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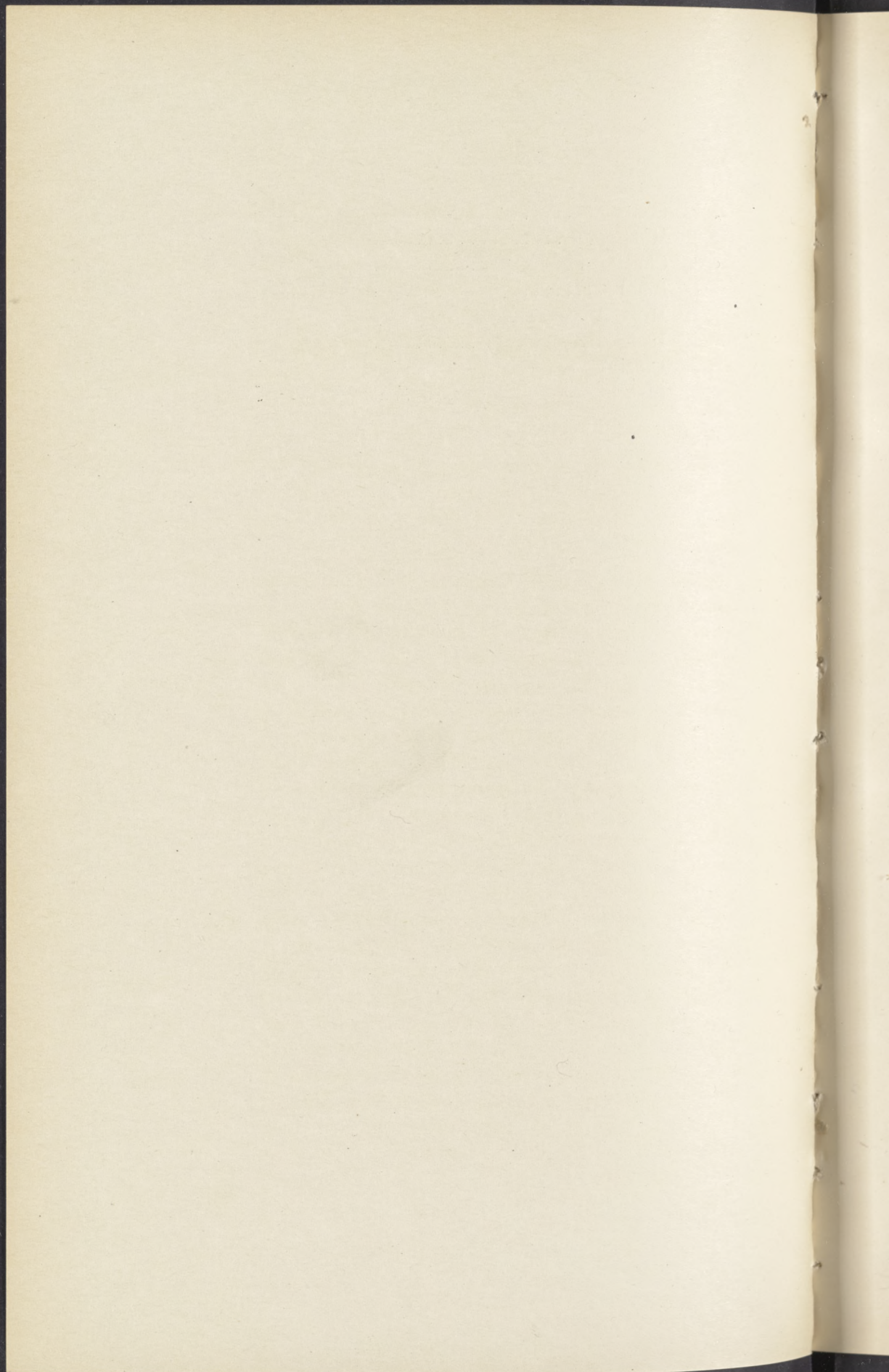
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BILL OF COMPLAINT.

Filed August 18, 1928.

In Chancery of New Jersey

To His Honor, Edwin Robert Walker, Chancellor 10
of the State of New Jersey.

The complainants, Blanche Gray, Arthur G. Hill and Sarah Hill, his wife, of the City of Newark, Essex County, New Jersey, respectfully show that:

1. On May 1, 1928, Lambertus J. Lammerts and Elizabeth Lammerts, his wife, being indebted to Blanche Gray in the sum of \$22,370, executed to her a bond of that date, to secure that sum, payable in the manner following: 20
\$500 on account of principal July 1, 1928 and the like amount each three months thereafter during the first year. \$1,000 on July 1, 1929 and a like amount each three months thereafter during the second year. \$2,000 on July 1, 1930 and a like amount each three months thereafter during the third year. The balance of said sum shall be due and payable July 1, 1931. The party of the second part (complainants) will, 30
if requested by the parties of the first part (defendants) so to do, extend the due date of said unpaid balance to July 1, 1932, in which event, the parties of the first part shall pay \$2,000 on account of principal July 1, 1931 and a like amount each three months thereafter and the entire balance of said principal sum July 1, 1932, with interest at the rate of six per cent. computed from May 1, 1928 and to be paid quarter-annually. 40

Bill of Complaint.

2. To secure payment of the bond, said Lambertus J. Lammerts and Elizabeth Lammerts executed to said Blanche Gray, two mortgages as follows:

10 (a) A mortgage dated May 1, 1928, whereby they conveyed to the said Blanche Gray in fee, the land hereinafter described on the express condition that such conveyance should be void if payment should be made according to the terms of the bond, which mortgage, having been first duly acknowledged and a certificate of acknowledgment duly endorsed thereon, was recorded in the office of the Clerk of Ocean County on the second day of May, 1928, in Book 213 of Mortgages for said county on pages 413, etc.; also recorded in the Register's office of the
20 County of Essex on the twenty-fourth day of May, 1928, in Book Y 63 of Mortgages for said county on pages 578-581.

(b) A chattel mortgage covering all the contents of the hotel building erected on the lands hereinafter described, which chattel mortgage, having been duly executed in accordance with the statute in such case made and provided, was recorded in the Clerk's office of Ocean
30 County in Book 28 of Chattel Mortgages, page 335.

3. The mortgaged premises described in the real estate mortgage above described are as follows:

All that certain hotel building and all those tracts or parcels of land and premises, hereinafter particularly described, situate, lying and being in the Borough of Point Pleasant Beach in the County of Ocean and State of New Jersey, being known, marked and designated as Lots
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Bill of Complaint.

Nos. 139, 140, 141 and 142 on a map or plan of lots of the Point Pleasant Land Company, duly filed in the Clerk's office of the County of Ocean, on the 6th day of May, 1878, bounded and described as follows, to wit:

Lots Nos. 139 and 140 fronting or in width one hundred feet on the northerly side of Atlantic avenue; thence extending northerly the same width by and between Boston avenue on the east and Lot No. 141 on the west one hundred twenty-five feet in depth.

10

Lots Nos. 141 and 142 fronting or in width one hundred feet on the northerly side of Atlantic avenue, extending northerly the same width by and between Lot No. 140 on the east and Lot No. 143 on the west one hundred twenty-five feet in depth.

20

Also that certain tract or parcel of land and premises hereinafter particularly described, situate, lying and being in the City of East Orange, in the County of Essex and State of New Jersey.

BEGINNING at a point in the northerly line of Lenox avenue distant two hundred (200) feet, westerly from the westerly side of South Arlington avenue at the southwesterly corner of tract belonging to Francis A. Robinson; thence northerly along said Robinson's land, one hundred (100) feet, more or less to land of Richard Coyne, thence westerly along said Coyne's land, fifty (50) feet; thence southerly parallel with first course one hundred (100) feet, more or less, to the northerly line of Lenox avenue; thence easterly along the northerly line of Lenox avenue, fifty (50) feet to the point of BEGINNING.

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Bill of Complaint.

4. Both the bond above mentioned and the real estate mortgage and chattel mortgage above described contained an agreement that if any installment of principal or interest should remain unpaid for thirty days after same should fall due, then the whole of the principal sum,
10 with all unpaid interest should, at the option of the mortgagee, her representatives or assigns, become immediately due and payable.

5. The mortgages also contained an agreement that the mortgagors, their heirs and assigns, would keep the buildings on the mortgaged premises insured against loss or damage by fire, in a sum of not less than \$22,370 and would assign the policies of insurance to the mortgagee, her representatives or assigns, and in
20 default of so doing, the mortgagee, her representatives or assigns, should be entitled to effect such insurance and the premiums paid for the same by the mortgagee, her heirs or assigns, with interest at six per cent., should be a lien on said lands, added to the amount of the mortgage debt secured by the mortgages.

6. Subsequent to the execution of said bond and mortgages, the said Blanche Gray assigned
30 to Arthur G. Hill and Sarah Hill, his wife, a \$3,000 interest in said debts secured by said bond and mortgages, which assignment was duly recorded in both the County of Ocean and County of Essex.

7. On July 1, 1928, the sum of \$500 became due upon the principal sum secured by said mortgages, together with the sum of \$335.50, being interest from May 1, 1928 to July 1, 1928,
40 on the principal sum of said mortgages.

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8. The complainant made due demand upon the defendants for the payment of said principal and interest and there was paid by defendants on account thereof the sum of \$250. The balance of \$585.50 has remained unpaid for more than thirty days thereafter and no part thereof has as yet been paid. Complainants have elected that the whole principal sum, with all unpaid interest, should be now due. 10

9. Defendants failed to keep the buildings on said land insured against loss or damage by fire for the full amount described in said mortgages and complainants have caused the same to be insured in accordance with the provisions of the mortgages above recited and there is due for the insurance premiums paid by complainants, the sum of \$330, which sum with interest at the rate of six per cent. is a lien on said premises added to the amount of the mortgage debt secured by said defendant's mortgages. 20

10. Complainants further charge that the taxes on the property in the Borough of Point Pleasant Beach, County of Ocean, which were due in accordance with the statute on June 1, 1928, amounting to the sum of \$500, have not been paid and that in accordance with the provisions of said real estate mortgage described herein, more than sixty days have elapsed since the same became due and payable and that complainants have also exercised the option given to them in their mortgage of declaring the full amount of said mortgage due and payable. 30

11. Complainant further charges that the said defendants, Lambertus J. Lammerts and 40

Bill of Complaint.

Elizabeth Lammerts, have always been in possession of the mortgaged premises and of the personal property described in said chattel mortgage and that they are operating the hotel property at Point Pleasant Beach, County of Ocean, as a summer hotel and that the season
10 for the operation of said hotel will be terminated on or about September 15th, after which time said hotel will close for the winter until the opening of the next season, which does not occur until about July 1st.

12. Complainants further show that when the defendants purchased the property described in the within mortgages, there was only paid on account of the purchase price of said property, which was \$55,000, the sum of \$500 in
20 cash and that if said property is sold at a forced sale under the decree of this court, it is extremely unlikely that there will be sufficient money realized to satisfy complainant's debt, even with the use of the collateral property in the County of Essex.

13. Complainants further charge that the within described mortgage on the real estate in Point Pleasant Beach is a third mortgage, there
30 being two mortgages in priority, the first mortgage \$26,000 held by the Monmouth Title & Mortgage Guaranty Company, six months' interest on which was due August 1, 1928, and which has not been paid; and a second mortgage of \$6,000 held by the Clinton Investment Company.

14. Complainants further show that said property at Point Pleasant Beach is a summer hotel, complete with the fixtures and personal
40 property and that the same should be sold by

Bill of Complaint.

the decree of this court in the same way and manner as if it were one complete unit, as to both real and personal property

15. Complainants further charge that they are informed and verily believe that the defendants herein are not financially responsible. Complainants therefore pray that a receiver may be appointed by this Honorable Court to take possession of the mortgage premises, both real and personal, for the purpose of applying the income from the operation of said hotel toward the reduction of taxes, interest on prior mortgages, etc. 10

16. The whole amount of principal of \$22,370 with interest from May 1, 1928, less a credit of \$250, is due upon complainants' bond and mortgages. 20

Complainants are without adequate remedy in the course of law and therefore pray:

(a) That Lambertus J. Lammerts and Elizabeth Lammerts, his wife, who are the defendants to this suit, may answer this bill of complaint and each statement therein made;

(b) That an account may be taken of the amount due on complainants' mortgage; 30

(c) That the defendants may be decreed to pay complainants the amount so found due with interest and costs by short day to be appointed by this court and that in default of such payment they and each of them be disbarred and foreclosed of any and all equity and remedy in said lands and personal property; or

Bill of Complaint.

(d) That a decree may be made for the sale of the mortgaged premises and personal property to raise and pay to complainants the amount so found due on their mortgage with interest and costs;

10 (e) That a receiver may be appointed for the purpose of taking possession of the mortgaged premises, both real and personal and collecting the income from the operation thereof for the purpose of applying the excess income toward the reduction of interest on prior mortgages, taxes and other carrying charges and also for the purpose of preserving and maintaining the said property until the further order of this court;

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

STEIN, McGLYNN & HANNOCH,
Solicitors for and of Counsel
with Complainants.

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ANSWER AND COUNTER-CLAIM.

Filed September 1, 1928.

IN CHANCERY OF NEW JERSEY.

Between

MAX GRAY and BLANCHE
GRAY, his wife, and ARTHUR
G. HILL and SARAH HILL,
his wife,

*Complainants,**and*

LAMBERTUS LAMMERTS and
ELIZABETH LAMMERTS, his
wife,

Defendants.

10

*On Bill.**Answer.*

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The defendants, Lambertus Lammerts and Elizabeth Lammerts, his wife, answering the bill of complaint filed herein, say that:

1. Paragraphs 1 and 2 of the bill of complaint are admitted only insofar as they accurately set forth the mortgages and instruments mentioned therein. The balance of said paragraphs are denied. The defendants crave oyer of the instruments mentioned in paragraphs 1 and 2 of the bill of complaint.

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2. Paragraph 3 is admitted.

3. Paragraphs 4, 5, 6 and 7 of the bill of complaint are admitted only insofar as they accurately describe the instruments mentioned therein and the provisions thereof. The balance of said paragraphs are denied. The defendants crave oyer of said instruments.

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Answer and Counter-claim.

4. Paragraph 8 is denied except insofar as is admitted in the following statement: Defendants paid to complainants the sum of \$250.

10 5. Defendants have no knowledge or belief sufficient to form a belief as to the allegations in paragraph 9 of the bill of complaint, and leave complainants to their proof thereof.

6. Paragraph 10 of the bill of complaint is denied except insofar as is admitted in the following statement: The defendants have paid no part of the tax for the year 1928.

7. Paragraph 11 is denied.

20 8. Paragraph 12 is admitted and defendants further state that even at a sale not forced and between a seller who does not have to sell and a buyer who does not have to buy, the price obtained would be much less than fifty-five thousand (\$55,000) dollars.

9. Paragraph 13 is admitted except that the defendants do not know whether there is six months' interest due on the twenty-six thousand (\$26,000) dollar mortgage mentioned therein.

10. Paragraph 14 is admitted.

30 11. Paragraph 15 is admitted, except that defendants say that they were not financially irresponsible before the transaction set forth in the response to defense, and are not so now, but may be made so if said transaction is allowed to stand.

12. Paragraph 16 is denied.

Answer and Counter-claim.

FIRST SEPARATE DEFENSE.

1. The mortgages held by the complainants and mentioned in the bill of complaint were executed pursuant to a contract dated April 20, 1928, made by the complainants, Max Gray and Blanche Gray, his wife, as vendors, and the defendants, as vendees, a copy of which contract is attached to the bill of complaint heretofore filed in this court by the defendants as complainants, naming as defendants, the said Max Gray and Blanche Gray, his wife, and Arthur G. Hill and Sarah Hill, his wife, and under which contract defendants herein agreed to purchase the summer hotel premises mentioned in the bill of complaint herein. 10

2. For the purpose of inducing defendants to purchase said property, said Max Gray and Blanche Gray, their servants and agents, particularly Arthur G. Hill, a real estate broker, with offices in the City of Newark, stated and represented to defendants that the operation of said premises as a hotel, did, in the past and for several years immediately before the sale, bring in at least the sum of twenty-five thousand (\$25,000) dollars per season by way of gross receipts, that Max Gray received at least the sum of six thousand (\$6,000) dollars annually by way of rent for said premises; that Hill made about ten thousand (\$10,000) dollars clear profit from the operation of said premises as a hotel some five years ago when he owned the property; that Hill and Gray promised to give the defendants a list of Hill's clientele and Hill's receipts and disbursements while operating said hotel, which also would prove Hill's alleged profit of ten thousand (\$10,000) dollars and that the opera- 20 30 40

Answer and Counter-claim.

tion of said premises as a hotel by defendants would bring in gross receipts of about twenty-five thousand (\$25,000) dollars per season and that defendants could pay off the mortgages and own the hotel free and clear in about three years from the profits of the hotel.

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3. The statements made by said Max Gray and Blanche Gray their servants and agents, particularly Arthur G. Hill, were false and untrue in the following particulars:

(a) the gross receipts in the past amount to much less than twenty-five thousand (\$25,000) dollars per season, and as a matter of fact, amounted to much less per season;

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(b) the gross receipts amount to much less than twenty-five thousand (\$25,000) dollars per season;

(c) the gross receipts of defendants from May 1, 1928, to August 15, 1928, amounted to but the sum of four thousand one hundred and nineteen dollars and twenty-five cents (\$4,119.25);

(d) Defendants could never pay the mortgages on said hotel out of the receipts or profits;

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(e) the gross receipts for the season of 1928 will amount to much less than twenty-five thousand (\$25,000) dollars;

(f) said Gray never received the sum of six thousand (\$6,000) dollars annually by way of rent for said hotel premises; said complainant Hill never made the sum of ten thousand (\$10,000) dollars clear profit when he operated said hotel premises;

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(g) said complainants Hill and Gray never intended that Hill give to defendants a list of Hill's client and Hill's receipts and disbursements while operating the hotel premises.

Answer and Counter-claim.

4. Defendants further say that the statements and representations made to them as aforesaid were false and untrue and were known to said Max Gray and Blanche Gray, their agents and servants, particularly Arthur G. Hill, to be false and untrue when such statements were made to defendants, and that said representations were material and defendants, were induced thereby to purchase said property and that said Max Gray and Blanche Gray, their agents and servants, particularly Arthur G. Hill knew that said defendants, by depending upon said statements and representations, were being influenced thereby to purchase said property. 10

5. Believing the statements and representations made by said Max Gray and Blanche Gray, their servants and agents, particularly Arthur G. Hill, as herebefore set forth to be true, and relying upon same defendants, did, as above set forth, enter into said contract dated April 20, 1928, and pursuant thereto closed same and took title and paid the considerations therefor. Defendants, have, since they have discovered that the statements and representations made by said Max Gray and Blanche Gray, their servants and agents, particularly Arthur G. Hill, were false and untrue rescinded the said sale and offered to reconvey the said premises to said Max Gray and Blanche Gray and demanded from said Max Gray and Blanche Gray, repayment to them of the moneys paid together with cancellation of the mortgage and other securities for the purchase price, given by defendants to said Max Gray and/or Blanche Gray with which request said Max Gray and Blanche Gray refused to comply, and defendants do not rescind said transaction and offer to convey said 20 30 40

Answer and Counter-claim.

property to said Max Gray and Blanche Gray on being paid the money paid by them and cancellation of the mortgage and other securities given by them.

10 6. Defendants further say that it is necessary that someone should operate and manage and control said premises pending the determination of this suit.

20 7. Defendants therefore pray that it be adjudged and decreed that the said complainants secured the contract from defendants for the purchase of said lands and premises by false and fraudulent representation and that said contract be rescinded and that complainants be directed to repay to defendants the moneys paid by them and to cancel the mortgage and securities given by them on the purchase of said lands and premises, and also pay to defendants such moneys as this court may direct upon a proper accounting, and that the moneys found due to the defendants may be decreed to be a lien and charge upon said lands and premises and that defendants be directed to convey said lands and premises to the said complainants, Max Gray and Blanche Gray, his wife, upon the payment by the complainants
30 herein of the moneys due to said defendants and cancellation of the mortgages and other securities, or that said lands and premises may be sold to raise and pay the moneys found due to defendants and that if there be any deficit, the complainants be compelled to pay the same.

MARDER and OKIN,
Solicitors of Defendants.

**REPLICATION AND ANSWER TO
COUNTER-CLAIM.**

Filed September 13, 1928.

IN CHANCERY OF NEW JERSEY.

<p><i>Between</i></p> <p style="padding-left: 40px;">MAX GRAY and BLANCHE GRAY, his wife, and ARTHUR G. HILL and SARAH HILL, his wife,</p> <p style="text-align: center; padding-left: 80px;"><i>Complainants,</i></p> <p style="text-align: center; padding-left: 60px;"><i>and</i></p> <p style="padding-left: 40px;">LAMBERTUS LAMMERTS and ELIZABETH LAMMERTS, his wife,</p> <p style="text-align: center; padding-left: 80px;"><i>Defendants.</i></p>	10	<p><i>On Bill, &c.</i></p> <p><i>Replication and Answer to Counter- claim.</i></p>
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The complainants join issue on the answer of the defendants.

As to the counter-claim contained in said answer, complainants say:

1. They admit the allegations of paragraph 1. 30
2. They deny the allegations of paragraphs 2, 3, 4 and 5.
3. They admit the allegations of paragraph 6.

STEIN, McGLYNN & HANNOCH,
Solicitors of Complainants.

**PETITION FOR APPOINTMENT OF
RECEIVER.**

Filed August 18, 1928.

IN CHANCERY OF NEW JERSEY.

10	<p><i>Between</i></p> <p style="text-align: center;">BLANCHE GRAY, ARTHUR G. HILL and SARAH HILL, <i>Petitioners,</i></p> <p style="text-align: center;"><i>and</i></p> <p style="text-align: center;">LAMBERTUS J. LAMMERTS and ELIZABETH LAMMERTS, his wife,</p> <p style="text-align: right;"><i>Defendants.</i></p>	<p><i>On Bill, &c.</i></p> <p><i>Petition for Appoint- ment of Receiver for Collec- tion of Rents.</i></p>
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The petition of Blanche Gray, Arthur G. Hill and Sarah Hill respectfully shows:

1. They have filed a bill in the above-entitled cause alleging that the defendants, Lambertus J. Lammerts and Elizabeth Lammerts, his wife, executed and delivered a bond in the sum of \$22,370.00, secured by a mortgage covering certain real estate described in said bill, located in the Borough of Point Pleasant Beach, County of Ocean, and State of New Jersey, having erected thereon a frame hotel, containing approximately sixty bedrooms. That said mortgage also covered as collateral security, a piece of property in the City of East Orange, County of Essex, and State of New Jersey.

2. That in addition to said real estate mortgage, said defendants also executed and delivered a chattel mortgage covering the com-

Petition for Appointment of Receiver.

plete furnishings and personal property located in said hotel, consisting of bedroom furniture, dining-room furniture and complete equipment for the operation of said hotel.

3. That said bond and mortgages provided for a payment of \$500.00 on account of the principal thereof on July 1, 1928, and \$500.00 every three months thereafter during the first year; \$1,000.00 on July 1, 1929, and a like amount each three months thereafter during the second year; \$2,000.00 on July 1, 1930, and a like amount each three months thereafter during the third year; and the balance to be due July 1, 1931; an extension to be given for the payment of the balance until July 1, 1932, upon payment of \$2,000.00 and a like amount each three months thereafter; that the interest was to be at the rate of six per cent. from May 1, 1928, to be paid quarter annually.

4. That said mortgages, after execution and delivery, were duly recorded in their respective counties above named.

5. That the bond and mortgages above described contained clauses that if any installment of principal or interest should remain unpaid for thirty days after same became due, that the petitioners would have the option of declaring the entire amount immediately due and payable.

6. Said mortgages also contained the clauses that said defendants would keep the buildings on the mortgaged premises insured against loss or damage by fire and that in default of so doing, petitioners should be entitled to obtain said insurance and the amount of the premiums

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Petition for Appointment of Receiver.

therefor should also be secured by said mortgages, with interest at six per cent.

10 7. The petitioners, Arthur G. Hill and Sarah Hill, his wife, have a \$3,000.00 interest in said bond and mortgage and petitioner, Blanche Gray, is the owner of the balance of said sum secured by said bond and mortgages.

8. That on July 1, 1928, the sum of \$500.00 became due to them, with interest amounting to \$335.50.

20 9. That repeated demands have been made for the payment of said principal and interest and that there has been paid by said defendants on account thereof the sum of \$250.00; the balance of \$585.50 has remained unpaid for more than thirty days. Petitioners have elected that the whole principal sum, with unpaid interest, should become due and payable.

10. Petitioners further allege that the defendants failed to keep said buildings fully insured and that petitioners effected insurance and have incurred an expense of \$330.00 for premiums for that purpose.

30 11. Petitioners further allege that taxes on the property in Point Pleasant Beach which became due on July 1, 1928, amounting to the sum of \$500.00, have not been paid and have remained unpaid for more than sixty days and that for this default, they have also elected to declare the entire amount of the mortgage due and payable.

40 12. Petitioners further allege that the defendants purchased said property described at Point Pleasant Beach, consisting of the Hotel

Petition for Appointment of Receiver.

Carrollton and its contents, for \$55,000.00, paying in cash the sum of \$500.00, assuming a first mortgage held by the Monmouth Title & Mortgage Guaranty Company in the sum of \$26,000.00, assuming a second mortgage held by the Clinton Investment Company in the sum of \$6,000.00, and paying for the balance of said purchase price by the bond and mortgages herein described. 10

13. Petitioners further allege that the interest on the first mortgage herein mentioned became due and payable on August 1, 1928, and has not been paid.

14. Petitioners further allege that the property at Point Pleasant Beach is a summer hotel, as stated herein, complete with fixtures and personal property for its complete operation and that if the same should be sold under the decree of this court it should be sold as one unit, rather than in parcels. 20

15. Petitioners further allege that they are informed and verily believe that the defendants herein are not financially responsible.

16. Petitioners further allege that the season for the operation of said hotel terminates on or about September 15th and that the best part of said season is at the present time until September 15th. Petitioners therefore pray that a receiver be appointed by this Honorable Court to take possession of the mortgaged premises, both real and personal, for the purpose of acquiring the income from the operation of said hotel and applying same in reduction of taxes, interest and other carrying charges, or for the purpose of taking possession of said personal 30
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Petition for Appointment of Receiver.

property and preserving its status until the further order of this court, with power to collect rental for its use and operation, together with rental for the use and occupation of said real estate, so that the said income can be used for the purpose of preserving the property until
 10 the further order of this court and for the reduction of interest on prior mortgages, taxes, etc.

Petitioners will ever pray, etc.

STEIN, McGLYNN & HANNOCH,
 Solicitors for and of Counsel with Petitioners.

STATE OF NEW JERSEY, }
 COUNTY OF ESSEX. } ss.
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ARTHUR G. HILL, being duly sworn according to law, upon his oath deposes and says:

1. He is one of the petitioners in the within suit and petition annexed to this affidavit.

2. That he has filed a bill in the within cause alleging that the defendants, Lambertus J. Lammerts and Elizabeth Lammerts, his wife, executed and delivered a bond in the sum of \$22,370.00, secured by a mortgage covering certain
 30 real estate described in said bill, located in the Borough of Point Pleasant Beach, County of Ocean, and State of New Jersey, having erected thereon a frame hotel, containing approximately sixty bedrooms. That said mortgage also covered as collateral security, a piece of property in the City of East Orange, County of Essex and State of New Jersey.

3. That in addition to said real estate mortgage,
 40 said defendants also executed and de-

Petition for Appointment of Receiver.

livered a chattel mortgage covering the complete furnishings and personal property located in said hotel, consisting of bedroom furniture, dining room furniture and complete equipment for the operation of said hotel.

4. That said bond and mortgages provided for a payment of \$500.00 on account of the principal thereof on July 1, 1928, and \$500.00 every three months thereafter during the first year; \$1,000.00 on July 1, 1929, and a like amount each three months thereafter during the second year; \$2,000.00 on July 1, 1930, and a like amount each three months thereafter during the third year; and the balance to be due July 1, 1931; an extension to be given for the payment of the balance until July 1, 1932, upon payment of \$2,000.00 and a like amount each three months thereafter; that the interest was to be at the rate of six per cent. from May 1, 1928, to be paid quarter annually.

5. That said mortgages, after execution and delivery, were duly recorded in their respective counties above named.

6. That the bond and mortgages above described contained clauses that if any installment of principal or interest should remain unpaid for thirty days after same became due, that the petitioners would have the option of declaring the entire amount immediately due and payable.

7. Said mortgages also contained the clauses that said defendants would keep the buildings on the mortgaged premises insured against loss or damage by fire and that in default of so doing, petitioners should be entitled to obtain said in-

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surance and the amount of the premiums therefor should also be secured by said mortgages, with interest at six per cent.

10 8. That he and Sarah Hill, his wife, have a \$3,000.00 interest in said bond and mortgage and Blanche Gray, one of the petitioners of the within suit, is the owner of the balance of said sum secured by said bond and mortgages.

9. That on July 1, 1928, the sum of \$500.00 became due to them, with interest amounting to \$335.50.

20 10. That repeated demands have been made for the payment of said principal and interest and that there has been paid by said defendants on account thereof the sum of \$250.00; the balance of \$585.50 has remained unpaid for more than thirty days. Petitioners have elected that the whole principal sum, with unpaid interest, should become due and payable.

11. Deponent further alleges that the defendants failed to keep said buildings fully insured and that petitioners effected insurance and have incurred an expense of \$330.00 for premiums for that purpose.

30 12. Deponent further alleges that taxes on the property in Point Pleasant Beach which became due on July 1, 1928, amounting to the sum of \$500.00, have not been paid and have remained unpaid for more than sixty days and that for this default he has also elected to declare the entire amount of the mortgage due and payable.

40 13. Deponent further alleges that the defendants purchased said property described at Point Pleasant Beach, consisting of the Hotel Carroll-

Petition for Appointment of Receiver.

ton and its contents, for \$55,000.00, paying in cash the sum of \$500.00, assuming a first mortgage held by the Monmouth Title & Mortgage Guaranty Company in the sum of \$26,000.00, assuming a second mortgage held by the Clinton Investment Company in the sum of \$6,000, and paying for the balance of said purchase price by the bond and mortgages herein described. 10

14. Deponent further alleges that the interest on the first mortgage herein mentioned became due and payable on August 1, 1928, and has not been paid.

