Q. Mr. Harris, you were president of Island Development Company in 1925?

A. I was.

Q. Did you on the 18th of April or within a month prior thereto make a statement to Mr. Hillman, Ulysses Hillman, or any other person that

Island Development Company had full pier rights, unencumbered and unrestricted, in the lands under water in front of block 219?

A. I did not.

Q. Were you present at the executive committee meetings?

A. I was.

Q. And the directors' meetings?

A. Always.

Q. Did you, during the period I have just before 10 mentioned, hear anyone make a statement to Mr. Hillman or anyone else, that the Island Development had full pier rights, unrestricted and unencumbered, in the lands under water in front of block 219?

A. I never did.

Q. Did you on the 18th of April, 1925, or within a month prior thereto, state to Mr. Hillman or any other person that the lands under water in front of development No. 1, except in front blocks 201 and 20 219, was effectually dedicated for public park purposes?

A. No. If I made any statement at all it was that we had conveyed —

Mr. McCarter: One moment. I don't think the answer, "If I made any statement it was to this effect or that effect—" He is asked a specific question whether he made it and his answer should be 30 yes or no.

A. No.

Q. You didn't make it?

A. No.

Q. Did you at any meeting of the directors or of the executive committee, hear any member of the

executive committee or any director state to Mr. Hillman or any other person that the land under water in front of development No. 1, except in front of blocks 201 and 219, was effectually dedicated for public park purposes?

A. No.

Cross-examination.

10 By Mr. McCarter:

Q. You as president of the company, Mr. Harris, signed the deed which your counsel offered in evidence dated the 15th of April, 1925, between the Island Development Company and the city of Brigantine, did you not?

A. I did.

Q. That was the 15th of April, 1925, that you knew what was in that deed?

20 A. Yes, sir.

Q. Beg pardon?

A. Yes, sir.

Q. And you undertook as an officer of the company to sign a document that purported to convey to the city of Brigantine the land under water in front of development number 1, didn't you?

Mr. Bourgeois: I object. The deed would speak for itself.

30 The Court: Sustain the objection.

Q. Well, your counsel has also put in evidence a copy of an ordinance of the city of Brigantine of certain lands under water which seems to have been approved by the Mayor of Brigantine on the 18th

of August, 1924. You were familiar with that ordinance?

A. I knew there was such an ordinance passed by the city, yes, sir.

Q. About the time that it was passed?

A. Yes, sir.

Q. And you knew that the deed to which I have alluded was an effort on the part of the Island Development Company to perform its part —

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Mr. Bourgeois: Object.

Q. Don't answer the question until I have finished it—was an effort on the part of the Island Development Company to carry into effect the dedication that had been attempted to be made that ordinance; did you not?

Mr. Bourgeois: I object, if your Honor please. That asks for a conclusion, and your Honor will pass upon what that deed purports to carry into effect. 20

The Court: Sustain the objection.

Mr. Bourgeois: If your Honor please, the other witnesses I have here are all executive committeemen against whom they have not alleged any one of them that these statements were made, so I won't offer any further evidence. 30

Mr. McCarter: Now, your Honor will recall possibly that during the progress of the hearing, young Mr. Tooker, who was here from the board of commerce and navigation, stated in reply to some question that there had been two riparian grants

made of intermediate lots, and we were given the right to procure copies of those two conveyances and I have them here certified, and I would like to offer them in evidence.

The Court: You may do so.

(Certified copies received in evidence and marked Exhibits B1 and B2 of this date.)

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EXHIBIT C1.

BOND.

KNOW ALL MEN BY THESE PRESENTS,  
 THAT It, ATLANTIC-BRIGANTINE HOTEL  
 and PIER CO., a corporation under and by virtue  
 20 of the laws of the State of New Jersey, having its  
 principal office in the City of Atlantic City, County  
 of Atlantic, and State of New Jersey, (hereinafter  
 called the Obligor) is held and firmly bound  
 unto ISLAND DEVELOPMENT CO., a cor-  
 poration under and by virtue of the laws  
 of the State of New Jersey (hereinafter called  
 the Obligee) in the sum of ONE HUNDRED  
 FIFTY THOUSAND DOLLARS lawful money of  
 30 the United States of America, to be paid to the said  
 Obligee its certain Attorney, Successors or Assigns:  
 to which payment well and truly to be made it does  
 hereby bind and oblige itself, its successors and as-  
 signs firmly by these presents, sealed with its cor-  
 porate seal. Dated the nineteenth day of April in  
 the year of our Lord one thousand nine hundred and  
 twenty-six.

THE CONDITION OF THIS OBLIGATION IS SUCH, that if the above bounden Obligor, its successors, assigns or any of them, shall and do well and truly pay, or cause to be paid to the above named Obligee, its certain Attorney, successors or Assigns, the just sum of SEVENTY-FIVE THOUSAND DOLLARS lawful money as aforesaid payable within three years from date hereof together with interest thereon, payable semi-annually, at the rate of six per cent. per annum, without any fraud 10  
or further delay; then the above Obligation to be void, or else to be and remain in full force and virtue: PROVIDED, however, and it is hereby expressly agreed, that if at any time default shall be made in payment of interest as aforesaid, for the space of thirty days after any semi-annual payment thereof shall fall due, or should said Obligor, or  
Assigns, at any time fail to keep the buildings on the lands described in the accompanying Mortgage, well 20  
and sufficiently insured against loss or damage by fire, and the policy or policies of Insurance, to an amount not less than  
Dollars, assigned to, or the loss made payable to the said Obligee, or  
Assigns, or should the said Obligor, or  
Assigns, at any time fail to pay any tax assessed upon the lands described in the accompanying Mortgage and the buildings and improvements thereon for the period of sixty days after the 30  
same is due and collectible by law, then, and in the case of any such failure or default, the whole principal debt aforesaid shall become due and payable immediately and payment of said principal debt, and all interest thereon, may be enforced and recovered at once, anything herein contained to the contrary, notwithstanding.

AND PROVIDED FURTHER, however, and it is hereby expressly agreed, that if at any time hereafter by reason of any default in payment, either of said principal sum at maturity or of said interest within the time specified, suit should be brought in any Court for the amount of such principal sum and interest or judgment should be obtained by virtue of the warrant of Attorney annexed hereto or proceedings to foreclose the accompanying Mortgage should be had, an Attorney's fee of \_\_\_\_\_ per cent. for collection, should be payable, by reasons of such suit, judgment or proceedings, and may be recovered in addition to all principal, interest and taxes then due, besides costs of suit.

ATLANTIC-BRIGANTINE HOTEL  
AND PIER CO.

By WILLIAM B. RICHMAN  
President

20 SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF

Attest: CLEMENT RICHMAN,  
Secretary

TO \_\_\_\_\_ ESQ.,

Or any other Attorney of any Court of Law in New Jersey or Elsewhere:

30 This is to authorize you to appear for ATLANTIC-BRIGANTINE HOTEL AND PIER CO. in any court of competent jurisdiction, in case of the breach of the condition of the above bond and confess judgment for the penalty therein contained, as of the last or any subsequent term, with cost of suit and release of errors; and this shall be your sufficient warrant.

WITNESS its corporate hand and seal this nine-

teenth day of April Anno Domini one thousand nine hundred and twenty-six.

ATLANTIC-BRIGANTINE HOTEL  
AND PIER CO.

By WILLIAM B. RICHMAN

President

SEALED AND DELIVERED

IN THE PRESENCE OF

Attest: CLEMENT RICHMAN

Secretary

10

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CORPORATION  
BOND AND WARRANT  
ATLANTIC-BRIGANTINE HOTEL  
AND PIER CO.

TO

ISLAND DEVELOPMENT CO.

Dated April 19, 1926

Block 219.

For \$75,000.00

20

30

## EXHIBIT C2.

## MORTGAGE.

THIS INDENTURE, MADE THE Nineteenth day of April in the year of our Lord one thousand nine hundred and twenty-six, between ATLANTIC-BRIGANTINE HOTEL AND PIER CO., a corporation under and by virtue of the laws of the State of New Jersey, having its principal office in the City of Atlantic City, County of Atlantic, and State of New Jersey of the first part, and ISLAND DEVELOPMENT CO., a corporation under and by virtue of the laws of the State of New Jersey of the second part, WHEREAS, the said ATLANTIC-BRIGANTINE HOTEL AND PIER CO. in and by a certain obligation or writing obligatory under its corporate seal duly executed, and bearing even date herewith, stands bound unto the said party of the second part, in the sum of ONE HUNDRED FIFTY THOUSAND DOLLARS lawful money of the United States of America, conditioned for the payment of the just sum of SEVENTY-FIVE THOUSAND DOLLARS lawful money as aforesaid, payable within three years from date hereof together with interest thereon, payable semi-annually, at the rate of six per cent. per annum, without any fraud or further delay; PROVIDED, however, and it was thereby expressly agreed, that if at any time default should be made in payment of interest as aforesaid, for the space of thirty days, after any semi-annual payment thereof shall fall due, or should said Obligor, or

Assigns, at any time fail to keep the

buildings on the lands described in this the accompanying Mortgage, well and sufficiently insured against loss or damage by fire, and the policy or policies of Insurance to an amount not less than Dollars, assigned to, or the loss made payable to the said Obligee, or Assigns, or should the said Obligor, or

Assigns, at any time fail to pay any tax assessed upon the lands described in this the accompanying mortgage and the buildings and improvements thereon for the period of sixty days after the same is due and collectible by law, then, and in the case of any such failure or default, the whole principal debt aforesaid shall become due and payable immediately and payment of said principal debt, and all interest thereon, may be enforced and recovered at once, anything therein contained to the contrary, notwithstanding.

AND PROVIDED FURTHER, however, and it was thereby expressly agreed, that if at any time hereafter by reason of any default in payment, either of said principal sum at maturity or of said interest within the time specified, suit should be brought in any Court for the amount of such principal sum and interest or judgment should be obtained by virtue of the warrant of Attorney annexed thereto or proceedings to foreclose this the accompanying Mortgage should be had, an Attorney's fee of per cent. for collection, should be payable, of such suit, judgment or proceedings, and may be recovered in addition to all principal, interest and taxes then due, besides costs of suit as in and by the said recited obligation and condition thereof, relation to the same being had, may more fully and at large appear.

NOW THIS INDENTURE WITNESSETH, that the said party of the first part, as well for and in consideration of the aforesaid debt or sum of SEVENTY-FIVE THOUSAND DOLLARS and for the better securing the payment thereof, unto the said party of the second part, its successors and Assigns, in discharge of the said obligation above recited, as for and in consideration of the further sum of one dollar, in specie, well and truly paid

10 to the said party of the first part, by the said party of the second part, at and before the ensealing and delivery hereof the receipt of which one dollar is hereby acknowledged has granted, bargained, sold, released and confirmed, and by these presents does grant, bargain, sell, release and confirm unto the said party of the second part, its successors and Assigns, all that certain tract or parcel of land and premises hereinafter particularly described, situate in the City of Brigantine in the County of

20 Atlantic and State of New Jersey, BEGINNING at a point in the Southwest Corner of 32nd Street South and Ocean Avenue, 80 feet wide; thence (1) westwardly along the southerly line of Ocean Avenue a distance of 200 feet to the Easterly line of 33rd Street South; thence (2) Southwardly along the said easterly line of 33rd Street South a distance of 525 feet more or less to high water line of Atlantic Ocean; thence (3) Eastwardly along said high water line of Atlantic Ocean a distance of 200 feet

30 more or less to its point of intersection with the Westerly line of 32nd Street South; thence (4) Northwardly along the Westerly line of 32nd Street South a distance of 590 feet more or less to the place of beginning, together with all the right, title and interest of the party of the first part in and to lands lying under water located between the high water

line of Atlantic Ocean and the Interior Line of the City Park as established by Ordinance of the City Council of the City of Brigantine, and the Westerly line of 32nd Street South, and the Easterly line of 33rd Street South, Subject to the operation of the City Park Deed executed between Island Development Co. and the City of Brigantine, being Block 219, as shown on map entitled "Revised Map of Portion of Beach-front as shown on Map No. 1A of Lands Located on Brigantine Beach made for Island Development Co. by H. I. Eaton, C. E., March, 1925." 10

Being the same premises which the said Island Development Co. by deed bearing even date herewith, and intended to be forthwith recorded in the Clerk's Office of the County of Atlantic, granted and conveyed to the said Atlantic Brigantine Hotel & Pier Co., this mortgage being given to secure the payment of part of the consideration in said deed expressed. 20

Subject to the covenants and restrictions in said deed mentioned and set forth.

TOGETHER, with all and singular, the buildings, improvements, woods, ways, rights, liberties, privileges, hereditaments and appurtenances, to the same belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; TO HAVE AND TO HOLD the said hereditaments and premises above granted, or intended so to be, with the appurtenances, unto the said party of the second part its successors and Assigns forever. 30

PROVIDED ALWAYS NEVERTHELESS, that if the said ATLANTIC-BRIGANTINE HOTEL AND PIER CO., its successors or Assigns, do and shall well and truly pay, or cause to be paid unto

the said party of the second part, or to its certain Attorney or Attorneys, Successors or Assigns, the aforesaid debt or sum of SEVENTY-FIVE THOUSAND DOLLARS on the day and time hereinbefore mentioned and appointed for the payment thereof, together with interest for the same, in like money, in way and manner hereinbefore specified therefor, without any fraud or further delay, and without any deduction, defalcation or abatement to  
10 be made, for, or in respect of any taxes, charges, or assessments whatsoever; that then and from thenceforth, as well this present Indenture and the estate hereby granted, as the said OBLIGATION above recited, shall cease, determine, and become absolutely null and void, to all intents and purposes; anything hereinbefore contained to the contrary thereof in any wise notwithstanding.

AND the said party of the first part, for itself, its successors and assigns does covenant and grant  
20 to and with the said party of the second part, its successors and Assigns, that the said party of the first part, its successors and Assigns, shall not nor will apply for or claim any deduction by reason of this mortgage, from the taxable value of the said lands and premises; and that the said party of the second part, its successors and Assigns, shall and may from time to time, and at all times after default shall be made in the performance of the proviso or condition herein contained, peaceably and quietly enter into,  
30 have, hold, use, occupy, possess and enjoy all and singular the above granted and bargained premises, with the appurtenances, without the let, suit, trouble, hindrance or denial of the said party of the first part its successors or Assigns, or of any other person or persons whatsoever, AND it is also further agreed, by and between the parties to these presents,

that if the said party of the first part shall fail to keep the buildings erected and to be erected upon the lands above conveyed, insured against loss or damage by fire, in some safe and responsible Insurance Company or Companies to an amount not less than \_\_\_\_\_ dollars, and assign the policy and certificate thereof, or have the loss, if any, made payable to the said party of the second part as collateral security for the payment of the principal and interest aforesaid, 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, and payable on demand with legal interest.

10

IN WITNESS WHEREOF, the said party of the first part has hereunto caused its corporate seal to be affixed, its President to sign and Secretary to attest the day and year first above written.

20

ATLANTIC-BRIGANTINE HOTEL  
AND PIER CO.

By WILLIAM B. RICHMAN  
President

SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF

Attest: CLEMENT RICHMMAN

Secretary

30

STATE OF NEW JERSEY }  
 ATLANTIC COUNTY, } ss.

BE IT REMEMBERED, that on this            day  
 of April in the year of our Lord one thousand nine  
 hundred and twenty-six before me, the subscriber,  
 a Notary Public for the State of New Jersey, per-  
 sonally appeared Clement Richman who, being by  
 10 me duly sworn according to law, did on his oath  
 say that he is the Secretary of the ATLANTIC-  
 BRIGANTINE HOTEL AND PIER CO. the  
 grantor mentioned in the foregoing indenture; that  
 he knows the seal of said Corporation; that the seal  
 affixed to the said indenture is the common seal of  
 the said Corporation; that Wm. Richman is the  
 President of said Corporation and did by its order  
 sign, seal and deliver the said indenture as its volun-  
 20 tary act and deed in the presence of said deponent;  
 and that the said deponent did, at the execution  
 thereof subscribe his name as a witness thereto.

CLEMENT B. RICHMAN

Sworn and subscribed before me the  
 day and year aforesaid.

U. G. HILLMAN

Notary Public of New Jersey.

CORPORATION  
MORTGAGE  
ATLANTIC-BRIGANTINE HOTEL  
AND PIER CO.  
TO  
ISLAND DEVELOPMENT CO.

\$75,000.00

Dated April 19, 1926

Block 219.

Received in the.....office  
of the County of .....  
on the.....day of.....  
A. D. 192..., at.....o'clock, in  
the.....noon, and Recorded in Book  
.....of Mortgages for said  
County, on pages.....  
.....

10

20

STATE OF \_\_\_\_\_ }  
COUNTY, } ss.

BE IT REMEMBERED, that on this \_\_\_\_\_ day  
of \_\_\_\_\_ in the year of our Lord one thousand nine  
hundred and \_\_\_\_\_ before me, personally ap-  
peared \_\_\_\_\_ who, I am  
satisfied \_\_\_\_\_  
the grantor mentioned in the above deed or con- 30  
veyance, and I having first made known to  
\_\_\_\_\_ the contents thereof,  
acknowledged that \_\_\_\_\_ signed, sealed and  
delivered the same as \_\_\_\_\_ voluntary act and  
deed. All of which is hereby certified.

## EXHIBIT C6.

Also marked as  
EXHIBIT D4.

File of Board of Commerce and Navigation.

2957

10     FIRST NATIONAL BANK BUILDING,  
          No. 1 Exchange Place,  
          Jersey City, N. J.

June 17, 1926.

H. I. Eaton, Esq.,  
Civil Engineer,  
1201 Atlantic Avenue,  
Atlantic City, N. J.

Dear Sir:

20     Relative to your letter of the 16th instant advis-  
ing that you would like to include Blocks 219 and  
221 in your former application.

I think it would be advisable for you to make out  
a new application for these two blocks upon the form  
I am enclosing herewith.

Very truly yours,

(Victor Gelineau)

Director

EJM

HRT/IM

30

COPY

2957

ISLAND DEVELOPMENT COMPANY

Atlantic City, N. J.

1201 Atlantic Avenue,

June 16th, 1926.

State Board of Commerce & Navigation

1 Exchange Place

Jersey City, N. J.

Attention Mr. Victor Gelineau, Director

10

Dear Sir:

Will you please add to our recent application for Riparian Grants of the Beach Front, Blocks 219 and 221, which we would like included in the grant.

If it requires a separate application for this please advise and I will submit same.

Yours very truly,

ISLAND DEVELOPMENT COMPANY

BY (sgd) H. I. Eaton

Engineer. SW 20

HIE:SW

---

COPY

ISLAND DEVELOPMENT COMPANY

Atlantic City, N. J.

1201 Atlantic Avenue,

May 21st, 1926.

Mr. Victor Gelineau, Director

30

Board of Commerce & Navigation

1 Exchange Place

Jersey City, N. J.

Dear Sir:

In reply to yours of the 20th, regarding a copy of the deed to the Island Development Company cov-

ering lands on the beach front, for which we have applied for a Riparian Grant, please let me remind you that we furnished you with an abstract of title in 1923, prepared by the Chelsea Title and Guaranty Company.