15. Deponent further alleges that the property at Point Pleasant Beach is a summer hotel, as stated herein, complete with fixtures and personal property for its complete operation and that if the same should be sold under the decree of this court it should be sold as one unit, rather than in parcels. 20

16. Deponent further alleges that he is informed and verily believes that the defendants herein are not financially responsible.

17. Deponent further alleges that the season for the operation of said hotel terminates on or about September 15th, and that the best part of said season is at the present time until September 15th. 30

ARTHUR G. HILL.

Sworn to and subscribed before me,
this 18th day of August, 1928.

ABRAHAM FENSTER,
Attorney at Law of N. J.

**ORDER TO SHOW CAUSE WHY RECEIVER
SHOULD NOT BE APPOINTED.**

Filed August 18, 1928.

IN CHANCERY OF NEW JERSEY.

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Between

BLANCHE GRAY, ARTHUR G.
HILL and SARAH HILL,
Petitioners,

and

LAMBERTUS J. LAMMERTS and
ELIZABETH LAMMERTS, his
wife,

Defendants.

*On Bill, &c.
Order to
Show Cause
why Receiver
Should
Not Be
Appointed.*

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Upon reading and filing the duly verified petition of the petitioners herein, it is on this day of August, 1928, on motion of Stein, McGlynn & Hannoch, solicitors for and of counsel with petitioners,

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ORDERED that Lambertus J. Lammerts and Elizabeth Lammerts, his wife, the defendants herein, show cause before the Chancellor, at the Chancery Chambers, City Hall, Long Branch, N. J., on Thursday, the 23rd day of August, 1928, at eleven o'clock in the forenoon or as soon thereafter as counsel can be heard, why an order should not be made appointing a receiver for the real and personal property described in the bill of complaint and the petition upon which this order is entered, known as the Hotel Carrollton property, Point Pleasant Beach, New Jersey, for the purpose of foreclosing the chattel mortgage described in said bill of complaint

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Order to Show Cause.

and petition, for the purpose of taking possession of said personal property for the preservation thereof, pending said foreclosure, with power, if necessary, to rent said personal property to the defendants herein so that the income thereof can be used for the purpose of preserving said personal property to the completion of said foreclosure proceedings, and also with power to collect rents and income from the property described in the bill of complaint, located in East Orange, New Jersey, and Point Pleasant Beach, New Jersey, for the purpose of applying said income or so much thereof as may be necessary therefor toward the payment of interest on prior mortgages, taxes and insurance premiums and other carrying charges; and it is further

ORDERED that a true copy of this order and the bill of complaint filed by petitioners and this order to show cause, certified as true by such solicitors of the petitioners, be served personally upon said defendants within three days from the date hereof.

E. R. WALKER,
C.

Respectfully advised,

JOHN H. BACKES,
V.-C.

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**BILL OF COMPLAINT OF LAMBERTUS
LAMMERTS AND WIFE.**

Filed August 18, 1928.

(Signed) Backes, V.-C.

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IN CHANCERY OF NEW JERSEY.

To the Honorable Edwin Robert Walker, Chan-
cellor of the State of New Jersey:

Lambertus Lammerts and Elizabeth Lam-
merts, his wife, of the City of East Orange,
County of Essex and State of New Jersey, re-
spectfully shows that:

- 20 1. On April 20, 1928, Max Gray and Blanche
Gray, his wife, of the City of Newark, County
of Essex and State of New Jersey, made a con-
tract with complainants under the terms of
which the said Max Gray and Blanche Gray
agreed to sell to complainants the lands and
premises mentioned in said contract for the sum
of Fifty-five Thousand (\$55,000.00) Dollars, a
copy of which contract is hereto annexed and
made part hereof and marked Exhibit 1.
- 30 2. On May 1, 1928, title was closed under
said contract and complainant paid to the said
Max Gray and Blanche Gray, the consideration
of Fifty-five Thousand (\$55,000.00) Dollars by
way of cash and mortgages and other securities
which was called for by said contract and com-
plainants received a warranty deed for said
premises from said Max Gray and Blanche Gray,
his wife, which deed was duly recorded in the
office of the Clerk of the County of Ocean. A
40 copy of the settlement statement in connection

Bill of Complaint—Lambertus Lammerts & Wife.

with said purchase is hereto annexed and made part hereof and marked Exhibit 2.

3. In pursuance to said contract, complainants executed and delivered to said Max Gray and Blanche Gray a purchase money mortgage of Twenty-two Thousand Three Hundred and Seventy (\$22,370.00) Dollars, which included both the premises purchased, situated in the Borough of Point Pleasant Beach, County of Ocean, State of New Jersey, and also premises owned by the complainants and situated on the northerly side of Lenox avenue, in the City of East Orange, County of Essex and State of New Jersey; said mortgage secures the bond of the complainant to said Max and/or Blanche Gray; and one Arthur G. Hill, hereinafter mentioned, and Sarah Hill, his wife, have an interest in said bond and mortgage which is recorded in Ocean County and is also recorded in Book Y 60, page 578 of Mortgages for Essex County.

4. The lands and premises purchased by complainants consist of a lot having a frontage of 200 feet on Atlantic avenue, in the Borough of Point Pleasant, and depth of 125 feet, which lot has erected thereon two buildings, one a three-story frame hotel building (known as Hotel Carleton), about twenty-five years old, containing about sixty rooms, and the other building, a two-story building containing about ten rooms for the help. Said premises are valuable only for use and operation as a summer hotel.

5. For the purpose of inducing complainants to purchase said property said Max Gray and Blanche Gray, their servants and agents, particularly Arthur G. Hill, a real estate broker, with offices in the City of Newark, stated and

Bill of Complaint—Lambertus Lammerts & Wife.

represented to complainants that the operation of said premises as a hotel, did, in the past and for several years immediately before the sale, bring in at least the sum of Twenty-five Thousand (\$25,000.00) Dollars per season by way of gross receipts, that Max Gray received at least
 10 the sum of Six Thousand (\$6,000.00) Dollars annually by way of rent for said premises; that Hill made about Ten Thousand (\$10,000.00) Dollars clear profit from the operation of said premises as a hotel some five years ago when he owned the property; that Hill and Gray promised to give the complainants a list of Hill's clientele and Hill's receipts and disbursements while operating said hotel, which also would
 20 prove Hill's alleged profit of Ten Thousand (\$10,000.00) Dollars and that the operation of said premises as a hotel by complainant would bring in gross receipts of about Twenty-five Thousand (\$25,000.00) Dollars per season and that complainants could pay off the mortgages and own the hotel free and clear in about three years from the profits of the hotel.

6. The statements made by said Max Gray and Blanche Gray and their servants and agents, particularly Arthur G. Hill, were false and untrue in the following particulars:
 30

(a) the gross receipts in the past never amounted to Twenty-five Thousand (\$25,000.00) Dollars per season, and as a matter of fact, amounted to much less per season;

(b) the gross receipts amount to much less than Twenty-five Thousand (\$25,000.00) Dollars per season;

(c) the gross receipts of complainants from
 40 May 1, 1928 to August 15, 1928 amounted to but

Bill of Complaint—Lambertus Lammerts & Wife.

the sum of Four Thousand One Hundred and Nineteen Dollars and Twenty-five Cents (\$4,119.25);

(d) complainants could never pay the mortgages on said hotel out of the receipts or profits:

(e) the gross receipts for the season of 1928 will amount to much less than Twenty-five Thousand (\$25,000.00) Dollars; 10

(f) said Gray never received the sum of Six Thousand (\$6,000.00) Dollars annually by way of rent for said hotel premises; said defendant Hill never made the sum of Ten Thousand (\$10,000.00) Dollars clear profit when he operated said hotel premises;

(g) said defendants Hill and Gray never intended that Hill give to complainants a list of Hill's clients and Hill's receipts and disbursements while operating the hotel premises. 20

7. Complainants further say that the statements and representations made to them as aforesaid were false and untrue and were known to said Max Gray and Blanche Gray, their agents and servants, particularly Arthur G. Hill, to be false and untrue when such statements were made to complainants, and that said representations were material and complainants were induced thereby to purchase said property and that said Max Gray and Blanche Gray, their agents and servants, particularly Arthur G. Hill knew that said complainants, by depending upon said statements and representations, were being influenced thereby to purchase said property. 30

8. Believing the statements and representations made by said Max Gray and Blanche Gray, their servants and agents, particularly Arthur G. Hill, as herebefore set forth to be true, and 40

Bill of Complaint—Lambertus Lammerts & Wife.

relying upon same complainants, did, as above set forth, enter into said contract dated April 20, 1928, and pursuant thereto closed same and take title and pay the considerations therefor. Complainants have, since they have discovered that the statements and representations made
 10 by said Max Gray and Blanche Gray, their servants and agents, particularly Arthur G. Hill, were false and untrue, rescinded the said sale and offered to reconvey the said premises to said Max Gray and Blanche Gray and demanded from said Max Gray and Blanche Gray, repayment to them of the moneys paid together with the cancellation of the mortgage and other securities for the purchase price, given by complainants to said Max Gray and/or Blanche
 20 Gray, with which request said Max Gray and Blanche Gray refused to comply, and complainants do now rescind said transaction and offer to convey said property to said Max Gray and Blanche Gray on being paid the money paid by them and cancellation of the mortgage and other securities given by them.

9. Complainants further say that it is necessary that someone should operate and manage and control said premises pending the determination of this suit.
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Complainants are without adequate remedy in the courts of law and therefore pray:

1. That Max Gray and Blanche Gray, his wife, and Arthur G. Hill and Sarah Hill, his wife, who are the defendants to this suit, may answer this bill of complaint and each statement therein made, without oath.

Bill of Complaint—Lambertus Lammerts & Wife.

2. That it be adjudged and decreed that the said defendants secured the contract from complainants for the purchase of said lands and premises by false and fraudulent representation and that said contract be rescinded and that defendants be directed to repay to complainants the moneys paid by them and to cancel the mortgage and securities given by them on the purchase of said lands and premises, and also pay to complainants such moneys as this court may direct to be paid to said complainants upon a proper accounting, and that the moneys found due to the complainants may be decreed to be a lien and charge upon said lands and premises and that complainants be directed to convey said lands and premises to the said defendants, Max Gray and Blanche Gray, his wife, upon the payment by the defendants herein of the moneys due to said complainants and cancellation of the mortgage and other securities, or that said lands and premises may be sold to raise and pay the moneys found due to complainants and that if there be any deficit, the defendants be compelled to pay the same.

3. That an order be made restraining the defendants from assigning, selling, hypothecating or pledging any one or all of the mortgage or securities given by complainants as above described until the further order of this court.

4. That a decree be made discharging the mortgage and bond made by complainants above described and voiding any other security given by complainants in the transaction.

5. That the complainant may be permitted to operate, manage and control said property pending this suit without any prejudice to insist

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Bill of Complaint—Exhibit 1.

upon rescission, or that a receiver may be appointed for such purpose.

6. That complainant may have such other and further relief as may be just and proper.

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

MARDER & OKIN,
Solicitors of Complainant.

AARON MARDER,
Of Counsel with Complainants.

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EXHIBIT 1.

THIS AGREEMENT

made the twentieth day of April, in the year of our Lord One Thousand Nine Hundred and twenty-eight.

Between

MAX GRAY and BLANCHE GRAY, his wife, of the City of Newark, County of Essex and State of New Jersey party of the first part;

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And

LAMBERTUS LAMMERTS and ELIZABETH LAMMERTS, his wife, of the City of East Orange, County of Essex and State of New Jersey party of second part; Witnesseth, That the said party of the first part, for and in consideration of the sum of FIFTY FIVE THOUSAND (\$55,000.00) Dollars, to be paid and satisfied as hereinafter mentioned, and also in consideration of the covenants and agree-

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Bill of Complaint—Exhibit 1.

ments hereinafter mentioned, made and entered into by the said party of the second part, doth agree to and with the said party of the second part, that they the said party of the first part, will well and sufficiently convey to the said party of the second party of the second part, their heirs and assigns, by Deed of Warranty free of all encumbrances on or before the First day of May next ensuing the date hereof, All that certain Hotel building and all those lots, tracts, or parcels of land and premises hereinafter particularly described situate, lying and being in the Borough of Point Pleasant Beach in the County of Ocean and State of New Jersey, being known marked and designated as Lots Numbers 139, 140, 141, and 142 on a map or plan of lots of the Point Pleasant Land Company duly filed in the Office of the Clerk of the County of Ocean on the Sixty day of August 1878, bounded and described as follows, to wit:

Lots 139 and 140, fronting or in width one hundred feet (100) on the northerly side of Atlantic Avenue, thence extending northerly the same width by and between Boston Avenue on the east and Lot 141 on the west, one hundred twenty-five (125) feet in depth.

Lots 141 and 142, fronting or in width one hundred feet (100) on the northerly side of Atlantic Avenue, extending northerly the same width by and between Lot 140 on the east and Lot 143 on the west, one hundred twenty-five feet (125) in depth.

Including all fixtures, furniture, house furnishings, screens, doors, carpets, chairs, kitchen utensils, kitchen ranges, linens, safe, *cash* register, office equipment, porch chairs and all other goods and chattels now in said premises.

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Bill of Complaint—Exhibit 1.

Subject to restrictions contained in deed Point Pleasant Land Company, a corporation, to Rachael A. Bogert dated May 9, 1882, recorded in the Ocean County Clerk's Office in Book 116 of Deeds, page 201.

- 10 It is understood and agreed that the buildings now on said premises are entirely within the lot lines, and there are no encroachments of buildings over the adjoining properties. And the said parties of the second part for themselves, their heirs, executors and administrators, doth covenant, promise and agree to and with the said party of the first part, their heirs, executors, administrators and assigns, that they the said party of the second part, will pay and satisfy, or cause to be paid and satisfied, unto the said
- 20 party of the first part, the said sum of FIFTY FIVE THOUSAND (\$55,000.00) DOLLARS as and for the purchase money of the foregoing described land and premises, in the following manner, that is to say: \$500.00 by check, the receipt whereof is hereby acknowledged.
- 30 \$26,000.00 by taking said premises subject to a mortgage in that sum made by Max Gray and wife to Monmouth Title & Mortgage Guaranty Company, which the parties of the second part hereby agree to assume, which mortgage is due on or about December 2, 1930. \$6,000.00 made by said Gray to Clinton Investment Company, which mortgage is due on or about June 2, 1929. The balance, by the parties of the second part executing and delivering to the party of the first part, bond and purchase money mortgage for said balance, which mortgage shall provide for payment of \$500 instalment on account of principal each and every three months during
- 40 the first year, \$1,000.00 on account of principal

Bill of Complaint—Exhibit 1.

each and every three months during the second year, \$2,000 each and every three months during the third year and the balance of the said third mortgage shall be due at the end of the third year, unless the parties of the second part exercise an option to be therein given, to renew said mortgage for an additional period of one year. In case of renewal thereof, \$2,000.00 shall be paid on account of principal, each and every three months. Six percent (6%) interest on said third mortgage shall be paid every three months at the time payments on account of principal are paid. Said third mortgage shall contain non-contributing fire insurance policy clause, shall contain the usual thirty day interest and instalment default clauses and the usual sixty day tax default clause. It shall contain provision that the entire amount of said principal or the unpaid balance thereof, shall become due and payable if interest or instalments due on the first or second mortgage shall become due and remain in arrears for the space of more than thirty days.

The parties of the first part agree to procure a renewal of the said second mortgage for one year. In the event that \$2,000.00 is paid on account thereof on or before June 2, 1929. The reasonable cost of procuring said renewal, shall be borne by the parties of the second part. The said parties of the first part agree, at any time during the term of said third mortgage, and up to June 2, 1929, to postpone said mortgage to a first mortgage or first and second mortgage in a sum not to exceed \$32,000.00. After said time and up to June 2, 1930, the parties of the first part will, at any time, postpone their said second mortgage, to first, or

Bill of Complaint—Exhibit 1.

10 first and second mortgage, in a sum not to exceed \$30,000.00 and thereafter during the life of said third mortgage agree to postpone, the same to a first mortgage not to exceed \$26,000.00. The said Gray hereby agrees, if requested so to do, to procure an extension of said second mortgage for one year from its present due date, in the event that the parties of the first part pay the sum of \$2,000.00 on account thereof, before the now date of maturity. Also, the said third mortgage shall cover and be a lien upon the following described property now owned by the parties of the second part.

ALL that certain tract or parcel of land situate, lying and being in the City of East Orange, in the County of Essex and State of New Jersey.

20 BEGINNING on the northerly side of Lenox Avenue 200 feet westerly from South Arlington Avenue at the southwesterly corner of premises conveyed by George W. Blackwell and wife to Frances A. Robinson; thence northerly along Robinson's land, now belonging to Anna M. G. McBratney 100.22 feet to Richerd Coyne's land; thence westerly along same 50 feet to William T. Hickson's land; thence southerly along his line and parallel with first course 100.22 feet
30 more or less to the northerly side of Orange Street; thence easterly along same 50 feet to Beginning.

It is understood and agreed that the said premises last above described are now subject to a first mortgage in the sum of \$7500.00 held by the Fidelity Union Trust Company and to a second mortgage in the sum of \$1500.00 now held by one Samuel Seigler. The said Gray hereby agrees to postpone, at any time, the said third
40 mortgage to a mortgage or mortgages in a sum

Bill of Complaint—Exhibit 1.

not exceeding \$11,000.00 on said property last above described. The said third mortgage shall contain the provision that in the event of default continuing more than thirty days in payments on account of interest or principal on any of said mortgages aggregating the said sum of \$11,000.00, or should the taxes on said property, become due and continue in default for more than sixty days, then the sum secured by the said third mortgage shall immediately become due and payable.

10

The parties of the second part are about to purchase from one Richerd Coyne premises in the said City of East Orange adjoining premises last above described and hereby agree to execute and deliver the said Gray a mortgage for the same amount and upon the same terms as the third mortgage herein described, covering said property.

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It is understood and agreed that the said property to be purchased from said Coyne will be subject to a first mortgage in the sum of \$3,000.00. The said Gray hereby agrees to postpone his said third mortgages so far as said East Orange property is concerned, to a mortgage in addition to the ones already mentioned, in a sum not to exceed \$2,000.00.

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The said Gray hereby agrees, at any time, to postpone his said third mortgage to a mortgage or mortgages covering both of said East Orange properties in a sum or sums not to exceed \$16,000.00. It is understood and agreed that the taxes, interest on mortgages, assessments, sewer rents, water rents and all other municipal charges, impositions or liens, shall be apportioned as of the day of passing title.

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Bill of Complaint—Exhibit 1.

It is further understood and agreed that in the event that any of said taxes, interest, assessments, water rents, sewer rents, or other municipal liens have not been paid at the time of passing title, the amount therefor shall be deducted from the amount of the third mortgage above mentioned. In such event, however, the said Gray shall not enforce default of said third mortgage by reason of the fact that any of said charges are not paid within the period of thirty or sixty days, as the case may be.

It is understood and agreed that the parties of the second part shall execute and deliver to said Gray, a chattel mortgage in the sum named in said third mortgage and to be upon the same conditions, so far as the same are applicable upon all furniture, fixtures and other chattels which are now in said Point Pleasant property or which may hereafter be placed therein.

It is further understood and agreed that the said parties of the second part shall pay all costs incurred in connection with all of said postponements of said third mortgage which they may hereafter request from the said Gray.

It is understood and agreed that the said third mortgage covering the premises firstly, secondly and thirdly described shall become due and payable in the event that the parties of the second part shall sell or convey the same or any one of said properties.

This contract is entered into upon the knowledge of the parties as to the value of the land and whatever buildings are upon the same, and not on any representations made as to character or quality.

And the said party of the part hereby agrees to pay to the licensed and authorized agent

Bill of Complaint—Exhibit 1.

a commission of % on the purchase price aforesaid.

And it is further agreed by the parties to these presents, that the said party of the second part, their heirs and assigns, may enter into and upon the said land and premises on the first day of May next ensuing the date hereof, and from thence take the rents, issues and profits to their and their use. 10

And it is further agreed, by the parties hereto, that the said deed shall be delivered and received at office of Cook and Stout,

Electric Building,
Asbury Park, N. J.

between the hours of ten o'clock in the forenoon and four o'clock in the afternoon on the said day of closing next ensuing the date hereof. 20

The parties of the first part hereby agree that they will assign to Arthur G. Hill, a participating interest of \$3,000.00 in said third mortgage or mortgages; and further agree with the said Arthur G. Hill, in consideration of cash advancements and part commissions, shall receive twenty five (%25) percent of the amount paid on account of the principal thereof, until the said sum of \$3,000.00 is paid to said Arthur G. Hill; and in addition thereto shall receive interest at the rate of six percent (6%) on the said \$3,000.00 or unpaid balances thereof from the interest paid on said third mortgage or mortgages. 30

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 40

Bill of Complaint—Exhibit 1.

same, the sum of FIFTY FIVE THOUSAND (\$55,000.00) DOLLARS which they hereby fix and settle as liquidated damages therefor.

10 In Witness Whereof, the said parties have hereunto interchangeably set their hands and seals the day and year first above mentioned.

MAX GRAY (SEAL)
 BLANCHE GRAY (SEAL)
 Lambertus Lammerts
 Elizabeth Lammerts
 Arthur G. Hill.

Signed, Sealed and Delivered
 in the presence of

20 William J. O'Hagan.

In consideration of mutual promises and agreements herein stated, we hereby agree to extend the date for the delivery of deed and execution of this contract to at same hour and place

Witness hand and seal this
 day of A. D. 19

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Bill of Complaint—Exhibit 1.

State Of New Jersey }
 County of Monmouth } ss.

Be it Remembered that on this twentieth day of April in the year of Our Lord One Thousand Nine Hundred and Twenty-eight, before me the subscriber,

personally appeared MAX GRAY and
 BLANCHE GRAY, his wife, and Lambertus
 Lammerts and Elizabeth Lammerts, his wife,
 who, I am satisfied, are the grantors mentioned
 in the within instrument, to whom I first made
 known the contents thereof, and thereupon they
 acknowledged that, they signed, sealed and de-
 livered the same as their voluntary act and deed,
 for the uses and purposes therein expressed.

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And the said William J. O'Hagan
 apart from said husband, further acknowl-
 edged that signed, sealed and delivered the
 same as voluntary act and deed, FREELY, with-
 out any fear, threats or compulsion of said
 husband.

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Bill of Complaint—Exhibit 2.

EXHIBIT 2.

GRAY-LAMMERTS CLOSING

May 1, 1928.

	Price	\$55,000.00
10	Insurance:	
	118853 U. S. Merchants & Shipper	\$9.10
	237926 Victory Insurance Co.	36.67
	507306 Concordia Insurance Co.	211.75
	Merchants Insurance Co. 7018 St. Paul	
	2527644 U. S. Fire	
	240917 London, Liverpool & Globe	
20	366042 Hanover	
	<hr/>	
	244680 Insurance Co. Of No. America	32.06
	29738 Am. & Foreign Ins. Co.	32.06
	464264 Superior	29.50
		<hr/>
		351.14
30		<hr/>
		\$55,351.14

Bill of Complaint—Affidavit of L. Lammerts.

Deposit	\$500.00	
1st. mortgage, Mon. Title & Mtg. Guaranty Co.	26,000.00	
2nd mortgage, Clinton In- vestment Co.	5,000.00	
Int. 12/2/27-5/1/28	100.00	
3rd mortgage, Clinton In- vestment Co.	1,000.00	10
Int. 12/2/27-5/1/28	25.00	
Taxes	351.60	
Cash	4.54	
Mortgage, Lammerts to Gray	22,370.00	
	<hr/>	\$55,351.14

Blanchy Gray
 Max Gray
 Elizabeth Lammerts
 Lambertus Lammerts
 Arthur G. Hill

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STATE OF NEW JERSEY, }
 COUNTY OF ESSEX. } ss.

LAMBERTUS LAMMERTS, of full age, being duly sworn, according to law, on his oath deposes and says:

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I and my wife are the complainants in the foregoing bill of complaint and I have read the foregoing bill of complaint. I have personal knowledge of the matters stated therein and the statements contained therein are true.

I am fifty-one years of age and reside at 16 Lenox avenue, East Orange, New Jersey. I have never been in business for myself, and I have been a watchmaker all my life with the exception of the business venture hereinafter related.

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Bill of Complaint—Affidavit of L. Lammerts.

I am not a man of means and my entire wealth above the business venture herein mentioned consists of my equity in my home in East Orange, at No. 16 Lenox avenue, the equity being worth about \$6,000.00, which equity was pledged as in said bill of complaint set forth.

10 Some time in April, 1928, my wife went down to the office of one Arthur G. Hill, real estate broker, with offices at No. 20 Clinton street, Newark, N. J., in response to an advertisement in the Newark Evening News by said Mr. Hill, stating that he had a well-paying seashore hotel for sale or rent.

After my wife's visit to Mr. Hill's office she went to view the property with Mr. Hill, his wife Sarah Hill and Max Gray on the following Saturday. The following Wednesday said Hill and Gray came up to our house in East Orange and negotiated the sale of said premises to us and said Hill and Gray told us that the proposition was a splendid proposition. They wanted \$60,000.00 for the property and stated that the hotel property was a splendid proposition and that it took in at least \$25,000.00 per season, by way of gross receipts and I could make all expenses and I could pay off all the liens against the hotel in three years; that Hill had made \$10,000.00 clear profit five years ago, when he owned and ran the place, leading us to believe that in the past it took in at least \$25,000.00 per season. Hill and Gray also promised to give us a list of his clientele and receipts and disbursements when he ran the place. Hill and Gray also stated that Gray received at least \$6,000.00 per annum by way of rent, while he owned the place, again leading us to believe that the place took in

Bill of Complaint—Affidavit of L. Lammerts.

at least \$25,000.00 per season to afford such a rental.

Then my wife and I agreed to pay \$55,000.00 for the property which was acceptable to Gray and he agreed to take but \$500.00 in cash and take a mortgage on my East Orange house as security. The contract was then executed on April 20, 1928, and on May 1, 1928, title passed and my wife and I took possession of the hotel and started cleaning it up and started in business. 10

The gross receipts from May 1st, until the date of this affidavit to wit: August 17, 1928, is \$4,119.25, so that it is an impossibility for us to take in this season, ending on or about September 15th, about one month hence, the sum of \$25,000.00. 20

We have since and recently been informed by the tradespeople and neighbors that there never was any business in said hotel for the last four or five years; that it was very badly run and that it had a reputation for poor service, poor food and filth.

My wife and I several times before the execution of the contract asked Hill for the lists of receipts and disbursements; he and Gray promised us but he put us off from time to time and said he couldn't find them. After the contract was signed and title passed we asked again and he said he would not give us the receipted bills since if these were lost he would have to pay again and that the list of his clientele was lost but he did give us the names of about five or six wholesalers. 30

We did our best to get trade and advertised in papers in Philadelphia, Baltimore, Newark, New 40

Bill of Complaint—Affidavit of L. Lammerts.

York, Elizabeth, Jersey City and other places, but without any appreciable success.

In running the hotel we have paid out the sum of \$5,077.26, which includes \$750.00 paid to Gray and \$180.00 paid on second mortgage interest.

10 (Signed) LAMBERTUS LAMMERTS.

Subscribed and sworn to before me
this 17th day of August, 1928.

(Signed)

THEODORE EHRENKRANTZ,
(SEAL) Notary Public of New Jersey.

20 STATE OF NEW JERSEY, }
COUNTY OF ESSEX. } ss.

ELIZABETH LAMMERTS, of full age, being duly sworn on her oath, according to law, deposes and says:

I am one of the defendants in the above-entitled matter and am the wife of Lambertus Lammerts. I have read the foregoing bill of complaint and have personal knowledge of the statements contained therein and the statements therein contained are true.

30 I have always been a housewife and have never engaged in any business excepting that we rented occasionally a couple of rooms in our house in East Orange, at 16 Lenox avenue, and excepting the business venture hereinafter related.

40 Some time in April, 1928, in response to an advertisement by one Arthur G. Hill, real estate broker, in the City of Newark, with offices at 20 Clinton street, I called at his office. The advertisement stated that Mr. Hill had a splendid hotel for sale or rent. I asked Mr. Hill about

Bill of Complaint—Affidavit of L. Lammerts.

this hotel and he wanted to know how much money we had. I told him that I and my husband had no money excepting the property we owned in East Orange in which we had an equity of about \$6,000.00. He then said the hotel he had in mind was not for rent but for sale and that the hotel was owned by a client of his named Max Gray and that the hotel brought in gross receipts of at least \$25,000.00 per season and that he had operated the hotel about five years ago when he owned it and had made \$10,000.00 clear profit. He also told me that it was a splendid opportunity to make money and that I was just the person to run the hotel and he would drive me down to look at it, and that we could get the hotel for \$60,000.00. 10

The following Saturday, I drove down with Mr. Gray, Mr. Hill, and his wife and my son Charles to look at the property. At that time Gray and Hill told me that the property was a splendid opportunity to make money; that I would take in at least \$25,000.00 per season, gross receipts; that Mr. Hill had run the hotel himself about five years ago and had made \$10,000.00 clear profit; and that Mr. Gray the owner of the hotel, had never rented the place for less than \$6,000.00 per season, leading me to believe that the gross receipts were at least \$25,000.00 per season to pay a rent of \$6,000, per season. Gray and Hill also promised to give me a list of Hill's clientele, receipts and disbursements while Hill ran the hotel, which would help us and also show his profit. 20 30

The following Wednesday Gray and Hill were up to my house in East Orange and my husband was present and they repeated most of the representation before set forth and asked us 40

Bill of Complaint—Affidavit of L. Lammerts.

\$60,000.00 for the property and then agreed to sell for \$55,000.00 with a down payment of \$500.00 cash, the balance to be secured by a mortgage on the East Orange property. We then drew the contracts attached to the bill of complaint on April 20, 1928, and took title May 1, 1928. We then took possession of the hotel and started cleaning it up and started in business.

The gross receipts from May 1st, until the date of this affidavit to wit: August 17, 1928, is \$4,119.25, so that it is an impossibility for us to take in this season, ending on or about September 15th, about one month hence, the sum of \$25,000.00.

We have since and recently been informed by the tradespeople and neighbors that there never was any business in said hotel for the last four or five years; that it was very badly run and that it had a reputation for poor service, poor food and filth.

My husband and I several times before the execution of the contract asked Hill for list of the receipts and disbursements; he and Gray promised us but he put us off from time to time and said he couldn't find them. After the contract was signed and title passed we asked again and he said he would not give us the receipted bills since if these were lost he would have to pay again and that the list of his clientele was lost but he did give us the names of about five or six wholesalers.