The Island Development Company became the owner of the Ripa on Brigantine Beach, by virtue of the original John Ladd Survey, as shown in the abstract of title.

- 10 As the deed above referred to has more than thirty pages, we would like to save the labor of copying it if it is not necessary. Please advise, and oblige,

Yours very truly,

ISLAND DEVELOPMENT COMPANY

BY (sgd) H. I. Eaton

Engineer.

HIE:SW

20 COPY

FIRST NATIONAL BANK BUILDING,

No. 1 Exchange Place,

Jersey City, N. J.

May 20, 1926.

H. I. Eaton, Esq., Civil Engineer,

1201 Atlantic Avenue,

Atlantic City, N. J.

Dear Sir:

- 30 Kindly send me a copy of the deed of the Island Development Co. covering the lands along the Ocean Front in front of which a lease is desired situate in the City of Brigantine.

Very truly yours,

(signed) Victor Gelineau

(Victor Gelineau)

Director.

HRT/im

COPY

FIRST NATIONAL BANK BUILDING,  
No. 1 Exchange Place,  
Jersey City, N. J.

May 18th, 1926.

Mr. Harold I. Eaton, C. E.,  
Island Development Company,  
1201 Atlantic Avenue,  
Atlantic City, N. J.

Dear Sir:

10

This acknowledges receipt of your letter of May 14th enclosing application by the Island Development Company for certain blocks on the ocean front at Brigantine. This letter was received in this office on May 17th and, in order to be placed on the calendar, should, as you well know, have been received at least ten days or, preferably, two weeks in advance of the meeting. The case will be considered at the June meeting.

Very truly yours,

20

(sgd) Victor Gelineau  
(Victor Gelineau)  
Director.

VG/re

COPY

RIPARIAN APPLICATION SCHEDULE

30

1. Name of applicant Island Development Co.
  - a. If individual, is application duly signed?....
  - b. Is signature witnessed? No
2. Is applicant a corporation? Yes
  - a. Is seal affixed? Yes

- b. Is application signed by superior officer, attested by Secretary?.....
  - c. Difference, if any, between recited name and signed name "Co" Company
  - d. If signed by other than president and attested by other than secretary, attach indication of delegation of this authority....
  - e. Domicile of corporation or individual N. J.
  - f. Principal office Atlantic City
  - 10 g. If foreign corporation, resident agent.....
- 3. Full copy of instrument constituting applicant riparian owner No.
  - 4. Does description fully describe upland of riparian owner? Yes
  - 5. Name of abutting riparian owners? No
- 20 6. Does applicant recite
    - a. Any former grant of Riparian Commission? .....
    - b. Any Legislative grant?.....
    - c. Any Freeholders License?.....
  - 7. Do lands applied for embrace
    - a. Natural oyster grounds?.....
    - b. Fishery?.....
- 30 8. Name of water way Atlantic Ocean
  - 9. Name of municipality City of Brigantine
  - 10. Is application for
    - a. Grant in Fee.....
    - b. Convertible Lease 15 Year lease
    - c. Limited Lease.....

- d. Easement in perpetuity.....
- e. License.....

M A P

- 11. Is map attached? Yes
- 12. Signed by licensed surveyor? Yes
- 13. Dose map agree with description in application? 10  
Yes
- 14. Do metes and bounds form closed circuit?.....
- 15. Meridian shown? True magnetic assumed?
- 16. Has State established exterior lines at this lo-  
cality? If so, date March April 21, 1924.
- 17. Has Federal Government established exterior 20  
lines at this locality? If so, date No
- 18. If State exterior lines, does map show connec-  
tion thereof to property? Yes
- 19. If Federal exterior lines, does map show con-  
nection thereof to property? No
- 20. Terms fixed..... 30
- 21. Accepted .....
- 22. Conveyance signed .....
- 23. Summary of information lacking .....

24. Has applicant been notified to furnished lacking information? 5/19/26.

25. Is information on application sufficient to draw instrument upon receipt of acceptance of terms? Yes

Remarks:

.....

10

COPY

ISLAND DEVELOPMENT COMPANY

Atlantic City, N. J.

1201 Atlantic Avenue

May 14th, 1926.

Mr. Victor Gelineau, Director  
State Board of Commerce & Navigation

20 1 Exchange Place,  
Jersey City, N. J.

Dear Sir:

We are submitting herewith an application for a Riparian Grant for the various blocks on the ocean front now owned by the company.

30 You will note that we have omitted from the application, blocks from two hundred to two hundred and twenty-two. Most of these blocks have been sold and this company is no longer the owner of record but we have agreed to handle the matter of obtaining the grants for the various owners.

We have already received the grant on block 201 and have submitted applications on several of the others. We are now obtaining signed applications from the other owners in this section and these will be forwarded to you at an early date.

Will you please put us on the calendar for Monday, May 17th, in order that we may settle the matter as soon as possible?

Yours very truly,  
ISLAND DEVELOPMENT COMPANY  
By (sgd) H. I. Eaton  
Engineer

HIE:SW  
Enc.

10

APPLICATION OF RIPARIAN OWNER.

TO the Board of Commerce and Navigation appointed under the Act of Legislature of the State of New Jersey, approved April 8th, 1915, entitled "An Act creating a department to be known as the Board of Commerce and Navigation," and the Governor of the said State of New Jersey:

THE APPLICATION OF the ISLAND DEVELOPMENT COMPANY, 1201 Atlantic Avenue, Atlantic City, in the State of New Jersey respectfully shows that said applicant is the owner in fee simple, and in possession of lands adjoining, but above the high water mark of the tidal waters of the ATLANTIC OCEAN as shown on the accompanying map and described as follows:

Block 67, 68, 69, 70, West Half of 71, 72, East Half of 74, 75, East part of 76, West three-quarters of 77, 78, 79, 80, 81, West Half of 82, East Half of 227, 226, 225, 224, 223, 199, 198, 197, 196, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320.

Block between 14th Street North and 15th Street North

20

30

- Block between 15th Street North and 16th Street North
- Block between 17th Street North and 18th Street North
- East Half between 19th Street North and 20th Street North
- East Half between 20th Street North and 21st Street North
- 10 Block Between 22nd Street North and 23d Street North
- West Half between 23d Street North and 24th Street North
- Block Between 24th Street North and 25th Street North
- Block between 26th Street North and 27th Street North
- Block Between 27th Street North and 28th Street North
- 20 East Half Between 28th Street North and 29th Street North
- East Half Between 29th Street North and 30th Street North
- Block Between 31st Street North and 32d Street North
- West Half Between 32d Street North and 33 Street North
- Block Between 33d Street North and 34th Street North
- 30 West Half Between 34th Street North and 35th Street North
- Block Between 35th Street North and 36th Street North
- Block Between 36th Street North and 37th Street North
- Block Between 37th Street North and 38th Street North

Block Between 38th Street North and 39th Street North

Block Between 40th Street North and 41st Street North

Block Between 41st Street North and 42nd Street North

East Half Between 41d Street North and 43d Street North

Block Between 43d Street North and 44th Street North

10

Block Between 44th Street North and 45th Street North

West Half Between 45th Street North and 46th Street North

Block Between 47th Street North and 48th Street North

Block Between 49th Street North and 50th Street North

East Half Between 50th Street North and 51st Street North

20

Block Between 51st Street North and 52d Street North

West Half Between 52d Street North and 53d Street North

West Half Between 53d Street North and 54th Street North

Block Between 55th Street North and 56th Street North

West three-quarters 56th Street North and 57th Street North

West portion block between 57 Street North and 58th Street North

and so riparian owner adjoining the lands under water of which is desired; and further shows that said applicant is desirous of obtaining a Fifteen year lease, with right to purchase of the land under

the tide waters of said \_\_\_\_\_ lying adjacent to and in front of the premises above described; and further shows that the said land under water has not been improved and is not authorized to be improved under any grant or license protected by the provisions of the Supplement to the Act of April 11th, 1864, approved March 31st, 1869.

You are therefore requested to designate what lands under water lie in front of said lands owned  
 10 by said applicant and to fix the price or consideration and annual rental for the \_\_\_\_\_ of said land under water which lies below high water mark, and may properly be included in the \_\_\_\_\_ which the said applicant \_\_\_\_\_ desirous of obtaining; and to certify, under your hands, the boundaries and the price, \_\_\_\_\_ to be paid for the same, to the end that such further proceedings may be had that the said applicant may obtain the lease aforesaid.

20 IN WITNESS WHEREOF the said ISLAND DEVELOPMENT COMPANY has hereunto set its hand and seal this twelfth day of May in the year nineteen hundred and twenty-six.

ISLAND DEVELOPMENT COMPANY  
 BY V. S. Haneman  
 Secretary

SEAL

ISLAND DEVELOPMENT COMPANY

Incorporated

30 1922

New Jersey

EXHIBIT C7.

ORDINANCE #8

AN ORDINANCE to open and lay out on and along the beach or ocean front, a public park or place for public resort and recreation, in the City of Brigantine (formerly City of East Atlantic City) in the County of Atlantic and State of New Jersey, and to devote the lands within the limits of such park or place of resort to such use exclusively. 10

BE IT ORDAINED by the Common Council of the City of Brigantine (formerly City of East Atlantic City) in the County of Atlantic and State of New Jersey:

Section 1. That there be laid out and opened a public park or place for public resort or recreation on and along the beach or ocean front of said City the interior or inland lines thereof being hereby established and described as follows: 20

Beginning at a point on the easterly line of 41st Street South, if extended oceanward, distant 980 feet southwardly from the southerly line of Brigantine Avenue, thence eastwardly to a point on the easterly line of 33d Street South if extended Oceanward, distant 1420 feet southwardly from the southerly line of Brigantine Avenue, thence southwardly along the easterly line of 33d Street south, if extended Oceanward to a point distant 3120 feet from the southerly line of Brigantine Avenue, thence eastwardly to a point in the westerly line of 32d Street South if extended oceanward, distant 3110 feet from 30

the southerly line of Brigantine Avenue, thence northwardly along the westerly line of 32d Street south, if extended oceanward, to a point distant 1460 feet from the southerly line of Brigantine Avenue, thence eastwardly to a point on the center line of 30th Street South if extended oceanward distant 1550 feet from the southerly line of Brigantine Avenue, thence eastwardly to a point in the easterly line of 15th Street South if extended oceanward distant 1420 feet from the southerly line of Brigantine Avenue, thence southwardly along the easterly line of 15th street South if extended oceanward to a point 2920 feet from the southerly line of Brigantine Avenue, thence eastwardly to a point in the westerly line of 14th Street South, if extended oceanward distant 2910 feet from the southerly line of Brigantine Avenue, thence northwardly along the westerly line of 14th Street South, if extended oceanward to a point 1410 feet from the southerly line of Brigantine Avenue, thence eastwardly to a point in the center line of 3d Street South if extended oceanward distant 1200 feet from the southerly line of Brigantine Avenue.

Section 2. That the limits and boundaries of said park or place for public resort and recreation are hereby fixed and established as follows:

Beginning at a point on the Easterly line of 41st Street South, if extended oceanward, distant 980 feet Southwardly from the Southerly line of Brigantine Avenue, thence Eastwardly to a point on the Easterly line of 33d Street South if extended Oceanward, distant 1420 feet Southwardly from the Southerly line of Brigantine Avenue, thence Southwardly along the Easterly line of 33d Street South, if extended Oceanward to a point distant 3120 feet from

the Southerly line of Brigantine Avenue, thence Eastwardly to a point in the westerly line of 32d Street South if extended Oceanward, distant 3110 feet from the southerly line of Brigantine Avenue, thence Northwardly along the Westerly line of 32d Street South, if extended Oceanward, to a point distant 1460 feet from the Southerly line of Brigantine Avenue, thence Eastwardly to a point on the center line of 30th Street South if extended Oceanward distant 1550 feet from the Southerly line of Brigantine Avenue thence Eastwardly to a point in the Easterly line of 15th Street South if extended Oceanward distant 1420 feet from the Southerly line of Brigantine Avenue, thence Southwardly along the Easterly line of 15th Street South if extended Oceanward to a point 2920 feet from the Southerly line of Brigantine Avenue, thence Eastwardly to a point in the westerly line of 14th Street South, if extended Oceanward, distant 2910 feet from the Southerly line of Brigantine Avenue, thence Northwardly along the Westerly line of 14th Street South if extended Oceanward to a point 1410 feet from the Southerly line of Brigantine Avenue, thence Eastwardly to a point in the center line of 3d Street South if extended oceanward distant 1200 feet from the Southerly line of Brigantine Avenue, thence Southwardly along the center line of 3d Street South, if extended Oceanward 1750 feet to the exterior line as established by the Board of Commerce and Navigation of the State of New Jersey, thence Westwardly along the said exterior line to a point in the center line of 30th street South if extended Southwardly a distant 3500 feet from the center line of Brigantine Avenue thence Westwardly along the said exterior line to its intersection with the Easterly line of 41st Street South if extended Ocean-

ward, thence Northwardly along the Easterly line of 41st Street South, to a point and place of beginning.

Section 3. This ordinance shall take effect when and as provided by law after its final passage and publication.

Passed first and second readings August 4, 1924.

Passed third and final reading August 18, 1924

10 Approved by the Mayor August 18, 1924

Signed: A. B. Smith

Mayor

Signed: E. R. Smith

City Clerk.

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EXHIBIT D1.

20

AGREEMENT.

ARTICLES OF AGREEMENT, made this eighteenth day of April, in the year of our Lord one thousand nine hundred and twenty-five, BETWEEN Island Development Company, a corporation under and by virtue of the laws of the State of New Jersey, of the first part, and Ulysses G. Hillman, of the City of Woodstown, County of Salem, and State of New Jersey, of the second part, WITNESSETH, 30 that the said party of the first part, for and in consideration of the sum of ONE HUNDRED AND FIFTY THOUSAND DOLLARS (\$150,000) to be paid and satisfied as hereinafter mentioned and also in consideration of the covenants and agreements hereinafter mentioned, made and entered into by the said party of the second part, doth agree to and

with the said party of the second part, that it the said party of the first part, will well and sufficiently convey to the said party of the second part, his heirs and assigns by Deed free from all encumbrance, on or before the eighteenth day of April, 1926, all that lot, tract, or parcel of land and premises hereinafter particularly described, situate, lying and being in the City of Brigantine, in the County of Atlantic, and State of New Jersey, bound and described as follows:

10

Bound upon the North by Ocean Avenue, on the South by the high water line of Atlantic Ocean, on the East by 32nd Street South, on the west by 33rd Street South, being Block 219, as shown on map hereunto attached, together with all the right, title, and interest of the party of the first part, in and to lands lying under the water in front of said described premises, between the high water line of the Atlantic Ocean and the interior line of the City Park, said Interior line being located at a distance of about 1500 feet beyond the Interior line of the proposed boardwalk, as shown on the blue print hereunto attached, between 32nd and 33rd Sts. South, it being understood that the premises oceanward of the above named block and between 32nd and 33rd Streets South, are not incorporated within the boundaries of the City Park, for a distance of about 1500 feet, having been left vacant in order to provide site for the construction of an ocean pier without being affected by said Ocean Front Park Ordinance. It is fully understood and agreed, however, that a right of way for the Boardwalk, of the width of the proposed Boardwalk will be dedicated across the above described premises at the location

20

30

shown on the attached blue print. Said described premises are to be conveyed free and clear of any restrictions. 32nd and 33rd Streets from Ocean Avenue to the bulkhead constructed across said described premises are to be paved with gravel, and concrete sidewalks and curbs are to be constructed before day of settlement. Ocean Avenue will be paved with gravel, with concrete sidewalks and curbs before day of settlement. The land lying between the bulkhead and Ocean Avenue will be filled to grade before day of settlement.

AND the said Ulysses G. Hillman for himself, his heirs, executors, and administrators, doth covenant, promise and agree to and with the said party of the first part, its successors and assigns, that he the said party of the second part will pay and satisfy or cause to be paid and satisfied unto the said party of the first part the said sum of one hundred and fifty thousand dollars (\$150,000) as and for the purchase money of the foregoing described land and premises, in the following manner, that is to say:

Fifteen thousand dollars, receipt of which is hereby acknowledged.

Fifteen thousand dollars on July 18, 1925

Fifteen thousand dollars on October 18, 1925

Fifteen thousand dollars on January 18, 1926

Fifteen thousand dollars on April 18, 1926, at which time settlement shall be made and title passed. At time of settlement, party of second part agrees to execute his bond, or the bond of his successors or assigns secured by first mortgage on said described premises for \$75,000, said mortgage to be payable at any time within three years from the date thereof, and

to bear interest at the rate of six per cent payable semi-annually.

It is further agreed by and between the parties hereto that should the party of the second part, his heirs, successors or assigns build or cause to be built upon said described premises, and open to the public for entertainment on or before the 15th day of June, 1926, a hotel containing at least 150 bedrooms with at least 100 baths, costing not less than (\$400,000) FOUR HUNDRED THOUSAND DOLLARS, to be of fire proof, or semi fire proof construction, and also to assume any expense incurred by this Company for hotel plans ordered from McLanahan and Benkert, Architects of Philadelphia; then, in that case, the \$75,000 mortgage will be cancelled of record and rebated unto the party of the second part, his heirs, successors, or assigns, as a discount on the purchase price herein named.

10  
20

AND IT IS FURTHER AGREED, by the parties to these presents, that the said part of the second part, heirs and assigns, may enter into and upon the said land and premises on the day of and from thence take the rents, issues and profits to and their use.

AND for the performance of all and singular the covenants and agreements aforesaid, the said parties do bind themselves and their respective heirs, executors and administrators; and they hereby agree to pay, upon failure to perform the same, the sum of which they hereby fix and settle as liquidated damages therefor.

30

IN WITNESS WHEREOF, the said parties have

hereunto interchangeably set their hand and seals  
the day and year first above mentioned.

ISLAND DEVELOPMENT COMPANY

By H. C. HARRIS

President

SIGNED, SEALED AND DELIVERED

in the presence of

(Island Development Company Seal)

ATTEST: V. S. HANEMAN,

10

Secretary.

ULYSSES G. HILLMAN

\_\_\_\_\_

Dated

1925

For value received, I hereby assign, transfer, set  
over and release all my right, title and interest in the  
within agreement to Atlantic-Brigantine

Hotel & Pier Co.

20

Ulysses G. Hillman

Witness:

C. B. Richman

\_\_\_\_\_

EXHIBIT D2.

DEED.

30 THIS INDENTURE, MADE THE Nineteenth  
day of April in the year of our Lord one thousand  
nine hundred and twenty-six BETWEEN ISLAND  
DEVELOPMENT CO., a corporation under and by  
virtue of the laws of the State of New Jersey of  
the first part, and ATLANTIC-BRIGANTINE  
HOTEL AND PIER CO., a corporation under and

by virtue of the laws of the State of New Jersey, having its principal office in the City of Atlantic City, County of Atlantic, and State of New Jersey of the second part,

WITNESSETH, that the said party of the first part, for and in consideration of the sum of ONE HUNDRED FIFTY THOUSAND DOLLARS lawful money of the United States of America, well and truly paid by the said party of the second part, to the said party of the first part, at and before the  
10  
ensealing and delivery of these presents, the receipt whereof is hereby acknowledged has granted, bargained, sold, aliened, enfeoffed, released, conveyed, and confirmed, and by these presents does grant, bargain, sell, alien, enfeoff, release, convey and confirm unto the party of the second part, its successors and Assigns, ALL that certain tract or parcel of land and premises hereinafter particularly described, situate in the City of Brigantine, in the  
20  
County of Atlantic and State of New Jersey, bounded and described as follows: Beginning at a point in the South West Corner of 32nd Street South and Ocean Avenue, 80 feet wide; thence (1) westwardly along the southerly line of Ocean Avenue a distance of 200 feet to the Easterly line of 33rd Street South; thence (2) Southwardly along the said easterly line of 33rd Street South a distance of 525 feet more or less to high water line of Atlantic Ocean; thence (3) Eastwardly along said high  
30  
water line of Atlantic Ocean a distance of 200 feet more or less to its point of intersection with the Westerly line of 32nd Street South; thence (4) Northwardly along the Westerly line of 32nd Street South a distance of 590 feet more or less to the place of beginning, together with all the right, title and interest of the party of the first part in and to

lands lying under water located between the high water line of Atlantic Ocean and the Interior Line of the City Park as established by Ordinance of the City Council of the City of Brigantine and the Westerly line of 32nd Street South and the Easterly line of 33rd Street South, "Subject to the operation of the City Park Deed executed between Island Development Co. and the City of Brigantine, being Block 219, as shown on map entitled "Revised Map of Portion of Beachfront as shown on Map No. 1A of Lands Located on Brigantine Beach made for Island Development Co. by H. I. Eaton, C. E., March, 1925."

10  
20  
TOGETHER with all and singular, the buildings, improvements, woods, ways, rights, liberties, privileges, hereditaments, and appurtenances, to the same belonging, or in any wise appertaining, and the reversion or reversions, remainder and remainders, rents, issues and profits thereof, and of every part and parcel thereof: AND ALSO all the estate, right, title, interest, property, possession, claim and demand whatsoever, both in law and equity, of the said party of the first part, of, in and to the premises, with the appurtenances

30  
TO HAVE AND TO HOLD the said premises, with all and singular the appurtenances, unto the party of the second part, its successors and Assigns, to the only proper use, benefit and behoof of the said party of the second part, its successors and Assigns, forever.

AND the said ISLAND DEVELOPMENT CO., its successors and assigns DO by these presents covenant, grant and agree to and with the said party of the second part, its successors and Assigns, that it the said party of the first part, its successors and assigns all and singular the hereditaments and prem-

ises herein above described and granted, or mentioned and intended to be so, with the appurtenances unto the said party of the second part, its successors and Assigns, against it, the said party of the first part, its successors and assigns and against all and every other person or persons whomsoever lawfully claiming or to claim the same or any part thereof, by, from or under it, him, her or any of them SHALL and WILL by these presents WARRANT and forever defend.

10

IN WITNESS WHEREOF, the said party of the first part to these presents has caused these presents to be signed by its President, attested by its Secretary and its corporate seal to be hereto affixed, the day and year first above written.

ISLAND DEVELOPMENT CO.

By \_\_\_\_\_

President

SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF

20

Attest:

\_\_\_\_\_

Secretary

\_\_\_\_\_

STATE OF NEW JERSEY }  
ATLANTIC COUNTY, } ss.

BE IT KNOWN that on this nineteenth day of 30  
April nineteen hundred and twenty-six before me,  
the subscriber, a Notary Public for the State of  
New Jersey, personally appeared Vincent S. Hane-  
man who, being by me duly sworn according to law,  
did on his oath say that he is the Secretary of the  
ISLAND DEVELOPMENT CO. the grantor men-

tioned in the foregoing indenture; that he knows the seal of this corporation; that the seal affixed to the said indenture is the common seal of the said corporation; that H. G. Harris is the President of said Corporation and did by its order sign, seal and deliver the said indenture as its voluntary act and deed in the presence of said deponent; and that the said deponent did, at the execution thereof subscribe his name as a witness thereto.

10

---

CORPORATION  
DEED  
ISLAND DEVELOPMENT CO.  
TO  
ATLANTIC-BRIGANTINE HOTEL  
AND PIER CO.

20

Dated April 19, 1926  
Block 219.  
Received .....19.., and  
Recorded in the .....  
Office of .....County,  
at .....  
in Book.....of Deeds, Folio.....  
.....

---

30 STATE OF }  
COUNTY, } ss.

BE IT REMEMBERED, that on this  
day of \_\_\_\_\_ in the year of our Lord one thou-  
sand nine hundred and \_\_\_\_\_ before me  
personally appeared

who, I am satisfied, the grantor mentioned in the above deed of conveyance, and I having first made known to the contents thereof, acknowledged that signed, sealed and delivered the same as voluntary act and deed. All of which is hereby certified.

EXHIBIT D3.

10

DEED.

THIS INDENTURE, MADE THE day of in the year of our Lord one thousand nine hundred and BETWEEN ATLANTIC-BRIGANTINE HOTEL AND PIER CO., a corporation under and by virtue of the laws of the State of New Jersey, of the first part, and ISLAND DEVELOPMENT CO., a corporation under and by virtue of the Laws of the State of New Jersey, of the second part, 20

WITNESSETH, that the said party of the first part, for and in consideration of the sum of lawful money of the United States of America, well and truly paid by the said party of the second part, to the said party of the first part, at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged has granted, bargained, sold, aliened, 30 enfeoffed, released, conveyed, and confirmed, and by these presents does grant, bargain, sell, alien, enfeoff, release, convey and confirm unto the party of the second part, its successors and Assigns, ALL that certain tract or parcel of land and premises hereinafter particularly described, situate in the

City of Brigantine, in the County of Atlantic and State of New Jersey, bounded and described as follows: BEGINNING at a point in the Southwest corner of 32nd Street South and Ocean Avenue, 80 feet wide; thence (1) Westwardly along the southerly line of Ocean Avenue a distance of two hundred and eighteen one-hundredths (200.18) feet to the Easterly line of 33rd Street South; thence (2) Southwardly along the said Easterly line of 33rd Street South a distance of five hundred and twenty-five (525) feet more or less to high water line of Atlantic Ocean; thence (3) Eastwardly along said high water line of Atlantic Ocean a distance of two hundred (200) feet more or less to its point of intersection with the westerly line of 32nd Street South; thence (4) Northwardly along the westerly line of 32nd Street South a distance of five hundred and ninety (590) feet more or less to the place of beginning. Together with all the right, title and interest of the party of the first part hereto in and to all the lands lying under water located between the high water line of the Atlantic Ocean and the Exterior Line of the City Park as established by Ordinance of the City Council of the City of Brigantine.

TOGETHER with all and singular, the buildings, improvements, woods, ways, rights, liberties, privileges, hereditaments, and appurtenances, to the same belonging, or in any wise appertaining, and the reversion or reversions, remainder and remainders, rents, issues and profits thereof, and of every part and parcel thereof: AND ALSO all the estate, right, title, interest, property, possession, claim and demand whatsoever, both in law and equity, of the said party of the first part, of, in and to the premises, with the appurtenances

TO HAVE AND TO HOLD the said premises, with all and singular the appurtenances, unto the party of the second part, its successors and Assigns, to the only proper use, benefit and behoof of the said party of the second part, its successors and Assigns, forever.

AND the said Atlantic-Brigantine Hotel and Pier Co. its successors and assigns do by these presents covenant, grant and agree to and with the said party of the second part, its successors and Assigns, that 10  
it the said party of the first part, its all and singular the hereditaments and premises herein above described and granted, or mentioned and intended to be so, with the appurtenances unto the said party of the second part, its successors and Assigns, against it the said party of the first part, its successors and against all and every other person whomsoever lawfully claiming or to claim the same or any part thereof by, from, through or under it, him, her, them or any of them, subject as aforesaid 20  
SHALL and WILL by these presents WARRANT and forever defend.

IN WITNESS WHEREOF, the said party of the first part has hereunto caused its President to sign, its Secretary to attest and its corporate seal to be hereunto affixed.

ATLANTIC-BRIGANTINE HOTEL  
AND PIER CO.

\_\_\_\_\_  
President SC

ATTEST:

\_\_\_\_\_  
Secretary

SIGNED, SEALED AND DELIVERED,  
IN THE PRESENCE OF





## EXHIBIT D5.

## DEED OF DEDICATION.

10 THIS INDENTURE, Made the Fifteenth day of April, 1925, Between ISLAND DEVELOPMENT COMPANY, a corporation under and by virtue of the laws of the State of New Jersey, party of the first part, and the CITY OF BRIGANTINE, a municipal corporation of Atlantic County, New Jersey, party of the second part.

Whereas the City of Brigantine is one of the cities of the State of New Jersey located on or near the Atlantic Ocean and embracing within its limits or jurisdiction certain beach or lands fronting upon the ocean.

20 And whereas the City Council of the City of Brigantine being the governing body of said City, having resolved to open and lay out along such beach or ocean front a public park or place for public resort and recreation and to devote the lands within the limits of such park or place of resort to such uses exclusively under and by virtue of an act of the Legislature of the State of New Jersey entitled "An Act to enable cities in this State located on or near the Ocean and embracing within the limits or jurisdiction any beach or ocean front to open  
30 and lay out a public park or place for public resort or recreation and along the beach or ocean front of such city and to purchase or condemn lands, property and rights therefor and to preserve the same from obstruction or encroachment" approved April twenty-sixth eighteen hundred and ninety four.

And Whereas the City Council of the said city for this purpose did, on the eighteenth day of August nineteen hundred and twenty-four duly pass an ordinance of the said City to lay out and open such park and to establish the interior or inland lines thereof so that the interior or inland line of said park is described as follows:

BEGINNING at a point in the Easterly line of 41st Street South, if extended oceanward, distant nine hundred and eighty feet Southwardly from the Southerly line of Brigantine Avenue, thence Eastwardly to a point in the Easterly line of 33d Street South, if extended oceanward distant 1420 feet Southwardly from the Southerly line of Brigantine Avenue, thence Southwardly along the Easterly line of 33d Street South, if extended oceanward to a point distant 3120 feet from the Southerly line of Brigantine Avenue, thence Eastwardly to a point in the Westerly line of 32d Street South, if extended oceanward, distant 3110 feet from the Southerly line of Brigantine Avenue, thence Northwardly along the Westerly line of 32d Street South, if extended oceanward, to a point distant 1460 feet from the Southerly line of Brigantine Avenue, thence Eastwardly to a point in the center line of 30th Street South if extended oceanward distant 1550 feet from the Southerly line of Brigantine Avenue, thence Eastwardly to a point in the Easterly line of 15th Street South, if extended oceanward, distant 1420 feet from the Southerly line of Brigantine Avenue, thence Southwardly along the Easterly line of 15th Street South, if extended oceanward to a point 2920 feet from the Southerly line of Brigantine Avenue, thence Eastwardly to a point in the Westerly line of 14th Street South, if extended oceanward, distant 2910 feet from the Southerly line of Brigantine

Avenue; thence Northwardly along the Westerly line of 14th Street South, if extended oceanward to a point 1410 feet from the Southerly line of Brigantine Avenue, thence Eastwardly to a point in the center line of 3d Street South, if extended oceanward, 1200 feet from the Southerly line of Brigantine Avenue.

Said ordinance fixing and establishing the limits and said boundaries of said park or place for public resort and recreation as follows:

10 BEGINNING at a point on the Easterly line of 41st Street South, if extended oceanward, distant 980 feet Southwardly from the Southerly line of Brigantine Avenue, thence Eastwardly to a point on the Easterly line of 33d Street South if extended Oceanward, distant 1420 feet Southwardly from the Southerly line of Brigantine Avenue, thence Southwardly along the Easterly line of 33d Street South, if extended Oceanward to a point distant 3120 feet  
20 from the Southerly line of Brigantine Avenue, thence Eastwardly to a point in the Westerly line of 32d Street South if extended oceanward, distant 3110 feet from the Southerly line of Brigantine Avenue, thence Northwardly along the Westerly line of 32d Street South, if extended oceanward to a point distant 1460 feet from the Southerly line of Brigantine Avenue, thence Eastwardly to a point on the center line of 30th Street South, if extended oceanward distant 1550 feet from the Southerly line  
30 of Brigantine Avenue, thence Eastwardly to a point in the Easterly line of 15th Street South, if extended oceanward distant 1420 feet from the Southerly line of Brigantine Avenue, thence Southwardly along the Easterly line of 15th Street South, if extended oceanward to a point 2920 feet from the Southerly line of Brigantine Avenue, thence East-

wardly to a point in the Westerly line of 14th Street South, if extended oceanward, distant 2910 feet from the Southerly line of Brigantine Avenue, thence Northwardly along the Westerly line of 14th Street South if extended oceanward to a point 1410 feet from the Southerly line of Brigantine Avenue, thence Eastwardly to a point in the center line of 3d Street South if extended oceanward distant 1200 feet from the Southerly line of Brigantine Avenue, thence Southwardly along the center line of 3d Street South, if extended oceanward 1750 feet to the exterior line as established by the Board of Commerce and Navigation of the State of New Jersey, thence Westwardly along the said exterior line to a point in the center line of 30th Street South, if extended Southwardly distant 3500 feet from the center line of Brigantine Avenue, thence Westwardly along the said exterior line to a point in the Easterly line of 41st Street South to the point and place of beginning.

And whereas the said City Council in pursuance and authority given by said act and in pursuance has caused the inland line of said park to be established and suitably marked upon the ground and has caused a description of the same to be filed in the office of the City Clerk of the said city in pursuance of and in conformity with the provisions and directions of the said act.

Now for the purpose of enabling the said City to use the lands lying oceanward from the inland line so established and so to be established and within the boundaries above designated as a public park and place of resort and recreation in pursuance of the provisions of the said Act.

THIS INDENTURE WITNESSETH, that the parties of the first part for and in consideration of

the premises and of the sum of One Dollar, lawful money of the United States of America, well and truly paid, said party of the second part to the said party of the first part, at and before the sealing and delivery of these presents, receipt of which is hereby acknowledged; and in consideration of the benefit and advantage to be derived by the parties of the first part, by the laying out of the said park within the boundaries aforesaid and building said walk, and in consideration also that the lands of the said parties of the first part will not be condemned as is provided by the act of the Legislature, and ordinance above referred to, having by these presents, do for themselves and each of them, their heirs, successors and assigns give, grant, bargain, sell and convey to the said party of the second part, and its successors, all their and each of their, right, title and interest in and to the lands incorporated within the boundaries of said public park as herein described.

TO HAVE AND TO HOLD the said premises, with all and singular the appurtenances unto the said party of the second part and its successors, for and only for use as a public park or place of resort and recreation, giving to said party of the second part and its successors however, the right to construct, re-construct, repair, complete and maintain upon the lands so contained along the interior or inland line of said park or place for public resort as established as aforesaid an elevated public boardwalk in accordance with the provisions of the said act, and subject to the following conditions and restrictions; that no railroad or street railway shall ever be constructed, operated or maintained, over, upon or across any portion of the premises hereby granted and conveyed and that said lands

shall never be used for any railroad purposes or use whatever and the said party of the second part hereby covenants and agrees to and with the said grantors, parties of the first part, and to and with each and every one of them and to with their and each of their assigns as follows:

FIRST: To maintain the said elevated boardwalk as hereinafter to be constructed or extended along the inland line of the land hereby conveyed as an open public walk. 10

SECOND: To permit the owner of the lands and properties lying inland from the line so established and marked and contiguous to any parcel of land hereby conveyed by any of the several grantors named herein, from time to time (a) to connect all and each of said inland lands and properties with such elevated boardwalk by building, maintaining proper approaches for this purpose on the inland side thereof; (b) to pump or otherwise convey sand from the parcel of land so conveyed to any part of said contiguous land, for the purpose of filling the same; "provided however that the point of suction or removal of sand shall be at a point not less than one hundred and fifty feet oceanward of the then Boardwalk and that no sand shall be removed excepting between the first day of October and the next succeeding first day of May," (c) to construct upon said land so conveyed, jetties, bulkheads, sand traps or other devices (no part of which is more than two (2) feet above high water level) to prevent erosion or to accelerate accretion of the beach; provided, the same shall not obstruct the view oceanward from said elevated public walk and (d) to erect and maintain salt water mains, below ordinary low water level, for the supply of ocean water to baths on any part of said contiguous land. 20 30

THIRD: That whenever a formation of land by accretion shall occur within the bounds of the lands hereby conveyed to such an extent that the high water line of the Ocean shall not be less than three hundred feet oceanward from the inland line so established the grantee and its successors shall upon written request of the grantors, their mortgagees, heirs and assigns, in conjunction with other together owning not less than five contiguous city blocks of

10 the land hereby conveyed upon which such accretion may be formed, cause the elevated boardwalk erected thereon to be moved oceanward three hundred feet or any less distance that such owners, mortgagees and the party of the second part, may agree upon, and whenever the said elevated boardwalk shall be moved oceanward by virtue of this provision, the inland line of said park shall be moved oceanward to correspond therewith and all the land hereby

20 conveyed lying inland from the line so re-established shall be released from the dedication thereby made and revert to the owners thereof, their heirs, mortgagees or assigns.

FOURTH: That the lands hereby granted and dedicated to public use shall forever be and remain open so that the view oceanward from the said elevated public walk erected and to be erected as above mentioned shall be free, open and unobstructed and that no use shall be made of the said land by the grantee, its successors or assigns, inconsistent with

30 its use as a public park or place for public resort and recreation; public pavilions or shelters with an eave or ceiling elevation of at least sixteen feet may be erected by the City with consent of the abutting property owner, or the abutting property owner with the consent and approval of the City may erect on the ocean side of the Boardwalk and connected

thereto, provided that no business be transacted therein and that no admission be charged thereto.

IN WITNESS WHEREOF the said party of the first part has hereunto set its corporate seal and caused these presents to be signed by its President and attested by its Secretary and the said party of the second part has caused its corporate seal to be hereunto affixed and be attested and executed by its proper officers, the day and year first above written.

ISLAND DEVELOPMENT COMPANY

By H. G. Harris

President

CITY OF BRIGANTINE

A. B. Smith

Mayor

Signed, sealed and delivered  
in the presence of

ATTEST:

V S Haneman

Secretary

(Seal of Island Development Co.)

ATTEST:

E R Smith

City Clerk

(Seal of City of Brigantine)

10

20

STATE OF NEW JERSEY }  
COUNTY OF ATLANTIC } ss.