We did our best to get trade and advertised in papers in Philadelphia, Baltimore, Newark, New York, Elizabeth, Jersey City and other places, but without any appreciable success.

Bill of Complaint—Affidavit of L. Lammerts.

In running the hotel we have paid out the sum of \$5,077.26 which includes \$750.00 paid to Gray and \$180.00 paid on second mortgage interest.

.....

Subscribed and sworn to before me
this 17th day of August, 1928. 10

A Notary Public of New Jersey.

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ORDER AMENDING BILL OF COMPLAINT.
 IN CHANCERY OF NEW JERSEY.

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Between

LAMBERTUS LAMMERTS and
 ELIZABETH LAMMERTS, his
 wife,

*Complainants,**and*MAX GRAY, *et als.*,*Defendants.*

On Bill, &c.
Order
Amending
Bill of
Complaint.

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This matter being opened to the Court by Marder & Okin, solicitors of complainants, it is ORDERED that the bill of complaint heretofore filed in this cause be amended to include the following paragraphs:

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3A. In pursuance to said contract, complainants executed and delivered to Blanche Gray for said Blanche Gray and Max Gray, her husband, a chattel mortgage of Twenty-two Thousand Three Hundred and Seventy (\$22,370.00) Dollars, which covers all the chattels contained in said hotel premises mentioned herein, said chattel mortgage being given to secure the aforesaid bond and mortgage, which chattel mortgage was recorded in Book 28 of Chattel Mortgages for Ocean County on page 335.

It is further ordered that paragraph 4 of the prayer be amended to read as follows:

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That a decree be made discharging the mortgages and bond executed by complainants above

Order Amending Bill of Complaint.

described and voiding any other securities given by complainants in the transaction.

Respectfully advised,

V.-C.

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We hereby consent to the entry of the above order.

STEIN, McGLYNN & HANNOCH,
Solicitors of Defendants.

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ANSWER OF MAX GRAY AND OTHERS.

Filed August 28, 1928.

IN CHANCERY OF NEW JERSEY.

8/27/28.

10 3179. I.

Between

LAMBERTUS LAMMERTS and
 ELIZABETH LAMMERTS,
Complainants,
 and

20 MAX GRAY, BLANCHE GRAY,
 his wife; ARTHUR HILL and
 SARAH HILL, his wife,
Defendants.

On Bill, &c.

*Answer of
 Max Gray,
 Blanche
 Gray, his
 wife, Arthur
 Hill and
 Sarah Hill,
 his wife.*

The defendants, Max Gray, Blanche Gray, his wife; Arthur Hill and Sarah Hill, his wife, answering the bill of complaint, say that:

1. They admit the allegations contained in paragraphs 1, 2, 3, 3A and 4.

30 2. They deny the allegations contained in paragraphs 5, 6, 7, 8 and 9.

STEIN, McGLYNN & HANNOCH,
 Solicitors for and of Counsel with Max
 Gray, Blanche Gray, his wife; Arthur
 G. Hill and Sarah Hill, his wife.

REPLICATION.

Filed September 11, 1928.

IN CHANCERY OF NEW JERSEY.

*Between*LAMBERTUS LAMMERTS and
ELIZABETH LAMMERTS,*Complainants,**and*MAX GRAY, BLANCHE GRAY,
his wife; ARTHUR HILL and
SARAH HILL, his wife,*Defendants.*

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*On Bill, &c.**Replication.*

Complainants, Lambertus Lammerts and Elizabeth Lammerts join issue with the defendants on the allegations contained in their answer.

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MARDER & OKIN,
Solicitors of Complainants.AARON MARDER,
Of Counsel with Complainants.

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ORDER TO SHOW CAUSE AND RESTRAINING ORDER.

Filed August 18, 1928.

IN CHANCERY OF NEW JERSEY.

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Between

LAMBERTUS LAMMERTS and
ELIZABETH LAMMERTS, his
wife,

Complainants,

and

MAX GRAY, *et als.*,

Defendants.

*On Bill, &c.
Order to
Show Cause
and Re-
straining
Order.*

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This matter being opened to the Court by Marder & Okin, solicitors for the complainant, and upon reading and filing the verified bill of complaint;

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It is on this 18th day of August, 1928, ORDERED that the defendants, Max Gray and Blanche Gray, his wife, and Arthur G. Hill and Sarah Hill, his wife, show cause before the Chancellor, City Hall, Long Branch, N. J., at eleven o'clock in the forenoon or as soon thereafter as counsel can be heard, on Thursday, the 23rd day of August, 1928, why an order should not be made restraining the said defendants according to the prayer of said bill and why an order should not be made, permitting the complainants to manage and operate and control the lands and premises referred to in the bill of complaint, pending this suit, without prejudice to the right of complainants to insist upon rescission and why the com-

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Order to Show Cause and Restraining Order.

plainant should not have such other and further relief as should be proper.

It is further ORDERED that the said defendants and agent and servants, in the meantime and until the further order of this court be and they are hereby restrained and enjoined from assigning, transferring, selling, hypothecating or pledging in any way the mortgage and bond and other securities mentioned in the bill of complaint, said mortgage being recorded in Book Y 63 of Mortgages for Essex County on page 578. 10

It is further ORDERED that a copy of the bill of complaint, together with a copy of this order, neither of which need be certified, be served upon said defendants, either personally or by leaving it at the usual place of business or abode of each of them within two days of the date hereof. 20

E. R. WALKER,
C.

Respectfully advised,

JOHN BACKES,
V.-C.

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ORDER TO CONSOLIDATE CAUSES.

Filed September 4, 1928.

IN CHANCERY OF NEW JERSEY.

10	<p><i>Between</i></p> <p style="text-align: center;">L A M B E R T U S L A M M E R T S and E L I Z A B E T H L A M M E R T S, his wife,</p> <p style="text-align: center;"><i>Complainants,</i></p> <p style="text-align: center;"><i>and</i></p> <p style="text-align: center;">M A X G R A Y and B L A N C H E G R A Y, his wife, and A R T H U R G. H I L L and S A R A H H I L L, his wife,</p> <p style="text-align: center;"><i>Defendants.</i></p>	<p><i>On Bill, &c.</i></p> <p><i>Order.</i></p> <p><i>Docket 69,</i> <i>p. 426.</i></p>
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30		

This matter being opened to the Court by Marder & Okin, solicitors of the complainants, in the presence of Stein, McGlynn & Hannoeh, solicitors of the defendants, and it appearing that Messrs. Stein, McGlynn & Hannoeh have instituted a suit in this court wherein the above-named Blanche Gray, Arthur G. Hill and Sarah Hill, his wife, are complainants and Lambertus J. Lammerts and Elizabeth Lammerts, his wife, are defendants, and upon arguing the order to show cause, dated August 18, 1928, in the above-entitled cause, and the order to show cause, dated August 18, 1928, obtained in the suit instituted by Stein, McGlynn & Hannoeh, it is on this 4th day of September, 1928,

ORDERED, that both causes be and the same are hereby consolidated and that said causes be dis-

Order to Consolidate Causes.

posed of together as though they were one suit,
and it is further

ORDERED, that the defendants, Max Gray and
Blanche Gray, his wife, and Arthur G. Hill and
Sarah Hill, his wife, be enjoined from selling,
assigning, hypothecating or pledging or in any
other way disposing or one or all of the mort- 10
gages or securities given by complainants, Lam-
bertus Lammerts and Elizabeth Lammerts, his
wife, to Max Gray and Blanche Gray, his wife,
and Arthur G. Hill and Sarah Hill, his wife,
pending the termination of this cause, and it is
further

ORDERED, that the complainants, Lambertus
Lammerts, and Elizabeth Lammerts, his wife,
remain in possession of the hotel premises men- 20
tioned in their bill of complaint without preju-
dice to their right to relief as prayed for in their
bill of complaint.

E. R. WALKER,
C.

Respectfully advised,

JOHN H. BACKES,
V.-C.

We hereby consent to the making and entry 30
of the foregoing order.

STEIN, McGLYNN & HANNOCH,
Solicitors of Defendants.

MARDER & OKIN,
Solicitors of Complainants.

TESTIMONY.

IN CHANCERY OF NEW JERSEY,

October 22, 1928.

10 *Between*

MAX GRAY and BLANCHE
GRAY, his wife; ARTHUR
G. HILL and SARAH HILL,
his wife,

*Complainants,**and*

LAMBERTUS LAMMERTS and
ELIZABETH LAMMERTS, his
wife,

20

*Defendants.**Between*

LAMBERTUS LAMMERTS and
ELIZABETH LAMMERTS, his
wife,

*Complainants,**and*

30

MAX GRAY and BLANCHE
GRAY, his wife; ARTHUR
G. HILL and SARAH HILL,
his wife,

Defendants.

Transcript of shorthand notes of testimony
taken in the above-entitled cause before his
Honor, Alonzo Church, Vice-Chancellor, at the
Chancery Chambers, Newark, New Jersey, in
the presence of Stein, McGlynn & Hannoeh (by

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Max Gray, direct.

Mr. McGlynn) for complainants; Marder & Okin (by Mr. Marder) for defendants.

MAX GRAY, sworn for complainants.

Direct examination by Mr. McGlynn.

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Q Mr. Gray, you are the husband of Blanche Gray? A Yes, sir.

Q And you had charge of this transaction involving the Hotel Carrolton property at Point Pleasant? A Yes, sir.

Q And I understand you sold this property by a written contract of sale to Lambertus Lammerets and his wife? A Yes, sir.

Q And upon the closing of title did you receive—(interrupted).

20

Mr. Marder: I beg your pardon. Won't you introduce your contract now?

Mr. McGlynn: I have no objection. I offer the contract in evidence.

(Contract marked Exhibit C. 1.)

Mr. McGlynn: Marked recorded in both Ocean County and in Essex County because there were two tracts of land involved; the Ocean County registration being Book 213 of Mortgages, page 413, and the Essex County registration being Y-63 of Mortgages, 578.

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(Paper marked Exhibit C. 2.)

Mr. McGlynn: I offer chattel mortgage recorded in Ocean County in Book 28 of Chattel Mortgages, page 335.

(Chattel mortgage marked Exhibit C. 3.)

40

Max Gray, direct.

Mr. McGlynn: And bond secured by the mortgages, just marked.

(Bond marked Exhibit C. 4.)

Q Now, Mr. Gray, under the terms of the bond and mortgage just introduced in evidence,
10 do you recall when the first interest was due under this bond and mortgage? A No.

The Court: The mortgage—the bond will speak for itself.

Mr. McGlynn: I thought he could help me out, but apparently he cannot.

The Witness: No.

Q \$22,370 is the amount of the mortgage? A
20 The amount.

Q Interest from May 1, 1928, at six per cent.? A Right.

Q Quarter annually? A Yes, sir.

Q I also understand that the bond provides that the said sum of \$22,370 secured hereby shall be paid \$500 on account of principal July 1, 1928? A Right.

Q And a like amount each three months thereafter, during the first year? A Right.

Q Now, was the five hundred dollars paid on
30 July 1, 1928? A No.

Q Was anything paid on account of it? A On interest two hundred some odd dollars.

Q Oh, how much was paid after the execution of this bond and mortgage by the Lammererts? A There was paid interest two hundred and—two hundred some odd dollars in August.

Q In August. Is that the only payment you received? A That is the only payment I re-
40 ceived. It is part of the interest, not full.

Max Gray, direct.

Q Not full payment of interest? A No.

Q How much was that check? Did you get the check? A We got three checks, we have, some two hundred or two hundred and fifty or two hundred and sixty dollars, I don't know.

Q Three checks which total that amount? A Which total that amount. 10

Q Two hundred and sixty dollars? A Right.

Q Who made those payments? A Mrs. Lammerts brought it to the office of Cook and Stout in Asbury and Mrs. Hill, got the money.

Q What about the taxes on the property? A It has not been paid.

Q For the first of 1928? A No.

Q Do you know what the taxes are for the year? A About a thousand and fifty dollars, something like that, in that neighborhood. 20

Q What about insurance? A It has not been paid.

Q Well, when you closed title, was there some insurance on the building? A Right.

Q And was that insurance taken over by the Lammerts? A Yes, sir.

Q And calculation made as to its— A Closing. 30

Q —the value of its unexpired term? A Yes.

Q And figured in on the closing figure? A Yes.

Q You mean then, insurance in addition to the insurance which figured at the closing? A About five thousand dollars additional insurance which they had to give me according to the agreement they made us. She didn't pay that.

Max Gray, direct.

Q How much did that amount to? A Amounted to three hundred and twenty, or something like that.

Q Who paid that? A No; they cancelled the policies only recently.

10 Q And was this mortgage a first mortgage that we just had in evidence? A Yes.

Q This is a— A Third mortgage.

Q Who held the first mortgage? A The Monmouth Title Company of Asbury Park.

Q How much was that? A \$26,000.

Q Twenty-six thousand. Do you know when the interest was due on that? A When I turned it over, until I paid that interest and I give the check May first and then the interest came due three months later.

20 Q That was a quarter every three months due? A It has not been paid.

Q The next insurance which was due after May first was not paid? A Was not paid.

Q What was the second mortgage? A The second mortgage six thousand dollars.

Q Six thousand? A Yes.

Q And was the interest paid by you up to the time of closing title? A Yes, sir.

Q May 1, 1926? A Yes, sir.

30 Q And do you know when the interest came due or didn't that become due yet? A It didn't become due. It become due a month later they paid that one hundred eighty dollars.

Q The interest on the second mortgage they did pay? A They did pay, yes.

Mr. McGlynn: Now, your Honor please, in connection with this matter there was a petition filed, some time, I think, in September, by me, on which I obtained a rule

Max Gray, direct.

to show cause why the defendants should not be restrained from moving certain personal property, not only from this hotel, but from a storage warehouse in Lakewood, and also why they should not be held in contempt for violation of the terms of a restraining order issued some time previous thereto, restraining them from moving any personal property from the hotel. On the return of that rule it was suggested by Mr. Marder that they continue the rule to show cause in the contempt matter and that it come on today with this final hearing, and I don't know whether your Honor wants to hear that first or right with the other case or what. It is your Honor's case. 10

The Court: I think we better find out whether or not this mortgage is properly foreclosed first. 20

Mr. McGlynn. All right, sir.

Q Now, after this principal payment became due on the mortgage on July 1, 1928, did you demand payment of it from Mr. Lammerts and Mrs. Lammerts? A I certainly did.

Q And as a result what did they say? A They told me they were going to pay me a little later, in about a month later. 30

Q And did you wait until August 1? A I did wait until August 1 and then made an appointment to meet in Mr. Cook and Stout's and she said she was going to bring the money down there.

Q After August 1? A Yes, and we been waiting until three o'clock with her lawyer and the appointment was ten o'clock and we waited until three and they didn't show up, so I went home again. 40

Max Gray, cross.

Q Then after that was any payment made to you on account of this principal sum which became due on July 1? A No, never did.

Q Now, the title of this property before the sale to Lammerts was in your name? A Yes.

10 Q And in the closing of title did you order these mortgages put in your wife's name, Blanche Gray? A Yes.

Q And did she thereafter make any assignment of any part or parcel of the mortgage to somebody else? A Yes, to Mr. Hill.

Q Mr. and Mrs. Hill? A Yes.

Q About how much? A Three thousand dollars.

20 Q She is the owner of \$22,370, less \$3,000, and Mr. and Mrs. Hill are the owners of \$3,000 interest, making a total of \$22,370? A Yes.

Mr. McGlynn: That is all.

The Court: Any cross examination?

Mr. Marder: Yes, sir.

Cross examination by Mr. Marder.

Q What was the consideration of this assignment of three thousand dollars to Mr. Hill?

30 Mr. McGlynn: I object. I don't see what materiality that has.

The Court: I will sustain the objection.

Mr. Marder: All right. No cross examination.

The Court: That is all.

Mr. McGlynn: Mr. Hill.

Arthur G. Hill, direct.

ARTHUR G. HILL, sworn for complainants.

Direct examination by Mr. McGlynn.

Q I understand you are the owner who negotiated this sale? A I am.

Q Are you familiar with the figures with reference to the interest payments which were made? A Yes, I am. 10

Q And can you tell me how much, if anything, was paid by the Lammerts, the defendants, on account of the principal of this \$22,370 mortgage or the interest thereon? A There was nothing paid on the principal, but on the interest after much discussion and pressure they paid two hundred and fifty dollars which—(interrupted).

Q An even two hundred and fifty? A An even two hundred and fifty. 20

Q Was that the payment that was made at Cook & Stout's office in Asbury Park? A Yes, Mrs. Lammerts brought to Cook & Stout's office three checks from guests and then I had my wife stop over at the office to pick up the three checks to give them to me and I gave them to Mr. Gray.

Q They aggregated just an even two hundred and fifty dollars? A Two hundred and fifty dollars exactly. 30

Q And that was paid, do you recall about when? A That was paid about, I believe the date was about August the 2nd.

Q August the 2nd. Now, do you know the amount of the taxes on the Carrolton Hotel property for 1928? A Well, they were about one thousand dollars. I don't know just the penny. About a thousand dollars. 40

Arthur G. Hill, direct.

Q And were the taxes—first, have they been paid? A No, we are insisting on them being paid.

Q Have they been paid? A No.

10 Q What about the interest on the first mortgage held by the Monmouth Title Company, \$26,000? A That was not paid and Cook & Stout were ready to foreclose. In fact, they wrote a letter about it, and Mr. Gray paid that.

Q What about the fire insurance? A Fire insurance was not paid and that was another reason why the Monmouth Title Company were going to foreclose, as well as they had found the hotel had been apparently abandoned and left open to the elements.

20 Mr. McGlynn: That is all. Cross examine.

The Court: Any cross examination?

Mr. Marder: No.

The Court: That is all.

Mr. McGlynn: That proves a prima facie case for the complainant.

I wonder now if your Honor wants to hear that contempt situation?

30 The Court: I understand the mortgage was secured by the owner?

Mr. McGlynn: Yes.

The Court: Let us find out about that.

Mr. Marder: May I read a short statement at this time, that perhaps may be in order?

40 The complainants in the other suit contracted to buy this property on April 20, 1928, for the sum of fifty-five thousand dollars, and this is the hotel property down at

Statement by Defendants' Counsel.

Point Pleasant. They agreed to pay the fifty-five thousand dollars according to the contract as follows: Five hundred dollars by way of check receipted on the contract; \$26,000 by taking the property subject to a mortgage in that sum, held by Monmouth Title Mortgage Company, \$6,000, and by taking the premises subject to a mortgage in the sum of \$6,000 held by the Clinton Investment Company, and the balance by a purchase money mortgage, being the purchase money mortgage of \$22,370. This purchase money mortgage covered the hotel property and also covered that property owned by the Lammerts in East Orange, and in which they claim they had an equity of about six thousand dollars, and also in order to secure the bond secured by the purchase money mortgage they gave a chattel mortgage covering all of the furniture then in the hotel. This is important in connection with this contempt proceeding instituted by Mr. McGlynn. The chattel mortgage did not in any way cover any after acquired property or any other property except that which was then in the hotel.

Now, our allegations according to the bill of complaint are that—I will read paragraphs 5 and 6. They are not so very long: “For the purpose of inducing complainant to purchase said property said Max Gray and Blanche Gray their servants and agents, particularly Arthur G. Hill, a real estate broker, with offices in the City of Newark, stated and represented to complainant that the operation of said premises as a hotel did, in the past and for several

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Statement by Defendants' Counsel.

10 years immediately before the sale bring in at least the sum of twenty-five thousand dollars per season by way of gross receipts, that Max Gray received at least the sum of six thousand dollars annually by way of rent for said premises; that Hill made about ten thousand dollars clear profit from the operation of said premises as a hotel some five years ago when he owned the property; that Hill and Gray promised to give the complainant a list of Hill's clientele and Hill's receipts and disbursements while operating said hotel, which would also prove Hill's alleged profit of ten thousand dollars and that the operation of said premises as a hotel by complainant would bring in gross receipts of about twenty-five thousand dol-
20 lars per season and that complainants could pay off the mortgages and own the hotel free and clear in about three years from the profits of the hotel."

30 Now, it should be borne in mind that they practically obligated themselves to pay the entire fifty-five thousand dollars by way of mortgages with the exception of the five hundred dollars. "The statements made by said Max Gray and Blanche Gray, their servants and agents, particularly Arthur G. Hill were false and untrue in the following particulars: (a) The gross receipts in the past amount to much less than twenty-five thousand dollars per season, and as a matter of fact, amounted to much less a season.

(b) Gross receipts amount to much less than twenty-five thousand dollars per season:

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Elizabeth Lammerts, direct.

(c) The gross receipts of complainants from May 1 to August 15, 1928, amounted to but the sum of \$4,119.25;

(d) Complainants could never pay the mortgages on said hotel out of the receipts or profits.

(d) The gross receipts for the season of 1928 will amount to much less than \$25,000; 10

(f) Said Gray never received the sum of \$6,000 annually by way of rent for said hotel premises; said defendant Hill never made the sum of \$10,000 clear profit when he operated said hotel premises.

(g) Said defendants Hill and Gray never intended that Hill give to complainants a list of Hill's clients and Hill's receipts and disbursements while operating the hotel premises." 20

Those are our allegations, if the Court please. If we sustain them, I maintain the transaction should be set aside, which is what we pray, the whole transaction.

Mrs. Lammerts.

ELIZABETH LAMMERTS, sworn for defend- 30
ants.

Direct examination by Mr. Marder.

Q Mrs. Lammerts, you are the wife of Lambertus Lammerts? A Yes, sir.

Q And where do you live? A In East Orange, 60 Lenox avenue.

Q 60 Lenox avenue? A Yes.

Elizabeth Lammerts, direct.

Q Do you own that house, you and your husband? A Yes.

Q What is that house? A Well, it is a private home.

Q One family house? A Yes; one family house.

10 Q Now, did you do anything with that house? I mean, did you keep any boarders there? A No; I never kept any boarders.

Q Any roomers? A I have a few roomers there.

Q How many roomers did you have there? A About five.

Q When did you buy that house? A About six years ago.

20 Q And what did you pay for it? A \$15,500.

Mr. McGlynn: I object. I don't see what difference it makes what she paid for it.

Mr. Marder: I want to show the equity.

The Court: What they are trying to find out now is, was this mortgage fraudulent?

Mr. Marder: That is right.

30 The Court: What has the East Orange house to do with it?

Mr. Marder: Just this. I am going to lead on to her conversation in connection with this property and I also want to— (interrupted).

The Court: No. I will hear you afterwards.

Q How old are you, Mrs. Lammerts? A Forty-three.

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Elizabeth Lammerts, direct.

Mr. McGlynn: What is that?

The Witness: Forty-three.

Q How old is your husband? A Fifty.

Q What did you do before May 1, 1928? A
Nothing.

Q You were a housewife? A Yes.

10

Q Except you kept boarders in that house?
A Yes.

Q And what was your husband's business?

A He was in the jewelry business.

Q In what way? What does he do? What
does he do? A Well, he repaired watches.

Q You are not a native of this country, are
you, Mrs. Lammerts? A No; we are born in
Holland.

Q And how long have you been in this
country? A We are here around eleven years
now.

20

Q Eleven? A Uh huh.

Q All right. Now coming down to this first
meeting with Mr. Hill, how did you first find out
about this hotel down in Point Pleasant? A
Well, it was an advertisement.

Q Is this the advertisement (showing witness
paper)? A Yes, this is the advertisement.

30

Mr. Marder: I offer in evidence advertise-
ment in the Newark Evening News which, ac-
cording to the affidavit of somebody in con-
nection with the News—(interrupted).

Mr. McGlynn: I have no objection to it.

Mr. Marder: —was inserted on April 7,
1928.

(Newspaper clipping marked Exhibit D.
1.)

40

Elizabeth Lammerts, direct.

Mr. Marder: The advertisement reads as follows: "Wonderful opportunity; seashore hotel to lease; Point Pleasant, New Jersey; reasonable rent; inquire Hill, 25 Springfield avenue, Mitchell 5325."

10 Q Now, did you see Mr. Hill as a result of this advertisement? A Well, I called him up before and asked him the price of the rent of that hotel and he could not tell me over the phone, so he asked me to come up to his house the next day and see him about it, so I went to his office instead and asked him about the hotel, the price.

Q Who was there? A Mr. Hill and I.

20 Q Just you two? A Just us two and he said, well, he don't know exactly the price. Well, I told him, I said, "We haven't got this money. If you can figure it this way that, you know, we rent the hotel and pay you in the time we are working in it, I like to do it that way." "Well," he said, "haven't you got any money?" I said, "No, we haven't any money." He said, "Have you any property?" I said, "Well, we have a home where we live." "Why," he said, "you own that?" I said, "Yes." "Well," he said, "you know, I tell you something." He said, "the
30 hotel is a wonderful proposition and it does \$25,000 business a year," he said, "and I think you are just the right person to rent that hotel and you practically don't need any money," he said, "the hotel belongs to Mr. Gray, and that is a builder, and Mr. Gray is looking for apartment sites." He said, "Maybe we can exchange that way so you don't need any money and will clear up a lot out somewhere and if you come to get like that, I introduce you to Mr. Gray," he said, "you will make a lot of money." So I
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Elizabeth Lammerts, direct.

said, "Well, I don't know if we can do that. I have to see my husband first." "Why," he said, "when is your husband in?" So I said, "Well, he is always in around eight o'clock at night." And so he came to see us, I guess a couple of days after and have a talk with my husband and me.

10

Q Who, Mr. Hill? A Mr. Hill.

Q Was Mr. Gray with him? A No, Mr. Gray was not there yet. So then we had a talk with Mr. Hill about the proposition of the hotel and so on, but it didn't amount to anything. He asked me if I will come down with him some day and look at the hotel. "Well," I said, "we could look at it on a Saturday, because my son is out of work then and it is better for us." All right. We make an appointment and we went— Mr. Gray—Mr. Hill and Mr. Gray and Mrs. Hill and my son, Charlie, and I went down to Point Pleasant and had a look at the hotel.

20

Q All right. When did you first see this paper? A This paper he give me that to show to my husband.

Q The first time you went to see him? A When I went to see him in his office and he said, he told me, "Show this to your husband and look what a nice opportunity this is."

30

Mr. McGlynn: At this time, as I understand, Mr. Hill was a party to this as a broker?

The Court: Yes.

Mr. Marder: I offer this.

(Paper marked Exhibit D. 2.)

Mr. Marder: That is a prospectus gotten up by Hill, describing the hotel in question

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Elizabeth Lammerts, direct.

and the property, asking \$75,000 for the property and showing what a wonderful place it is and near the ocean and so forth.

10 Q All right. Now, you went down, did you, to Point Pleasant to view this property with these people you mentioned? A Yes.

Q And what did Mr. Gray say—what did Mr. Hill say then? A Well, we looked at the property—(interrupted).

The Court: Was Mr. Gray there?

Mr. Marder: Yes.

20 Mr. McGlynn: The trip to Point Pleasant, I understand, was made by Mr. and Mrs. Lammerts, the son Charlie and Mr. and Mrs. Hill.

The Witness: Yes, the five of us.

The Court: Yes.

The Witness: Well, we came there and it was quite dark and, of course, we looked at the house and the plaster was falling down from some of the rooms and showed some leaks, you know, on the walls, so I asked him, "Well—" (interrupted).

30 Mr. McGlynn: Asked who?

The Witness: What?

Mr. McGlynn: Asked who?

The Court: Who did you ask?

The Witness: Who I asked?

The Court: Yes.

The Witness: I asked Mr. Gray and Hill. I was talking to both of them.

40 Q You knew that Mr. Gray was the owner, didn't you? A Yes, he told me that, and he

Elizabeth Lammerts, direct.

saw the plaster and so on, the rooms, and I said to him, "Well, that is a nice condition the house is in; I think it needs all cleaning up," and so on. "Why, yes," he said, "the whole winter we have such storms and so on, and it is all kalsomined, it is all damp. Now," he said, "with a couple of weeks' work the house will look fine, and," he said, "that you will rent the rooms like anything." And then we asked him about linens and the dishes and silver and everything, so "Well," he said, "everything is in the hotel," but there was nothing in it. 10

Mr. McGlynn: There is no allegation about representation with regard to furnishings in the bill. Why waste time on it. 20

Q Well, what was said to you, if anything, by Messrs. Gray and Hill in connection with the rent? How much could be taken in and so forth? 20

A There was to be taken in every year. There was a business of \$25,000.

Q Did Gray tell you that? A Mr. Gray and Mr. Hill.

Q And did they tell you anything about how much Hill made when he ran the hotel? A Mr. Hill—(interrupted). 30

Mr. McGlynn: May it please the Court, I do not think Mr. Marder should lead his client on this most important part of the whole case.

The Court: No.

Mr. Marder: Is this leading, if the Court please?

The Court: What was the question? 40

Elizabeth Lammerts, direct.

(Question read as follows: "And did they tell you anything about how much Hill made when he ran the hotel?")

The Court: I do not think that is leading.

The Witness: Do you want me to answer now?

10

The Court: Yes.

The Witness: Mr. Hill told me.

Mr. Marder: What is your Honor's ruling?

The Court: I said I don't think it was leading.

Mr. Marder: All right.

The Witness: Mr. Hill told me that when he rents a hotel he makes \$10,000 clear profit.

20

Q And did Mr. Gray tell you how much he rented the place for? A What?

Q Did Mr. Gray tell you how much he rented the place for, as a rule? A And he rented the place every year for sixty-five hundred dollars—every year.

Q Was anything else said to you or promised you by way of help from Hill or Gray? A Yes.
30 I told him, I said, "We haven't got money," and he said to me, "Well," he said, "we help you along," he said, "if you need any money—" (interrupted).

Mr. McGlynn: May it please the Court, there is no such allegation in the bill.

Mr. Marder: He does not get the purport of my question. I wanted to refrain from leading or indicating as much as possible; that is why I placed it that way.

40

Elizabeth Lammerts, direct.

Q Were they going to give you any help aside from money and help you out in any way by showing you anything or giving you anything? A No. He didn't give me anything. He said if I am in need of anything, in need of money, he always is—will help me out, if he bill—delay the payment what is coming to him, he told me he will have patience with it. 10

Q Now, did Mr. Gray or Mr. Hill tell you anything about help in connection with the past business done by them, bills, clientele and so on? A Yes; Mr. Hill told me he will show me all the papers, all the bills. How much business he did and what the property was making, and he would give me the register of the hotel, that they could write to all his clients who were there that year and it will help me along in the business. That is what he promised. 20

Q And was Gray there when he promised it? A No, he told it to me and my son and my husband.