30

BE IT REMEMBERED, That on the twenty-seventh day of May, in the year of our Lord, one thousand nine hundred and twenty-five, before me a Notary Public of the State of New Jersey, personally appeared E. R. Smith, to me known, who

being by me duly sworn according to law, on his oath doth depose and make proof to my satisfaction that he is the City Clerk of the City of Brigantine, the grantor in the foregoing deed named; that he well knows the seal of said municipal corporation, that the seal affixed to the said deed is the corporate seal of the said municipal corporation, that it was so affixed in pursuance of a resolution of the Common Council of the said municipal corporation; that Alfred B. Smith is the Mayor of the said municipal corporation; that he saw the said Alfred B. Smith, as such Mayor affix said seal thereto, sign and deliver said deed, and heard him declare that he signed, sealed and delivered the same as the voluntary act and deed of the said municipal corporation in pursuance of said resolution, and that this deponent signed his name thereto, at the same time, as a subscribing witness.

E. R. Smith

20

Sworn and subscribed before me at Atlantic City, N. J., the day and year aforesaid.

Miriam Needles

Notary Public State of New Jersey

Commission Expires February 2, 1930

(SEAL)

30

STATE OF NEW JERSEY }  
ATLANTIC COUNTY } ss.

BE IT REMEMBERED, that on this twenty-seventh day of May, in the year of our Lord, one thousand nine hundred and twenty-five, before me a Notary Public of the State of New Jersey personally appeared Vincent S. Haneman, who being by me duly sworn, on his oath saith, that he is the Secretary of Island Development Company, the grantor within named, and that H. G. Harris is the President; that deponent knows the common or corporate seal of said grantor and that the seal annexed to the within Deed or Conveyance is such common or corporate seal; that the said Deed or Conveyance was signed by the said President and the seal of said grantor affixed thereto in the presence of deponent that said Deed or Conveyance was signed, sealed and delivered as and for the voluntary act and deed of said grantor for the uses and purposes therein expressed, pursuant to a resolution of the Board of Directors of said grantor; and at the execution thereof this deponent subscribed his name thereto as witness.

Vincent S. Haneman

Sworn and subscribed the  
day and year aforesaid  
Miriam Needles  
Notary Public State of New Jersey  
Commission expires February 2, 1920  
(SEAL)

10  
20  
30

(Endorsed)

RETURNED  
JUN 18 1925  
WM. A. BLAIR  
CLERK  
PARK DEED

10

Act of 1894  
ISLAND DEVELOPMENT CO.  
(Corp. N. J.)

to

The City of Brigantine  
(Municipal Corp. N. J.)

D 5

9/19/28 L

20

Received June 6 1925 at 10 A. M. and  
recorded in the Clerk's Office of Atlan-  
tic County, at May's Landing, N. J.  
in Book of Deeds No. 771  
page 475 &c

William A. Blair Clerk  
R. F.  
(Clerk's Seal)

30

EXHIBIT D12.

LETTER

(Copy)

March 14, 1927.

Brigantine Hotel & Pier Co.,  
315 Guarantee Trust Bldg.,  
Atlantic City, N. J.

10

Dear Sir: Attention: Mr. Wm. Richman.

In view of the fact that a certain letter which I wrote you dated June 7, 1926, seems to have miscarried, I am writing the present letter to conform with what I have said in the past.

I desire at this time to assure you that the Island Development Company is doing all within its power to assist the City of Brigantine in obtaining riparian grants for the City Park, in front of the so-called 20 First Development.

I should like to assure you further, as Assistant City Solicitor for the City of Brigantine that the City is making every effort to obtain these riparian grants itself.

In accordance with your request, I should at this time like to inform you that all the land lying between 8th Street South to 14th Street South and from 15th Street South to 32nd Street South and between 33rd Street South and a point 100 feet 30 westwardly from 40th Street South, and extending from the Landward or Interior Line of the boardwalk, (which line is co-incident with the Landward or Inland line of the City Park) and the Exterior line of said City Park is and will continue to be subject to and encumbered by the provisions and

conditions of the City Park deed or agreements between Island Development Co., and the City of Brigantine Dated April 15, 1925 and that the strip of land lying between 32nd and 33rd Streets South, and extending southeastwardly 1700 feet from the Interior Line of the Boardwalk, measured along 33rd Street South and 1650 feet if measured along 32nd Street South, if not a part of the said City Park and is free and clear of all restrictions and  
10 conditions, except as set forth in the deed from Island Development Co. to the Brigantine Hotel and Pier Co., connecting the strip lying between 32nd and 33rd Streets South as above described.

Very truly yours,

(Signed.) Vincent S. Haneman

20

30

## I N D E X

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THE HISTORY OF THE  
CITY OF BOSTON  
FROM THE FIRST SETTLEMENT  
TO THE PRESENT TIME  
BY NATHANIEL BENTLEY  
IN TWO VOLUMES  
VOLUME I  
PUBLISHED BY G. B. LITTLE & CO. 15 NASSAU ST. N. Y.  
1857

ANSWER TO PETITION OF APPEAL.

NEW JERSEY COURT OF ERRORS  
AND APPEALS.

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Between  
ATLANTIC-BRIGANTINE HO-  
TEL & PIER Co.,  
*Appellant,*  
and  
ISLAND DEVELOPMENT Co.,  
*et al.,*  
*Respondent.*

10

On Appeal.  
Answer to Petition of  
Appeal.

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The answer of the above-named respondents to the 20  
petition of appeal of the above-named appellant.

This respondent, not acknowledging all or any of  
the matters which in the said petition of appeal are  
contained to be true, for answer thereto, neverthe-  
less, says and admits, that a decree was, on the 19th  
day of March, 1929, last past, made and entered in  
the Court of Chancery, in the cause for that pur-  
pose mentioned in the said petition, as is therein  
stated; but as to the substance and form thereof,  
this respondent prays to refer thereto when the 30  
same shall be produced. And this respondent is ad-  
vised and believes, that the said decree is agreeable  
to equity, and it prays that the same may be affirmed  
with costs to be adjudged to this respondent.

BOURGEOIS & COULOMB,  
*Solicitors for Respondents.*



ACKNOWLEDGMENT OF SERVICE OF BRIEF  
FOR APPELLANT, ATLANTIC-BRIG-  
ANTINE HOTEL AND PIER CO.

NEW JERSEY COURT OF ERRORS  
AND APPEALS.

10

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Between ATLANTIC-BRIGANTINE HO- TEL AND PIER Co., <i>Complainant-Appellant,</i> and ISLAND DEVELOPMENT Co., <i>et als.,</i> <i>Defendants-Appellees.</i>	} On Bill, &c. On Appeal from Chancery. Acknowledgment of 20
Between ISLAND DEVELOPMENT Co., <i>et als.,</i> <i>Complainants-Appellees,</i> and ATLANTIC-BRIGANTINE HO- TEL AND PIER Co., <i>Defendant-Appellant.</i>	

30

Service of the within brief for appellant, Atlantic-  
Brigantine Hotel and Pier Co., acknowledged this  
15th day of May, A. D. 1929, as though within time.

BOURGEOIS & COULOMB,  
*Solicitors for Island Develop-  
ment Co., et als.*

## EXHIBIT D8.

9/19/28L.

(Revised)

## PRICE LIST OF LOTS

Shown on Map entitled "Portion of Beach Front,"  
as shown on Map No. 1-A, showing

10

Lands located on

BRIGANTINE BEACH, N. J.

Owned by

ISLAND DEVELOPMENT COMPANY

901 Boardwalk

1201 Atlantic Avenue

Atlantic City, New Jersey

Phones Marine 6015 and 6016

Subject to change without notice

BLOCK 202 .....\$75,000

Restricted to a line 400' south of Ocean Avenue

20

BLOCKS 203-204-205-206 ..... Sold

BLOCK 207

Lots 19-20 .....\$2,750 each

Lots 21-22-23-24-25-26 .....\$3,000 each

Lot 27 .....\$6,500

Lot 28 .....\$4,500

Lot 29 .....\$4,600

Lot 30 .....\$7,000

BLOCK 208

Lots 19-20-21-22 .....\$2,750 each

30

Lots 23-24-25-26-27-28 .....\$3,000 each

Lot 29 .....\$6,000

Lots 30-31 .....\$4,500 each

Lot 32 .....\$6,600

BLOCK 209

Lots 19-20 .....\$2,750 each

Lots 21-22-23-24-25-26 .....\$3,000 each

Lot 27 .....\$6,500

Lots 28-29 .....	\$4,500	each	
Lot 30 .....	\$6,750		
BLOCKS 212-213-214 .....	Sold		
BLOCK 215			
Lots 19-20-21-22 .....	\$2,750	each	
Lots 23-24-25-26-27-28 .....	\$3,000	each	
Lot 29 .....	\$6,750		
Lots 30-31 .....	\$4,500	each	
Lot 32 .....	\$6,750		
BLOCK 216 .....			10
Lots 19-20-21-22-23-24 .....	\$2,750	each	
Lots 25-26-27-28-29-30 .....	\$3,000	each	
Lot 31 .....	\$6,200		
Lots 32-33 .....	\$4,500	each	
Lot 34 .....	\$6,000		
BLOCK 217			
Lots 19-20-21-22 .....	\$2,750	each	
Lots 23-24-25-26-27-28 .....	\$3,000	each	
Lot 29 .....	\$7,000		
Lots 30-31 .....	\$4,750		20
Lot 32 .....	\$6,500		
BLOCK 219			

With full Pier Rights, unrestricted, sale price \$100,000, or to a purchaser who will build pier 500 ft. long, costing \$100,000 during coming summer, the price will be \$75,000—with \$15,000 cash payment—This offer withdrawn after June 1, 1925 or on notice at any time.

EXHIBIT D9.

9/19/28L.

THE FIRST NATIONAL BANK OF  
WOODSTOWN.

No. A312  
10 Woodstown, N. J., Apr 18 1925 192  
Pay to the order of Island Development Co. \$15,000.00  
Exactly Fifteen Thousand Dollars Dollars  
U. G. Hillman  
Cashier  
To the First National Bank  
of Philadelphia.  
219

(Stamped)  
20 G. R. B.  
N-P  
55-144

---

ATLANTIC-BRIGANTINE HOTEL & PIER CO.  
INC.

No. 1  
Woodstown, N. J. 7/23 1925  
30 Pay to the order of  
Island Development Co. \$15,000.00  
Exactly Fifteen Thousand Dollars Dollars  
For 2nd Pay  
Atlantic-Brigantine Hotel & Pier Co. Inc.  
Wm. Richman Pres.  
U. G. Hillman Treas.

*Exhibit D9, Cancelled Checks and Receipt* 7

To The First National Bank  
55-456 Woodstown, N. J. 55-456

F

(Stamped)

N-P

55-144

---

THE FIRST NATIONAL BANK 55-456 10  
of Woodstown

Woodstown, N. J. 10/15 1925 No.

Pay to the order of

Island Development Co. \$15,000.00

Exactly Fifteen Thousand Dollars Dollars

Atlantic-Brigantine Hotel & Pier Co.

Wm. Richman Prest.

U. G. Hillman Treas.

Blk 219 3rd Pay

F

20

(Stamped)

N. P.

55-140

---

THE FIRST NATIONAL BANK 55-456  
of Woodstown

Woodstown, N. J. 2/15 1926 No.

Pay to the order of

Island Development Co. \$15,000.00 30

Exactly Fifteen Thousand Dollars Dollars

U. G. Hillman

219—4th Pay

(Stamped)

N. P.

55-140

8 *Exhibit D9, Cancelled Checks and Receipt*

Atlantic-Brigantine Hotel & Pier Co.  
Atlantic City, N. J.

Atlantic City, N. J., April 19 1926

In settlement with

ISLAND DEVELOPMENT COMPANY

For Lot Block 219.

Brigantine Beach, shown on Map 1A:

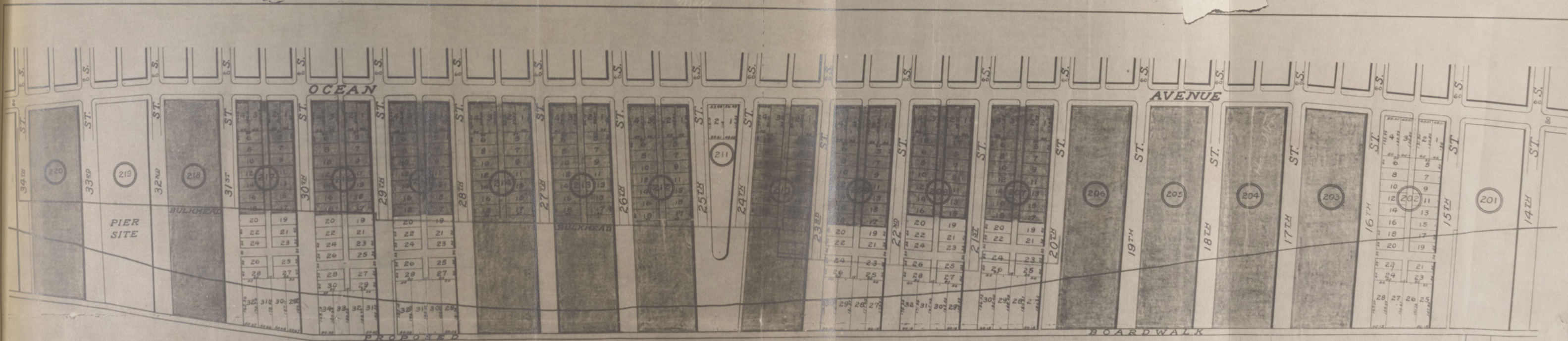
	To Purchase Price	\$150,000.
	1st Installment paid....	15000.
10	2nd " " ....	15000.
	3rd " " ....	15000.
	4th " " ....	15000.
	5th " " .....	
	Purchase Money Mortgage..	75000. 135,000.
		<hr/>
	Balance due .....	15,000.
	To Recording Deed.....	2.40
		<hr/>
	Total Due from Purchaser	15,002.40

20 2666

Received Payment,  
RECEIVED PAYMENT  
Jun 16 1926  
ISLAND DEVELOPMENT CO.  
Per J W

30

Exhibit D1-A  
map



A T L A N T I C

O C E A N

REVISED MAP  
OF  
PORTION OF BEACHFRONT  
AS SHOWN ON  
MAP NO. 1 A  
OF  
LANDS LOCATED ON  
BRIGANTINE BEACH  
MADE FOR  
ISLAND DEVELOPMENT CO.  
by H. I. Eaton, C. E. March, 1925  
Scale—150 feet to an inch.