Q I say, was Gray present when that was promised? A No.

Q When did you sign the contract as a result of that? A The contract was signed the 30th of April— 30

Mr. McGlynn: The 20th.

Mr. Marder: The 20th of April.

Q Where was this contract drawn? A In Asbury Park.

Q At the office of Cook & Stout?

The Court: Whose lawyers are they?

Q Whose lawyers are Cook & Stout? A Mr. O'Hagen's. 40

Elizabeth Lammerts, direct.

Q No. Whose lawyers were they, do you know, Cook & Stout, before this transaction?

A No.

Q Who brought you? A Mr. Hill and Mr. Gray.

10 Q What did they say about these lawyers?
A He didn't say a word about them. He just brought us down there and brought out the contract.

Q Did Mr. Gray or Mr. Hill suggest that you have your own lawyer? A No. I said to him, "Don't we have to have a lawyer?" And he looked the things up for us and he said, "That is not necessary," and he will work for both of us.

20 Mr. Marder: Then on April 20th this contract was drawn which you introduced in evidence as D. 1 (handing paper to Mr. McGlynn.)

Mr. McGlynn: Yes.

Q And then on May first you closed this title, didn't you? A Yes.

Q You took title to the property and you signed these mortgages. A Yes, sir.

30 Q And is this a copy of the closing statement? A Yes, this is the closing.

Mr. Marder: I offer this in evidence.
(Paper marked Exhibit D. 3.)

Q Now, as you understood the transaction, you were paying how much for the property?

A \$55,000.

40 Q How much cash were you paying? A \$500.

Elizabeth Lammerts, direct.

Q And you were taking it subject to a first mortgage of \$26,000? A Yes.

Q And a second mortgage of \$3,000?

The Court: Six thousand.

A No. Six thousand. 10

Q Second mortgage of six and then you gave back a purchase money mortgage for the balance of \$22,370? A Yes.

Q Now, this purchase money mortgage covered what? A Covered only the mortgage of the hotel and our house.

Q And your house? A Yes.

Q And you also gave him a chattel mortgage? A No.

Q Didn't you sign a chattel mortgage? A Yes, we sign a chattel mortgage, but we don't want to have it in. 20

Q You gave a chattel mortgage covering the furniture in the hotel, didn't you? A Yes; that is what we did; that was the only chattel mortgage we signed for.

Q Was that to secure the same bond of \$22,370? A Yes, sir; uh huh.

Q Now, were you told at the time you signed this chattel mortgage about it covering property that you might buy for the hotel? A No. 30

Q Did you understand that the chattel mortgage should cover any such property, personal property that you should buy in the hotel?

Mr. McGlynn: I object.

The Court: That is leading.

Mr. Marder: That is leading, but I have got to with this witness.

The Court: Not on important matters you should not. 40

Elizabeth Lammerts, direct.

Q What was your understanding with that chattel mortgage?

10 Mr. McGlynn: I don't see why he should do that. They have a written agreement that seems to be quite complete. The chattel mortgage is here and whether it covers after acquired property is simply a question of looking at the mortgage. Your Honor can tell that by looking at it in two seconds.

Mr. Marder: I won't press it.

The Court: All right.

Q When did you open up this hotel? A We opened up this hotel—we took possession of it the first of May and the 15th of June we were
20 ready to operate.

Q And you operated the hotel until when? A Until the fourth of September.

Q Yes. But this bill was instituted, your bill to rescind was instituted when?

The Court: August 28, 1928.

Mr. McGlynn: It was before that, wasn't it?

30 Mr. Marder: No. It was before that.

The Court: Oh, was it? This is the end.

Mr. McGlynn: August 18th, I think.

The Court: Yes, it is August 18th.

Mr. Marder: August 18th.

Q Now, do you know exactly how much you took in during the operation of this hotel? A How much we put in, you say?

40 Q How much you took in. A Yes.

Elizabeth Lammerts, direct.

Q How much your receipts were. A It was around six thousand, a little over; I am not sure about it. It is written down here.

Q And how much did you pay out? How much were your disbursements. A What?

Q How much did you pay out? How much were your disbursements? A Well— I am not sure about that. It is all written down, you see. I guess about seven or eight thousand we put out. 10

Q Who did this writing for you? Who kept your books, such as there were? A My son kept the books.

Q Your son, Charlie, kept the books? A Yes, he kept the books.

Q He knows all about the money details of the transaction? A Yes. 20

Q Now, did you do much business? A We didn't do much business. I did my best to get business in, but that was all the business we got.

Q What did you do to get the business? A We advertised it all over.

Q I show you a bill from an advertising agency dated August 7, 1928. Did you cause these advertisements to be inserted in connection with your hotel? 30

Mr. McGlynn: Just a minute. That is rather a peculiar way to prove it.

A Yes, we had all advertising in those papers.

Mr. McGlynn: I don't know if the fact itself is at all important, but whether it is or not, it seems to be a peculiar way to prove the insertion of an advertisement by bringing in the bill of an advertising agent. 40

Elizabeth Lammerts, direct.

The Court: I think it is sufficient, if the witness testified that she advertised as widely as she could, that is enough.

10 Q Well, did you advertise in the papers on this list? A In all those papers we advertised.

Mr. Marder: For that purpose I offer this list in evidence.

Mr. McGlynn: I am not going to waste any time on it.

Mr. Marder: I know, but it is—(interrupted).

Mr. McGlynn: All right. Put it in. I will withdraw my objection.

20

(List marked Exhibit D. 4.)

Q Did you try to get from Mr. Hill the information you said before he promised, which constitutes the clientele and the people he did business with? A No, sir; he never give me any papers.

30 Q Did you try to get that information from him? A I tried to get it every day and every day he put me off with something else. One day he was busy; another day he gave somebody all the leaves off his register and then he took, well, he put it off every day, so, at last, he give me a sheet of paper with all the names on it, I can get the groceries, meat, fish and so on, and that is all ever he showed to me and the reason was he said that if he gives it, if he hands out those papers, he is afraid he has to pay it over again, that they were getting lost. That is the answer what he give me.

40 Q Did you have any conversation with Mr. Gray after you had taken title and operated this

Elizabeth Lammerts, direct.

business? A Yes, I—he came down in our hotel and asked for the money what was due. We paid first \$180 on the second mortgage; then five hundred dollars was due and I said to him, “Well, we haven’t got the money.” “Well,” he said, “I have to get it.” I said, “Well, we haven’t got it.” “Well,” he said, “don’t you do any business in this hotel then that you get money in?” I said, “Well, you can see the business here is in. That is not twenty-five thousand dollars. I have only fifteen guests here.” That is all there was from Sunday to Friday. I said to him, “You know what you will do. Please take the hotel back.” He said, “I don’t want my hotel back.” I said, “What are we going to do? Because we can’t pay you? You know, we haven’t got any money.” “Why,” he said, “that is none of my business,” he said, “if you not pay me this week and bring the money by the lawyer,” he said, “I am going to foreclose you, take my hotel back, of course, take your home, take your furniture, take anything you got.” That is the answer what he gives me. I said, “Now, it isn’t our fault we are that way. You brought me in that. You give me the proposition.” That is what he said to me and he didn’t said it once, he said it four times. The last time he came to our house, “Do you know what?” he said, I said by Mr. Gray, “What will we do?” “I want my money,” he said. I said, “I haven’t got it.” I said, “Won’t you be kind enough and release the mortgage from the house and we get the second mortgage on the house on two thousand dollars and he give me that cash?” He said, “Nothing doing,” he said. “I have engaged some smart, slick lawyers,” he said, and he

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Elizabeth Lammerts, direct.

said, "I pay a lot of money on it and I going to get the hotel, I get your home, I get your furniture, I get every penny out of you," and he put two pieces of paper on the table and he left the house, that is what he did and they all heard him.

10 Q Have you got those papers with you? A No. That is what he did. (Witness cries.)

Q Now, it was just about that time that you had your slick lawyers institute this suit for you? A I don't know what slick lawyers are, but that is what they told me.

Q Now, did you have a conversation with Mr. Gray after these suits were started? A What do you say?

20 Q Did you have a conversation with Mr. Gray right after these suits were started, his foreclosure suit and your bill to rescind?

Mr. McGlynn: I object. I don't see what the purpose of all this is. The conversation after to prove representations before.

The Court: Certainly not.

Mr. Marder: Any admission on his part.

The Court: No, not after the suit was started.

30

Q About how many guests did you have here in that hotel this summer? A How many guests? Well, I guess altogether four hundred, everything included.

Mr. Marder: That is all.

The Court: Was it pleasant weather during July and August?

40

The Witness: What you say?

Elizabeth Lammerts, cross.

The Court: Did it rain during July and August?

The Witness: Well, I told you in the beginning of the week the weather was nice, but there was no business. Then on Saturdays it was filling up, you know, and we got some business, then a couple of week-ends it was raining terrible. We didn't do any business at all. 10

The Court: All right.

Cross examination by Mr. McGlynn.

Q When did you discover that the hotel was not going to take in twenty-five thousand dollars a year? When did you first discover that? 20

A When we did—(interrupted).

Mr. Marder: I object to that.

Mr. McGlynn: It is most important, may it please the Court.

The Court: I will allow it. I will allow it.

The Witness: Well, we discovered that about half—about the latter part of July.

Q About the latter part of July? A Yes. 30

Q When did you first discover that Mr. Gray did not receive sixty-five hundred dollars a year rent for his hotel before that? A When is it I discover that?

Q Yes. A Why, I didn't discover that.

Q Oh, that is part of your charge here. You say that is one of the reasons why you want this transaction set aside, because Mr. Gray represented to you—(interrupted). 40

Elizabeth Lammerts, cross.

Mr. Marder: We are going to prove that by another witness.

Mr. McGlynn: Pardon me, Mr. Marder. Pleases let me cross examine.

Mr. Marder: Go ahead.

10 Q You say in your papers that Mr. Max Gray received at least six thousand dollars by way of rent. A That is what he told us.

Q When did you discover he did not? A Well, that was the time out there.

Q When did you discover he did not receive six thousand dollars? A That was the time we were in the hotel.

20 Q When was the first time you discovered it? A Well, we hear that all over.

Q When, when? July— A Well.

Q June, May? A It may have been the month of July.

Q Eh? A Well, we hear that all over. We hear that not only once, but ten times.

Q I nuderstand that. You have told me that three or four times. When was the first time you heard it? A I don't remember that exactly.

30 Q When was that—when you first heard it, did you make some examination to find out if it was true? A We heard it from beginning to the end.

Q I want to know what efforts you made to find out whether it was true or not. A What did you say?

40 Q What effort did you make to find out whether it was true that Mr. Gray did not receive six thousand dollars? A I can't remember exactly the day, but we heard that from the

Elizabeth Lammerts, cross.

beginning to the end when we were running the hotel.

Q All right. When did you find out that Mr. Hill did not make ten thousand dollars a year clear profit from the operation of the hotel? A Well, all the people in town where we trade with and so on.

10

Q I didn't ask you how you found it out, I asked you when you found it out. A We found it out when we were running the hotel and we saw there was no business.

Q Did you find that out in the early part of the season or— A Well—

Q —the last part of the season. A Well, about July.

Q July. Now when did you make a payment of one hundred and eighty dollars on the second mortgage? A I guess that was in the beginning of July yet, if I am not mistaken, or the second—about the ninth.

20

Q The early part of July? A Yes, the early part of July.

Q Did you make any payments on account of the mortgage held by Mrs. Gray? Did you pay any interest or principal on that? A No. We paid two hundred and fifty dollars on the second—on the first mortgage.

30

Q On the first mortgage? A On the interest—no, on Mr. Gray's payment two hundred and fifty dollars we pay.

Q You pay two hundred and fifty dollars' interest on Gray's mortgage? A Yes.

Q When did you pay that? A I guess in the latter part of July.

Q Are you sure it was not the first part of August? A No, I don't think so. It was in the end of July.

40

Elizabeth Lammerts, cross.

Q The last part of July? A Yes.

Q And you knew when you made this payment of two hundred and fifty dollars on account of the Gray mortgage all these facts about the hotel, that it was not going to take in twenty-five thousand dollars, and Gray had not received
10 six thousand dollars a year rent, that Hill did not make ten thousand dollars clear profit. A What did you say first? I didn't hear you so well.

Q All right. You knew when you paid Mr. Gray two hundred and fifty dollars— A Yes.

Q —in the latter part of July, you knew at that time, first, that it would be impossible for you to take in twenty-five thousand dollars? A Yes.

20 Q You knew that Mr. Gray had not received six thousand dollars a year rent? A Well, I cannot positively say he did not receive sixty-five hundred.

Q Six thousand? A Six thousand dollars rent.

Q But you knew that there was some question about it. A But, listen, I know when he asked for his money, five hundred dollars.

30 Q Yes ma'am. A I told him, Mr. Gray, I only have five hundred dollars, that is all I have and we need that for running the hotel.

Q Let me interrupt you.

The Witness: Listen—

The Court: Answer the question.

Q Just a minute. We want to get through some time. Now, that payment of five hundred dollars was due when, July 1st, wasn't it? A Yes, yes.

Elizabeth Lammerts, cross.

Q Mr. Gray came and asked you for the five hundred dollars? A Yes.

Q After July 1st. You told him that you did not have the money. You had five hundred dollars; you wanted to keep that to run the hotel with, is that right? A No. The time when he came down for his money I told him, "I haven't any money."

10

Q All right. He came again and then you finally paid this two hundred and fifty dollars at the end of the month in July? A No, he didn't come again.

Q All right. A He wanted us to come to his lawyer's office.

Q All right. A Cook & Stout.

Q All right. A And there I explained them, Mr. Hill and Gray, they both were there, that we did not have the money and if he wanted to take his hotel back, because there was no business in it however.

20

Q So it was after all that that you paid the two hundred and fifty dollars? A Yes.

Q Yes? A I paid the two hundred and fifty dollars.

Q Now, you say you had a conference with him after that at your house in East Orange. That was after you closed the hotel, when you got these two papers that you just told us about?

30

A Yes; he came to our house.

Q That was after you closed the hotel in September? A Yes.

Mr. Marder: No, that is not the contract she testified to. You objected to that.

Q You testified here that at a certain conference when Mr. Gray told you that he was going

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Elizabeth Lammerts, re-direct.

to foreclose the mortgage and all that sort of business, and he left two papers on the table; when was that? A He told us in—(interrupted).

- 10 The Court: When was that?
 The Witness: He told us—(interrupted).
 The Court: When was that?
 The Witness: You mean, to foreclose?
 The Court: When did he tell you that he was going to foreclose and put the papers on the table?

Q Two pieces of paper A That was the latter part of September.

20 The Court: All right.

Q That was after the suit started? A Yes, that was after the suit started.

Q And all you asked him to do then was to release your East Orange property? A Well, I asked him that several times before.

Q And you would go raise a mortgage? A Yes.

30 Q And pay him two thousand dollars? A Yes.

Q You continued to run the hotel from August 18th up to September 4th? A Yes, sir.

Mr. McGlynn: That is all.

The Court: That is all.

Re-direct examination by Mr. Marder.

40 Q Mrs. Lammerts, when you told Gray that you could not pay him the five hundred dollars

Lambertus Lammerts, direct.

and you finally paid him two hundred and fifty did Gray say anything to you? A He all the time said that he will not bother for his money, but instead of that he demanded his money and all the time I said to him, "Well, Mr. Gray, I haven't got it; I have no money myself; I have to get it out of the hotel first." He said, "Never mind. I am going to foreclose you." That is the only thing he told me. 10

The Court: She has already said that three times.

Q When you gave him the two hundred and fifty dollars before that, you testified that you said you did not have any money and did he say anything to you at that time about whether you could get any money out of the hotel or not? 20
A No. He said, "Go out—(interrupted).

Mr. McGlynn: Excuse me, Mrs. Lammerts. I object. I do not see how this is re-direct.

The Court: No, it is not. You asked her that before. He said to her, "Why can't you get the money out of the hotel?" That is what he said. That's all. 30

Mr. Marder: All right.

LAMBERTUS LAMMERTS, sworn for defendants.

Direct examination by Mr. Marder.

Q Mr. Lammerts, you are one of the complainants in this cause and you are the husband 40

Lambertus Lammerts, direct.

of Mrs. Lammerts, who just testified? A Yes, sir.

Q How old are you? A Fifty-two.

Q And you live up in East Orange with Mrs. Lammerts? A Yes, sir.

10 Q What is your business? A Watchmaker.

Q Were you born in this country? A No. I am born in Holland.

Q And how long have you been in this country? A About eleven years.

Q Now, after you got into this transaction, do you remember meeting Mr. Hill, the broker? A Yes.

Q When was that? A The first time I met Mr. Hill was at my home, 60 Lenox avenue.

20 Q What month and what year? A Well, I don't remember exactly.

Q April some time, of this year, wasn't it? A Yes.

Q And Mr. Hill, what did he state in connection with this hotel property? A Well, Mr. Hill has told me he has got the hotel for sale, and it was a wonderful proposition.

Q Who was present at this conversation? A My wife was present.

30 Q And Mr. Hill? A And Mr. Hill.

Q And who else? A My daughter and myself.

Q What did he say about this wonderful proposition? A Well, he said that the hotel in Point Pleasant has got a fine reputation, it was an up-to-date hotel, it was all equipped and ready to operate and that it did a twenty-five thousand dollar business a year.

40 Mr. McGlynn: It did what?

Lambertus Lammerts, direct.

The Witness: That there was a twenty-five thousand dollar business in that hotel and it was equipped and ready to operate.

Q Did he say anything, how much money he made while operating the hotel? A Yes, he told me he never had run a hotel before and he even make ten thousand dollars there. 10

Q What hotel have you in mind, Mr. Lammerts? A The hotel in Point Pleasant.

Q And did Mr. Hill say who ran that hotel? A He have run it himself.

Q How much did he say he made out of it when he ran it? A He said he made ten thousand dollars clear.

Q Now, was anything said at that time about what they got by way of rent out of the hotel, that is, the rental? A Yes; they told Mr. Gray they received every year six thousand five hundred dollars rent out of this place. 20

Q You did not go down to Point Pleasant to look at that property, did you? A Yes, I went down there.

Q And the first time they went down? A No, in the later.

Q When did you go down? A I went down with my wife and my son and Mr. Hill and Gray. 30

Q When? A I don't know exactly when that was. It was some time around April, I think.

Q I mean, was it before the signing of the contract? A Yes, it was before the signing.

Q And what was said then before the signing, about how much the property would bring in, the receipts? A Twenty-five thousand dollars it will bring at least. He said this hotel have always done twenty-five thousand dollar 40

Lambertus Lammerts, direct.

business and if you are able to get this property clear in about three years' time.

Q Who said that? A That is what Mr. Hill.

Q And was Mr. Gray present? A Mr. Gray was there and he admitted that that was the truth.

10 Q And did Hill say anything about how much he made in running the hotel when Gray was there? A Yes, sir.

Q What did he say? A He told him he made ten thousand dollars there.

Q And did Gray say anything about how much he got by way of rent out of the place? A A Yes. He always got six thousand five hundred dollars rent out of it.

20 Q Well, when did you agree to buy the property? A Well, we agreed in April to buy the property.

Q You entered into this contract on April 20th? A Yes, sir.

Q And it was closed on May 1st? A Yes, sir.

Q Now, did you ever ask, or—just a moment—did Hill make any other promises to you? A Yes, sir.

30 Q By way of helping you out? A He make promises about giving me all his bills and about the business he did in the hotel.

The Court: Well, did you believe he would furnish you these bills and figures about the hotel?

The Witness: Yes, I believed.

The Court: Well, then, why did you take the property until he did furnish them?

40 The Witness: Well, he—I don't—I really can't say, because I believe him, and I was

Lambertus Lammerts, direct.

always waiting for those papers and they never came. He put me off from one day to the other.

The Court: So, without waiting for the papers you signed the contract and took title?

The Witness: Yes, sir.

10

Q Did you ask Mr. Hill for these papers before the execution of the contract? A (Witness nods yes.)

Q Before you signed the contract? A Yes. He said he shall deliver to me and when we asked him to come across with those papers he said, "Well, I am more or less afraid to give them."

20

Mr. McGlynn: What was that?

Mr. Marder: You are going a little too fast.

The Witness: Yes.

Q Before the signing of the contract, did you ask him for those papers? A Yes, sir.

Q How many times? A Oh, I don't know exactly how many times I asked him, three or four times, at least.

30

Q Before you signed the contract? A Yes, sir.

Q And what did he tell you? A Well, he said he is going to give me the papers, but I never received them; he always delayed it.

Q Did he give you any excuse? A Yes. His last excuse was that he was afraid to give me the papers.

Q No, no. That is before the signing of the contract. A Well, he could not find them some

40

Lambertus Lammerts, direct.

times and all the times he didn't have no time and so on.

Q Did you ask him for these papers, after the contract was signed? A Yes, I asked him.

Q Did you get them? A No.

10 Q What was his excuse then? A He was afraid to leave the papers out of his hands for fear he would lose the receipts.

Mr. McGlynn: What?

The Witness: A lot of receipts and he said he was afraid we would lose them.

Q What did you do to get business to the hotel? A We start advertising and paint and kalsomined the place and fixed the plumbing. It
20 was in awful poor shape, the plumbing, it took about three or four weeks, because, you see in those summer houses—(interrupted).

Q You will have to speak louder. A I say, it took about three or four weeks to repair the plumbing in that place, because, you see, everything is disconnected in this hotel.

Q And when did you take possession of the hotel? A I took possession of the hotel May
1st.

30 Q And when did you really begin to run it, really open it up so you could run it? A Seventh of September, I think it was.

Q When did you begin running it, not end running it, begin? A I really don't know exactly.

Q Well, was it in May or June? A I imagine it was in June.

Q About when in June? A The 15th, I think.

Lambertus Lammerts, direct.

Q About the 15th of June. Well, did you do much business? A No, we didn't do no business at all.

Q How much business did you do? A Well, I can hardly say how much business, because it did not amount to nothing.

Q Your son, Charlie, kept the books? A Charlie kept the books. 10

Q And can tell exactly how much? A Yes.

Q Now, do you remember coming to my office? A Yes, sir.

Q That was when, about? A About the 20th of July, I guess.

Mr. McGlynn: What?

The Witness: Twentieth of July. 20

Mr. Marder: It was the early part of August.

Mr. McGlynn: Now, wait.

The Witness: Yes, the first part of August.

The Court: Who is testifying here?

Mr. Marder: Mr. McGlynn wants to save time.

Mr. McGlynn: I want the case tried right. 30

Mr. Marder: I know, but there isn't any question about that.

Q How long before you came to my office did you find out that Hill had not made ten thousand dollars a year? A Well, that was when we opened the place, the first two weeks we see already there was no business.

Q The first two weeks? A Yes, two weeks. 40

Lambertus Lammerts, cross.

Q But you continued to try? A But we continued to try, because Mr. Hill, he says to me, "June doesn't mean anything, but always the month of August, that makes everything right."

Q That is what Hill told you? A Yes.

10 Q The month of August makes everything right? A "The month of August makes everything right," yes, and of course, it was not true.

Q How much did you take in the month of August, you don't know, do you? A I really don't know.

Cross examination by Mr. McGlynn.

20 Q You knew how many years before this Hill had run the hotel, didn't you? A Yes, I knowed that.

Q It was five or six years before that? A Five years.

Q Eh? A Yes.

Q Five years before. Did you and your wife go down to Point Pleasant independently of Hill and Gray before the signing of the contract? A No, we went together.

Q Didn't you go—(interrupted).

30 The Court: Did you go at any time without Mr. Hill or Mr. Gray?

The Witness: Yes, sir; I was down there at Point Pleasant before.

40 Q And didn't you tell Mr. Gray or Mr. Hill that you had been down and checked up on the hotel and talked to the neighbors about it, and so forth and so on, the tradespeople? A I don't remember that.

Lambertus Lammerts, cross.

Q Well, that trip you made down there alone was before you signed the contract, wasn't it? A Yes, yes.

The Court: Well, did you talk to the neighbors about it when you went down there?

10

The Witness: No, I did not talk with any one of the neighbors about it.

The Court: What did you do when you went there by yourself?

The Witness: I went down and we looked at the town and the beach and at the hotel, how it was situated and so on.

Q How long were you down there? A How long? Well, about for a couple of hours.

20

Q You had the key with you, didn't you, the key to the hotel? A No, I don't think so.

Q You don't think so. Now, you know when the payment was made by your wife and yourself of one hundred and eighty dollars on the second mortgage, don't you? You remember when that was made, don't you? A Yes.

Q When was that? A July, I guess.

Q What date? A I don't know exactly the date. I left it all to my son.

30

Q Sir? A I left it to my son, the payment.

Q You know when the payment of two hundred and fifty dollars was made by your wife? A Yes.

Q On account of the Gray mortgage, don't you? A Yes, I know that.

Q When was that? A That was in the second of August.

Q The second day of August? A I guess it was.

40

Lambertus Lammerts, cross.

Q Now, you knew, Mr. Lammerts, on the second day of August that this hotel would not and could not make twenty-five thousand dollars? A No, I didn't know that.

Q Didn't you? A No, I didn't know that.

10 Q You knew at that time that Mr. Hill had not made ten thousand dollars a year clear, didn't you? A No, I didn't know that.

Q You knew that Mr. Gray had never taken in—had never received six thousand dollars a year rent, didn't you? A I don't get that.

Q Well, one of the charges you make, sir, as a reason for setting aside this transaction— A Yes, that is—

Q Are you going to let me finish or not? A Why, Mr.—

20

The Court: Wait a minute. Let counsel finish his question and then you answer it.

Q Continuing my question: One of the reasons that you allege as a reason for setting aside this transaction— A Yes.

Q —is that Gray represented to you that he always received six thousand dollars a year rent? A Yes.

30 Q You say that is false? A Yes, I doubt it, yes, sir.

Q Sir? A I doubt it, yes, sir.

Q You doubt it? A Yes.

Q When did you first have your doubts? A Well, because there was no business.

Q When did you first have your doubts? A Well, after I operated the place for about two or three weeks.

40 Q Then, when you surely had the doubts before August 2nd before this payment was made—

Charles Lammerts, direct.

The Court: That is a matter of mathematics.

A I will tell you this way: I talked about to Mr. Hill, I told him, "There is no business in this place." He said, "Never mind those two months. August is the month and August makes everything good," and that is why I paid the payment to him. 10

Q That is why you made the payment on August 2nd? A Yes, sir.

Q Mr. Gray—Mr. Hill was at your hotel as a guest the early part of July, wasn't he? A Mr. Gray?

Q Mr. Hill? A Yes, sir.

Q And his family? A Yes, sir.

Q There for two or three days? A Yes. 20

Q And you had some trouble with your chef about that time, didn't you? A I got some trouble with my chef? No, I don't have trouble with my chef.

Q Well, you changed chefs about that time, didn't you? A Yes, sure.

Q Eh? A Sure.

Q Didn't have as good meals after that as you did before? A Yes; we got better meals.

Q Better meals, eh? That is all. A (No answer.) 30

CHARLES LAMMERTS, sworn for defendant.

Direct examination by Mr. Marder.

Q Mr. Lammerts, when did you first meet Mr. Hill—you are the son of these people here who 40

Charles Lammerts, direct.

just testified? You live at home with them?

A I live at home with my parents.

Q How old are you? A I am twenty-three years old.

10 Q When did you first see Mr. Hill? A The first time I saw Mr. Hill was about—let me see, was about the middle of April, when I went down with my mother to Mr. Hill's office. The purpose of that visit was that Mr. Hill had it arranged for my mother and I and himself and Mr. Gray to go down and inspect the hotel.

20 Q Well, did Mr. Hill say anything about the hotel at that time? A Mr. Hill told us that it was a wonderful opportunity for us people and it was a paying proposition, that the hotel had always taken in twenty-five thousand dollars gross and he thought, in his opinion, that my mother was a wonderful business woman and she was just the party to run a hotel like that.

Q Did he say anything more at that time? A Well, he told us that he was going to take us down to the hotel and show it to us.

Q And did you go down? A We went down.

Q With Mr. Gray? A With Mr. Gray.

Q And Mrs. Hill and your mother? A Mrs.—there was Mrs. Hill and my mother.

30 Q Well, what was said during that trip, during the conversation? A Why—

Q (Continuing.) By Mr. Gray and Mr. Hill about the hotel? A Why, they were telling us all along what a wonderful proposition it was and that the hotel always did twenty-five thousand dollars business and that they figured that it was in first-class condition and ready to operate and he said too that, "You are an accountant and you are very good at figures, you can take care of the books, and," he said, "your

40

Charles Lammerts, direct.

sister can live in the hotel and your father, and," he said, "I, personally, I ran the hotel and I made ten thousand dollars clear," he said, "but I didn't have as much help, I mean, your whole family could work in the hotel and you have the advantage over us," he said, "you figure with a family all together, you can make more money than that, because you will save it on help." 10

Q Did they say anything about how much the rent was for the place in the past? A Yes, he said he always received sixty-five hundred dollars rent from Mr. Underhill, and that Mr. Underhill—that is, he always received sixty-five hundred dollars rent from Mr. Underhill.

Q Now, were you present at the lawyer's office when the contract was signed? A I was present when the contract was signed, but I was not present when it—(interrupted). 20

Q At the closing? A At the closing.

Q When did you people take possession of the hotel? A May the 1st.

Q And when did they begin to do business? A Why, we started business about June 15th.

Q What was done between May 1st and June 15th? A Why, cleaning the hotel and kalsomin-ing and, you know, there was a lot of work to be done, putting the rooms in shape and so forth. 30

Q Yes. Have you the figures here showing exactly how much you put in and paid out in connection with the operation of the hotel? A Those are the figures.

Q Which are they? I don't know which they are, you have so many of them. A I kept the books and to the best of my belief those are all correct.

Q Well, are those all correct? A They are correct. Of course, I am not responsible for 40

Charles Lammerts, direct.

slight mistakes, like clerical mistakes, and so forth.

Q All right. What was the income from it?

A Well, the income was \$6,677.39.

Q That is from when until when? A That is from the beginning of the season, that is from the time we commenced operating the hotel, I would say, June the 15th until Labor Day.

10

Q When you closed the hotel? A When we closed the hotel up.

Q What are your disbursements, what did you pay out? A My disbursements were \$6,426.59.

20

Q Can you give us your disbursements in more detail, show how those disbursements are made up? A Well, I have that all written down here.

Q Does that include the two hundred and fifty dollars payment, too? A Two hundred and fifty dollars paid to Mr. Gray and Hill.