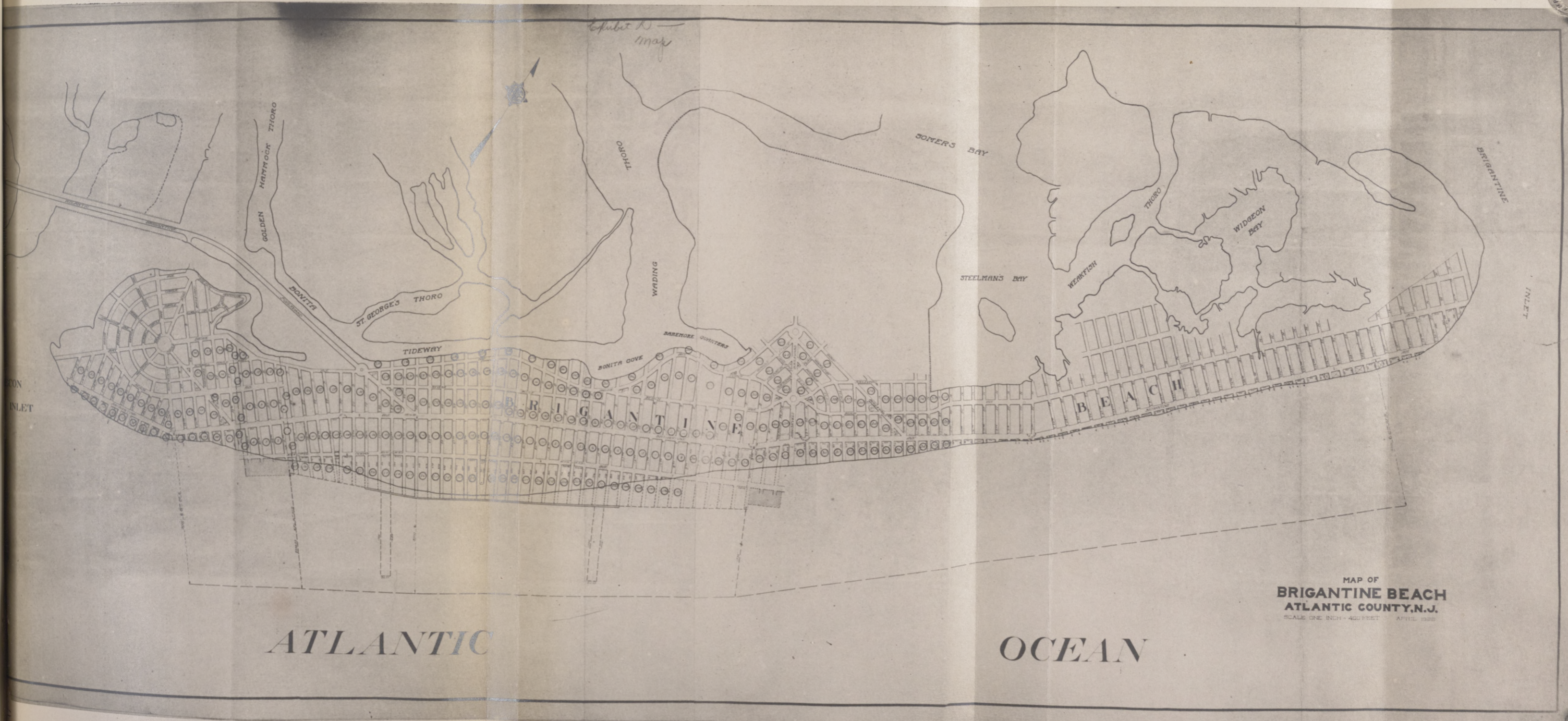
PROPOSED PIER

A

Exhibit D -  
Map

10

Exhibit D -  
map



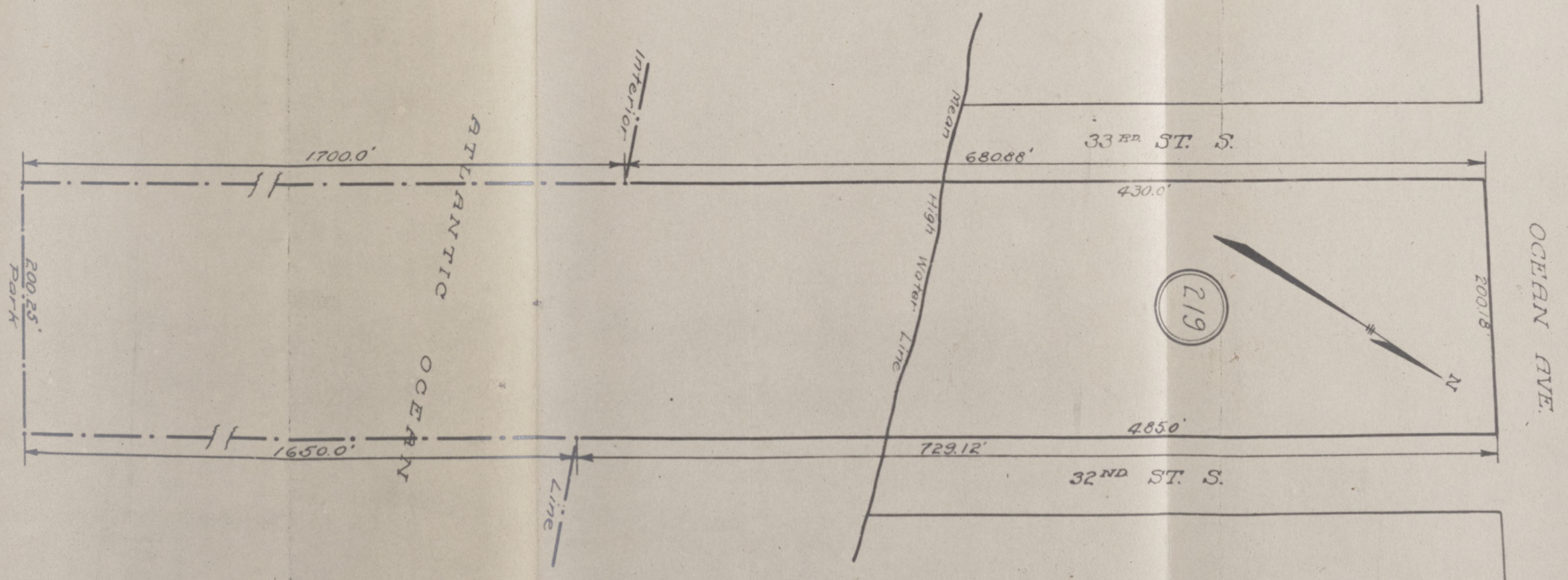
ATLANTIC

OCEAN

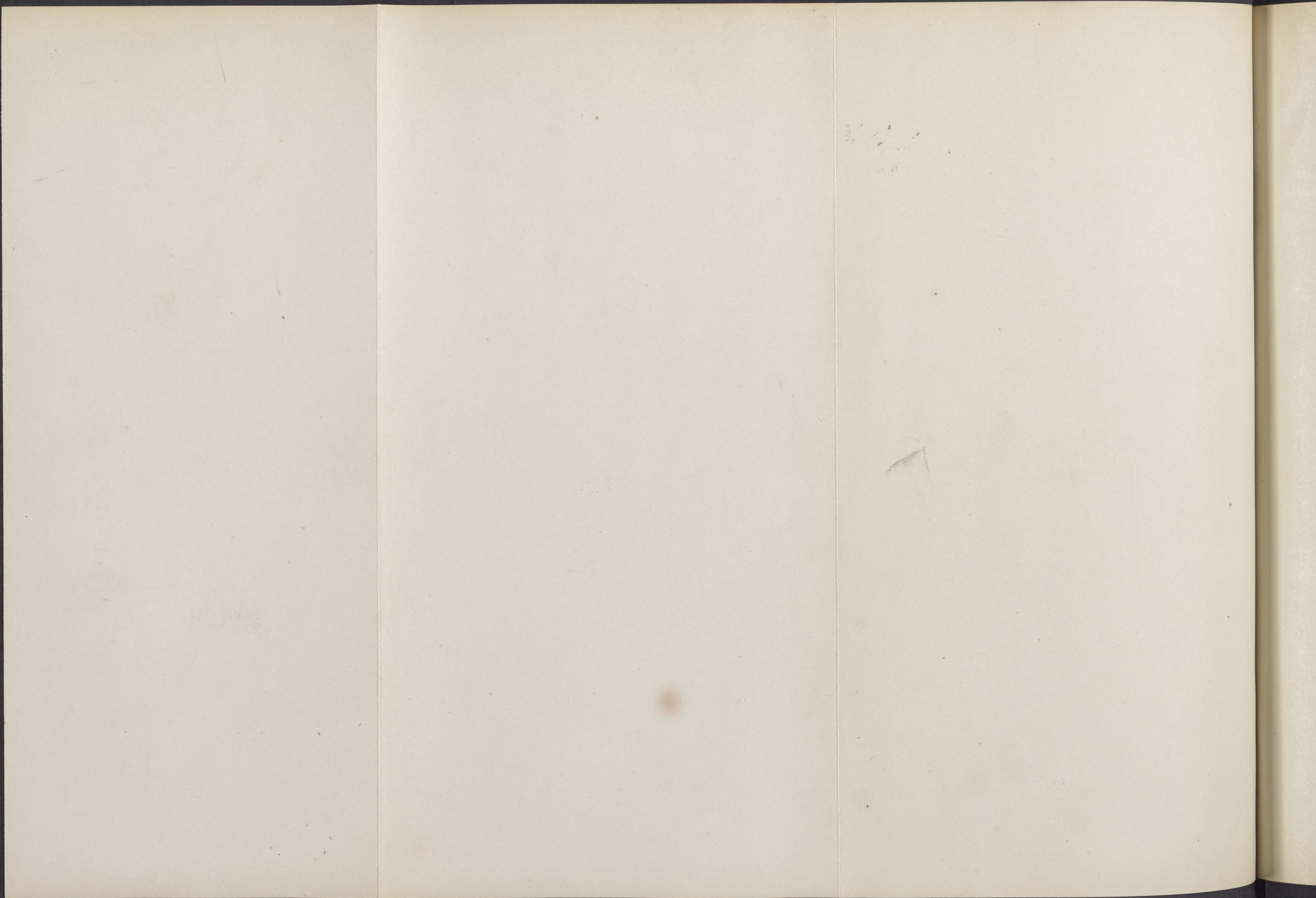
MAP OF  
BRIGANTINE BEACH  
ATLANTIC COUNTY, N.J.  
SCALE ONE INCH = 400 FEET APRIL 1922



Exhibit D 7  
Map



HIGH WATER LINE SURVEY  
ISLAND DEVELOPMENT CO.  
Brigantine, N.J.  
Nov. 10, 1925      Scale 1"=100'



NEW JERSEY COURT OF ERRORS  
AND APPEALS.

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Between

ATLANTIC-BRIGANTINE HOTEL AND PIER Co.,  
*Complainant-Appellant,*

and

ISLAND DEVELOPMENT Co., *et als.*,  
*Defendants-Appellees.*

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Between

ISLAND DEVELOPMENT Co., *et als.*,  
*Complainants-Appellees,*

and

ATLANTIC-BRIGANTINE HOTEL AND PIER Co.,  
*Defendant-Appellant.*

---

ON BILL, &C.

---

ON APPEAL FROM CHANCERY.

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BRIEF FOR APPELLANT, ATLANTIC-  
BRIGANTINE HOTEL AND PIER CO.

## STATEMENT.

The above two cases were tried together and can be most conveniently considered at the same time upon this appeal. The first of the two actions is based upon an original bill filed by the Atlantic-Brigantine Hotel and Pier Co., hereinafter for convenience called the Atlantic-Brigantine Company, against the Island Development Co., hereinafter called the development company, seeking to have a deed made by the development company to the Atlantic-Brigantine Company set aside and the contract therein involved rescinded, and the purchase money paid by the grantee restored to the grantor. The second action—a later action—is a foreclosure of a mortgage made by the Atlantic-Brigantine Company to the development company for part of the purchase money, in which foreclosure by a counterclaim attached to its answer, the Atlantic-Brigantine Company asks for the same relief as it had prayed for in its original bill.

The two cases were tried together before Vice-Chancellor Ingersoll, who filed his conclusions on March 19, 1929 (State of the Case, pp. 37 and 92); and on the same day signed decrees adverse to the appellant and in favor of the respondents (State of the Case, pp. 48 and 93). No notice was given to fix the form of the final decrees, but appellant makes no point of this fact.

The Atlantic-Brigantine Company appeals from the whole of the decree entered in each of the cases.

The development company projected and laid out an elaborate scheme for the development and sale of a large tract of land at Brigantine Beach, preparing and filing maps showing the lay out (Exhibit

1A, p. 9 of Supplemental State of the Case). The controversy in this case is in connection with Block numbered 219 on these maps, but which was not thereby cut up into lots, a space on the ocean side of the upland known as Block 219, and the land under water in front of most, if not all of the property, appearing on said map.

Arthur T. Butler (p. 130) was one of the development company's agents for the sale of its property, and on its behalf he successfully negotiated an agreement for a sale, with Ulysses G. Hillman, who was associated with some other gentlemen as a syndicate to purchase the property. After the agreement was made, it was assigned by Hillman (p. 254) to the Atlantic-Brigantine Hotel & Pier Company, the appellant herein, a corporation formed by and composed of the said syndicate. The pertinent features of the agreement (p. 250), which is dated April 18, 1925, was that the development company, for a consideration of \$150,000 to be paid in installments, agreed to convey to the heirs or assigns of Hillman, free from all encumbrance, on or before the 18th of April, 1926:

"All that lot, tract or parcel of land and premises \* \* \* bound and described as follows: Bound upon the North by Ocean Avenue, on the South by the high water line of Atlantic Ocean, on the East by 32nd Street South, on the west by 33rd Street South, being Block 219, as shown on map hereunto attached, together with all the right, title, and interest of the party of the first part, in and to lands lying under the water in front of said described premises, between the high water line of the Atlantic Ocean and the interior line of the City Park, said Interior line being located at a distance of about 1500 feet beyond the Interior line of the proposed board-

walk, as shown on the blue print hereunto attached, between 32nd and 33rd Streets South, it being understood that the premises oceanward of the above-named block and between 32nd and 33rd Streets South, are not incorporated within the boundaries of the City Park, for a distance of about 1500 feet, having been left vacant in order to provide site for the construction of an ocean pier without being affected by said Ocean Front Park Ordinance. It is fully understood and agreed, however, that a right of way for the Boardwalk, of the width of the proposed Boardwalk will be dedicated across the above described premises at the location shown on the attached blue print. Said described premises are to be conveyed free and clear of any restrictions. 32nd and 33rd Streets from Ocean Avenue to the bulkhead constructed across said described premises are to be paved with gravel, and concrete sidewalks and curbs are to be constructed before day of settlement. Ocean Avenue will be paved with gravel, with concrete sidewalks and curbs before day of settlement. The land lying between the bulkhead and Ocean Avenue will be filled to grade before day of settlement."

The agreement further provided for the down payment of \$15,000, for the subsequent payment on July 18, 1925, of \$15,000; of \$15,000 on October 18, 1925; \$15,000 on January 18, 1926, and \$15,000 on April 18, 1926, "at which time settlement shall be made and title passed," at which time the vendee, his successors or assigns was to deliver the purchase money mortgage, with bond, payable at any time within three years, for \$75,000. Attached to this agreement

by a clip, was a map (Exhibit DIA, p. 7 // of the Supplemental State of the Case, p. 153).

The first payment was made the date the agreement was signed, as provided therein, namely April 18, 1925; the second on July 23, 1925; the third on October 15, 1925; the fourth on February 15, 1926, and the last payment on June 16, 1926 (p. 167). The individuals connected with both companies closed the deal on June 16, 1926, without counsel, and the deed (dated April 19, 1926), instead of being given to the grantee, was recorded by the grantors, and never came physically into the grantee's possession until after it was recorded, which was on the 14th of October, 1926 (p. 103).

The deed (p. 254) is a bargain and sale deed, with the following covenant:

“AND the said ISLAND DEVELOPMENT CO., its successors and assigns DO by these presents covenant, grant and agree to and with the said party of the second part, its successors and Assigns, that it the said party of the first part, its successors and assigns all and singular the hereditaments and premises hereinabove described and granted, or mentioned and intended to be so, with the appurtenances unto the said party of the second part, its successors and Assigns, against it, the said party of the first part, its successors and assigns and against all and every other person or persons whomsoever lawfully claiming or to claim the same or any part thereof, by, from or under it, him, her or any of them SHALL and WILL by these presents WARRANT and forever defend.”

The premises conveyed are described as follows (*Ibid*):

“ALL that certain tract or parcel of land and



agreement and deed, and asking, for the reasons stated therein, as well as in the amendment thereto (found on p. 32), which amendment reads as follows:

“3a. On or about the time mentioned in paragraph 3 of this pleading, the president and other officers of the Island Development Company further represented that said company had full pier rights, unencumbered and unrestricted, in the lands under water in front Block 219; and that the balance of the land under water in front of development No. 1 in Brigantine, except Block 201, was effectively dedicated for public park purposes, and that Block 219 was the only block in said development, except Block 201, in front of which a pier could be erected.”

That the contract and deed be set aside and the mortgage be cancelled, the theory being that the same had been fraudulently induced. Later, and on October 22, 1927, the development company filed its bill to foreclose its mortgage (p. 52), to which the defendant answered, setting up the same alleged fraud, and by counter-claim sought to have the mortgage cancelled. See answer and counter-claim (p. 56) with amendment thereto (p. 87).

In support of its claim, the appellant showed, by the evidence of Butler, one of the development company's brokers, that about, or in the month preceding the month of April, 1925 (the date of the agreement), Mr. Harris, the president of the development company, had told him that the development company (p. 152):

“Had full pier rights in 219 and that the balance of the beach front in front of Brigantine with the exception of 201 had been dedicated to

the City of Brigantine by deed of dedication for public park purposes, and that we, in buying this block, had the only block where a pier could be constructed, with the exception of block 201."

And that he, Butler, negotiating on behalf of the development company brought those statements of Mr. Harris to the attention of Mr. Hillman, the representative of the vendee, and the contractee in the contract. The witness further shows (p. 144) that he was furnished by the appellant with a so-called price list, which was admitted in evidence and is marked Exhibit D8 (Supplemental State of the Case, p. 4). The feature thereof, pertinent to the issue herein, is as follows:

"BLOCK 219

*With full Pier Rights, unrestricted, sale price \$100,000, or to a purchaser who will build pier 500 ft. long, costing \$100,000 during coming summer, the price will be \$75,000—with \$15,000 cash payment—This offer withdrawn after June 1, 1925, or on notice at any time."*

Hillman testified (p. 156) that Butler, before his determination to purchase the property told him:

"That with this Block 219, there went a full pier right, with this site, 219, unencumbered and unrestricted. \* \* \*

Q. Was there anything said as to how many other pier rights existed, or could exist on this number one development?

A. Yes.

Q. What did he say about that?

A. He said there was only one other right in the division, No. 201."

Clement B. Richman, one of the syndicate (p. 202) was asked:

“Previous to the signing of the agreement did you have any conversations with or hear any remarks made by Mr. Harris, president of the Island Development Company, with reference to the land under water oceanward of the high-water line, if so, what?”

Mr. Bourgeois: Objected to as irrelevant and immaterial and not competent.

The Court: I will permit it. You can answer the question.

A. Yes, about that time Mr. Butler and I both, there was representations made to me as well as Mr. Butler, that this block had full pier rights, and Block 201 with full rights, also the Block 201, all other beach front was excepted, or was dedicated, had been dedicated to city park, and these would be the exclusive pier sites in division number one.

Q. When you said this property, which property did you refer to?

A. 219.”

The facts undisputably are that the development company had no pier rights whatever in front of Block 219, nor had they ever obtained a riparian grant for the land under water in front of other lots shown on the map, and it is because of this fact, and the falsity of the representations in the statements made by Mr. Harris, as well as in the price list that the company had and circulated and gave to Butler, their agent, who in turn showed it to the members of the syndicate, that the appellant desires to be relieved of the contract and deed. It is true, that Harris (pp. 191 and 221) makes a carefully

guarded denial of the representations. On page 220, he was asked, by a carefully framed question:

“Q. Did you on the 18th of April or within a month prior thereto make a statement to Mr. Hillman, Ulysses Hillman, or any other person that Island Development Company had full pier rights, unencumbered and unrestricted, in the lands under water in front of Block 219?

A. I did not.

Q. Were you present at the executive committee meetings?

A. I was.

Q. And the directors' meetings?

A. Always.

Q. Did you, during the period I have just before mentioned, hear anyone make a statement to Mr. Hillman or anyone else, that the Island Development had full pier rights, unrestricted and unencumbered, in the lands under water in front of Block 219?

A. I never did.

Q. Did you on the 18th of April, 1925, or within a month prior thereto, state to Mr. Hillman or any other person that the lands under water in front of development No. 1, except in front Blocks 201 and 219, was effectually dedicated for public park purposes?

A. No. If I made any statement at all it was that we had conveyed —

Mr. McCarter: One moment I don't think the answer, 'If I made any statement it was to this effect or that effect——' He is asked a specific question whether he made it and his answer should be yes or no.

A. No.

Q. You didn't make it?

A. No.

Q. Did you at any meeting of the directors or of the executive committee, hear any member of the executive committee or any director state to Mr. Hillman or any other person that the land under water in front of development No. 1, except in front of Blocks 201 and 219, was effectually dedicated for public park purposes?

A. No.”

Haneman, the secretary of the company, on p. 217 is asked:

“Q. In any meeting of the directors or the executive committee or officers of the Island Development Company did you ever hear any statement made to Mr. Hillman or any other person within a month prior to the 18th of April, 1925, to the effect that the Island Development Company had full pier rights, unencumbered and unrestricted, in the lands under water in front of block 219?

Mr. McCarter: Object to that for the same reason.

The Court: I will admit that.

A. No.

Q. Did you at any time prior to the 18th of April, 1925, or within a month prior thereto, ever hear any person state, that is, any director or member of the executive committee, state that the lands under water of development number 1, except in front of Blocks 201 and 219, was effectually dedicated for public park purposes?

A. No.”

It is not pretended by the witnesses for the appellant that the representations were made in the presence of Haneman.

The accuracy and reliability of Harris' testimony was greatly impugned by the fact that he first tried to escape the effect of the statement on the price list by the claim that it was issued after the making of the contract in question (p. 190, line 15). Later when shown that the price list itself bears date of issuance April 1, 1925, eighteen days before the making of the contract, he admits it was issued two weeks prior to the sale, and then on page 194, tries to escape the compelling force of the language of the price list "Block 219 with full pier rights unrestricted" by saying (p. 194, line 5):

"Our interpretation of that was this, that a full pier right, the same as in Atlantic City, meant that it had no control that would prohibit taking various admissions, making sales, rentals and so forth, on the oceanward side of the boardwalk."

This is face of the further language of the price list:

"Sale price \$100,000 or to a purchaser who will build pier 500 ft. long, costing \$100,000 during coming summer, the price will be \$75,000 with \$15,000 cash payment."

The Vice-Chancellor, because of Mr. Harris' denial, finds as a fact that no representations were made by him, in the face of the testimony of Messrs. Butler, Hillman and Richman, referred to above. He dismisses the price list with the statement:

"I find nothing in any written exhibit which would be evidential of any agreement or statement by the Island Development Company that it had procured the riparian rights of the land under water oceanward of the land in question."

If the language of the price list did not represent and mean that the development company had procured an unrestricted right to build a pier 500 feet long outside of the high-water line in front of Block 219, what was the object of indicating the "pier rights" on Exhibit 1A fastened to the agreement? What is the purpose of the long finger on the other maps in front of Block 219, and why was the boundary of the proposed park placed outside of and around the proposed location of the pier. (Eaton's evidence, pp. 120 to 122.)