Q That was paid about when? A That was paid about the beginning of August, approximately August the 2nd.

30

Q August the 2nd. And what are the other disbursements there? A The other disbursements we have was the disbursement of five hundred dollars to—well, the disbursements showed just general—all expenses running the hotel like labor and, you know, money I paid out for kalsomining the hotel, and, you know, my butcher bills and my grocery bills and I might say, all miscellaneous expenses connected with running the hotel.

Mr. Marder: Does your Honor think it will help if we sub-divided that somewhat?

The Court: I don't think it will help.

40

Charles Lammerts, direct.

Mr. McGlynn: I am interested to know whether that five hundred dollars original payment was included in that disbursement.

The Witness: It was disbursement.

Q Is included in the original disbursement?

A Certainly it is included.

10

Q Then the five hundred and additional two hundred and fifty— A Yes.

Q —is part of the \$6,426.59? A Yes, everything I paid for the hotel I have marked down on those papers.

Q Did you pay \$180 to a second mortgagee?

A Yes, I did.

Q And that is also included? A That is also included.

Q Now, were you present when Messrs. Hill and Gray wanted the interest money of \$250 and got it? A When they wanted the interest money?

20

Q Yes, when they received this \$250? A No, I was not present, but I made up the checks for it.

Q Well, were you present when a conversation was had between your father and Mr. Hill, some time in August, which your father testified to before? A Yes, sir. Mr. Hill and Gray; they come down and they demanded money, the interest.

30

The Court: Were you there?

The Witness: Yes, your Honor, I was there.

The Court: All right.

The Witness: They demanded the interest and— Yes, sir, they demanded the interest whereupon we stated that we did not take in

40

Charles Lammerts, direct.

the money which they told us the place would take in. We said, "But we don't understand, Mr. Hill, how we are ever going to pay all our obligations when the hotel does so little business." So my mother said—
 10 my mother and father told them that Mr. Hill had previously stated that the hotel would do \$25,000 business and that at the beginning of August, about August 1st we had taken in approximately \$4,000 so Mr. Hill said, "Well, Mr. and Mrs. Lammerts, don't be afraid," he said, "don't count on June and July," he said, "August is your big month," he said, "August is considered the biggest month in the shore," he said,
 20 "that is the time when you make all the money," he said. "Most hotels along the shore here during June and July, they operate at a loss, but during August they make up for everything and they make up their profit."

Q Can you give us the income per month? A Pardon me?

Q Can you give us the income by month, how much did you take in in June? A In June we took in less than—
 30

Q Have you got it in your papers here? Did you divide it that way? A No, I didn't divide it that way, but I remember I made out statements month by month.

Q Yes. A During June we took in less than four hundred dollars.

Q And in July how much did you take in? A In July we took in about twenty-three hundred.

Q In August how much did you take in? A Well, I figured in August—(interrupted).
 40

Charles Lammerts, cross.

Q The balance up until September— A Balance up until September 1st.

Q —fourth being Labor Day? A September 4th, pardon me.

Mr. Marder: That is all.

10

Cross examination by Mr. McGlynn.

Q Included in these disbursements are there any drawing accounts for the members of the family who were at the hotel? A Would you mind showing me those papers a minute?

Q Don't you know whether you drew any money? A I very seldom. I didn't need any money.

Q Well, did you, did you? A Get money? I used—I used out of my own personal funds. I never used any out of the hotel. 20

Q Any other member of the family draw any money but which is charged in those disbursements? A Well, there is one disbursement—well, I figured, of course, I cannot—sometimes, members of the family they would want twenty-five cents, fifty cents, you know, just for personal expense, and I remember my sister once in a while wanted twenty-five cents to buy something at the drug store, you know, to buy small items. I figure that is about all, but, as a matter of fact—(interrupted). 30

Q Your entire family lived there all summer?
A Why, certainly.

The Court: Wait a minute. "As a matter of fact"—what?

The Witness: As a matter of fact, it really didn't amount to anything, any per- 40

Charles Milner—Albert E. Herbert, direct.

sonal expense they took out, because we didn't need any money for ourselves.

Q The entire family lived at the hotel the whole summer? A Yes, sir.

10 Mr. McGlynn: That is all.

CHARLES MILNER, sworn for defendant.

Direct examination by Mr. Marder.

Q Where do you live, Mr. Milner? A Asbury Park.

20 Q What is your business? A My business is summer business in the drug store, seashore store.

Q Well, were you down at Point Pleasant in 1928? A The summer season I was.

Q There in 1927, too? A No, sir.

Mr. Marder: I withdraw Mr. Milner for the time being.

30 ALBERT E. HERBERT, sworn for defendant.

Direct examination by Mr. Marder.

Q Mr. Herbert, where do you reside? A Point Pleasant, New Jersey.

Q How long have you lived down there? A That is my home down there, twenty-eight years, twenty-seven years.

40 Q What business are you in? A Well, I have a fish business down there.

Albert E. Herbert, direct.

Q Supplied fish to the hotels down there? A Wholesale and retail, both.

Q And do you know this Hotel Carrolton? A Yes, sir.

Q Did you supply all of the fish at that hotel for the season 1927, that is a year ago this past season? A Yes, sir. 10

The Court: How do you know you did?

The Witness: Well, I wouldn't swear I supplied all of it.

The Court: Why, you can't swear that they didn't buy fish anywhere else.

The Witness: No, I couldn't swear to that.

The Court: Certainly not. Don't attempt to. 20

Q You supplied fish in 1927, then, did you? A Yes, sir.

Q And did you supply fish to the hotel in 1928? A Yes, sir.

Q Well, was more fish supplied in 1927 or 1928?

Mr. McGlynn: Oh, I object, may it please the Court. 30

The Court: I will sustain the objection.

The Witness: Does that question go?

The Court: No.

Mr. Marder: No, you can't answer it.

Q Did you observe how many guests were at the hotel in 1928?

Mr. McGlynn: I think, before he answers the question, if it is going to be a question 40

Albert E. Herbert, direct.

of any merit, it seems to me a man running a fish business is not able to be in a hotel from day to day the entire summer.

The Court: I don't think it is material. I will allow it.

10 Mr. McGlynn: All right. I will save the time, too.

The Court: How many times were you at the hotel during 1928?

The Witness: Probably twice a day, sometimes three times a day.

The Court: What was the average of the boarders there?

20 The Witness: They had a very few. I couldn't give you the exact average, but about the same—they have had about the same for the last four or five years every summer.

Q So they have had about the same for the last four or five years every summer? A Yes, with the exceptions of three years ago when we had an extra nice summer.

Q Have you had any conversations—

30 Mr. Marder: I withdraw that. That is all.

The Court: Any cross?

Mr. McGlynn: No cross examination.

Mr. Marder: Mr. Underhill.

Gerald H. Underhill, direct.

GERALD H. UNDERHILL, sworn for defendant.

Direct examination by Mr. Marder.

Q Mr. Underhill, you are in the hotel business down at Point Pleasant, are you not? A 10
No, sir.

Q Well, you were? A Yes, sir.

Q And you ran the Hotel Carrolton four years ago, that is, in 1925? A Yes, sir.

Q 1925. You also ran it in 1926? A Also.

Q And also 1927? A Yes.

Q You leased it from Mr. Gray? A Yes, sir.

Q Can you tell us what rental you paid for it? A Yes, sir. 20

Q How much? A Five thousand dollars a—
(interrupted).

Mr. McGlynn: Wait.

The Witness: (Continuing.) —the first year, sixty-five hundred the second year.

Q And how much in 1927? A I agreed to pay him four.

Q And he agreed to accept four? A That 30
is so.

Q For the 1927 rent? A Yes, sir.

Q Would you mind telling us what your receipts were in 1925, 1926 and 1927? A (Witness refers to paper.) \$13,199.

Mr. McGlynn: What year is that?

The Witness: 1925.

Q \$13,199? A 199.

Gerald H. Underhill, cross.

Q 1926? A \$8,955.

Q And in 1927? A \$5,570.94.

Mr. Marder: That is all.

Cross examination by Mr. McGlynn.

10

Q You are quite an experienced hotel man, aren't you, Mr. Underhill? A I couldn't say that, sir.

Q You have been operating a hotel at Bay Head for quite some time? A Yes.

Q How many years? A I have owned it five years.

Q How long have you been operating it? A That hotel?

Q Yes. A Five years.

20

Q This hotel you operate at Bay Head has been there longer than five years? A Yes, it has been there—it is a very old house.

Q I mean, as a hotel it is quite an old hotel? A Yes, quite an old house.

Q And your operation of that hotel in the past five years has been successful, has it not, the one at Bay Head? A I haven't got much wages myself.

Q No. A I have managed to pay accounts.

30

Q You have been more satisfied with your operation of the Bay Head Hotel than you have the Carrolton? A Oh, yes.

Q And you operated the two together in 1925, 1926 and 1927, or tried to? A Well, I did.

Q I know you did, but apparently from your figures your operation of the hotel at Point Pleasant, the receipts began to go down from thirteen thousand to fifty-five hundred last year; is that right? A Yes, those figures are correct.

40

Gerald H. Underhill.

Mr. McGlynn: Yes, that is all.

The Court: We will take a recess for a few minutes. How many more witnesses have you?

Mr. Marder: I think we are about through.

10

GERALD H. UNDERHILL, resumed.

Examined by Mr. Marder.

Mr. Marder: I would like to ask Mr. Underhill a question or two.

Q Mr. Underhill—

20

The Court: Wait a minute. Do you object to that?

Mr. McGlynn: I don't know what the question is yet.

The Court: You finished with this witness and you examined and cross examined and then the Court took a recess. I don't think you ought to, after having had a chance—(interrupted).

30

Mr. McGlynn: I don't know what has happened since the witness has been off the stand. Of course, your Honor knows he has been off the stand.

The Court: Yes. I won't allow it.

40

Carl Ochs, direct.

CARL OCHS, sworn for defendant.

Direct examination by Mr. Marder.

Q Mr. Ochs, what is your business? A My
business is superintendent of an apartment
10 house.

Q Where? A East Orange.

Q And did you go down to look at this prop-
erty? A Yes.

Q When? A That was in the end of April.

Q At whose request? A Mr. Lammerts.

Q For what purpose? A To look over the
plumbing and the shape of the hotel, the plumb-
ing and sewer business.

Q Did you do that? A Yes. I worked about
20 three weeks there.

Q Did you know what condition the roof
was in?

Mr. McGlynn: I object. There is no
proof that I recall about on which they re-
lied on this transaction with respect to this.
I don't see why we should waste time on it.

(Discussion.)

The Court: I don't see it has anything
30 to do with the case now. All we are trying
to find out is whether there was fraud in
connection with this mortgage.

Mr. Marder: Then I withdraw Mr. Ochs.

The Court: All right.

Mr. Marder: Mr. Milner.

Arthur G. Hill, direct.

CHARLES MILNER, recalled.

Direct examination by Mr. Marder.

Q When you said before that you were in the drug business in Point Pleasant— A Yes, sir.

Q In the summer of this year— A Yes. 10

Q —where did you live? A I lived at the Carrolton Hotel.

Q Well, can you tell us anything about the service there? A As far as I know, I had meals and room there and everything was perfect to my knowledge, for what I am used to, it was very good.

Mr. Marder: That is all.

The Witness: It was very good. 20

Mr. McGlynn: No questions.

Mr. Marder: We rest our case.

Mr. McGlynn: Mr. Hill.

ARTHUR G. HILL, recalled.

Examined by Mr. McGlynn.

30

Q How long ago was it you ran this Hotel Carrolton property? A Summer of 1923.

Q Did you own it then? A Owned it.

Q How long did you own it? A We owned it from—oh, it was for about a year.

Q I see. And who assisted you in the operation of it the summer you had it? A My wife.

Q Now, you are in the real estate business? A I am.

40

Arthur G. Hill, direct.

Q And you inserted this advertisement that this property was for rent? A Yes.

Q You were acting for whom in that? A I was acting for Gray, the owner.

Q And in what capacity were you acting? A As broker.

10 Q As a result of this ad, Mrs. Lammerts came down and saw you or called you or got in touch with you? A She did.

Q And how many times did you see Mrs. Lammerts or Mr. Lammerts before the execution of this contract of April 20th? A I saw Mrs. Lammerts on, I believe, it was the 8th—at least, it was—

20 Q I am not so much interested in the dates as I am the number of times between the answer to the ad and the contract. A I saw her, I think it was about four times.

Q Four times. Now, the first time was where? A The first time was at my office. We talked over about the proposition.

Q The second time was where? A The second time she came to my office it was on a Saturday, to go down to see the hotel.

30 Q The appointment had been for that purpose? A The appointment had been for that purpose? Well, I will tell you. I said I would try to get hold of Gray and see what I could do. He didn't tell me to come on Saturday, but still she came, anyway.

Q Did you go down that day? A Yes, we did.

40 Q What was the third occasion? A The third occasion was when she called me up to bring the key up to her, that she would like to go down with her husband, just she and her husband, to look it over.

Arthur G. Hill, direct.

Q Did you? A Yes. I got the key and left it up at the house.

Q What was the fourth occasion? A Then, well, there was that occasion I didn't count. I just left the key there. After she came back I went over one evening thinking she would like to talk it over; I went over with my wife and then I was up again with Gray. 10

Q Yes. Those are all before the—(interrupted). A All before the contract.

Q I see.

Mr. Marder: That is how many times, four times?

The Witness: It was really five times, counting when I went to take the key over.

Q Now, on any of these occasions, Mr. Hill, did you represent that Mr. and Mrs. Gray or that you and your wife in the operation of these premises as a hotel had, in the past, for several years immediately before 1928, stated that these premises brought in at least twenty-five thousand dollars per year? A No; never stated that. 20

Q Did you on any one of these occasions at any time before or after the contract, state that Max Gray received at least six thousand dollars annually by way of rent? A No; I never knew what rent he did receive. 30

Q Did you state on any one of these occasions or any other time, either before or after the contract, that you personally made about ten thousand dollars clear profit from the operation of said premises as a hotel some five years ago when you owned the property? A No, I did not. 40

Arthur G. Hill, direct.

Q Did you agree to give the Lammerts a list of your clientele and a list—and a copy of the receipts and disbursements while operating the hotel? A They spoke about the guests and I said the register was down at the hotel; they could see the register down there, if they could
10 get it from Mr. Underhill or if it was down there; I didn't have it in my office or anything. I showed them a bill-file full of bills. I said, "You can look those over. I don't want my bills to go out of the office."

Q What was that for? A Just simply to show where I brought stuff from and the sum, and Mrs. Lammerts said then, "Well, we don't need that now; we don't need to look that over, but we would like to have a list of who you
20 deal with," and I gave them that.

Q Butchers and bakers? A Butchers and bakers and several people. In fact, I had the stenographer make up a list and gave it to them and they said it was all they wanted, although I had a bill-file and they said they just wanted to get the names of where to deal.

Q Did you ever, on any of these occasions, state that the operation of these premises as a hotel by the Lammerts would bring in gross receipts of about twenty-five thousand dollars per
30 season and would pay off the mortgage and they could own the hotel free and clear in about three years from the profits? A No; I never said it. It would be impossible on the figures.

Q I am not interested in arguing. I want to know whether you did or did not make any such representation. A No; I never did.

Q Did you ever hear Gray when he was with you in their presence say anything to you about the question of how much rent he got or what his
40

Arthur G. Hill, direct.

leases were on the hotel? A Yes, he spoke about—the thing that Gray always impressed on them was: “I am not selling you a business; I am selling you the property and the ground,” and that is what I told them. And he said, “Mr. Underhill paid me there, one year, I believe it was either six thousand or sixty-five hundred and the other year five thousand,” and just talking about that, but he impressed them so forcibly, did it several times, tried to—he said, “I am not selling the business, understand, Mrs. Lammerts, I am only selling you the property and the ground.” And she said, “Why, I am a hotel woman; I know about that.” 10

Q Were you at the closing of title? A Yes, I was at the closing of title.

Q And the drawing of the contract? A The drawing of the contract, too. 20

Q Was anything said on either one of those occasions by the Lammerts to anybody at those two conferences concerning any representations made to them regarding this property? A You mean about the rent?

Q About all these things, the rent and the receipts. A No; they didn't say anything; they didn't find any fault about that or anything. She said she had been down to the hotel; she and her husband went down and she went to get lunch at the Arnold—I think she said the Arnold. 30

Q What is that, a hotel? A I think it is a hotel or restaurant.

Q Where? A At Point Pleasant. The Arnold, I think it was, and she said, “All among where we inquire among business people and neighbors and the Arnold, that hotel is all run down, it is very poor and there is no business, 40

Arthur G. Hill, direct.

but," she said, "I have a friend there and this friend and I talked over it and we feel that we can build it up; we can build it up and do a good business there, because we like the hotel."

Q Now, did you go down there shortly after they opened it? A Yes, I was down.

10 Q Who with? Who did you take with you?

A I went down with the family, my wife and family over the Fourth.

Q Fourth of July? A July, yes.

Q What is your family, how many? A My wife and three children.

Q I see. A Three daughters.

Q And when you got down there, who did you find was the chef? A Why, I found that she had hired a colored chef that I had.

20 Q Five years before? A Five years before. He came back there; she hired him.

Q What sort of meals did you get on that occasion? A We got wonderful meals, we got wonderful meals all through there and I said it was fortunate to have that chef, so she said, "Mr. Hill, he has an argument with the head waiter and I don't know which one to let go." I said, "Mrs. Lammerts, let two or three go before you let that chef go, because—" interrupted)

30

The Court: What are you going to try to prove, whether they furnished proper meals?

Mr. McGlynn: I want to deny some of the allegations made with relation to service and the way the hotel was operated.

Q You went back again after July fourth, later in the season? A I did, in the second

40

Arthur G. Hill, direct.

Sunday after that we were back again over the week-end.

Q And did you find things the same as they had been before, or what? A No; we arrived there on Saturday night and Charlie said, "Now, we are kind of tied up a little bit," he said, "We have more guests than we expected and you will have to wait a while." I said, "All right." 10

Q Charlie Lammerts, you mean, the son? A Yes, Charlie Lammerts, the son. That was about twenty minutes after six. He said, "If you wait a little while it will be better, so I waited until twenty-five after seven and I said, "Is it all right?" And he said, "Yes." We went in there. I said to him in the meantime, "How about the chef? Have you got the same chef?" I had gone and asked Jean to stay. I said, "Jean, why don't you stay?" She said, "I would like to, but I have had trouble with the head waiter." 20

Q Never mind about that. What did you find about the character of the rooms and so forth on the second occasion? A The rooms were always dirty, full of cobwebs, so I told—Mr. Lammerts told me, "Mr. Hill, I would like you to mention if there is anything right or wrong with the hotel," so I did mention it and Mrs. Lammerts took exception to it and I spoke about the chef, "Have you got the same chef?" She said, "No, we changed the chef and got a better one than the one we had." I said, "That is good." So we went into the meals and certainly the—they had just pork chops for dinner and we got those and they were black and my little daughter couldn't eat either of hers, so I had to give her one of mine and the others were very black and there were other people in 30 40

Arthur G. Hill, direct.

there and they were dissatisfied, so I kind of laughed about it.

10 Q Did you stay there? A We stayed there the next day and the meals were very bad, in fact, the next day some of the guests said, "Your service is so bad and the meals so rotten we are going to get out of here."

Q What did you do; did you stay there? A I stayed there until noon time and I said, "I guess we will beat it." We stayed Saturday night, Sunday and Sunday noon.

Q And then you left? A And then we came away, although we had intended to stay that night.

20 Q What about July 1st, when this payment came due on this mortgage of five hundred dollars, did you see either Mr. or Mrs. Lammerts then? A Yes; we went down there, Gray and I, and told them that it had to be paid, it was due, and Gray told them about this here interest—this here interest on the second mortgage, he had been insisting on that for quite a while; he said, "They will foreclose." He said to me, "Hill, you better tell them, too, because it will only hurry it, the second mortgagee will call the money in." So I impressed 30 on them and said, "It must be paid." Then we said we wanted our money on account of the principal which was due July 1st and couldn't seem to get it, so at last we made an appointment to meet up at the lawyer's office.

Q Cook & Stout? A Cook & Stout.

40 Q By the way, Cook & Stout were attorneys. Do you recall why they were then in this particular transaction? A They were the attorneys for the Monmouth Title.

Arthur G. Hill, direct.

Q They secured the first mortgage? A Secured the first mortgage.

Q You say you made an appointment to go to Cook & Stout? A Made an appointment in July to go to Cook & Stout for the purpose of getting this money in and she said she would like to talk with Gray. 10

Q About what. What did she say she wanted to talk about? A Talk about probably trying to put off the payment or something like that, meet it later.

Q And did you meet there? A We met there at Cook & Stout's and impressed on them that they should—that it must be paid, and then she said, "Well, she will see a little bit later," so at last we went down about the latter part of July and we told her, we said, "Mrs. Lam- 20 merts, if you don't pay, we are going to fore-close." Mr. Gray told her, and he said, "I don't want to hear any stories," he said, "I don't want to hear any troubles; I have got troubles of my own and we want the money." And we made the appointment to meet at Cook & Stout's again and we did meet there on, I believe it was the first or second of August, along in about there and we said, "We have got to have this money," and she said, "Well, 30 we need money. We want to pay—" (interrupted).

Q Never mind all that. What did she do? Did she make a payment? A She said she would bring up two hundred and fifty dollars the next day and she did bring up two hundred and fifty dollars.

Q Those are the checks you—(interrupted)
A That was on the interest, but she paid nothing on the principal. 40

Arthur G. Hill, direct.

Q Did she on any of these occasions or did Mr. Lammerts on any of these occasions when you were demanding payment of interest on the second mortgage or the interest or principal on the first mortgage say anything about any misrepresentation to them which they alleged had been made? A No; nothing about that.

10 Q What was the first you heard about misrepresentation with regard to anything? A Why, when this foreclosure was filed and you told me that claimed that.

Q You and your wife have a three thousand dollar interest in this \$22,000 mortgage? A Yes, we have.

Q Given to you for what? A Well, that was for foreclosure and there was some little cash I had put up with Gray and figured that three thousand dollars was the right amount and we agreed on that amount and we assigned that over to her.

20 Q Now, after making this payment of two hundred and fifty dollars, was there another appointment made after that to meet at Cook & Stout's office? A Yes.

Q What was that one for? A That was because they wanted to try to arrange for future years, if in a couple of years Gray was trying to arrange something with them to see—that is, they were talking about—

30 Q Change of the schedule? A Trying to exchange the secondary payment and stuff like that.

Q And did you actually meet for that purpose? A We went there and we waited from about ten o'clock in the morning to about three o'clock in the afternoon when Mr. O'Hagen of Cook & Stout's received a telephone message from Okin & Marder in Newark saying that the

40

Arthur G. Hill, cross.

Lammerts would not be down, that they were going to file a bill to try and rescind the contract.

Q I see. A So they never appeared.

Mr. McGlynn: That is all. Cross examine. 10

Cross examination by Mr. Marder.

Q Didn't you say a moment ago that the first time you learned of it was when Mr. McGlynn told you about it? A Yes, sir; that is when I learned it.

Q Didn't you say that a moment ago? A I did.

Q Didn't that happen after this telephone conversation that you talk about from my office down to O'Hagen's office? A I did. 20

Q Now, when you ran this hotel, how much did you have to take in in dollars, or, rather, how much out of a dollar that you took in was your percentage of profit?

Mr. McGlynn: May it please the Court, I—(interrupted)

A I don't— 30

The Court: Oh, no; that is too complicated for me.

Mr. Marder: Sir?

The Court: That is too complicated for me.

Q How much did you take—when did you run this hotel? A 1923, the summer of 1923. 40

Arthur G. Hill, cross.

Q How much did you take in? A I never knew exactly what I did take in.

Q That is enough. Did you make any money that summer? A We made some money, yes.

10 Q How much money did you make? A Didn't—never knew exactly, because I had some money I put in from rent and had put in my bank and drew in and out and never kept an exact bookkeeping statement on it.

20 Q How do you know whether you made money or not? A Because I knew approximately that I had—I was making money from the rent. You see, I ran out because I being in the real estate business, being a real estate operator buying and selling property I had taken this hotel in on a deal and my plan was to just run it, to keep it running as a hotel and not rent it to the same—(interrupted)

Q So you could sell it to somebody? A So I could sell it to somebody.

Q You had title in 1923? A Had title in 1923.

Q And you sold it to whom? A I sold it to Max Gray.

30 Q And was it an out and out sale or was it a trade? A No; it was an exchange made of an apartment house from out in Montclair, a large property, and I traded this in.

Q You told Gray you would get rid of it for him, didn't you? A No, I didn't tell him I would get rid of it for him.

Q What? A Told him—no, I didn't tell him I would get rid of it. I told him he might be able to sell it or he could—(interrupted)

Q That maybe you could get rid of it? A That maybe I can sell it, because I was in the business.

40

Arthur G. Hill, cross.

Q What did Gray pay you for it? A What is that?

Mr. McGlynn: I object, may it please the Court.

The Court: I will sustain the objection.

Mr. McGlynn: We are not interested in how much profit this man made. 10

Q Do you know what Gray's receipts were that year? A No, not exactly.

Q Not exactly? A Not exactly.

Q You made money that year, didn't you, all around in your business? A Yes, I made money.

Q And you paid an income tax that year? A Yes. 20

Q Where did you get your information for it? A Well, I figured out at that time as close as I could. I kept a general record, but I did not keep a real double entry bookkeeping account.

Q Well, where is your general record? Have you got it here with you? A No; I haven't got anything here.

Q Have you got it anywhere? A I don't know whether I can—I don't believe I saved that any more, because it has now been six summers ago. 30

Q Ancient history, isn't it? A It certainly is.

Q Now, you testified on direct that you never made any statement or representation that they were buying a business, all you told them was they were buying a piece of ground and this building on it; isn't that so? A And the furniture. 40

Arthur G. Hill, cross.

Q You impressed that on them— A Ground, building and furniture.

Q You impressed that on them time and— A Yes. I told—

10 Q —time again, and Gray told them that, too, isn't that so? A Yes.

Q How, then, did you come to insert an ad like this, "Wonderful opportunity; seashore hotel to lease, Point Pleasant, New Jersey, reasonable rent, inquire Hill, 20 Clinton street, Mitchell 5325"? A Well, Gray had been talking about renting the hotel and he said to me, rent it or sell it, but the time was getting a little bit late for selling, he thought, and he said, "Well, Hill, if you can rent it, rent it." So that was the idea that—to either sell or rent; he
20 would rather sell, but there didn't seem to be any prospects.

Q Much rather sell, wouldn't he? A Eh?

Q Much rather sell, wouldn't he? A I guess he would, I don't know.

Q A person leasing would not be interested in the ground and building simply as a building, they would be interested in the proposition as a business, wouldn't they? A If they wanted to buy—

30 Q Answer my question. A Leasing, no, not so much.

Q If a person wanted a lease, he would be interested in it not as a piece of ground with a house on it, he would be interested in it as a business proposition, would he? A Yes.

Q Isn't that so? A That is so.

40 Q If what you said before in direct examination is true, how come that you get up so wonderful a prospectus reading, "Capacity 200 guests"? A Well, that shows the size of your

Arthur G. Hill, cross.

building there; it says, "61 sleeping rooms, 14 baths."

Q That is all it does show, the size of the building? A Well, it shows the capacity.

Q Yes. A What they are buying; they want to know how big the hotel is; that is the general description. 10

Q Did you make any representation there to Mr. and Mrs. Lammerts at any time as to how much they could take in per annum? A No, no. She said that she was—(interrupted).

Q Just answer my question.

The Court: He said "No."

The Witness: I said, "No."

Mr. Marder: And then he goes on to talk.

The Court: Well, he oughtn't to. 20

Q Not one word was said by you as to how much was taken in per annum, was there? A Not about what they would take in. We may have said something about maybe if the rooms were rented, or something like that, how much do you think—she may have asked a question like that, but I did not attempt to go into that at all.

Q What did you tell him? 30

Mr. McGlynn: Let him answer the question.

The Witness: I always told Mrs. Lammerts, "We are not going into that. If you decide—"

Q You are evading now. A I am trying to tell you.

Q You said that once before. What did you tell her? If the rooms were rented—finish that. 40

Arthur G. Hill, cross.

A She asked me that question and I told her we can't go into that so much, "If you are now planning to buy; I am selling you the building and the furniture and the ground."

10 Q Isn't it a fact that when Mrs. Lammerts first came to you she wanted to lease it and you first inquired as to whether she had any property, and then when you ascertained she had this East Orange property you said, "No, it is not for lease, it is for sale"? A No.

Q Isn't that so? A No, that isn't so.

20 Q Isn't it a fact you figured out that twenty-five thousand per annum for her by saying that she had two hundred rooms, or, rather, capacity for two hundred guests and for the season—How does that go again? One hundred guests a week—you can do it better than I can—a hundred guests a week at twenty-five dollars apiece for ten weeks, that makes twenty-five thousand dollars, doesn't it? A No. I never said that because I wouldn't talk about twenty-five dollars a week because I always got more than that.

Q You got more than that? A I got more than twenty-five dollars a week per guest.

30 Q How much did you get? A There were only three single rooms there. We got thirty dollars a week.

40 Q Per guest? A Per guest per week. And the rest we rented double. The top floor, that is what we went into. She asked me what we had gotten. We got fifty-five to sixty dollars on the third sleeping floor for two people with meals; the second sleeping floor with running water we got sixty-five and seventy dollars a week; the first sleeping floor with running water in the room we got sixty-five and seventy dollars for; and those with private baths we got eighty to

Arthur G. Hill, cross.

ninety dollars a week for two and when we would have four we would rent two room and bath for around one hundred fifty to one hundred sixty dollars. That was what I told her.

Q You told her all that? A I told her that.

Q But you did not tell how much you made per annum? A No. 10

Q Did you tell her how many guests you had on an average per week? A You couldn't average. I didn't tell—(interrupted).

Q What did you tell them? A No, I didn't tell them on the average.

Q Didn't you tell her she would easily have one hundred guests on the average per week? A No.

Q Well, you have written right across the top of this glowing prospectus, "Two hundred guests." A Yes. 20

Q Surely, wouldn't you be able to get two hundred guests—(interrupted).

Mr. McGlynn: I object, may it please the Court.

The Court: Oh, no.

Q Now, you knew these people didn't have much money? A No. 30

Q That is what they told you. A No; they told me they did have money.

Q What did they tell you they had, Mr. Hill? A Eh?

Q What did they tell you they had? A When she came down—do you want me to tell from the beginning?