Now, what do the proofs show that had been done, and was later done by the development company in the premises?

On August 18, 1924, the City of Brigantine, wherein the lines of these lands are located, had, pursuant to the provisions of Chapter 93 of the Laws of 1894, passed an ordinance opening and laying out along the beach or ocean front, a public park or place for public resort or recreation (p. 247). In accordance with the requirements of this Act of the Legislature, a description of the proposed park was made and filed.

The third section of the Act authorizes the City to purchase or condemn the lands, real estate, property and rights of persons and corporations situated, lying and being within and between the line so established and the exterior line now or hereafter established by the State riparian commissioners, and to devote the same to public uses as a public park.

The fourth section of the Act authorizes the municipality to build and construct an elevated public walk along the exterior line of said public park.

The fifth section authorizes the common council to accept from any person or corporation *owning lands, property or rights*, which by the provisions of this

Act the City is authorized to purchase or condemn, a dedication of such property for the park purposes.

The sixth section authorizes the governing body of the municipality to regulate the use of the lands and property when so purchased, condemned or dedicated, and limits the character of structures that may thereafter be erected thereon.

The seventh section provides that lands and rights that are acquired by condemnation shall become the property of the City.

Pursuant to the provisions of this Act, and nine months after the approval of the ordinance, the development company delivered to the City its deed of dedication (p. 264) wherein, after reciting the Act of 1894, and the enactment of the ordinance just referred to, fixing and giving the interior or inland line of the park as described in the ordinance, as well as fixing and establishing the limits or boundaries of the park for public resort, and the further compliance by the City counsel with the requirements of said Act, it recited:

“For the purpose of enabling the said City to use the lands lying oceanward from the inland line so established and so to be established and within the boundaries above designated as a public park and place of resort and recreation in pursuance of the provisions of the said Act, in consideration of one dollar and of the benefit and advantage to be derived by the party of the first part (the development company), by the laying out of the said park within the boundaries aforesaid and building said walk, and in consideration also that the lands of the said parties of the first part will not be condemned as provided by the Act of the Legislature and ordinance above referred to.”

And did give, grant, bargain, sell, etc., to the City, all their right, title and interest in and to the lands incorporated within the boundaries of the park for, and only for use as a public park, giving to the City  
“the right to construct, reconstruct, repair, complete and maintain upon the lands so contained along the interior or inland line of said park  
\* \* \* an elevated public boardwalk, in accordance with the provisions of the said Act,”

and the City did on its behalf covenant to maintain the elevated boardwalk; to permit the owner of lands and properties lying inland from the line so established and marked, and contiguous to any parcel of land, from time to time to connect all and each of said inland lands and properties with such elevated boardwalk by building, maintaining proper approaches for this purpose, and other provisions.

The fourth clause provides:

“That the lands hereby granted and dedicated to public use shall forever be and remain open so that the view oceanward from the said elevated public walk shall be free, open and unobstructed, and that no use shall be made of the said land by the grantee inconsistent with its use as a public park,” etc.

The significant fact, however, is that no riparian grant had then, or has yet been obtained by the Development Company for the property it undertook so to dedicate, nor has the land under water been acquired in front of Block 219, in order that the pier rights may exist (Tooker's evidence, p. 127, *et seq.*); nor has the right to build a boardwalk as indicated on the maps below high water mark been obtained. Nevertheless a boardwalk has

been erected in front of Blocks 220 to 201 (p. 157). The interior park line is the inside line of the boardwalk (Eaton, p. 120), except in front of Blocks 219 and 201.

It is the contention of the appellant that

### I.

The representations hereinabove referred to with reference (a) to the pier rights, and (b) the park in front of the entire Section 1 of the property (except lots 201 and 219) were falsely and fraudulently made, and entitle the appellant to a rescission of the contract;

### II.

The right to such rescission exists notwithstanding the language used in the agreement and deed "together with all the right, title and interest of the party of the first part in and to lands lying under the water in front of said described premises, between the high water line of the Atlantic Ocean and the interior line of the City Park," and

### III.

Both the agreement and the deed (in connection with the maps, ordinance and dedicatory deed referred to) require and presuppose the legal erection and maintenance of a boardwalk as indicated on the maps, whereas the boardwalk thus erected was so erected and is maintained without legal right; and

IV.

The discovery by the appellant after the making of the agreement, and before the delivery of the deed, of the failure of the Development Company to have acquired these rights and its acceptance of the deed thereafter, does not prevent its later right, duly exercised, to rescind upon its discovery that the Development Company's continued promises to obtain them, on the faith of which final payment and acceptance of the deed were made and had, had not been kept; and

V.

The letter from the appellant to the engineer of the Island Development Company, dated September 24, 1925, agreeing to pay "all expenses" under the circumstances, does not interfere with the right of the appellant to its desired relief; and

VI.

The appellant in its attempted rescission, acted with commendable promptness, and before such rescission took place, the position of the Development Company had not in any way been changed; and

VII.

The position of the Chelsea National Bank in

the matter has no effect upon the appellant's claim; and finally

### VIII.

The decree should be reversed, and the attempted rescission sanctioned.

### I.

THE REPRESENTATIONS HEREINABOVE REFERRED TO WITH REFERENCE (a) TO THE PIER RIGHTS, AND (b) THE PARK IN FRONT OF THE ENTIRE SECTION 1 OF THE PROPERTY (EXCEPT LOTS 201 AND 219) WERE FALSELY AND FRAUDULENTLY MADE, AND ENTITLE THE APPELLANT TO A RESCISSION OF THE CONTRACT.

We have already shown by the evidence of three witnesses, as well as by the language of the price list, that during the negotiations, positive statements were made by the president of the development company in this regard. They apply to two distinct subjects (a) the ownership of full pier rights in front of Block 219, and (b) the effective and legal existence of an ocean park between Blocks 201 and 219. The importance of and significance of these representations cannot be overestimated. To be able to erect and maintain a pier seven hundred feet long in front of the block, with all that goes therewith, and that such right should be sole and exclusive in front of the whole tract, down to Block 201, is of the greatest practical im-

portance. The experience at Atlantic City, known to us all, demonstrates this. If these representations were not made, and did not mean what the language imports, what was meant by the "pier rights" indicated on map Exhibit 1A? Why is the so-called finger in front of Block 219 indicated on the other maps in the case?

It must be remembered that on August 18, 1924, the municipality had passed the ordinance (p. 247) laying out the park. The description therein contained of the area of the park, admittedly passes around the so-called finger in front of Block 219, as well as around the same finger in front of Block 201, and hence all the provisions of the enabling act authorizing the creation of the park with reference to its being kept open and free from physical obstructions, had no application to the land under water in front of Block 219. On April 15, 1925, two days before our agreement was made, the dedicatory deed (p. 264) by the development company to the municipality was made, whereby as we have seen, the company undertook to convey to the municipality, the territory embraced between high water mark, and the exterior line in front of the whole Section 1, except Blocks 219 and 201. Not only did this deed purport thus to convey this large tract of land under water to the city, but it undertook to regulate, by restrictive clauses, the city's use of the pavilions, shelters, etc., upon the joint consent of the city authorities and the owners of the upland.

It is the settled law, of course, that the title to all lands under water, below high water mark, belongs to the State of New Jersey. *Hoboken v. Pennsylvania R. R.*, 124 U. S. 656; *Stevens v. Paterson & Newark R. R.*, 34 N. J. Law, 532.

It is just as well settled that the riparian propri-

etor in New Jersey has no power to create an easement for the public on lands below high water mark, as against the State and those claiming under it, and if he attempts so to do and then conveys to another person his right to reclaim the land under water fronting his property, his grantee may acquire from the State the title to such land discharged of the supposed easement.

In *Bridgewater v. Ocean City Association*, 85 N. J. Equity, 379, at page 382, Vice Chancellor Backes says:

“The United States Supreme Court, in *Hoboken v. Pennsylvania Railroad Co.*, 124 U. S. 656, decided that a riparian proprietor in New Jersey has no power to create an easement for the public over lands below high water mark, as against the State and those claiming under it; and if he attempts to do it, and then conveys to another person all his right to reclaim the land under water fronting his property, his grantee may acquire from the State the title to such land, discharged of the supposed easement. This doctrine was adopted by our Supreme Court in *Elizabeth v. Central Railroad of New Jersey*, 53 N. J. Law, 491, and in *Evans v. New Auditorium Pier Co.*, 63 N. J. Eq. 674, this Court held the covenant of a grantee, binding himself, his heirs and assigns, restricting the use of his lands lying on the ocean front, not to embrace adjoining riparian lands afterwards acquired by his assigns from the State.”

In *Atlantic City v. Auditorium Pier Co.*, 63 N. J. Eq. 644, at page 663, Vice-Chancellor Grey says:

“It appears, after considerable litigation, to have been settled, as the law of this State, that

an owner of lands bordering on high water mark, who has not obtained the State's title to the lands lying below high water mark, has no power to charge the latter with any easement which will be forceful against a subsequent grant of the State's title. The Supreme Court of the United States, in the case of *Hoboken v. Pennsylvania Railroad Co.*, 124 U. S. 656 (1887), passed upon the question whether a riparian owner 'had power to dedicate to the public use, as a highway, any part of the land lying below high water mark.' The Circuit Court of the United States for this district has held that as lands lying below high water mark belonged to the State of New Jersey, they could only be dedicated or subjected to an easement by the State or its grantees."

It necessarily follows from the foregoing that the dedicatory deed given by the development company to the city is of no effect on the lands under water below high water mark in front of the land composing the first development.

The respondents, however, claim that notwithstanding the fact that no grant or license from the State had, or has been acquired either to erect the pier, the boardwalk, or the right to use the land under water for a park, nevertheless for all practical intents and purposes the ordinance and dedicatory deed are effective.

Prior to Chapter 99 of the Laws of 1900, P. L. 1900, p. 285, which authorizes the laying out of public parks along the ocean front, the owners of the *ripa* were entitled to, and did receive grants from the State for those lands under water in front of their respective properties. The legislature, by the

above act, however, authorized cities bordering on the Atlantic Ocean to acquire *by purchase or condemnation* the lands lying below high water mark, for the purpose of laying out a park or place of public recreation.

The City of Atlantic City, in pursuance of that act, by ordinance laid out a public park along its beach or ocean front, and acquired for such park, either by condemnation or purchase, all the lands theretofore granted by the State of New Jersey to the individual owners of the ripa. The riparian rights at the ocean end of each of the streets had, however, not been acquired, either by the City or the individual owners, and so the legislature, in 1901, P. L. p. 374, undertook to authorize the Riparian Commissioners to grant to all of the cities having laid out a park along their ocean front, the riparian rights for the ends of the streets, by the payment of a nominal consideration. In *Henderson v. Atlantic City*, 64 N. J. Equity, 583, it was held, and has ever since been understood as the law, that inasmuch as the proceeds from the sale of riparian lands had been devoted to the public school fund, the Act of 1901 was unconstitutional, because it permitted a grant by the State to the municipality of State lands for a nominal consideration, and thereby diverted proceeds which might arise from the sale of riparian lands from the school fund. Thereupon, the Legislature, in 1903, P. L. 1903, p. 387, 4 C. S. p. 4397, passed the act directing the Riparian Commissioners to grant to any city bordering on the Atlantic Ocean having a park along its ocean front, or lands under water within such park, but requiring the municipality to pay an adequate sum therefor, which in turn should be turned over to the School Fund.

Of course, without the grant from the State, the

State's title is unaffected. *Bridgewater v. Ocean City Association*, 85 N. J. Equity, 379; affirmed 88 Id. 35; *Atlantic City v. Auditorium Pier Co.*, 63 Id. 644.

The legislature in 1891, P. L. p. 216, had enacted that "without grant or permission of the commissioners, no person or corporation shall fill in, build upon or make any erection on, or reclaim any of of the lands under the tide waters of the State," and authorizing abatement for perpreasure by injunction or by indictment, as well as in ejectment. See also *Seacoast, etc., Co. v. American Timber Co.*, 92 N. J. Equity, 219 (E. & A.).

It thus appears, that no right whatever having been obtained from the State, the dedicatory deed is futile.

The respondents, however, contend that inasmuch as the third section of the Act of 1903, *supra*, authorizing the laying out of the park, and the acquisition from the State, upon the payment of adequate consideration, of its interest in the land under water, prohibits any conveyance being made by the Commissioners, except to the municipality aforesaid, of any land under water, within the limits of the park; that the park is as effectually a park without the grant as it is with it. In other words, if this contention be true, the development company can defy the constitution and the statute and purport to make a dedicatory deed, without having paid the State for the riparian lands included therein. Such a construction of the act cannot be possible, for it would render the act unconstitutional. It is just as bad to give to the Act of 1903, a construction that practically enables an effective park to be laid out, without paying into the School Fund a fair price therefor, as was the Act of 1901 which authorized the

grant from the State for a nominal consideration. An interpretation of an act which renders it unconstitutional will, of course, not be tolerated, and we submit that the true construction of the Act of 1903 is that a prohibition against the grant of a deed by the Riparian Commissioners to any one other than the municipality, only applies and comes into effect after the interest of the State in the lands under water has either, by purchase or condemnation, been acquired for a fair consideration.

The development company was, of course, fully aware of the rights of the State. One of its directors and its counsel was Honorable Joseph Thompson, and the record is replete with resolutions authorizing him and other officers to apply to the commission for riparian rights (pp. 201, 212, 218).

The misrepresentations that were made in the negotiations leading to the sale of this property, being false and known to be false, were fraudulent, and entitle the grantee to a rescission of the contract. *Hawthorne v. Oldenson*, 94 N. J. Equity, 588; *Brownback v. Spengler* (Leaming, V. C.), 101 Equity, 388; *Ratkewicz v. Kara* (E. & A.), 89 N. J. Equity, 203; *Waddell v. Beach* (E. & A.), 9 N. J. Equity, 793.

Of course, it is fundamental that fraudulent representations made in connection with a written contract, by which the same is induced, may always be shown (*Naumberg v. Young*, 44 N. J. Law, 331).

Apart from, and in addition to the representations above referred to, we point to the fact that the development company, by its scheme evidenced by the map dividing the large tract of land in Brigantine, in which is included both the development in front of Block 219, as well as in front of the whole section, that there would be a boardwalk, and a park, and that the purchaser of Block 219 in this devel-

opment would have the right, exclusive of all other owners of blocks in that development, except Block 201, to erect a pier, creates on the part of the development company an implied covenant that these representations in the transaction are true. *Bridge-water v. Ocean City Association*, 85 N. J. Equity, 379; affirmed 88 Id. 351; 62 Id. 798; *Lennig v. Ocean City Association*, 41 Id. 606.

## II.

THE RIGHT OF SUCH RESCISSION EXISTS NOTWITHSTANDING THE LANGUAGE USED IN THE AGREEMENT AND DEED "TOGETHER WITH ALL THE RIGHT, TITLE AND INTEREST OF THE PARTY OF THE FIRST PART IN AND TO LANDS LYING UNDER THE WATER IN FRONT OF SAID DESCRIBED PREMISES, BETWEEN THE HIGH WATER LINE OF THE ATLANTIC OCEAN AND THE INTERIOR LINE OF THE CITY PARK."

The respondents insist that the use in the contract and deed of the words "right, title and interest" of the grantor "in and to lands lying under the water in front of the described premises between the high water line of the Atlantic Ocean and the interior line of the City Park" implies no covenant and no ownership, but only a conveyance of whatever right, if any, the grantor had in the lands under water. Such may be, in the absence of fraudulent representations, the proper construction to be placed upon a grant containing this language; but no one can, we think, legitimately question the legal principle that if previous to the making of the agreement to convey, or a grant, it

be represented that the party owns certain premises, and has acquired the full right thereto, and later a deed is given of all his right, title and interest therein, he cannot, by simply using such language in the conveyance, overcome the representation that he made during the negotiations. It must be remembered that the words "right, title and interest" only applied, both in the contract and the deed, to the pier right in front of Block 219. No such language whatever is used with reference to the park rights in front of the whole development.

If in any transaction, whether by warranty deed, quit-claim deed conveying right, title and interest only, a promissory note, or other instrument, a contract is made which is fraudulently induced, the contractee, upon discovery of the fraud, may rescind the contract. This applies as well to mere quit-claim deeds as to others. *Botsford v. Wilson*, 75 Ill. 132; *Butman v. Hussey*, 30 Me. 263; 39 *Cyc.* 2010.

The doctrine that the purchaser under a quit-claim deed is not to be regarded as a bona fide purchaser without notice of outstanding titles and equities, is utterly inapplicable to protect a fraudulent grant, and only prevails in settling conflicting titles. One, who by false representations, induces a confiding purchaser to believe that he acquires a good title under a quit-claim deed, is guilty of fraud, and the vendee, upon discovery thereof, may rescind. As was said by the Supreme Court of Iowa in *Ballou v. Lucas*, 12 *Northwestern Reporter*, 745, 746:

"It would be a reproach to the law to hold that a vendor, who by fraudulent representations, has induced a vendee to accept a quit-claim deed for land, can wholly escape liability for his fraud. \* \* \* Of course, if the grantor

in a quit-claim deed makes no false representations, he is not liable if the grantee acquires nothing by the deed. But in that case he is honest; at least does not deceive the vendee by misrepresentations. But when he induces the grantee by falsehood to accept a quit-claim deed, there is no rule of law or equity which will relieve him of liability for his fraud."

In *Meeks v. Bickford* (E. & A.), 96 N. J. Equity, 321, this Court (Kalisch, J.) expressly held that fraud could be proven and relied on in the giving of a quit-claim deed, as in any other conveyance.

The principle underlying these cases, is the same, of course, as that which enables a grantee in a deed containing no covenants, or only partial covenants, to rescind for fraudulent misrepresentations concerning matters not covered by the covenants. *Hawthorne v. Oldenson*, 94 N. J. Equity, 588, and cases cited; *Brownback v. Spengler*, 101 N. J. Equity, 388. See also *Goldman v. Hadley*, 122 Southwestern Reporter, 282.

As has already been indicated, there is no limitation of right, title and interest to the effectiveness of the parking rights.

## III.

BOTH THE AGREEMENT AND THE DEED (IN CONNECTION WITH THE MAPS, ORDINANCE AND DEDICATORY DEED REFERRED TO) REQUIRE AND PRESUPPOSE THE LEGAL ERECTION AND MAINTENANCE OF A BOARDWALK AS INDICATED ON THE MAPS, WHEREAS THE BOARDWALK THUS ERECTED WAS SO ERECTED AND IS MAINTAINED WITHOUT LEGAL RIGHT.

The agreement, after describing the block to be conveyed—being 219—and the reference to the park, adds:

“It is fully understood and agreed, however, that a right of way for the boardwalk of the width of the proposed boardwalk will be dedicated across the above described premises, at the location shown on the attached blueprint.”

On the blueprint attached to the contract, as well as on the map—Exhibit D6 made in April, 1925—the boardwalk is plainly indicated as lying outside of high-water line, and it has in fact been constructed as indicated. The plain purport of the clause in the contract and the maps was that there should be a boardwalk, and that the grantee in the agreement obligated himself to dedicate across the property conveyed, a right of way therefor, which, of course, would only be a part of the site of the proposed boardwalk, down to and beyond lot 201.

As shown by Mr. Eaton, the engineer of the development company (p. 121, line 20), the dedicatory deed—made three days before the agreement in

question—included the boardwalk site, and the first clause of that deed (p. 269) reads:

“To maintain the said elevated boardwalk as hereinafter to be constructed, or extended, along the inland line of the land hereby conveyed, as an open public walk.”

The fourth clause of the same deed also provides

“That the lands hereby granted and dedicated to public use shall forever be and remain open so that the view oceanward from the said elevated public walk erected and to be erected as above mentioned, shall be free, open and unobstructed, etc., \* \* \* public pavilions or shelters with an eave or ceiling elevation of at least sixteen feet may be erected by the city with consent of the abutting property owner, or the abutting property owner with the consent and approval of the city may erect on the ocean side of the boardwalk and connect thereto \* \* \* .”

We contend that the vendee, under the agreement, had a right to rely upon these representations that the vendor intended to build the boardwalk, and that, of course, the boardwalk when built would be legally and effectively constructed, and that if such representation was false, the vendee might avoid a contract induced thereby. The situation is exactly like that, in this respect, in the case of *Roberts v. James (E. & A.)* 1912, Swayze, J., 83 N. J. Law 492. While it is true that at the time of the making of the contract, the boardwalk had not in fact been constructed, nevertheless, it was, as we have seen, to be constructed, and its location plainly indicated on the maps. The development company cannot escape its legal liability by claiming that these were mere

promises. *Roberts v. James*, 83 N. J. Law 492; *Gordon v. Schellhorn*, 95 Id. 363.

Now, while the boardwalk has been built, it is built in fulfillment of the representation and promise, outside of the highwater line, and without having obtained the State's grant therefor (p. 129).

It is true that no reference is made to the boardwalk in the deed. The deed, however, unlike the agreement, contains the clause "subject to the operation of the City Park deed executed between Island Development Co. and the City of Brigantine." Under the authorities, which are familiar and illuminating, the situation here is such as that the acceptance of the deed, without its containing a clause referring to the boardwalk, does not prevent the parties from insisting upon the legal existence of the boardwalk as provided in the agreement. It is true (*Davis v. Clark, E. & A.*, 47 N. J. Law, 338) that where a deed is made and accepted in pursuance of an executory contract, the law presumes that it fully expresses the final intention of the parties *as to so much of the contract as it purports to execute*.

Where, however, the contract contains several and distinct covenants, touching separable acts to be performed simultaneously, the executory contract, by acceptance of the deed, becomes extinct only as to such of its parts as are covered by the conveyance. *Long v. Hartwell, Van Syckel, J.*, 34 N. J. Law, 116.

The plain purport of the agreement is (1) to convey the upland; (2) the land under water in front thereof for a pier site; (3) to effectively provide for an open park in front of the whole property; (4) the permanent and effective construction of a boardwalk along the latter, at a given location. The deed makes no reference whatever to the boardwalk, but

as stated in *Buel v. Willard*, 9 Barb. 641, cited by Justice Van Syckel in *Long v. Hartwell*, *supra*, the rule is well stated

“that the covenant in order to be deemed collateral and independent, so as not to be destroyed by the execution of the deed, must not look to or be connected with the title, possession, quantity, or emblements of the land which is the subject of the contract.”

In a word, as stated in *Brownback v. Spengler*, 101 N. J. Equity, 388, 390:

“The rule to be adduced from the authorities is that the executed contract supersedes all prior negotiations and agreements where the last contract covers the whole subject embraced in the prior one.”

See *Davis v. Clark*, 47 N. J. Law, 338; *Waddell v. Beach*, 9 N. J. Equity, 793; *Blum v. Parsons Manufacturing Co.*, 80 N. J. Law, 390; *Hawthorne v. Oldenon*, 94 N. J. Equity, 588.

The principle is plainly brought out in *Curtis Warner Corporation v. Thirkettle*, 99 N. J. Equity, 806; affirmed in this Court, 137 Atlantic Reporter, p. 408. Here there was an agreement to convey certain described premises, and also covenants in the agreement with reference to the cutting through of streets and building of sidewalks, and as to the insistence that the silence of the deed with reference to the covenants last referred to, the Court said:

“But the deed which was delivered to the defendants in the instant case was not in performance of the agreement to either convey a corner lot or to build sidewalks and curbs. It is true that the deed conveyed the lot which was pur-

chased, describing it by metes and bounds, but not a corner; but it, nevertheless, did not convey a corner lot, which is what the vendor agreed to convey. It was, at best, a performance of such part of the contract as it purported to execute, namely, a conveyance of a particular piece of land. As well say that by the delivery of the deed for the lot the agreement to build the house was also executed. The delivery and acceptance of the deed, in pursuance of an executory contract, is, perhaps, *prima facie* evidence that it expresses the final intention of the parties, but only so far as it purports to carry into effect the executory contract. The cutting through of a street and building of sidewalks and curbs was executory even after the delivery of the deed. That part of the contract remained, and still remains, unfulfilled. There was no more a merger of these covenants in the contract by the delivery of the deed than there was a merger of the agreement to fill in the lowland upon the delivery of the deed in the case of *Peterson v. Reid*, *supra*, or than there would have been a merger by the delivery of a deed in the recent case of *Holloway v. Hendrick* of an agreement to build a house according to certain plans and specifications. In *Roberts v. James*, 85 Atl. Rep. 244, Mr. Justice Swayze, speaking for the Court of Errors and Appeals, held that a representation by the vendors that they intended to build a railway station and cement walks upon vacant lots entitled the vendees to avoid the contract where it appeared that the representations were false. The third point advanced by the complainant against defendants' claim for abatement is untenable."

IV.

THE DISCOVERY BY THE APPELLANT AFTER THE MAKING OF THE AGREEMENT, AND BEFORE THE DELIVERY OF THE DEED, OF THE FAILURE OF THE DEVELOPMENT COMPANY TO HAVE ACQUIRED THESE RIGHTS AND ITS ACCEPTANCE OF THE DEED THEREAFTER, DOES NOT PREVENT ITS LATER RIGHT, DULY EXERCISED, TO RESCIND UPON ITS DISCOVERY THAT THE DEVELOPMENT COMPANY'S CONTINUED PROMISES TO OBTAIN THEM, ON THE FAITH OF WHICH FINAL PAYMENT AND ACCEPTANCE OF THE DEED WERE MADE AND HAD, HAD NOT BEEN KEPT.

It is true that after the making of the contract, and before the delivery of the deed, the officers of the vendee discovered that the representations hereinabove referred to with reference to their having obtained the riparian rights were untrue. It is our contention, however, that their objections were quieted and put to rest by the promises of the development company immediately to acquire such rights.

Mr. Richman testifies (p. 165, line 22):

“We had made our fourth payment (which was on February 16, 1924), but the fifth payment we refused to make until we felt satisfied that the company would carry out their representations.”

On page 168, at line 20, he says:

“Q. You say you were continually following that up. I want to know what you were doing

when you were continually following that up. What were you doing, what went on?

A. Protesting to Mr. Harris and the board that we needed the riparian rights.

Q. What would he say?

A. Doing all within their power to secure them.

Q. I show you a copy of a letter dated June 7, 1926, addressed to the Brigantine Hotel and Pier Company and purporting to be signed by the Island Development Company, Secretary, which copy is handed me through the courtesy of Mr. Haneman, we having lost the letter. You remember receiving a letter of which that is a copy?

A. Yes, sir.

(Copy of letter offered, received in evidence and marked Exhibit D11.)

(D11 read by Mr. McCarter as follows: 'June 7th, 1926. Brigantine Hotel and Pier Company, 315 Guarantee Trust Building, Atlantic City, N. J. Attention of Mr. William Richman. Dear Sir: In confirmation of our conversation recently held, I am writing this letter to assure you that the Island Development Company is doing all within its power to assist the City of Brigantine in obtaining the riparian rights for the City Park in the so-called first development. The city expects to obtain same within the next few weeks.

'Would like to assure you as Assistant City Solicitor of the City of Brigantine that we are making every effort to obtain these riparian grants.

'Trusting this is satisfactory, I am, Very truly yours, Island Development Company.')

Mr. Bourgeois: Who is that signed by?

Mr. McCarter: It says secretary. It isn't signed, of course. The answer then is the letter was signed by Mr. Haneman, the secretary.

Q. After that letter was received was the final payment made on the 16th of June and the deed taken.

A. Final payment was made.

Q. On the faith of that letter?

A. Yes, sir.

Q. When did you personally first see the deed, do you know?

A. Mailed to me after it came back from Mays Landing."

The deed was not recorded until October 14th, 1926, although it is dated April 9th of that year. Meantime, and on May 14, 1926, a month before the last payment was made, the development company sent to the Board of Commerce and Navigation, successor to the Riparian Commission (a) an application for riparian rights in front of practically all the lots on the subdivision of the property displayed upon the maps (p. 242, *et. seq.*), stating in their letter accompanying the same:

"You will note that we have omitted from the application, blocks from 200 to 222. Most of these blocks have been sold, and this company is no longer the owner of record, but we have agreed to handle the matter of obtaining the grants for the various owners.

We have already received the grant on Block 201, and have submitted applications on several of the others. We are now obtaining signed applications from the other owners in this section, and these will be forwarded to you at an early date."

On page 239, under date of May 18th, 1926, the director of the board acknowledged the receipt of this application, but stated it was received too late to be put on the calendar for May, and "will be considered at the June meeting."

On May 20th, (p. 238) the director requested a copy of the deed of the development company covering the lands along the ocean front, and on May 21st, the development company replied seeking to escape the necessity of sending the deed, because of the expense. On June 16th, the very day of our last payment, as if in fulfillment of the promise to which Mr. Richman in his evidence above referred, the engineer of the development company wrote to the board saying (p. 237):

"Will you please add to our recent application for Riparian Grants of the Beach Front, Blocks 219 and 221, which we would like included in the grant. If it requires a separate application for this, please advise and I will submit same."

On June 17, 1926, (p. 236) the director of the board replied that it would be advisable for the company to make out a new application for these two blocks upon the form which he had enclosed. Nothing further was done, and the matter has rested there ever since.

Meantime, inasmuch as the appellant had evidently mislaid the letter of the development company, dated June 7, 1926, quoted above, they were able to procure a further letter, dated March 14, 1927, addressed to them, which reads as follows:

"In view of the fact that a certain letter which I wrote you dated June 7, 1926, seems to have miscarried, I am writing the present letter to conform with what I said in the past. I

desire at this time to assure you that the Island Development Company is doing all within its power to assist the City of Brigantine in obtaining riparian grants for the City Park in front of the so-called first development. I should like to assure you further as assistant solicitor of the City of Brigantine that the city is making every effort to obtain these riparian grants itself. In accordance with your request I should at this time like to inform you that all the land lying between Eighth Street south to 14th Street south, and from 15th Street south to 32nd Street south, and between 33rd Street south and a point 100 feet westwardly from 40th Street south, extending from the landward or interior line of the boardwalk, which line is coincident with the landward or interior line of the city park, and the exterior line of said city park is and will continue to be subject to and encumbered by the provisions and conditions of the said park deed or agreement between Island Development Company and the City of Brigantine, dated April 15th, 1925, and that the strip of land lying between 32nd and 33rd Streets south, and extending southeastwardly 1700 feet from the interior line of the boardwalk measured along 33rd Street south, and 1650 feet measured along 32nd Street south, is not a part of said city park. It is free and clear of all restrictions and conditions excepting as set forth in the deed from Island Development Company to the Brigantine Hotel and Pier Company, the strip lying between 32nd and 33rd Streets south as above described."

Further efforts were made, without avail, to procure the performance of the covenants by the devel-

opment company, and finally in July, 1926, counsel were consulted, with the result that in September of that year, the first of the bills of complaint herein, which sought to have the deed and contract set aside, was filed.

These facts seem to bring our case directly within the principle of *Curtis-Warner Corporation v. Thirkettle, supra*, where, as we have seen, except for a slight modification upon other points, this Court affirmed the opinion of Vice-Chancellor Berry, to this same effect:

“There is nothing in the testimony which indicates any laches, estoppel or waiver on the part of the defendants. The facts urged in support of this contention are that, after the defendant discovered that his lot was not a corner lot, he continued making installment payments on the mortgage and delayed his claim to an abatement to the point of waiver, and that he is thereby estopped from now asserting the claim for abatement. It is true that the defendant learned in 1923 that his lot was not a corner lot, but it appears that he was subsequently assured by Mr. Harman or Mr. Goldfarb, or both, that Tremont Avenue would be cut through and his lot made a corner lot. It is also apparent that defendant continued his complaints to both these witnesses right up to within a short time before the filing of the bill, and that he was repeatedly assured by one or both that he would receive what he bought. His continuing to pay installments due on the mortgage under these circumstances does not bar him from now asserting this claim. It is not suggested that the complainant has been placed in any worse position because of these payments by defen-

dant, and the evidence demonstrates that it has not.”

V.

THE LETTER FROM THE APPELLANT TO THE ENGINEER OF THE ISLAND DEVELOPMENT COMPANY, DATED SEPTEMBER 24, 1925, AGREEING TO PAY “ALL EXPENSES” UNDER THE CIRCUMSTANCES, DOES NOT INTERFERE WITH THE RIGHT OF THE APPELLANT TO ITS DESIRED RELIEF.

The opinion of the Vice-Chancellor refers to a letter written by Richman, the president of the appellants, to the engineer of the development company, dated September 24, 1925, (p. 43) which reads as follows:

“September 24, 1925.

Mr. H. I. Eaton, C. E.  
Island Development Company,  
1201 Atlantic Avenue,  
Atlantic City, N. J.

My Mr. Eaton:

Kindly obtain at our expense the Riparian Rights on Block 219, Brigantine Beach. This grant may be taken out in the name of the Island Development Company and included in our deed when we make settlement. We will pay all expenses and cost involved for obtaining same.

Very truly yours,  
Atlantic Brigantine Hotel & Pier Co.  
Wm. Richman,  
President.”

The fact is that in the demoralization that ensued upon learning that the riparian rights had not been secured, Richman in this letter offered, on behalf of the company, itself, to pay for the grant in front of Block 219, if the company would go ahead and get the riparian rights for the boardwalk and in front of the rest of the property, down to lot 202, offering to help them along to that extent (p. 173, line 35).

Mr. Richman testifies (p. 173):

“Q. Mr. Richman, did I understand you to say that you were insisting that the Island Development Company, as a part of their agreement, should secure the riparian grant for this tract of land between 32nd and 33rd Streets?

A. I was insisting on them securing the riparian rights on the whole number one division.

Q. You can answer that question, can't you, for me?

A. Was I insisting on them securing the rights for this particular block?

Q. (Question repeated.)

A. And even further than that, yes, sir.

Q. I didn't ask you that. That you insisted on?

A. Yes.

Q. And that was the basis of your complaint and is the basis of your complaint now, is that right?

A. Not altogether.

Q. What is the basis of your complaint?

A. That our title policy and what we bought don't mean anything unless the riparian rights are secured in the whole number one division and dedicated properly.

Q. Then your contention is that the Island Development Company under its agreement was required to procure a riparian grant for all

of the land described in the park, in the first division, or first section, is that right?

A. Yes, sir.

Q. Including the right for this lot?

A. We offered to buy that ourselves.

Q. You were going to buy that?

A. We offered to, to help the thing along."

And p. 181:

"Q. Now, referring to this letter of September 2nd, 1925, in which you, speaking for the Atlantic Hotel and Pier Company, September 24, 1925: 'Kindly obtain at our expense the riparian rights on block 219, Brigantine, New Jersey. This grant may be taken out in the name of the Island Development Company and included in our deed when we make settlement. We will pay all expenses and costs for obtaining same.' As I understand your evidence, your construction was right or wrong, but your construction of the situation as it existed between the Island Development Company and your company was to the effect that the only pier right that could exist and should exist in front of section number one were in front of your lot 219 and lot 201, and that the rest was to be always open for park purposes, and that your claim was and is that the only way to keep that open and clear it for park purposes was by the proper person, namely the owner of the upland, to apply for the riparian grant of all that land, is that right?

A. Yes, sir.

Q. Now, having that view in mind, did you finally, in your talks with the people, in your endeavors to bring that situation about, go so

far as to agree to pay for the expenses of that whole riparian grant that should be given in front of that land?

A. Of that one block, yes, sir.

Q. Of that one block?

A. Yes, sir.

Q. That was the compromise, wasn't it?

Mr. Bourgeois: I object.

The Court: Sustain the objection.

Q. What was that? How did you happen to do that? What led up to the conversation between you and the other people, they were saying what?

A. In conversation with Mr. Harris I says we want these riparian rights. Mr. Harris says all right, he says we will apply for them, Mr. Harris says we will apply for them under your instructions. Mr. Harris dictated that letter, writes that letter, in our own place, and I signed it, that is a copy which you have there.

Q. What insistence were you making at the time that you wrote that letter.

A. That we absolutely needed the riparian rights to make our title good and valid, and secure, that we could sell something that would be worth while.

Q. What riparian rights are you speaking of now?

A. Well, I am speaking of 219, also the whole division, but, of course, we are particularly talking about in front of block 219.

Q. Did you ever recede from the position, as you constituted the arrangement with them, in order to give you the exclusive pier right in 219, and the only other pier right being on block 201, that the riparian rights for the intermedi-

ate part should be obtained from them? Did you ever recede from that position?

A. No, sir.

Q. Had you ever, previous to this letter, agreed to pay, in so much of that riparian grant as was in front of your property?

A. No, sir.

Q. What led you to that proposal?

A. For this company to secure the balance of them.

Q. What?

A. For this company to secure the balance of them, Island Development Company.

Q. Did they say they would, if you did?

A. Never definitely.

Q. I beg pardon?

A. Never definitely.

Q. What did they say definitely or indefinitely?

A. These letters that we have answers the questions, they were trying to get the City of Brigantine, trying to secure them for the City of Brigantine.

Q. Did you hear the prices of the cost of a grant or riparian right in front of the entire section number one mentioned?

A. It was discussed in a general way that they could secure it at seven and a half a front foot, taking a leasehold.

Q. Talking about how much?

A. \$1500 a block.

Q. And that is forty or fifty thousand dollars, is it?

A. Yes, sir.

Mr. Bourgeois: How much?

A. Between forty-five and fifty thousand dollars.

Q. Had you ever, previous to writing the letter of September 24th, 1925, assumed or in any way manifested a willingness to pay the cost of so much of that grant that would be in front of 219?

A. No, sir.

Mr. Bourgeois: Objected to as immaterial.  
The Court: Sustain the objection.

Q. Why then did you write the letter of September 24th, 1925?

A. I was anxious to get some action.

Q. Some action on what, you say?

A. From the Island Development Company on riparian rights.

Q. What riparian rights?

A. The whole number one division."

(Page 187):

"Q. Now, you said that one of the reasons that induced you to write that letter was that your company at that time had not title?