Q Yes. A When she came down first, the lease—she said they were looking for a hotel. 40

Arthur G. Hill, cross.

They had been thinking about buying and they were looking up at Lake Hopatcong.

Q How much money did she tell you they had when you were talking about money? A You are trying—you want me to tell you just how the conversation come and what she said?

10 Q No, I want— A She told me, “Mr. Hill,” she said, “never mind about the money, just get that hotel for me just as cheap as you can; I have money and my son has money.”

Q How much did she tell you—(interrupted). A She told me—she didn’t tell me exactly, but she said, “Never mind about the money, we have money and we can put a big mortgage on our house and get money, and Charlie has two or three thousand that he will put in,” that is what she said.

20 Q When you finally came to close, Mr. Gray and you were satisfied with taking a deposit of five hundred dollars? A Yes.

Q Take the balance by way of a second mortgage? A No. I will tell you—

Q Or third mortgage? A Well, she came down, she wanted to—she was talking about trading her house; that had come in some way about trading the house.

30 Q Didn’t you suggest a little bit of trading? A Yes, I might have started that about trading, but Gray didn’t want to trade. He said, “No, I will take—” because in real estate we try money first and he said he didn’t want to trade, but he might take that in as collateral. I put it up to Mrs. Lammerts and she said, well, that she thought it would interest her doing it that way.

40 Q You know what the taxes are on that property, don’t you? A Approximately. They were about a thousand dollars a year.

Arthur G. Hill, cross.

Q And the insurance comes to about how much? A Well, I don't know the exact amount of insurance on the mortgage ahead of ours, but I had Mr. O'Hagen—(interrupted)

Q It comes to about three hundred some odd dollars? A Three hundred and thirty was the fifteen thousand covering our mortgage, see, 10
fifteen thousand.

Q Insurance down there is pretty expensive, isn't it? A It is, it comes to more than three hundred.

Q How about the other— A It was on the mortgage ahead of ours, so they raised it, made it about a thousand dollars.

Q Thousand dollars per annum? A If it was paid, yes.

Q Now, according to your contract she was 20
supposed to pay the first year fifteen hundred, that is correct, isn't it? A She was to pay five hundred the first of July.

Q And then five hundred? A And then five hundred every three months the first year.

Q That is two thousand dollars during the first year? A Yes.

Q Interest in the meantime on the fifty-five thousand dollars amounts to thirty-three hundred per annum, doesn't it? A Yes; although 30
she didn't have fifty-five thousand interest, because there had been some disbursements taken off.

Q I know, but it would come to thirty-three hundred per annum? A Somewhere around there.

Q So these items totalled the \$7,300 so that the first year—(interrupted)

The Court: Now, isn't that a matter of 40
argument?

Arthur G. Hill, cross.

Mr. Marder: I am going to ask him how he came to sell the property to these people and take so little money back without representing to him that he took in twenty-five thousand dollars.

The Court: No. I won't allow that.

10

Q What is your interest in this mortgage?

A Three thousand dollars.

Q How does that come about? A Why, I had been putting up—that is, spending some money for advertising and so on, and at different times had to go to the Court House and for the brokerage and different little cash I put out. We talked about how much it should be. She decided that three thousand dollars was the proper amount, so he agreed to assign that three thousand over to me, so then at the time of signing it, I said, “You can make it to both myself and wife.”

20

Q You had been trying quite a while to sell this property, hadn't you? A Well, the only time you can sell a property like that is pretty much on towards spring and I hadn't—

Q Answer my question. You had been trying for quite a while to sell that property? A

30

Yes, quite a while.

Q You had been trying to sell it ever since you traded it to Gray, hadn't you? A I had four or five deals on, he wouldn't take it. I could have sold several times, but he wouldn't take the deal.

Q You have been trying to sell it and your answer is Yes? A My answer is Yes, yes.

Q How long have you been in the real estate business, Mr. Hill? A I have had an office of my own since—let's see, five years this October.

40

Arthur G. Hill, cross.

Before that I was operating, buying and selling before we had to have any license at all, buying and selling for myself, besides being connected with the Pillsbury Flour Company.

Q Then you have been in real estate transactions for how long a time? A Probably eighteen or nineteen years.

10

Q You have had quite some experience in real estate transactions, haven't you? A Well, yes.

Q Well, now, you had most of your negotiations with Mrs. Lammerts, didn't you? A Well, Charlie was there—no. The whole family seemed to get into it. They were all there usually; if they were not there just then, they came in later, like if we were at the house and Mr. and Mrs. Lammerts were there and Charlie came in—(interrupted)

20

Q Did they look like experienced real estate people to you? A Why, I didn't go into that, about whether they were experienced real estate people. She said she had owned other property and she knew about running a hotel.

Q Is that what she said, she knew about running a hotel? A Yes, she knew about running a hotel.

30

Q Did she ever tell you she ran a hotel?

A No; she told me she ran a boarding house.

Q A what? A A boarding house.

Q Where did she say she had been running a boarding house? A She said she ran a boarding house at 16 Lenox avenue, and they were also going to get a hotel in Florida—told me that.

Q Do you know this house, 16 Lenox avenue?
A I do.

40

Sarah Hill, direct—cross.

Q How large a house is it? A It is about ten rooms. She wanted a mortgage on it; I got her a mortgage on it.

Q How many bedrooms? A I never have been upstairs, but in making that application for it—I got her a mortgage from the Prospect
10 and Watsessing Building and Loan. I remember there was—I believe there was eleven or twelve rooms altogether that she stated.

Mr. Marder: That is all.

Mr. McGlynn: Mrs. Gray—Mrs. Hill.

SARAH HILL, sworn for complainant.

20 *Direct examination by Mr. McGlynn.*

Q You are the wife of Mr. Hill who was just on the stand? A (Witness nods yes.)

Q You were present at some conferences when the Lammerts, your husband and the Grays either went down to Point Pleasant or met for that purpose somewhere? A (No answer.)

Q On any of those occasions did you hear
30 either your husband or Mr. and Mrs. Gray make any representations to the Lammerts with regard to the amount of money taken in at this hotel, the amount of profit that could be made? A No.

Q Or the amount of the rent? A No.

Cross examination by Mr. Marder.

Q You were paying very careful attention were you, madam? A I was only there once.

40 Q When was this? A The first meeting.

Blanche Gray, direct.

Q What was the first meeting? A The first time I met Mrs. Lammerts in Mr. Hill's office, the first visit they had at the hotel.

Q You knew you were down at Point Pleasant with them? A Yes.

Q And you are quite sure nothing was discussed— A No; we never told them— 10

Q —about how much rent it was to take in? A No; I don't know.

Q And do you know whether anything was stated about how much money your husband took in? A No, we never told him.

Q Or how much he got from the roomers? A No.

Q How much he got on the second and third floor? A He told them the rates.

Q You told them the rates? A Yes. 20

Q You didn't tell them what the gross was? A No.

Q But the rates you did tell them? A We told them the rates.

Mr. McGlynn. Now, Mrs. Gray.

BLANCHE GRAY, sworn for complainant. 30

Direct examination by Mr. McGlynn.

Q Mrs. Gray, you are the wife of Max Gray who was on the stand here? A I am.

Q How many times did you meet either Mr. or Mrs. Lammerts? A I met them three times.

Q And do you recall on what occasions that was, where were you and where did you go?

A One time I took them to my house, down 40

Blanche Gray, cross.

to the hotel and I was driving and I didn't speak to them at all.

Q Did you hear the conversation in the car?
A Well, I was interested in the wheel and I didn't say anything.

10 Q Did you go down through the hotel with them? A Yes; we went in the hotel.

Q For what purpose did you go in the hotel?
A To show them around.

Q Did you go down to take inventory of the contents? A That was the second time.

Q When was the third time? A In the lawyer's office to give title.

20 Q Now, on any of these occasions did you hear either your husband or Mr. Hill represent or state to these people that this Hotel Carrolton property had taken in \$25,000 a year from the operations? A No.

Q Before the— A No.

Q Or that Mr. Hill had made \$10,000 a year in it? A No, no.

Q Or that your husband or you had received at least six thousand or sixty-five hundred dollars a year rent? A I didn't hear those things.

30 Q Did Mrs. Lammerts ever say anything to you about having money to operate the hotel?
A She said she had money, we shouldn't worry about it, and she said she didn't think she could get this hotel for that price; she thought she got a bargain.

Cross examination by Mr. Marder.

Q Did you think she got a bargain? A That is what she said. I know she got a bargain.

40 Q Were you always with these people when they were talking at these conferences? A I was always with them.

Max Gray, direct.

Q Did you ever hear them say anything about what the rates were or anything of that kind? A No.

Q Not one word as to how much money the hotel took in? A No.

Q Not one word about the rent he got in the past, what it was? A No, I did not. 10

Mr. Marder: That is all.

MAX GRAY, recalled.

Examined by Mr. McGlynn.

Q When was the first time that you met the Lammerts people? A I met them in their house. 20

Q In their own house? A Yes.

Q Mr. Hill introduced you to them? A Yes.

Q What were you there for, what was the purpose? A Trying to—I knew—trying to sell the hotel.

Q And during that conference or any other conference that you had with them before they signed the contract to buy this property did you ever personally represent that you received at least sixty-five hundred dollars a year rent? A No. 30

Q Did you tell them what rent you had received? A I didn't even tell them that.

Q What rent did you actually receive? A I received five thousand dollars for the first year and sixty-five for the second year and four thousand for the balance in 1927.

Q He was supposed to pay four thousand? A Supposed to pay four thousand. 40

Max Gray, direct.

Q Mr. Underhill? A Mr. Underhill.

Q He has not paid it yet? A No.

Q And the next summer that they ran it, last year? A Yes.

Q Did you ever hear—did you make any representation to them with regard to the fact that
10 Mr. Hill had made ten thousand a year net? A Never did.

Q Did you hear Hill say that? A No.

Q Did you or Mr. Hill ever make any representations with regard to the fact that twenty-five thousand dollars a year had been taken in from the operation of the hotel? A Never. I never knew that at all.

Q Now, after they took title and they commenced to operate, when was the first you saw
20 them after that? A I saw them to get—they shall pay off the second mortgage interest.

Q When was that about? A It was in July.

Q That you went down there? A I went down there.

Q And as a result of your call did they actually pay the interest on the second mortgage?
A They paid it. They took an extension to the second mortgagee and promised to pay in fifteen days later.

Q Do you remember about when they paid
30 it? A The end of July.

Q The end of July they paid the one hundred and sixty or one hundred and eighty dollars from the second mortgage? A One hundred eighty.

Q And what did you mean, see them about your payment that was due on July first? A I saw him about a week later after the first and I came over there and they told me they are
40 going to pay me in about two weeks after, July

Max Gray, direct.

fifteen or sixteenth, something like that, they were going to pay me the payments. I been waiting for the payment and I called them up, I said, "I didn't receive the check yet." They said, "Well, you know, the busy season is in August and we will pay you before August," and that time they didn't pay, and then I went to Mr.—I had a letter from Mr. O'Hagen.

10

Q You had a letter? A From Mr. O'Hagen that Mr. Lammerts wants to meet me in Mr. O'Hagen's office.

Q O'Hagen is connected with the firm of Cook & Stout? A Yes, sir; I went down there and they started to tell me they can't meet those heavy payments on mortgages, so I told him, I said, "All right. I am willing to reduce the mortgages and as far as the payment is concerned," that she held on to the hotel by his first mortgage, interest on the title company that she paid "here is five hundred dollars which is due me on interest, the installment must be paid."

20

Q In other words, they paid the first installment and interest on your mortgage and paid the interest on the title company mortgage, you were willing to take it then and a different schedule of payments after that? A Right. If they promise they come over to Mr. O'Hagen's and he will go into where is the money on the fifteenth—on the first payment and second, and then he will go on to arrange it and since then they didn't come.

30

Q But they actually made you a payment on August 7th? A August 9th, \$250.

Q August 9th you got what? A August 9th in three checks.

40

Max Gray, cross.

Cross examination by Mr. Marder.

Q Did you make any representations to any of the Lammerts as to what rent you had taken in in the past year? A He never asked me that question.

10 Q That was not an answer to my question.

The Court: Did you make any representations?

The Witness: No, sir.

The Court: Say Yes or No.

The Witness: No.

The Court: No.

20 Q Did you make any statements about what rent you took in in the past years? A No.

Q Did you make any statements or did Hill in your presence make any statements about the moneys he made while he ran that hotel? A No, sir.

Q You have here a very carefully drawn contract, Mr. Gray. It provides for down payment of five hundred— A Right.

30 Q —the balance, taking the property subject to mortgages of \$26,000 and \$6,000 and then a purchase money mortgage of \$23,000 some odd dollars, providing for payments as follows: \$500 installments on account of principal each and every three months—(interrupted)

The Court: What are you reading the contract for?

Mr. Marder: Well, the mortgage provides the same way.

40 The Court: Yes.

Max Gray, cross.

Mr. Marder: And I am going to ask him how he came to sign this contract.

The Court: Then just ask him.

Mr. Marder: What he had in mind when he agreed for those kind of payments, what the discussion was at that time, showing that he had to—I am—this is cross examination and I am giving my cross examination and I am giving my cross examination away.

10

The Court: All right. Go on.

Q You recall this contract, don't you, Mr. Gray? A Yes.

Q It provided for rather heavy payments in connection with the purchase money mortgage, did it not? A They made it up.

20

Q Did they ask for those terms or did you suggest those terms? A We agreed on that at the lawyer's office.

Q Did you suggest them? A I didn't suggest them; they talked it over.

Q Who suggested that, those particular terms, first? A I suggested more.

Q You suggested more? A And they wouldn't pay that.

Q Did you give them any particular argument why they did not pay more? A I didn't give any argument, I didn't care whether they took the hotel in it or not, because I didn't sell them no business, I sold them property.

30

Q Didn't you tell them they could take in twenty-five thousand dollars a year and could afford to make these payments? A How could I tell? I never run the hotel.

Q All right. You never told them that? A No, sir.

40

William J. O'Hagen, direct.

Q You never told them anything as to how much money that place took in, did you? A No, sir; I didn't know what.

Q Now, you know Mr. Herbert, don't you?

Mr. Marder: Stand up, Mr. Herbert.

10

The Witness: No, sir,

Q Didn't you have a conversation with him recently? A I never had.

Q Wherein he told you that he had a customer for the hotel and you said to him, "Go to it. This is a good place; this takes in twenty-five thousand dollars a year." A I never met the gentleman at all.

Q Did you have that conversation with him?

20

A No, sir.

Mr. Marder: All right; that is all.

Mr. McGlynn: Mr. O'Hagen. My last witness.

WILLIAM J. O'HAGEN, sworn for complainant.

30

Direct examination by Mr. McGlynn.

Q You are a member of the Bar of the State of New Jersey? A Yes.

Q You are associated with and have been for some time, with Cook & Stout, Asbury Park? A Yes.

Q You drew this contract that has figured in this case? A Uh huh.

40 Q Marked Exhibit C. 1, I think, between the Grays and the Lammerts? A Yes.

William J. O'Hagen, direct.

Q Do you recall it? A Yes.

Q Recall the circumstances and some conferences thereafter between these parties? A After the contract?

Q Yes. A Yes, sir.

Q Who did you represent in connection with the contract and closing of title? A Both parties, the purchaser and the seller. 10

Q Did you make an examination and title for the Lammerts? A Yes, sir; both of the Point Pleasant property and the property in East Orange for the purpose of a mortgage.

Q And did you hear any discussion in your presence either prior to the time the contract was drawn or between them and the date of closing of the title with regard to any representations concerning the income of the property or its profits or whatnot? A No, I heard nothing like that. 20

Q Now, after the examination, Mr. O'Hagen, did you at the request of the Lammerts endeavor to get Mr. Gray to attend a conference for some purpose? A Yes, Mrs. Lammerts and Mr. Lammerts, Sr., I think, came to—after a telephone conversation we made an appointment and they came to our office and as a result of that I made arrangements with Mr. Gray to meet them; we discussed payments on the mortgages, to recast the schedule of payments on the mortgage. 30

Q Was that letter written after conferences with the Lammerts, after this talk with the Lammerts? A Well, yes, yes.

Q Did they at that time tell you the reason they wanted to change was because of misrepresentations or because they could not meet them?

A Well, they couldn't meet the payments, that was their purpose in wanting the change. 40

William J. O'Hagen, cross.

Q Did you collect two hundred and fifty or was two hundred and fifty dollars paid by you, interest to be applied on this purchase money mortgage? A I think they sent checks.

10 Q Was there another conference arranged for which they did not attend? A Yes; there was one after that.

Q There was an actual meeting, wasn't there, between the principals? A To discuss the re-arrangement of the payments?

Q Yes. A Yes.

Q Then there was another one? A At that time arranged for.

Q And that they did not come back for? A Yes; neither Mr. nor Mrs. Lammerts returned.

20 Q And Gray was there? A Yes.

Mr. McGlynn: That is the end of our case, sir.

Cross examination by Mr. Marder.

Q Did you dictate this agreement? A Yes.

Q After the parties told you what they wanted in it? A Yes.

30 Q Who did most of the talking? Did Lammerts say much? Who first outlined the terms of this agreement? A Mr. Hill, as I recall it.

Q Mr. Hill? A Yes.

Q And did Gray have anything to say? A Well, yes, I guess he did. They all talked.

Q Well, I know, but— A Lots of it.

Q Who seemed to know more about what was to go into the agreement than anybody else?

40 Mr. McGlynn: Object.

Albert Herbert, direct.

The Court: I will sustain the objection.

Q You say Hill first outlined the agreement to you? A That is my recollection, yes.

Q And then Gray had something to say? A I think the way of it was that he told me what it was, and then to fix the things in my mind I asked them questions as to what they were going to do. 10

Q Who did you ask the questions of, all of them? A I would ask the one party first and see if the other party agreed to it.

Q What were Gray's suggestions? A I don't know that I could pick out any particular thing.

Q You haven't got a clear memory, I mean, on that particular point, have you? A As to where the suggestions came from? No. 20

ALBERT HERBERT, sworn for defendant.

Direct examination by Mr. Marder.

Q Mr. Herbert, have you had a conversation with Mr. Gray recently? A Yes. 30

Q When was that? A About the last—the latter part of September. I am not positive of the date.

Q Does Mr. Gray know you? A He didn't know me until that time, though, I had seen him.

Q What was the purpose of that conversation? Tell us what it was. A Why, another party was interested in a hotel, possibly a buying proposition, he was looking for a hotel and I mentioned that I was in Newark or coming 40

Albert Herbert, direct.

here on business and he asked me if I would look it up. I called Mr. Gray at nine o'clock in the morning, I think—I called at his house first. They said I could find him at his office, so I went over to his office, 45 Park Place, I went over to his office and the stenographer there
10 said that—(interrupted)

The Court: I am letting all this in, because I am not going to be strict about it.

The Witness: (Continuing.) She said he was out. Later I called his house again and some young fellow's voice—I imagine it was—gave me a number in Passaic to call.

20 Q Did you speak to Mr. Gray? A I made an appointment for three o'clock in the afternoon. I was late, but he was waiting.

Q Yes? A And I told him what I had on my mind.

Mr. McGlynn: I am going to object to this conversation which occurred in September with regard to—(interrupted)

The Court: After the suit started?

30 Mr. McGlynn: Surely. The mere fact that he—even assuming for argument he did tell somebody, he don't know it.

Mr. Marder: There is no jury.

The Witness: He said he owned it.

Mr. McGlynn: Even suppose he does make a representation, does that prove he made another one?

The Court: No, it does not.

40 Mr. McGlynn: I don't see what relevancy it has.

Albert Herbert, direct.

The Court: I will allow it.

Q Go ahead.

The Court: Go on. Tell the story. What did he say to you?

The Witness: He asked me if the gentleman had any money. I told him I didn't know if he had money, but he could get money; everybody doesn't have fifteen or sixteen, ten or five thousand dollars. 10

The Court: What did he say?

The Witness: Finally Mr. Gray said—I asked him if he owned the hotel. He said, yes, I said, “You own it at the present time?” He said, “Well, the way it is tied up I can get it any day I want it.” Then he entered into some explanation of how he done business with Mr. Lammerts. I said, “I don't see where your profit is.” He said, “There is a valuable apartment house site that I have a mortgage on.” That was all of that. Finally we left it I would give him a call; meanwhile this other gentleman investigated the case and don't like the way affairs have been handled and dropped it. 20

Q Did he tell you about how much—(interrupted) 30

The Court: Is that all there was in the conversation?

The Witness: That is practically all I can think of that amounted to anything.

The Court: That is all. You cannot lead this witness.

Mr. Marder: I don't want to lead him. 40

Conclusions of Vice-Chancellor.

Q Did he say anything to you about how much money, how much rent the place took in per annum? A He asked me if I knew anything about the place and I told him that I knew where it was. He said the place did about twenty-five thousand dollars worth of business.

10 Q Who said that? A Mr. Gray.

The Court: What conversation are you referring to?

The Witness: To the Carrolton Hotel at Point Pleasant.

The Court: If you want to argue it all right. I am prepared to decide it today, but if you want to argue it, you will have to come back at two o'clock.

20 Mr. McGlynn: I am willing to submit it. The facts are fresh in your Honor's mind. You have heard it two or three hours.

The Court: I cannot shut Mr. Marder off.

Mr. McGlynn: I don't want to either.

The Court: I have been trying to stop it but I can't seem to do it.

Mr. McGlynn: I didn't see any—

30 Mr. Marder: If your Honor does not think there is much law involved, I am willing to submit it without argument.

The Court: I do not see there is any law in it at all. I have not read the pleadings, but I understand from counsel that it is a clear case where you ask that the mortgage be set aside on account of fraud.

Mr. Marder: Yes.

40 The Court: Now, this is a mere fact case. These people went to see the agent and

Conclusions of Vice-Chancellor.

they say that he made representations to them that the property brought in twenty-five thousand dollars a year and he promised that he would turn over his books and papers, showing that, and instead of waiting for him to fulfill the promise made, he went ahead and took title. They went twice to the property with the agent and the owner and they went once by themselves. They looked it over thoroughly and they need not to have purchased it if they were waiting for these figures, but they did purchase it. Now, I don't see that there has any fraud been proved in the matter at all. A promise to do something in the future, as I understood it, is not fraud anyway. 10

Mr. Marder: Vice-Chancellor Backes, as I understand, has ruled that it is. 20

The Court: Well, there are a great many cases that rule it is not. At any rate, they need not—it was not necessary for them to buy the property. If they were depending on the proof that he made twenty-five thousand dollars a year, they could have waited. They did not. They went right straight ahead. They had a chance to look over the property and the question of making twenty-five thousand dollars a year on a hotel or any other business is very largely a personal one. I might fail utterly and make nothing and you might make sixty thousand dollars. 30

I will dismiss the bill or—the fraudulent bill, and allow the mortgages to proceed.

Conclusions of Vice-Chancellor.

Mr. Marder: If your Honor would give me permission to submit a memorandum on the facts in this case, I would like to.

The Court: What do you mean, about the mortgage?

10 Mr. Marder: Yes.

The Court: I have already decided that.

Mr. Marder: I would like to get a transcript of the testimony, because I believe I am going to take an appeal.

The Court: Very well, if you want to take an appeal, go and take an appeal.

Mr. Marder: I mean, this is in the nature of a petition for re-argument. Will your Honor entertain such a petition?

20 The Court: No. If you want to appeal, why, you must ask Mr. Salmon for the record.

30

40

Exhibit C. 1.

EXHIBIT C. 1.

THIS AGREEMENT made the Twentieth day of April, in the year of our Lord One Thousand Nine Hundred and twenty-eight.

BETWEEN MAX GRAY and BLANCHE GRAY (his wife) of the City of Newark in the County of Essex and State of New Jersey party of the first part; 10

AND LAMBERTUS LAMMERTS and ELIZABETH LAMMERTS, (his wife) of the City of East Orange in the County of Essex and State of New Jersey party of second part;

WITNESSETH, That the said party of the first part, for and in consideration of the sum of FIFTY FIVE THOUSAND (\$55,000.00) DOLLARS to be paid and satisfied as hereinafter mentioned, and also in consideration of the covenants and agreements hereinafter mentioned, made and entered into by the said party of the second part, doth agree to and with the said party of the second part, that they the said party of the first part, will well and sufficiently convey to the said party of the second part, their heirs and assigns, by Deed of Warranty free of all encumbrances on or before the First day of May next ensuing the date hereof, ALL that certain Hotel building and all those lots tracts, or parcels of land and premises, hereinafter particularly described situate, lying and being in the Borough of Point Pleasant Beach in the County of Ocean and State of New Jersey, being known marked and designated as Lots Numbers 139, 140, 141 and 142 on a map or plan of lots of the Point Pleasant Land Company duly filed in the Office of the Clerk of 20 30 40

Exhibit C. 1.

the County of Ocean on the Sixty day of August 1878, bounded and described as follows, to wit:

10 Lots 139 and 140, fronting or in width one hundred feet (100) on the northerly side of Atlantic Avenue, thence extending northerly the same width by and between Boston Avenue on the east and Lot 141 on the west, one hundred twenty-five (125) feet in depth.

 Lots 141 and 142, fronting or in width one hundred feet (100) on the northerly side of Atlantic Avenue, extending northerly the same width by and between Lot 140 on the east and Lot 143 on the west, one hundred twenty-five feet (125) in depth.

20 Including all fixtures, furniture, house furnishings, screens, doors, carpets, chairs, kitchen utensils, kitchen ranges, linens, safe, cash register, office equipment, porch chairs and all other goods and chattels now in said premises.

 Subject to restrictions contained in deed Point Pleasant Land Company, a corporation, to Rachael A. Bogert dated May 9, 1882, recorded in the Ocean County Clerk's Office in Book 116 of Deeds, page 201.

30 It is understood and agreed that the buildings now on said premises are entirely within the lot lines, and there are no encroachments of buildings over the adjoining properties.

40 AND the said parties of the second part for themselves their heirs, executors and administrators, doth covenant, promise and agree to and with the said party of the first part, their heirs, executors, administrators and assigns, that they 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

Exhibit C. 1.

FIFTY FIVE THOUSAND (\$55,000.00) DOLLARS as and for the purchase money of the foregoing described land and premises, in the following manner, that is to say: \$500.00 by check, the receipt whereof is hereby acknowledged. \$26,000.00 by taking said premises subject to a mortgage in that sum made by Max Gray and wife to Monmouth Title & Mortgage Guaranty Company, which the parties of the second part hereby agree to assume, which mortgage is due on or about December 2, 1930. 10

\$6,000.00 by taking said premises subject to mortgage in the sum of \$6,000.00 made by said Gray to Clinton Investment Company, which mortgage is due on or about June 2, 1929.

The balance, by the parties of the second part executing and delivering to the party of the first part, bond and purchase money mortgage for said balance, which mortgage shall provide for payment of \$500. instalment on account of principal each and every three months during the first year, \$1,000.00 on account of principal each and every three months during the second year, \$2,000.00 each and every three months during the third year and the balance of the said third mortgage shall be due at the end of the third year, unless the parties of the second part exercise an option to be therein given, to renew said mortgage for an additional period of one year. In case of renewal thereof, \$2,000.00 shall be paid on account of principal, each and every three months. Six percent (6%) interest on said third mortgage shall be paid every three months at the time payments on account of principal are paid. Said third mortgage shall contain non-contributing fire insurance policy clause, shall 20 30 40

Exhibit C. 1.

contain the usual thirty day interest and instalment default clauses and the usual sixty day tax default clause. It shall contain provision that the entire amount of said principal or the unpaid balance thereof, shall become due and payable if interest or instalments due on the first
 10 or second mortgage shall become due and remain in arrears for the space of more than thirty days.

The parties of the first part agree to procure a renewal of the said second mortgage for one year. In the event that \$2,000.00 is paid on account thereof on or before June 2, 1929. The reasonable cost of procuring said renewal, shall be borne by the parties of the second part.

20 The said parties of the first part agree, at any time during the term of said third mortgage, and up to June 2, 1929, to postpone said mortgage to a first mortgage or first and second mortgage in a sum not to exceed \$32,000.00 After said time and up to June 2, 1930, the parties of the first part will, at any time, postpone their said second mortgage, to first, or first and second mortgage, in a sum not to exceed \$30,000.00 and thereafter during the life of said third mortgage agree to postpone, the same to a first mortgage
 30 not to exceed \$26,000.00.

The said Gray hereby agrees, if requested so to do, to procure an extension of said second mortgage for one year from its present due date, in the event that the parties of the first part pay the sum of \$2,000.00 on account thereof, before the now date of maturity. Also, the said third mortgage shall cover and be a lien upon the following described property now owned by the parties of the second part.

Exhibit C. 1.

ALL that certain tract or parcel of land situate, lying and being in the City of East Orange, in the County of Essex and State of New Jersey.

BEGINNING on the northerly side of Lenox Avenue 200 feet westerly from South Arlington Avenue at the southwesterly corner of premises conveyed by George W. Blackwell and wife to Frances A. Robinson; thence northerly along Robinson's land, now belonging to Anna M. G. McBratney 100.22 feet to Richard Coyne's land; thence westerly along same 50 feet to William T. Hickson's land; thence southerly along his line and parallel with first course 100.22 feet more or less to the northerly side of Orange Street; thence easterly along same 50 feet to Beginning.

10

It is understood and agreed that the said premises last above described are now subject to a first mortgage in the sum of \$7,500.00 held by the Fidelity Union Trust Company and to a second mortgage in the sum of \$1500.00 now held by one Samuel Seigler. The said Gray hereby agrees to postpone, at any time, the said third mortgage to a mortgage or mortgages in a sum not exceeding \$11,000.00 on said property last above described. The said third mortgage shall contain the provision that in the event of default continuing more than thirty days in payments on account of interest or principal on any of said mortgages aggregating the said sum of \$11,000.00, or should the taxes on said property, become due and continue in default for more than sixty days, then the sum secured by the said third mortgage shall immediately become due and payable.

20

30

The parties of the second part are about to purchase from one Richard Coyne premises in

40

Exhibit C. 1.

the said City of East Orange adjoining premises last above described and hereby agree to execute and deliver the said Gray a mortgage for the same amount and upon the same terms as the third mortgage herein described, covering said property.

10 It is understood and agreed that the said property to be purchased from said Coyne will be subject to a first mortgage in the sum of \$3,000.00. The said Gray hereby agrees to postpone his said third mortgages so far as said East Orange property is concerned, to a mortgage in addition to the ones already mentioned, in a sum not to exceed \$2,000.00.

20 The said Gray hereby agrees, at any time, to postpone his said third mortgage to a mortgage or mortgages covering both of said East Orange properties in a sum or sums not to exceed \$16,000.00. It is understood and agreed that the taxes, interest on mortgages, assessments, sewer rents, water rents and all other municipal charges, impositions or liens, shall be apportioned as of the day of passing title.

30 It is further understood and agreed that in the event that any of said taxes, interest, assessments, water rents, sewer rents, or other municipal liens have not been paid at the time of passing title, the amount therefor shall be deducted from the amount of the third mortgage above mentioned. In such event, however, the said Gray shall not enforce default of said third mortgage by reason of the fact that any of said charges are not paid within the period of thirty or sixty days, as the case may be.

40 It is understood and agreed that the parties of the second part shall execute and deliver to said Gray, a chattel mortgage in the sum named in

Exhibit C. 1.

said third mortgage and to be upon the same conditions, so far as the same are applicable upon all furniture, fixtures and other chattels which are now in said Point Pleasant property or which may hereafter be placed therein.

It is further understood and agreed that the said parties of the second part shall pay all costs incurred in connection with all of said postponements of said third mortgage which they may hereafter request from the said Gray.

10

It is understood and agreed that the said third mortgage covering the premises firstly, secondly and thirdly described shall become due and payable in the event that the parties of the second part shall sell or convey the same or any one of said properties.

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

20

AND IT IS FURTHER AGREED, by the parties hereto, that the said deed shall be delivered and received at office of Cook and Stout, Electric Building, Asbury Park, N. J. between the hours of ten o'clock in the forenoon and four o'clock in the afternoon on the said day of closing next ensuing the date hereof.

30

The parties of the first part hereby agree that they will assign to Arthur G. Hill, a participating interest of \$3,000.00 in said third mortgage or mortgages; and further agree with the said Arthur G. Hill, in consideration of cash advancements and part commissions, shall receive

40

Exhibit C. 1.

twenty-five (25%) percent of the amount paid on account of the principal thereof, until the said sum of \$3,000.00 is paid to said Arthur G. Hill; and in addition thereto shall receive interest at the rate of six percent (6%) on the said \$3,000.00 or unpaid balances thereof from the interest paid
 10 on said third mortgage or mortgages.

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 FIFTY FIVE THOUSAND (\$55,000.00) DOLLARS which they hereby fix and settle as liquidated damages therefor.

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

Signed, Sealed and Delivered
 in the presence of

WILLIAM A. O'HAGEN.

	MAX GRAY	(L. S.)
	BLANCHE GRAY	(L. S.)
	LAMBERTUS LAMMERTS	(L. S.)
30	ELIZABETH LAMMERTS	(L. S.)
	ARTHUR G. HILL	(L. S.)

Exhibit C. 1.

STATE OF NEW JERSEY, }
 COUNTY OF MONMOUTH. } ss.

BE IT REMEMBERED That on this 20th day of April in the year of Our Lord One Thousand Nine Hundred and Twenty-eight, before me the subscriber, personally appeared MAX GRAY and BLANCHE GRAY (his wife) and LAMBERTUS LAMMERTS and ELIZABETH LAMMERTS, his wife, who, I am satisfied, are the grantors mentioned in the within Instrument, to whom I first made known the contents thereof, and thereupon they acknowledged that, signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed. 10

And the said , being by me privately examined, separate and apart from said husband , further acknowledged that signed, sealed and delivered the same as voluntary act and deed, FREELY, without any fear, threats or compulsion of said husband. 20

WILLIAM J. O'HAGAN,
 M. C. C. of N. J.

CONTRACT

For Sale of Property 30

MAX GRAY *et ux*

to

LAMBERTUS LAMMERTS *et ux*

Dated April 20, 1928

*Exhibit C. 2.***EXHIBIT C. 2.**

THIS INDENTURE, MADE the First day of May in the year of our Lord One Thousand Nine Hundred and twenty-eight.

10 BETWEEN LAMBERTUS J. LAMMERTS and ELIZABETH LAMMERTS (his wife) of the City of East Orange in the County of Essex and State of New Jersey party of First Part; AND BLANCHE GRAY of the City of Newark in the County of Essex and State of New Jersey party of the Second Part;

20 WHEREAS, the said Parties of the first part are justly indebted to Blanche Gray, the said party of the Second Part, in the sum of TWENTY TWO THOUSAND THREE HUNDRED SEVENTY (\$22,370.00) Dollars, lawful money of the United States of America, secured to be paid by their certain bond or obligation, bearing even date with these presents, in the penal sum of FORTY FOUR THOUSAND SEVEN HUNDRED FORTY (\$44,740.00) Dollars, lawful money as aforesaid, conditioned for the payment of the said first mentioned sum of TWENTY TWO THOUSAND THREE HUNDRED SEVENTY (\$22,370.00) Dollars, 30 lawful money as aforesaid, to the said party of the Second Part, her executors, administrators or assigns, interest thereon, to be computed from May 1, 1928 at and after the rate of six per cent. per annum, and to be paid quarter-annually. The said sum of \$22,370.00 secured hereby shall be paid by the party of the first part to the party of the second part in manner following: \$500.00 on account of principal July 1, 1928 and the like amount each three months thereafter during the 40 first year. \$1,000.00 on July 1, 1929 and a like

Exhibit C. 2.

amount each three months thereafter during the second year. \$2,000.00 on July 1, 1930 and a like amount each three months thereafter during the third year. The balance of said sum shall be due and payable July 1, 1931. The party of the second part will, if requested by the parties of the first part so to do, extend the due date of said unpaid balance to July 1, 1932, in which event, the parties of the first part shall pay \$2,000.00 on account of principal July 1, 1931 and a like amount each three months thereafter and the entire balance of said principal sum July 1, 1932. 10

AND IT IS THEREBY EXPRESSLY AGREED, that should any default be made in the payment of the said interest, or instalments of principal or of any part thereof, on any day whereon the same is made payable as above expressed; or should any tax, assessment, water rent or other municipal or governmental rate, charge, imposition or lien be hereafter imposed or acquired upon the premises described in this mortgage, and become due and payable; or should the said party of the First Part, their heirs, executors, administrators or successors in title to said premises fail to keep the building or buildings now or hereafter located thereon insured against loss or damage by fire and assign the policy or policies for such insurance to the said party of the Second Part, her executors, administrators or assigns, and such insurance be effected and premium or premiums therefor paid by the said party of the Second Part, her executors, administrators or assigns, pursuant to the agreement contained in this mortgage; and should the said interest, or instalments of principal or any part thereof, remain unpaid and in arrear for a period 20 30 40

Exhibit C. 2.

of thirty days; or said tax, assessment, water
 rent, or other municipal or governmental rate,
 charge, imposition or lien, or any or either of
 them, remain unpaid and in arrear for a period
 of sixty days; or said insurance premium or
 premiums so paid by the said party of the Sec-
 10 ond Part, her executors, administrators or as-
 signs remain unpaid for a period of thirty
 days after demand therefor by the said party
 of the Second Part, her executors, administra-
 tors or assigns upon the said party of the First
 Part, their heirs, executors, administrators or
 successors in title; then and from thenceforth,
 that is to say, after the lapse or expiration of
 either of the said periods, as the case may be,
 the aforesaid principal sum of TWENTY TWO
 20 THOUSAND THREE HUNDRED SEVENTY
 (\$22,370.00) DOLLARS or so much thereof as
 may then remain unpaid, with all arrearage
 of interest thereon, shall, at the option of the
 said party of the Second Part, her executors, ad-
 ministrators or assigns, become and be due and
 payable immediately thereafter, although the
 period above limited for the payment thereof
 may not then have expired, anything therein-
 before contained to the contrary thereof in any-
 30 wise notwithstanding; as by the said bond or
 obligation, and the condition thereof, reference
 being thereunto had, may more fully appear.

Now, THIS INDENTURE WITNESSETH, That the
 said party of the First Part, for the better se-
 curing the payment of the said sum of money
 mentioned in the condition of the said bond or
 obligation, with interest thereon, according to
 the true intent and meaning thereof, and also
 for and in consideration of the sum of one dollar,
 40 to them in hand paid by the said party of the

Exhibit C. 2.

Second Part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have, granted, bargained, sold, aliened, released, conveyed and confirmed, and by these presents do grant, bargain, sell, alien, release, convey and confirm, unto the said party of the Second Part, and to her heirs and assigns forever, ALL that certain hotel building and all those tracts or parcels of land and premises, hereinafter particularly described, situate, lying and being in the Borough of Point Pleasant Beach in the County of Ocean and State of New Jersey, being known, marked and designated as Lots Nos. 139, 140, 141 and 142 on a Map or Plan of Lots of the Point Pleasant Land Company duly filed in the Clerk's Office of the County of Ocean on the 6th day of May 1878, bounded and described as follows, to wit:

Lots Nos. 139 and 140 fronting or in width one hundred feet on the northerly side of Atlantic Avenue; thence extending northerly the same width by and between Boston Avenue on the east and Lot No. 141 on the west one hundred twenty five feet in depth.

Lots Nos. 141 and 142 fronting or in width one hundred feet on the northerly side of Atlantic Avenue, extending northerly the same width by and between Lot No. 140 on the east and Lot No. 143 on the west one hundred twenty five feet in depth.

BEING the same premises this day conveyed to Lambertus Lammerts and wife by deed of Max Gray and wife, which deed is to be recorded simultaneously herewith.

ALSO that certain tract or parcel of land and premises hereinafter particularly described,

Exhibit C. 2.

situate, lying and being in the City of East Orange, in the County of Essex and State of New Jersey.

10 BEGINNING at a point in the northerly line of Lenox Avenue, distant two hundred (200) feet, westerly from the westerly side of South Arlington Avenue at the southwesterly corner of tract belonging to Francis A. Robinson; thence northerly along said Robinson's land, one hundred (100) feet, more or less to land of Richard Coyne, thence westerly along said Coyne's land, fifty (50) feet; thence southerly parallel with first course one hundred (100) feet, more or less, to the northerly line of Lenox Avenue; thence easterly along the northerly line of Lenox Avenue, fifty (50) feet to the point of beginning.

20 BEING the same premises conveyed to Lambertus J. Lammerts and Elizabeth T. Lamberts, joint tenants, by deed of Harold C. Patten, single, dated June 20, 1925 and recorded in Book M-72 of Deeds, page 225.

THIS mortgage being given to secure part of the purchase price therefor, of the premises firstly above described.

30 THE premises firstly above described are subject to the lien, operation and effect of a first mortgage in the sum of \$26,000.00 held by Monmouth Title & Mortgage Guaranty Company and mortgages in the sum of \$5,000.00 and \$1,000.00 respectively, now held by Clinton Investment Company, which last two mortgages are due June 2, 1929.

40 THE premises secondly above described are subject to the lien, operation and effect of a mortgage in the sum of \$7,500.00 held by Fidelity Union Title & Mortgage Guaranty Company,

Exhibit C. 2.

mortgage in the sum of \$1,500.00 held by Samuel Siegel and mortgage in the original sum of \$350.00 held by Louis Speigel.

IN the event that the parties of the first part pay at least \$2,000.00 on account of the mortgages aggregating \$6,000.00 held by Clinton Investment Company on or before June 2, 1929, the party of the second part agrees to procure an extension of said mortgages held by Clinton Investment Company for one year from June 2, 1929. The reasonable costs of procuring said renewal shall be borne by the parties of the first part.

10

THE party of the second part agrees at any time during the term of this mortgage up to June 2, 1929 to postpone this mortgage to a first mortgage or first and second mortgage covering the premises firstly above described in a sum not to exceed \$32,000.00. After said time and up to June 2, 1930 the party of the second part will, at any time, postpone this mortgage to a first mortgage or first and second mortgage covering the premises firstly above described in a sum not to exceed \$30,000.00, and thereafter during the term of this mortgage, agrees to postpone this mortgage to a first mortgage not to exceed \$26,000.00.

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30

THE party of the second part agrees to postpone at any time, this mortgage to a mortgage or mortgages covering the premises secondly above described in a sum not to exceed \$11,000.00.

IT is understood and agreed by and between the parties hereto that the principal sum secured hereby, or all unpaid balances hereof, shall be and become immediately due and pay-

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Exhibit C. 2.

able in the event that payments on account of principal or interest on said prior mortgages, or any one or more of them, become due and remain due and in arrears for the space of more than thirty days.

10 IN the event that the premises known as Lots 139, 140, 141 and 142 on Map of Lots of Point Pleasant Land Company, is sold by the parties of the first part, then the principal sum secured hereby, or the unpaid balance thereof, shall be and become due and payable, anything to the contrary herein contained notwithstanding.

20 TOGETHER with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof. AND ALSO, all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the First Part, of, in and to the same, and every part and parcel thereof, with the appurtenances: To HAVE AND TO HOLD, the above granted and described premises with the appurtenances, unto the said party of the Second Part, her heirs and assigns, to her and their own proper use, 30 benefit and behoof forever. PROVIDED ALWAYS, and these presents are upon this express condition, that if the said party of the First Part, their heirs, executors or administrators, shall well and truly pay unto the said party of the Second Part, her executors, administrators or assigns, the said sum of money mentioned in the condition of said bond or obligation, and the interest thereon, at the time and times, and 40 in the manner mentioned in the said condition,

Exhibit C. 2.

according to the true intent and meaning thereof, that then these presents, and the estate hereby granted, shall cease, determine and be void.

AND the said Parties of the first part for themselves, their heirs, executors and administrators, do covenant and agree to pay unto the said party of the Second Part, her heirs, executors, administrators or assigns, the said sum of money and interest, as mentioned above and expressed in the condition of the said bond.

10

AND IT IS AGREED that neither the mortgagors, nor the heirs, executors, administrators or successors in title of the mortgagors, shall be entitled to any credit on the interest payable on this mortgage for the taxes which may be levied on the mortgaged premises or for any part of such taxes.

20

AND IT IS ALSO AGREED that the said party of the First Part, their heirs, executors, administrators or successors in title to said mortgaged premises, shall and will keep the building or buildings now or hereafter located thereon insured against loss or damage by fire in some safe and responsible insurance company or companies, by policies containing non-contribution clause for a sum not less than TWENTY TWO THOUSAND THREE HUNDRED SEVENTY (\$22,370.00) dollars, and assign the policy or policies therefor to the said party of the Second Part, her executors, administrators or assigns as collateral security for the payment of the principal and interest aforesaid; and in default thereof, it shall be lawful for the said party of the Second Part, her executors, administrators or assigns to effect such insurance, and the premium or premiums paid for effecting the

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Exhibit C. 2.

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 by the said party of the First Part, their heirs, executors, administrators or assigns, with legal interest.

10 IN WITNESS WHEREOF, the said party of the First Part, have hereunto set their hands and seals the day and year first above written.

LAMBERTUS J. LAMMERTS (SEAL)
ELIZABETH LAMMERTS (SEAL)

Signed, Sealed and Delivered
in the presence of

WILLIAM J. O'HAGAN.

20

STATE OF NEW JERSEY, }
COUNTY OF MONMOUTH. } ss.:

BE IT REMEMBERED, That on this First day of May in the year of our Lord, One Thousand Nine Hundred and twenty-eight before me, the subscriber, a Master in Chancery of N. J. personally appeared LAMBERTUS. J. LAMMERTS and ELIZABETH LAMMERTS (his
30 wife) who I am satisfied are the grantors mentioned in the within Indenture, and to whom I first made known the contents thereof, and thereupon they acknowledged that they signed, sealed and delivered the same as their voluntary act and deed for the uses and purposes therein expressed.

WILLIAM J. O'HAGAN,
M. C. C. of N. J.

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Exhibit C. 2.

MORTGAGE

LAMBERTUS J. LAMMERTS *et ux**to*

BLANCHE GRAY

Dated May 1, 1928.

10

RECEIVED in the Clerk's Office of the County of Ocean, N. J., on the 2 day of May A. D., 1928, at 4 o'clock in the afternoon, and recorded in Book 213 of MORTGAGES for said County, on pages 413 &c.

JOHN A. ERNST,
Clerk.

Received Registers Office May 24, 1928, 3:36 P. M. Essex County, Newark, N. J.

20

Compared by 72-64 & 34-72.

Received in the Register's Office of the County of Essex, N. J., on the 24th day of May, A. D. 1928, at 3:36 o'clock in the afternoon, and Recorded in Book Y-63 of MORTGAGES for said County on pages 578-581.

HOWARD S. DODD,
Register.

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Exhibit C. 3.

EXHIBIT C. 3.

KNOW ALL MEN BY THESE PRESENTS: THAT LAMBERTUS J. LAMMERTS and ELIZABETH LAMMERTS (his wife) of the City of East Orange in the County of Essex and State of New Jersey party of the First Part, for securing the payment of the money herein mentioned, and in consideration of the sum of One Dollar to them duly paid by BLANCHE GRAY of the City of Newark in the County of Essex and State of New Jersey party of the Second Part, at or before the ensembling and delivery of these presents, the receipt whereof is hereby acknowledged, have bargained and sold, and by these presents do bargain and sell, unto the said party of the Second Part, her executors, administrators and assigns, all the goods and chattels mentioned in the schedule hereunto annexed and now in Carrollton Hotel, Boston & Atlantic Avenues, Point Pleasant Beach, New Jersey.

TO HAVE AND TO HOLD, all and singular the said goods and chattels above bargained and sold or intended so to be, unto the said party of the Second Part, her executors, administrators and assigns, forever. AND the said party of the First Part, for themselves, their heirs, executors and administrators, all and singular the said goods and chattels above bargained and sold, unto the said party of the Second Part, her executors, administrators and assigns, against them the said party of the First Part, and against all and every person or persons whomsoever shall and will warrant and forever defend.

UPON CONDITION, that if the said party of the First Part, shall and do well and truly pay unto

Exhibit C. 3.

the said party of the Second Part, her executors, administrators and assigns, the sum of \$22,-370.00, to be paid by a certain bond made by the parties of the first part to said Blanche Gray, bearing even date herewith, at the times specified in said bond, together with interest on said sum at the rate of 6% per annum, at the times and in the manner specified in said bond. 10

then these presents shall be void. AND the said party of the First Part, for themselves, their heirs, executors, administrators and assigns, do covenant and agree to and with the said party of the second part, her executors, administrators and assigns, that in case default shall be made in the payment of the said sum above mentioned, or in case the said party of the First Part shall, at any time before the day of payment herein provided for, remove the said goods and chattels, or any of them, or permit or suffer any attachment or other process against property to be issued against them or permit or suffer any judgment to be entered up against them. 20

then the said sum of money herein mentioned shall become instantly due and payable, and then it shall and may be lawful for, and they the said party of the First Part do hereby authorize and empower the said party of the second part, her executors, administrators and assigns, with the aid and assistance of any person or persons, to enter said hotel, dwelling-house, store and other premises, and such other place or places whatsoever in which the said goods and chattels, or any of them, are or may be placed and take and carry away the said goods and chattels, and to sell and dispose of 30 40

Exhibit C. 3.

the same for the best price they can obtain; and out of the money arising therefrom, to retain and pay the said sum above mentioned, and all charges touching the same, rendering the overplus (if any) unto them the said party of the First Part, their heirs, executors, administrators or assigns.

AND it is agreed by and between the parties to these presents that the said party of the First Part shall and will keep the goods and Chattels hereby mortgaged, insured against loss or damage by fire in some safe and responsible Insurance Company to an amount not less than TWENTY TWO THOUSAND THREE HUNDRED SEVENTY (\$22,370.00) DOLLARS. and assign the policy and certificates thereof to the said party of the Second Part as collateral security for the payment of the mortgaged debt, and in default thereof it shall be lawful for the said party of the Second Part to effect such insurance and the premium paid for effecting the same shall be a lien on the mortgaged property, added to the amount of the mortgaged debt, and secured by these presents, and payable on demand with lawful interest.

IN WITNESS WHEREOF, the said party of the First Part have hereunto set their hands and seals the First day of May in the year of our Lord One Thousand Nine Hundred and twenty-eight.

LAMBERTUS J. LAMMERTS (SEAL)
ELIZABETH LAMMERTS (SEAL)

Signed, Sealed and Delivered
in the presence of

WILLIAM J. O'HAGAN.

Exhibit C. 3.

STATE OF NEW JERSEY, }
COUNTY OF MONMOUTH. } ss.

BLANCHE GRAY the mortgagee in the foregoing mortgage named, being duly sworn, on her oath, says that the true consideration of said mortgage is as follows, viz:

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\$22,370.00, being part of the consideration for sale of the goods herein mentioned, by Max Gray and Blance Gray to the parties of the first part and part of the consideration for conveyance by said Max Gray and Blanche Gray to the parties of the first part of premises in the Borough of Point Pleasant Beach, said sum \$22,370.00 being secured to be paid by a certain bond made by the parties of the first part to said Blanche Gray bearing even date herewith. and deponent further says that there is due on said mortgage the sum of TWENTY TWO THOUSAND THREE HUNDRED SEVENTY (\$22,370.00) DOLLARS, besides lawful interest thereon from the First day of May 1928.

20

BLANCHE GRAY.

Sworn and subscribed this 1st
day of May A. D. 1928 before
me, at Asbury Park, N. J.

30

WILLIAM J. O'HAGAN,
M. C. C. of N. J.

40

Exhibit C. 3.

SCHEDULE.

The following is the Schedule referred to in the foregoing mortgage.

Dance Hall

- 10 80 Rockers and reclining chairs.
Piano and stool
Shades and curtains

Ladies Parlor

2 Tables; 4 settees white; 4 rockers white; 13 chairs white; 7 pictures; shades and drapes; rug entire floor.

Writing Room

- 20 Desk; 2 settees; 2 rockers; 1 chair; round plate glass mirror; rug; shades and drapes; door drapes; 5 pictures.

Lobby

4 rugs and 1 runner; 2 writing tables; 1 plain table; 2 rockers; 3 chairs; 3 pictures; 2 outside large mats; clothes tree; drapes.

Office

- 30 Safe; cash register; desk; 2 small tables; 1 show case; 1 mirror; clock; bookkeeping desk; 3 rugs; 2 fire extinguishers; 2 pictures.

Mens' Wash Room

2 mirrors.

Grill

54 chairs; 1 lawn mower; 1 steam table; 24 tables.

Dining Room

- 40 24 large tables; 16 serving tables; 115 chairs; 2 high chairs; 1 rug.

Exhibit C. 3.

Kitchen

2 coffee urns; 3 coal ranges; 2 gas ranges; portable urn; charcoal broiler; 1 warming closet; scale; pots, pans and utensils; 7 tables.

Mattresses; springs and beds.

Beds	Chairs	Rugs	Dressers	Ward- robes	Wash Stands	Pillows	Tables	
1	1	1	1	1	1	2	1	
1	3	1	1	1 1	1	2		
1	2	2	1	1	1	1		
1	2	1	1	1		2	1	
1	1	1	1	1	1	2		
1	2		1	1	1	2	1	
2	5	1	1		1	2	1	
1	2	1	1			2	1	
1	2	1	1		1	2	1	
2	3	1	1	1	1	2	1	20
1	2	1	1		1	1	1	
3	3	1	1	1	1	5	1	
1		1	1			2		
1	2	1	1	1	1	2		
1	3	1	1	1	1	2	1	
1	2	1	1	1	1	2	1	
2	3	1	1			2	1	
2	2	1	1	1		2	1	
1	3	1	1			2	1	30
2	3	1	1	1		2	1	
1	2	1	1	11	1	3	1	
1	2	1	1	1	1	2	1	
1	2	1	1	1	1	2		
1	2	No. 28 bad	1	1	1	2	1	
1	2	1	1	1	1	2	1	
2	2	1	1			2	1	
2	2	1	1	1		2	1	
2	3	1	1		1	2	1	
2	2	1	1		1	2	1	
1	3	1			1	2	1	40

Exhibit C. 3.

	Beds	Chairs	Rugs	Dressers	Ward- robes	Wash Stands	Pillows	Tables
	1	2	1	1		1	2	1
	2	4	1	1			2	1
	5 cots							
	1	2	1	1	1	1	2	
10	1	2	1	1	1	1	2	
	1	2	1	1	1	1	2	1
	1	1	1	1	1	1	2	1
	2	2	1	1	1		2	1
	1	3	1	1	1		2	1
	2	1	1	1	1	1	2	
	2	3	1	1			2	
	1 cot							
	1	1	1		1		2	
	1	2	1	1	1	1	1	
	1	2	1		1	1	2	
20	2	2	1	1	1	1	3	1
	1	2	1	1	1	1	2	1
	1	2	1	1	1	1	2	1
	1	2	1	1	1	1	2	
	1	1	1	1	1	1	2	
	2	2	1	1	1		2	
	1	2	1	1			2	1
	1	1	1	1	1		2	
	1	2	1	1	1	1	2	
	1	2	1	1	1	1	1	
30	2	2	1	1		1	1	
	1	2	1	1	1	1	2	
	1	2	1	1	1	1	2	1
	1	4	1	1	1	1		1
	1 Sewing machine							
	1	3	1	1	1	1	2	
	1	2	1	1	1	1	2	
	1	2	1	1	1	1	2	
	1	2	1	1	1	1		1

Runners in Halls and stair carpet.

Exhibit C. 3.

STATE OF NEW JERSEY, }
COUNTY OF MONMOUTH. }ss.

BE IT REMEMBERED, That on this First day of May, in the year of our Lord One Thousand Nine Hundred and twenty-eight, before me, the subscriber, a Master in Chancery of N. J. personally appeared LAMBERTUS J. LAMMERTS and ELIZABETH LAMMERTS (his wife) who, I am satisfied, are the mortgagors mentioned in the within Indenture, to whom I first made known the contents thereof, and thereupon they acknowledged that they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed. 10

WILLIAM J. O'HAGAN,
M. C. C. of N. J. 20

MORTGAGE

On Goods and Chattels.

LAMBERTUS J. LAMMERTS *et ux*

to

BLANCHE GRAY

Dated, May 1, 1928

RECEIVED in the Clerk's Office of the County of Ocean on the 2 day of May A. D., 1928 at 4 o'clock in the afternoon, and recorded in Book 28 of CHATTEL MORTGAGES for said County, on pages 335 &c. 30

JOHN A. ERNST,
Clerk.

Exhibit C. 4.

EXHIBIT C. 4.

KNOW ALL MEN BY THESE PRESENTS: THAT We,
 LAMBERTUS J. LAMMERTS and ELIZA-
 BETH LAMMERTS (his wife) of the City of
 East Orange in the County of Essex and State
 10 of New Jersey are held and firmly bound unto
 BLANCHE GRAY of the City of Newark in
 the County of Essex and State of New Jersey in
 the penal sum of FORTY FOUR THOUSAND
 SEVEN HUNDRED FORTY (\$44,740.00) DOL-
 LARS. lawful money of the United States of
 America, to be paid to the said Blanche Gray her
 executors, administrators or assigns: FOR WHICH
 PAYMENT well and truly to be made, we bind our-
 selves, our heirs, executors and administrators,
 20 firmly by these presents. Sealed with our seals
 Dated the First day of May One Thousand
 Nine Hundred and twenty-eight.

THE CONDITION of the above obligation is such
 that if the above bounden Lambertus Lam-
 merts and Elizabeth Lammerts their heirs, exe-
 cutors or administrators, shall well and truly pay,
 or cause to be paid unto the above named Blanche
 Gray executors, administrators or assigns, the
 just and full sum of TWENTY TWO THOU-
 30 SAND THREE HUNDRED SEVENTY (\$22,-
 370.00) DOLLARS. the interest thereon, to be
 computed from May 1, 1928 at and after the
 rate of six per cent. per annum, and to be paid
 quarter-annually. The said sum of \$22,370.00
 secured hereby shall be paid by the party of the
 first part to the party of the second part in
 manner following: \$500.00 on account of prin-
 cipal July 1, 1928 and the like amount each three
 months thereafter during the first year. \$1,-
 40 000.00 on July 1, 1929 and a like amount each

Exhibit C. 4.

three months thereafter during the second year. \$2,000.00 on July 1, 1930 and a like amount each three months thereafter during the third year. The balance of said sum shall be due and payable July 1, 1931. The party of the second part will, if requested by the parties of the first part so to do, extend the due date of said unpaid balance to July 1, 1932, in which event the parties of the first part shall pay \$2,000.00 on account of principal July 1, 1931 and a like amount each three months thereafter and the entire balance of said principal sum July 1, 1932.

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AND IT IS HEREBY EXPRESSLY AGREED, that should any default be made in the payment of the said interest, or instalments of principal or of any part thereof, on any day whereon the same is made payable as above expressed; or should any tax, assessment, water rent or other municipal or governmental rate, charge, imposition or lien be hereafter imposed or acquired upon the premises described in the mortgage accompanying this bond, and become due and payable; or should the said obligors their heirs, executors, administrators or successors in title to the said mortgaged premises fail to keep the building or buildings now or hereafter located thereon insured against loss or damage by fire and assign the policy or policies for such insurance to the said obligee, her executors, administrators or assigns, and such insurance be effected and premium or premiums therefor paid by the said obligee her executors, administrators or assigns, pursuant to the agreement contained in the said mortgage; and should the said interest or installments of principal or any part thereof, remain unpaid and in arrear for a period of thirty days; or said tax, assessment,

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Exhibit C. 4.

water rent, or other municipal or governmental rate, charge imposition or lien, or any or either of them, remain unpaid and in arrear for a period of sixty days; or said insurance premium or premiums so paid by the said obligee, her

10 executors, administrators or assigns remain unpaid for a period of thirty days after demand therefor by the said obligee, her executors, administrators or assigns upon the said obligors, their heirs, executors, administrators or successors in title; then and from thenceforth, that is to say, after the lapse or expiration of either of the said periods, as the case may be, the aforesaid principal sum of money, or so much thereof as may then remain unpaid, with all arrearage of interest thereon, shall, at the option of the said

20 obligee, her executors, administrators or assigns, become and be due and payable immediately thereafter, although the period first above limited for the payment thereof may not then have expired, anything hereinbefore contained to the contrary thereof in anywise notwithstanding.

AND IT IS FURTHER EXPRESSLY AGREED, that the said obligors, their heirs, executors, administrators or successors in title to said mortgaged premises, shall not be entitled to and will not

30 claim any credit on the interest payable on the mortgage securing this bond for taxes which may be levied upon the said mortgaged premises, nor for any part of said taxes.

LAMBERTUS J. LAMMERTS (SEAL)
 ELIZABETH LAMMERTS (SEAL)

Signed, Sealed and Delivered
 in the presence of

WILLIAM J. O'HAGAN.