Mr. Bourgeois: I object, if your Honor please. He didn't say that. He said that one of the reasons he asked to take them out in the Island Development Company's name was after the writing of the letter.

Mr. McCarter: The language of the letter —

Mr. Bourgeois: — was because your company hadn't title to the upland. I ask you if there was any other reason than that, and if so, what it was? You said that was only a partial reason.

A. We felt that Mr. Eaton and Mr. Haneman were in contact with the department and they would get quicker action, secure more satisfaction than we would, being entirely in the out-

side parties, and not having a contract with the department.

Q. Were you aware of the fact that on the 16th of June, 1926, the Island Development Company applied to the Board of Commerce and Navigation for a grant in front of 219 and 201.

A. No, sir.

Q. Didn't know that?

A. No, sir."

See also page 175:

"Q. What difference did it make to you, Mr. Richman, whether there was a grant made by the State for the riparian rights to the other portion of the land than that immediately in front of your property, your upland, what did you care whether there was a riparian grant or not for the land within the park?

A. I wanted our title and deed to be something we could sell, I wanted it to be exclusive.

Mr. McCarter: How is that?

A. I wanted our deed and title policy, property we were buying, to be exclusive right outside of the boardwalk in the number one division, with the exception of 201.

Q. Now, what difference does it make about the riparian grant, in your judgment, that is the riparian grant for other land than in front of your particular lot or block?

A. I felt other property owners would have pier rights just as much as we do unless the property was bought and paid for."

This letter was a mere gratuitous offer, and in no wise released the Island Development Company

from liability under its contract, nor for responsibility for its misrepresentations. The offer was not accepted by the development company, and nothing appears to have been done thereunder.

## VI.

THE APPELLANT IN ITS ATTEMPTED RESCISSION ACTED WITH COMMENDABLE PROMPTNESS, AND BEFORE SUCH RESCISSION TOOK PLACE, THE POSITION OF THE DEVELOPMENT COMPANY HAD NOT IN ANY WAY BEEN CHANGED.

Before final payment was made, appellant received the letter of June 7th, 1926, leading appellant to believe that the riparian grant would be obtained (p. 169). On March 14, 1927, after several protests, the development company wrote appellant a letter (p. 275). As the development company still failed to do anything in July, 1927 (p. 172), appellant consulted counsel, and in September tendered back the deed and filed the bill for rescission.

Now, it is well settled that a party after the discovery of the fraud by the vendor has a reasonable time to determine what to do, and that mere delay in exercising the right of rescission of itself does not operate as an estoppel, unless in the meantime third persons have acquired rights from the property *bona fide* for a valuable consideration, or the position of the party has by reason of such inaction changed for the worse. *Williamson v. New Jersey Southern R. R. Co.*, 311; *Roberts v. James*, 83 N. J. Law 492; *Curtis-Warner Co. v. Thirkettle*, *supra*. The suggestion that the development company vol-

untarily tendered back the purchase money and expressed a willingness to receive back the property (pp. 179, 180) is the merest hearsay.

VII.

THE POSITION OF THE CHELSEA NATIONAL BANK IN THE MATTER HAS NO EFFECT UPON THE APPELLANT'S CLAIM.

It will be remembered, that as shown by the evidence of Mr. Bessor, that institution is a trustee under a mortgage made by the Brigantine Hotel Company to secure an issue of \$500,000 of bonds, none of which have yet matured, to pay for the erection of a hotel. The bonds have been sold to the public, and have not only the security of the mortgage on the hotel property itself, but of \$600,000 of other mortgages, including the one in question, which was assigned by the development company to the bank. Under these circumstances, the Chelsea Bank naturally did not feel it necessary to secure from the Brigantine Company a declaration of no "set-offs" and hence it took the assignment subject to all the defense and equities which the mortgagor (the Brigantine Company) can urge against the mortgagee.

In the recent case of *Reddvide v. Laskowitz*, 5 Adv. Reports 472, the Court of Errors and Appeals said:

"The purchaser for value of a chose in action is bound by the equities existing against it in the hands of the original obligor. *Putnam v. Clark*, 29 N. J. Eq. 412; affirmed, 33 N. J. Eq. 338.

It is always easy for an assignee before pur-

chasing to inquire of the mortgagor, or of those who have succeeded to his rights, whether or not its validity will be disputed. If he chose to refrain from doing so, relying entirely upon the representations of the assignor, I think he has no right to ask the complainant (in this case the co-defendants) to bear the consequences of his own folly. *Vredenburgh v. Burnet*, 31 N. J. Eq. 229; affirmed 34 N. J. Eq. 252."

## VIII.

THE DECREE SHOULD BE REVERSED  
AND THE ATTEMPTED RESCISSION SANCTIONED.

It is, therefore, respectfully urged that appellant has established a clear right against the Island Development Company and the Chelsea National Bank to have the transaction rescinded, the purchase money refunded and the bond and mortgage held by the Chelsea National Bank returned to appellant for cancellation; appellant hence respectfully submits that the decrees of the Court below be reversed in both of the above cases and the cases remanded to the end that the remedy sought by the Atlantic-Brigantine Hotel and Pier Co. may be granted as aforementioned.

Respectfully submitted,

REPETTO & GODFREY,  
*Solicitors for Appellant.*  
ROBERT H. McCARTER,  
*Of Counsel with Appellant.*

NEW JERSEY COURT OF ERRORS  
AND APPEALS.

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Between  
ATLANTIC-BRIGANTINE HOTEL AND PIER Co.,  
a corporation,  
*Complainant-Appellant,*  
and  
ISLAND DEVELOPMENT Co., a corporation,  
*et al.,*  
*Defendants-Respondents.*  
and

Between  
ISLAND DEVELOPMENT Co., a corporation,  
*et al.,*  
*Complainants-Respondents,*  
and  
ATLANTIC-BRIGANTINE HOTEL AND PIER Co.,  
a corporation,  
*Defendant-Appellant.*

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ON BILL, ETC.

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ON APPEAL FROM COURT OF CHANCERY.

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BRIEF OF BOURGEOIS & COULOMB,  
SOLICITORS FOR ISLAND DE-  
VELOPMENT CO., RESPON-  
DENTS.

The appeals in these two cases bring here for review two decrees of the Court of Chancery of New Jersey advised by Vice-Chancellor Ingersoll, as follows:

1. A decree in favor of the defendant, in the suit between Atlantic-Brigantine Hotel and Pier Company, and Island Development Company, *et al.*, filed to set aside a deed made by the defendant to the complainant on the ground of fraud and misrepresentation.

2. A decree in favor of the complainant, in the suit between Island Development Company, *et al.*, and Atlantic-Brigantine Hotel and Pier Company, to foreclose a mortgage given by the hotel company to the land company, in part payment of the consideration price mentioned in the deed.

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#### FACTS.

For the purpose of brevity, we will hereafter refer to the complainant in the first suit, and defendant in the second suit, namely: Atlantic-Brigantine Hotel and Pier Company, as "hotel company," and to the complainant in the second suit and defendant in the first suit, namely: Island Development Company, as the "island company."

Sometime prior to April, 1925, the island company had been interested in the development and sale of a large tract of land on Brigantine Island, known as "Development No. 1." This tract faced the Atlantic Ocean and was divided into blocks. The block sold to the hotel company was known as "Block No. 219."

On April 18, 1925, the island company entered into an agreement with one, Ulysses G. Hillman, for conveyance of lot 219 for \$150,000, \$75,000 thereof to be paid in cash in certain installments, and the balance of \$75,000 to be secured by a purchase money mortgage payable in three years. Hillman assigned his contract to the hotel company. The installments were paid, and in June, 1926, final settlement was had, at which time the island company delivered to the hotel company a deed for the premises, which deed was sent for record, and afterwards, came into possession of the hotel company, and the hotel company in turn, executed and delivered a bond and mortgage to secure the balance of the consideration price, namely: \$75,000. This mortgage was afterwards assigned by the hotel company to the Chelsea National Bank, as trustee, with other mortgages to secure an issue of \$500,000 in bonds.

The description in the agreement (p. 251, l. 10) is the same as that set forth in the appellant's brief. The description in the deed (p. 255, l. 17) and in the mortgage (p. 228), however, differ materially from that contained in the agreement, to wit: the following being omitted from both the deed and the mortgage:

“It is fully understood and agreed, however, that a right of way for the Boardwalk, of the width of the proposed Boardwalk will be dedicated across the above-described premises at the location shown on the attached blue-print. Said described premises are to be conveyed free and clear of any restrictions. 32nd and 33rd Streets from Ocean Avenue to the bulkhead constructed across said described premises are to be paved with gravel, and concrete sidewalks and curbs are to be constructed before day of settlement. The land lying be-

tween the bulkhead and Ocean Avenue will be filled to grade before day of settlement.”

It will also be observed that the deed which the hotel company tendered to the island company (p. 259) likewise omits that portion of the description above-referred to, which was contained in the agreement. It will be observed that the island company did not either in the agreement or the deed assert any right in the land under water in Block 219. It merely conveyed to the hotel company whatever right, title and interest therein it might have had. It will be further observed that on April 15, 1925, the Island Development Company, by deed bearing that date, dedicated certain lands to the City of Brigantine for a Public Park (Exh. D. 5, p. 264). The lots, however, in front of Blocks 219 and 201 were excluded from that deed so that the lands in front of these two blocks were not to be restricted or limited by the provisions of the Statute of New Jersey providing for the establishment of City Parks, etc.

After the making of the agreement, and on September 24, 1925, the hotel company directed the island company to procure for it, the hotel company, riparian grant to the lands lying in front of Block 219. The island company made application for a riparian grant of this land as well as for other land in Development No. 1, but for some reason or other those grants were not obtained. Later on, and before the final settlement in June of 1926, the boardwalk was built, its interior or landward line being coincident with the interior line of the grant or dedication of the City Park.

The hotel company contends that fraudulent misrepresentations were made, and it was deceived in the following particulars:

1. That the hotel company fraudulently misrepresented that it owned the land in front of Block 219. That it agreed to convey the same, and by its deed, it actually purported to convey the same.

2. That the island company had agreed to build a boardwalk over lands upon which it had a right to construct said boardwalk, but that while it had constructed said boardwalk, in question, it had built the same on lands belonging to the State.

3. That the island company had fraudulently misrepresented that full pier rights were attached to Blocks 219 and 201, whereas, that by reason of the failure to obtain the riparian grant, while it, the island company, still owned the upland, it could not control the erection of piers in front of blocks owned by others than itself and that therefore, the pretended full rights to Blocks 219 and 201 could not be enforced.

There is no evidence in this case of any promises or assurances being given or of any statement being made that the hotel company was the owner of the riparian grant for the lands under water in front of Block 219 or in front of any other block in development No. 1. Neither the testimony of Richman, Butler or Hillman pretends that any such statement or claim was made. It is pretended, however, on the part of the hotel company that it was understood that the island company should procure the riparian grant not only to Block 219 but to the remaining blocks in development No. 1. The only basis for this pretense is the alleged statement on the blue-print that Blocks 219 and 201 had full pier rights.

In addition to this, we have the more appropriate and conclusive fact that neither the agreement nor

deed, nor mortgage, pretended to convey the land below the highwater line.

A grant of the island company's right, title and interest of this land conveys exactly what the deed says, namely; whatever right, title and interest the island company had to the land lying in front of Block 219. Whether this was included because of the proposed erection of the boardwalk, which might possibly be deemed to have severed the upland from the ripa so as to render it questionable as to whether or not the owner of Block 219 was entitled to get a riparian grant in the lands under water in front of Block 219, or whether it was because of the possibility of erosions or accretions, which might possibly have some effect upon the right of the hotel company, it is needless to discuss.

If it had been intended by the island company to sell, or the hotel company to purchase, the riparian grant for the lands lying under water in front of Block 219, such intention would have been expressed by appropriate description.

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## ARGUMENT.

### I.

The first bill is filed for the purpose of setting aside a sale of real estate made by Island Development Company to Atlantic-Brigantine Hotel and Pier Company, April 19th, 1926, because the Island Development Company did not in the conveyance have a riparian grant to convey to the Atlantic-Brigantine Hotel and Pier Company.

The deed from the Island Development Company contained the clause:

“TOGETHER with all the right, title and interest of party of the first part in and to the lands lying under water in front of the said described premises.”

That language imports no covenant and no ownership, but only a conveyance of whatever, if any, interest the grantor had in the lands under water. The words: “Right, title and interest” were construed in the case of *Baker v. Davey* (97 N. E. Mass p. 1094), at p. 1097, by Chief Justice Rugg as follows:

“These words (right, title and interest) have acquired in deeds a certain and definite meaning. They convey whatever title the grantor has, be it much or little, and that alone. As words of grant, they are limited to the estate and interest of the grantor. They do not import ownership in fee or any other particular extent of proprietorship.”

Citing a long list of Massachusetts cases.

The construction placed upon these words by the Courts of Massachusetts conforms to the interpretation given to them generally, and is the interpretation that they should receive in our courts. But, aside from this phase of the matter, the allegation of alleged false statement set forth in the bill of complaint was not sustained. Their attempt to prove that the officers of the Island Development Company had promised them riparian grant fell flat, when William Richman was asked (p. 163, l. 26—p. 164, l. 29):

“Q. Now wasn't the fact that the Island Development Company claimed that they had acquired the pier rights, and that there was to be no other pier in front of section number one and

in front of block 201 besides 219 brought up to your attention during the negotiations that led up to the purchase agreement signed by Mr. Hillman?

A. That might have been brought to his attention by me. He didn't know anything about it.

Q. No, just answer the question yes or no.

A. I would like to qualify that.

Q. Well, I am not asking you to qualify or unqualify anything. I am asking you to tell us what the fact is. If you want to give a partial answer give it. I don't want you to say yes, then I want to qualify. Say it as a fact.

A. The question was it called to my attention that this was an exclusive pier right?

Q. You understand that question?

A. Well, I knew they hadn't the riparian rights.

Q. You think that answers the question? Yes or no.

A. I would have to answer no."

At p. 174, ll. 8-10, he further testified:

"Q. Who was going to make that application?

A. I gave the company a letter asking them to apply for it and charge it to us at the settlement."

Letter reads as follows (p. 174, ll. 29-34):

"Kindly obtain at our expense riparian rights on Block 219 Brigantine Beach. This grant may be taken in the name of the Island Development Company and included in our deed when we make settlement. We will pay all expenses and costs involved for obtaining same."

And, again, on p. 179, l. 23—p. 180, l. 11, William Richman testified:

“Q. Now, Mr. Richman, there is one other thing I have forgotten. After that deed was delivered in 1926, did the Island Development Company offer to take that property back off your hands and pay you your money back?”

A. Not to my knowledge.

Q. You never heard of it, or did you hear of it?

A. I said not to my knowledge. It wasn't made to me.

Q. Who was it made to?

A. Mr. Butler.

Q. And Mr. Butler made it to you?

A. He spoke of it in a general way, to all the directors for the company.

Q. And they refused, didn't they?

A. Yes, sir.”

At the bottom of p. 180, he further testified:

“Q. I didn't care anything about that. Did anybody from the company, the Island Development Company, talk to you about having tendered the deed?

A. In a general way at the directors' meeting it was talked over.”

This offer was made after the deed had been delivered—after June 16th, 1926 (p. 178, l. 26), and if there had been any fraud, this was the time when they should have accepted their money and returned the property, and not wait until the real estate market had collapsed.

From this testimony, two things appear: The first is, that the Atlantic-Brigantine Hotel and Pier Com-

pany knew they were not to get the riparian grant as part of the conveyance from Island Development Company and, second, that their application to Mr. Eaton to get the riparian grant for them was only for the purpose of securing the grant before the title actually passed to them.

So that, all the allegations made by complainant about having been deceived about the right, title and interest of the Island Development Company in the land under water failed with their lack of proof and became conclusive against them by the testimony of William Richman, when he said that he knew that the company had not the riparian grant (p. 164) and authorized Mr. Eaton to get it for them at their expense (p. 174).

But, if there had been any basis for any such claim, it was quieted beyond their resurrection when the Island Development Company offered to deed the property back to them and return the money they had paid to them, after June, 1926, and Mr. Butler had brought this proposition to the directors of the Atlantic-Brigantine Hotel and Pier Company, and they had refused it.

The appellant, in its brief, characterizes the testimony touching the offer of the island company to take back the property from the hotel company as merest hearsay. The reading of the testimony will disclose that it is of the most convincing character. Mr. Richman was a director of the island company, and also a director in the hotel company, and he admits that he knew that the island company desired to get back the property. The offer to take back the property was made at a time when the island company could obtain a higher price than it had obtained from the hotel company. The hotel company must have been aware of this, and believing that they had a good bargain decided to hold on to it

rather than return the property to the island company and receive back the consideration price paid.

The Vice-Chancellor, in his opinion, laid stress upon the fact that the provisions in the agreement, and the covenants contained in the deed were specific, and that in the absence of fraud, there could be no rescission based upon a violation of the covenant. In the present case, there was no violation of any covenants and the Vice-Chancellor found that there was no fraud.

The appellant, in its brief, discusses the effect of the Park Act of 1894 (P. L. 1894, p. 146). It is our contention that the appellant has an entirely wrong conception of the effect of that Act. The Park Act of 1894 authorizes the laying out of a park, the inland line of which shall not be further inland than the highwater line. There is no inhibition to placing the inland line oceanward of the highwater mark. A boardwalk only may be erected within said park and upon the inland line thereof.

The third section of the Act of April 8, 1903 (P. L. 1903, Chapt. 202, p. 387), provides:

“No conveyance shall hereafter be made by the said Commissioners except to the municipality aforesaid, of any land under water within the limits of such park, nor within the lines or at the end of any such public street or highway or oceanward thereof.”

Since the City has by ordinance established the park, and by so doing, the riparian commissioners are without authority to make a riparian grant to anybody but the City, the park is as effectually a park without the riparian grant as it is with it except only that without the riparian grant, it can not erect the boardwalk along the inland line thereof.

The agreement does not require the erection of a boardwalk.

The ordinance laying out the park excluded therefrom the lands in front of Blocks 219 and 201 so that this land is unaffected so far as any prohibition against the building of a pier thereon is concerned.

We respectfully submit, therefore, that there is no merit in the appellant's contention upon this phase of the case.

## II.

Touching the complaint of Island Development Company for the foreclosure of the mortgage against the Atlantic-Brigantine Hotel and Pier Company: The execution of the bond and mortgage are admitted. It is admitted that no part of the principal has been paid, and that no interest has been paid on account of the mortgage, and assuming that the Atlantic-Brigantine Hotel and Pier Company have failed in their suit to set aside the deed, then there is no defense to this foreclosure, and we are entitled to a decree for the principal sum of \$75,000, and interest on that sum from the 19th day of April, 1926, amounting to \$11,937.50, in all \$86,937.50, which decree, under the testimony, should be in favor of Chelsea National Bank, as trustee, with remainder over to Island Development Company, after the obligation to the Chelsea National Bank, trustee, has been satisfied.

It is respectfully submitted that the decrees in both cases should be affirmed.

BOURGEOIS & COULOMB,  
*Solicitors for Respondents.*