Exhibit D. 1.

BOND.

LAMBERTUS J. LAMMERTS *et ux*

to

BLANCHE GRAY

Amount,\$22,370.00 10
 Date, May 1, 1928
 Due, As specified herein
 Interest Payable, 6% quarter-annu-
 ally

EXHIBIT D. 1.

STATE OF NEW JERSEY, }
 COUNTY OF ESSEX. } ss. 20

WONDERFUL OPPORTUNITY.

Seashore hotel to lease. Point Pleasant, N. J.,
 reasonable rent. Inquire Hill, 20 Clinton st.,
 Mitchell 5325.

Harold Vieison, of full age, being duly sworn
 according to law, on his oath saith, that he is
 a clerk in the office of the "Newark Evening
 News" and that a notice, of which the annexed 30
 is a true copy, was published on the 7th day of
 April A. D. 1928, in the said "Newark Evening
 News," a public newspaper, printed and pub-
 lished at Newark, in this State.

HAROLD VIEISON.

Sworn and subscribed this 19th
 day of October, 1928, before
 me

HAROLD W. BAILEY,
 (SEAL) Notary Public. 40

Exhibit D. 2.

EXHIBIT D. 2.

ARTHUR G. HILL
Real Estate and Insurance
Clinton Building Room 501
20 Clinton Street
Newark, N. J.

10

THE CARROLLTON HOTEL

CAPACITY—200 Guests

100 TRAINS DAILY—Pennsylvania
and New Jersey Central R. R.

Located at the corner of Atlantic and Boston
Avenues, Point Pleasant, New Jersey.

PLOT: 125 x 200

20

HOTEL. 4 story frame building, besides grill,
35 x 70 and bar room in basement, also rooms for
help and barber shop.

30

61 sleeping rooms, 14 baths, and comprising
private bath rooms on first and second sleeping
floors where suites of one, two and three con-
necting rooms with bath can be made up. Large
dance hall on first floor, ladies parlor, sitting
room and large entrance and office, dining room
to seat about 200, wonderful kitchen with full
equipment, all furnishings including fine rugs,
silver and linen, large safe and \$800 cash regis-
ter. Up to date and ready to open and operate.

Extra cottage for help containing 11 rooms,
bath and laundry. Rooms for help over kitchen
also, giving opportunity to use mixed help.

The above hotel is located one block from the
ocean, commanding a fine view of the ocean
from a 215 ft. porch, 10 ft. wide, and has always
been run on a high-class, up to date hotel, and
has a fine reputation. It contains a rear stair-

40

Exhibit D. 3.

way for the use of guests for bathing purposes without coming in contact with guests in the front. Plenty of ground for car space. Facilities for bathing, boating, fishing, golfing, and all seashore sports are of the best.

PRICE: \$75,000., subject to mortgage of \$26,000 Title Co., subject to mortgage of \$6,000 2nd for 2 yrs. **10**

FOR SALE OR WILL EXCHANGE

EXHIBIT D. 3.

Gray—Lammerts Closing

May 1, 1928.

Price		\$55,000.00	20
Insurance:			
118853 U. S. Merchants & Shipper	\$	9.10	
237926 Victory Insurance Co.		36.67	
507306 Concordia Insurance Co.		211.75	
Merchants Insurance Co. 7018 St. Paul			
2527644 U. S. Fire			30
240917 London, Liverpool & Globe			
366042 Hanover			
244680 Insurance Co. of No. America		32.06	
29738 Am. & Foreign Ins. Co.		32.06	
464264 Superior		29.50	351.14
		<hr/>	
		\$55,351.14	40

Exhibit D. 3.

	Deposit	500.00	
	1st. mortgage, Mon. Title & Mtg. Guaranty Co.	26000.00	
	2nd mortgage, Clinton In- vestment Co.	5000.00	
	Int. 12/2/27-5/1/28	100.00	
10	3rd mortgage, Clinton In- vestment Co.	1000.00	
	Int. 12/2/27-5/1/28	25.00	
	Taxes	351.60	
	Cash	4.54	
	Mortgage, Lammerts to Gray	22370.00	\$55,351.14

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BLANCHE GRAY
 MAX GRAY
 ELIZABETH LAMMERTS
 LAMBERTUS J. LAMMERTS
 ARTHUR G. HILL

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*Exhibit D. 4.***EXHIBIT D. 4.**

Sheet 1.

MALCOLM SEVERANCE, Inc.
AdvertisingAsbury Park, N. J.
August 7th., 1928.IN ACCOUNT WITH
Mrs. E. Lammerts,
The Carrollton,
Point Pleasant, N. J.

SEASON BILL

Starting Date 1928	Name of Publication		Rate per Line	Number of Lines	Number of Times	Cost
June 10	Baltimore Sun	Sundays consecutive	.38	5	13	\$24 70
5	Pittsburgh Sun	Tues. & Thurs.	.40	5	10	20 00
10	Herald Tribune	Sundays, Tuesdays, Thursdays,	.60	5	30	90 00
16	Catholic News	Saturdays	.22	5	10	11 00
14	Newark News	Thursdays	.24	10	9	21 60
9	Jersey Journal	Saturdays	.15	10	10	15 00
16	New York Sun	Saturdays	.55	10	10	55 00
9	" "	Special Number	.55	60	1	33 00
5	Scranton Republican	Tuesdays, Thursdays	.15	5	30	22 50
16	Newark News	Saturdays	.24	5	5	6 00
17	Newark Call	Sundays	.17	10	10	17 00
3	New York World	Special & Book	.60	60	1	36 00
17	" "	June 17, 24; July 22, 29; August 5th—	.60	10	5	30 00
17	Brooklyn Eagle	June 17, 24; July 1, 8, 15, 22, 29; August 5	.35	10	8	28 00
28	" "	Thursdays	.35	5	7	12 10
10	Philadelphia Ledger	Resort Special and Guide	.65	36	1	36 40
	" "	Sun. Wed. Fri.	.60	2	24	28 80
		Forwarded—				\$487 10

Exhibit D. 4.

Sheet 2.

MALCOLM SEVERANCE, Inc.
AdvertisingAsbury Park, N. J.
August 7th, 1928.IN ACCOUNT WITH
Mrs. E. Lammerts,
The Carrollton,
Point Pleasant, N. J.

SEASON BILL

1928	Brought forward—				\$487 10
June 3	Philadelphia Ledger	June 3, 17			
		July 1, 15, 29	.60	10	5 30 00
9	New York Post	Resort Special	.40	60	1 24 00
					<hr/>
					\$541 10
	Two line cuts—		2.50	each	5 00
	Ten Mats—				2 50
					<hr/>
					\$548 60
	Total—\$548.60				

*Final Decree.***FINAL DECREE.**

Filed November 27, 1928.

IN CHANCERY OF NEW JERSEY.

369-439.

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Between

MAX GRAY and BLANCHE
GRAY, his wife, and ARTHUR
C. HILL, and SARAH HILL,
his wife,

*Complainants,**and*

LAMBERTUS LAMMERTS and
ELIZABETH LAMMERTS, his
wife,

*Defendants.**On Bill, &c.**Final
Decree.*

20

This cause coming on to be heard before the
Chancellor upon bill, answer, counter-claim, rep-
lication and proofs, not only in the above-en-
titled case but also in the case of Lambertus
Lammerts and Elizabeth Lammerts, his wife,
complainants and Max Gray and Blanche Gray,
his wife, Arthur G. Hill and Sarah Hill, his
wife, defendants (Docket 69-426) which case,
by proper orders heretofore entered, was con-
solidated with the above-entitled case, in the
presence of Stein, McGlynn & Hannoeh, of coun-
sel with complainants and Marder & Okin, of
counsel with the defendants and the pleadings
and proof having been read and argument of
counsel heard and considered and the Chancellor
being of the opinion that there was due to the

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Final Decree.

complainants on the date of this decree on their mortgage set forth in their bill the sum of \$22,370.00 with interest at the rate of six per cent. from May 1, 1928 to date of this decree, amounting to \$671.10, on which interest there has been paid the sum of \$250.00, and further
 10 being of the opinion that the defendants did not sustain the counter-claim filed by them herein, and further being of the opinion that the complainants are entitled to relief and that the counter-claim of the defendants should be dismissed, it is thereupon, on this 27th day of November, 1928, by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey,

ORDERED, ADJUDGED and DECREED that the mortgages of the complainants set forth in their
 20 bill dated May 1, 1928 made by Lambertus Lammerts and Elizabeth Lammerts, his wife, to secure the sum of \$22,370.00, with lawful interest from the date thereof, one of said mortgages being recorded in the Clerk's office of the County of Ocean in Book 213 of Mortgages for said County on page 413 and which is also recorded in the Register's office of the County of Essex, Book Y 63 of Mortgages for said County on pages 578-581 and chattel mortgage made by the
 30 said Lambertus Lammerts and Elizabeth Lammerts, his wife, dated May 1, 1928 and recorded in Book 28 of Mortgages for Ocean County on page 335, are valid and existing encumbrances as against the said defendants upon the lands and premises therein and in said bill described and upon the personal property therein and in said bill described; and it is further

ORDERED, ADJUDGED and DECREED that said
 40 mortgaged premises and the personal property be sold to raise and satisfy the several sums of

Final Decree.

money due to the said complainants and that a writ of *feri facias* do issue for that purpose out of this court, directed to John A. Bernhard one of the Special Masters of this court, commanding him to make sale according to law of the mortgaged premises described as follows:

All that certain hotel building and all those tracts or parcels of land and premises, herein-after particularly described, situate, lying and being in the Borough of Point Pleasant Beach, in the County of Ocean and State of New Jersey, being known, marked and designated as Lots Nos. 139, 140, 141 and 142 on a Map or Plan of Lots of the Point Pleasant Land Company duly filed in the Clerk's Office of the County of Ocean on the 6th day of May, 1878, bounded and described as follows, to wit:

Lots Nos. 141 and 142 fronting or in width one hundred feet on the northerly side of Atlantic avenue; thence extending northerly the same width by and between Boston avenue on the east and Lot. No. 141 on the west one hundred twenty-five feet in depth.

Lots Nos. 141 and 142 fronting or in width one hundred feet on the northerly side of Atlantic avenue, extending northerly the same width by and between Lot No. 140 on the east and Lot. No. 143 on the west one hundred twenty-five feet in depth.

Also that certain tract or parcel of land and premises hereinafter particularly described, situate, lying and being in the City of East Orange, in the County of Essex and State of New Jersey.

BEGINNING at a point in the northerly line of Lenox avenue distant two hundred (200) feet

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Final Decree.

westerly from the westerly side of South Arlington avenue at the south-westerly corner of tract belonging to Francis A. Robinson; thence northerly along said Robinson's land one hundred (100) feet more or less to land of Richard Coyne, thence westerly along said Coyne's land 10 fifty (50) feet; thence southerly parallel with first course one hundred (100) feet more or less to the northerly line of Lenox avenue; thence easterly along the northerly line of Lenox avenue fifty (50) feet to the point of BEGINNING.

and also of the personal property described as follows:

Dance Hall:

- 80 rockers and reclining chairs
- Piano and stool
- 20 Shades and curtains

Ladies Parlor:

2 tables; 4 settees, white; 4 rockers, white; 13 chairs, white; 7 pictures; shades and drapes; rug, entire floor.

Writing Room:

- Desk; 2 settees; 2 rockers; 1 chair; round plate glass mirror; rug; shades and drapes; door drapes; 5 pictures.

30

Lobby:

4 rugs and 1 runner; 2 writing tables; 1 plain table; 2 rockers; 3 chairs; 3 pictures; 2 outside large mats; clothes tree; drapes.

Office:

Safe; cash register; desk; 2 small tables 1 show case; 1 mirror; clock; bookkeeping desk; 3 rugs; 2 fire extinguishers; 2 pictures.

Men's Wash Room:

- 40 2 mirrors.

Final Decree.

Grill:

54 chairs; 1 lawn mower; 1 steam table: 24 tables.

Dining Room:

24 large tables; 16 serving tables; 115 chairs; 2 high chairs; 1 rug.

10

Kitchen:

2 coffee urns; 3 coal ranges; 2 gas ranges; portable urn; charcoal broiler; 1 warming closet; scale; pots, pans and utensils; 7 tables. Mattresses; springs and beds.

79 beds

6 cots

1 sewing machine

132 chairs

60 rugs (No. 28 bad)

20

58 dressers

65 wardrobes

44 wash stands

118 pillows

36 tables

Runners in halls and stair carpet.

and out of the money arising from such sale, said Special Master pay to the complainants or to their solicitors, said debt, interest and costs. In case more money should be raised by the sale than shall be sufficient to satisfy said several payments, that such surplus be paid into this court to abide the further order of this court, unless previously disposed of by the order of this court and that the said Special Master make return without delay of his proceeds by virtue of the said writ; and it is further

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ORDERED, ADJUDGED and DECREED that the defendants stand absolutely debarred and foreclosed of and from all equity of redemption of,

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Final Decree.

in and to the said mortgaged premises, when sold as aforesaid by virtue of this decree; and it is further

10 ORDERED, ADJUDGED and DECREED that there first be sold the premises situate, lying and being in the County of Monmouth as above described, together with the personal property above described, as one parcel and if the money arising from such sale shall not be sufficient to pay to the complainants said debt, interest and costs, then and only in such event shall the said Special Master sell the premises situate, lying and being in the County of Essex, and above described, for the purpose of raising the balance due to the complainants for their said debt, interest and costs; and it is further

20 ORDERED, ADJUDGED and DECREED that if the sale of the Monmouth County premises together with the personal property as one unit, be sufficient to satisfy said debt, interest and costs, said premises situate in Essex County above described shall be discharged from this decree and the mortgage upon which this decree was entered; and it is further

30 ORDERED, ADJUDGED and DECREED that the sum of \$250.00 be allowed and paid to the solicitors of the complainants instead of the retaining fee now allowed to counsel by statute, and that the

Final Decree.

same be included in the taxed bill of costs, to be collected with the other items of said bill.

E. R. WALKER,
C.

Respectfully advised,

ALONZO CHURCH,
V.-C.

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Approved as to form by

MARDER & OKIN,
Solicitors of Lammerts.

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NOTICE OF APPEAL.

Filed December 5, 1928.

IN CHANCERY OF NEW JERSEY.

10	<p><i>Between</i></p> <p>MAX GRAY and BLANCHE GRAY, his wife, and ARTHUR G. HILL and SARAH HILL, his wife,</p> <p style="text-align: right;"><i>Complainants,</i></p>	<p><i>On Bill, &c.</i> <i>Docket 69,</i> <i>page 439.</i></p>
	<p style="text-align: center;"><i>and</i></p> <p>LAMBERTUS LAMMERTS and ELIZABETH LAMMERTS, his wife,</p> <p style="text-align: right;"><i>Defendants.</i></p>	

20	<p><i>Between</i></p> <p>LAMBERTUS LAMMERTS and ELIZABETH LAMMERTS, his wife,</p> <p style="text-align: right;"><i>Complainants,</i></p>	<p><i>Docket 69,</i> <i>page 426.</i> <i>Notice of</i> <i>Appeal.</i></p>
30	<p style="text-align: center;"><i>and</i></p> <p>MAX GRAY and BLANCHE GRAY, his wife, and ARTHUR G. HILL and SARAH HILL, his wife,</p> <p style="text-align: right;"><i>Defendants.</i></p>	

The above-named Lambertus Lammerts and Elizabeth Lammerts, his wife (complainants in the above suit, in docket 69, page 426 and defendants in the above suit, in docket 69, 439),

Notice of Appeal.

hereby appeal from the final decree made on November 27, 1928, in the above-entitled causes (hitherto consolidated) and from the whole and every part thereof, to the Court of Errors and Appeals in the Last Resort in All Causes.

Dated: December 3rd, 1928.

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MARDER & OKIN,
Solicitors for said Lambertus Lammerts
and Elizabeth Lammerts, his wife.

AARON MARDER,
Of Counsel with Lambertus Lammerts
and Elizabeth Lammerts, his wife.

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

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AARON MARDER,
Of Counsel with Lambertus Lammerts
and Elizabeth Lammerts, his wife.

Service of within notice acknowledged this 3rd day of December, 1928.

STEIN, McGLYNN & HANNOCH,
Solicitors of Max Gray, Blanche Gray,
Arthur C. Hill and Sarah Hill.

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AMENDED NOTICE OF APPEAL.

Filed December 12, 1928.

IN CHANCERY NEW JERSEY.

10 *Between*

MAX GRAY and BLANCHE
GRAY, his wife, and ARTHUR
G. HILL and SARAH HILL,
his wife,

*Complainants,**and*

LAMBERTUS LAMMERTS and
ELIZABETH LAMMERTS, his
wife,

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Defendants.

On Bill, &c.
Docket 69,
page 439.

Between

LAMBERTUS LAMMERTS and
ELIZABETH LAMMERTS, his
wife,

*Complainants,**and*

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MAX GRAY and BLANCHE
GRAY, his wife, and ARTHUR
G. HILL and SARAH HILL,
his wife,

Defendants.

Docket 69,
page 426.
Amended
Notice of

40 The above-named Lambertus Lammerts and
Elizabeth Lammerts, his wife (complainants in
the above suit, in docket 69, page 426 and de-
fendants in the above suit, in docket 69, page

Amended Notice of Appeal.

439) hereby appeal from the final decree made on November 27, 1928, in the above-entitled causes (hitherto consolidated) and from the whole and every part thereof, to the Court of Errors and Appeals in the Last Resort in All Causes.

Said final decree was made by the Chancellor on the advice of Vice-Chancellor Church. 10

Dated: December 11th, 1928.

MARDER & OKIN,
Solicitors for said Lambertus Lammerts
and Elizabeth Lammerts, his wife.

AARON MARDER,
Of Counsel with Lambertus Lammerts
and Elizabeth Lammerts, his wife. 20

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

AARON MARDER,
Of Counsel with Lambertus Lammerts
and Elizabeth Lammerts, his wife.

Service of within notice acknowledged this 11th day of December, 1928.

STEIN, McGLYNN & HANNOCH, 30
Solicitor of Max Gray, Blanche Gray,
Arthur G. Hill and Sarah Hill.

PETITION OF APPEAL.

Filed December 15, 1928.

NEW JERSEY COURT OF ERRORS
AND APPEALS.

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Between

MAX GRAY and BLANCHE
GRAY, his wife; ARTHUR G.
HILL and SARAH HILL, his
wife,

Complainants-Respondents,

and

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LAMBERTUS LAMMERTS and
ELIZABETH LAMMERTS, his
wife,

Defendants-Appellants.

*Docket 69.
page 439.*

Between

LAMBERTUS LAMMERTS and
ELIZABETH LAMMERTS, his
wife,

Complainants-Appellants,

and

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MAX GRAY and BLANCHE
GRAY, his wife; ARTHUR G.
HILL and SARAH HILL, his
wife,

Defendants Respondent

*Docket 69.
page 426.*

*On Appeal
from the
Court of
Chancery.*

*Petition of
Appeal.*

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Petition of Appeal.

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

The petition of Lambertus Lammerts and Elizabeth Lammerts, his wife, the complainants in the second of the above-entitled causes, respectfully show that:

1. Petitioners find themselves aggrieved by a final decree made in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date November 27, 1928, in certain causes in said Court of Chancery, which were consolidated by order of the Court of Chancery, in one of which causes Max Gray and Blanche Gray, his wife, and Arthur G. Hill and Sarah Hill, his wife, were complainants and the said petitioners, Lambertus Lammerts and Elizabeth Lammerts, his wife, were defendants, and in the other cause wherein Lambertus Lammerts and Elizabeth Lammerts, his wife, were complainants and Max Gray and Blanche Gray, his wife, and Arthur G. Hill and Sarah Hill, his wife, were defendants, in these respects, to wit, that said decree adjudges that the mortgages in question are valid existing encumbrances as against the petitioners upon the lands and premises described in said mortgages and upon the personal property described therein and directs that said mortgaged premises and personal property be sold to raise and satisfy the sum of twenty-two thousand three hundred seventy (\$22,370.00) dollars, together with interest thereon and costs, which sums are adjudged to be due from said petitioners, and dismisses the bill of complaint in the suit wherein the petitioners are complainants.

And the petitioners appeal from the whole of the decree of the Chancellor which decrees as

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Petition of Appeal.

aforesaid, upon the ground that the same is erroneous in that (a) the contract pursuant to which the mortgages in question were given and said mortgages were secured from petitioners by said Max Gray, Blanche Grag, his wife, Arthur G. Hill and Sarah Hill, his wife, by false and fraudulent representations and that said contract should have been rescinded and set aside and the moneys paid out thereunder or by reason of same by said petitioners be ordered returned to them and that the mortgages and securities given by petitioners pursuant to said contract be cancelled and/or returned; (b) the entire transaction should have set aside pursuant to the prayer in the bill of complaint wherein the petitioners were complainants because of the false and fraudulent representations made by said Max Gray, Blanche Gray, his wife, Arthur G. Hill and Sarah Hill, his wife, or one or more of them, to the petitioners; (c) the bill of complaint in the suit wherein the petitioners are complainants should not have been dismissed because the transaction was induced by false and fraudulent representations made to the petitioners by said Max Gray, Blanche Gray, his wife, Arthur G. Hill and Sarah Hill, his wife, or one or more of them; (d) at the final hearing in the court below, the Court should have allowed further cross examination of the said Arthur G. Hill and Max Gray; (e) at the final hearing in the court below, the Court should have allowed further examination of both of the petitioners.

Petitioners therefore pray that the said decree of the said Chancellor may be wholly reversed, set aside and for nothing holden, and

Petition of Appeal.

that petitioners may have such other relief in the premises as to this court may seem proper.

MARDER & OKIN,
Solicitors for Appellants.

AARON MARDER,
Of Counsel with Appellants. 10

Service of the within notice acknowledged this 14th day of December, 1928.

STEIN, McGLYNN & HANNOCH,
Solicitors of Max Gray, Blanche Gray,
Arthur G. Hill and Sarah Hill,
Respondents.

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ANSWER TO PETITION OF APPEAL.

Filed December 21, 1928.

NEW JERSEY COURT OF ERRORS
AND APPEALS.

10	<p style="text-align: center;"><i>Between</i></p> <p style="text-align: center;">MAX GRAY and BLANCHE GRAY, his wife; ARTHUR G. HILL and SARAH HILL, his wife, <i>Complainants-Respondents,</i></p> <p style="text-align: center;"><i>and</i></p> <p style="text-align: center;">LAMBERTUS LAMMERTS and ELIZABETH LAMMERTS, his wife, <i>Defendants-Appellants.</i></p>	<p style="font-size: 3em;">}</p> <p><i>Docket 69, Docket 69-439.</i></p>
20	<p style="text-align: center;"><i>Between</i></p> <p style="text-align: center;">LAMBERTUS LAMMERTS and ELIZABETH LAMMERTS, his wife, <i>Complainants-Respondents,</i></p> <p style="text-align: center;"><i>and</i></p> <p style="text-align: center;">MAX GRAY and BLANCHE GRAY, his wife; ARTHUR G. HILL and SARAH HILL, his wife, <i>Defendants-Appellants.</i></p>	<p style="font-size: 3em;">}</p> <p><i>Docket 69-426. On Appeal from the Court of Chancery. Answer to Petition of Appeal.</i></p>
30	<p style="text-align: center;"><i>Between</i></p> <p style="text-align: center;">LAMBERTUS LAMMERTS and ELIZABETH LAMMERTS, his wife, <i>Complainants-Respondents,</i></p> <p style="text-align: center;"><i>and</i></p> <p style="text-align: center;">MAX GRAY and BLANCHE GRAY, his wife; ARTHUR G. HILL and SARAH HILL, his wife, <i>Defendants-Appellants.</i></p>	<p style="font-size: 3em;">}</p> <p><i>Docket 69-426. On Appeal from the Court of Chancery. Answer to Petition of Appeal.</i></p>
40	<p>The answer of Max Gray and Blanche Gray, his wife, Arthur G. Hill and Sarah Hill, his wife, to the petition of appeal of Lambertus</p>	

Answer to Petition of Appeal.

Lammerts and Elizabeth Lammerts, his wife, the above-named appellants.

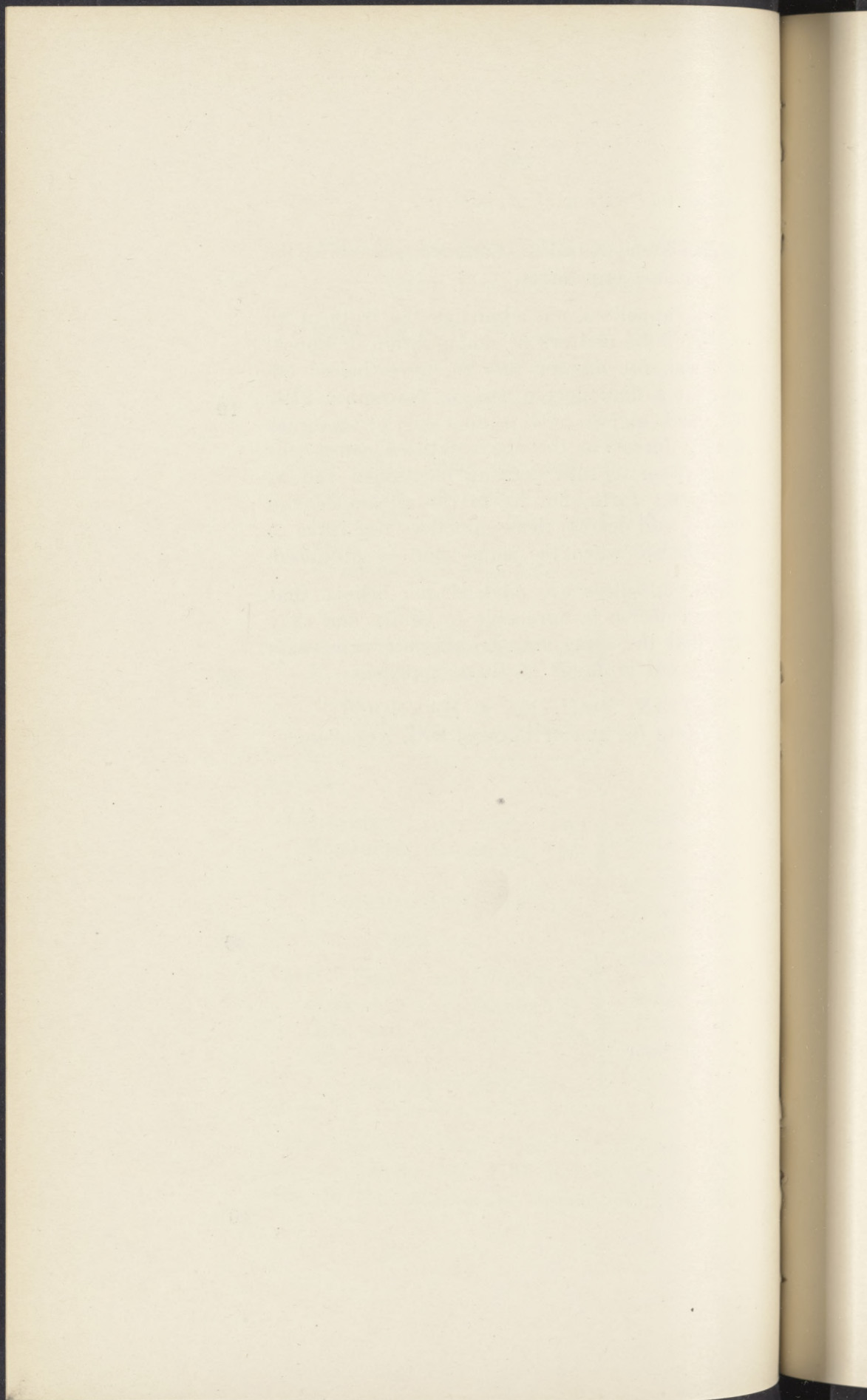
These appellees, not admitting the truth of all or any of the matters in said petition of appeal contained, for answer thereto, nevertheless admit that a final decree was on November 27th, 1928, made and directed in the Court of Chancery of New Jersey in the above-entitled causes for the purpose in said petition mentioned and as therein set forth, but as to the substance and form of said decree, these appellees beg leave to refer thereto when the same shall be produced. 10

These appellees are advised and believe that the said decree is agreeable to equity and they pray that the same may be affirmed with costs to be taxed in favor of these appellees. 20

STEIN, McGLYNN & HANNOCH,
Solicitors for and of Counsel with Appellees.

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781

78 FEB. T. 1929
78 1/2

Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

New Jersey Court of Errors and Appeals

Between

MAX GRAY and BLANCHE GRAY,
his wife, and ARTHUR G.
HILL and SARAH HILL, his
wife,

Complainants-Appellants,

and

LAMBERTUS LAMMERTS and
ELIZABETH LAMMERTS, his
wife,

Defendants-Respondents.

On Bill, etc.

*On Appeal
from the
Court of
Chancery.*

Between

LAMBERTUS LAMMERTS and
ELIZABETH LAMMERTS, his
wife,

Complainants-Respondents,

and

MAX GRAY and BLANCHE GRAY,
his wife, and ARTHUR G.
HILL and SARAH HILL, his
wife,

Defendants-Appellants.

BRIEF ON BEHALF OF APPELLANTS.

This is an appeal from the final decree (p. 189) of the learned court below directing the foreclosure of certain mortgages given by appellants to respondents on respondents' bill (p. 17) to foreclose and dismissing appellants' bill (p. 26) to set aside and rescind these mortgages,

the bond these mortgages secured and the entire transaction pursuant to which these were given, etc., because of false and fraudulent misrepresentations.

Statement of Facts.

By agreement in writing dated April 20, 1928 (Exhibit C. 1, p. 153, etc.) the respondents Max Gray and Blanche Gray, his wife, agreed to sell to the appellants the premises in question consisting of the hotel building and fixtures, furniture, equipment, etc., of the hotel situated in the Borough of Point Pleasant Beach (known as Hotel Carrolton), for the sum of \$55,000.00 to be paid for as follows:

\$ 500.00	by way of deposit
26,000.00	by taking the premises in question subject to a first mortgage held by the Monmouth Title & Mortgage Guaranty Co. and given by Max Gray;
6,000.00	by taking the premises subject to a second mortgage held by the Clinton Investment Co. and given by Max Gray and
22,500.00	the balance, by way of purchase money mortgage to provide for \$500.00 installments on account of principal every three months during the first year, \$1,000.00 on account of principal every three months during the second year, \$2,000.00 on account of principal every three months during the third year and the balance at the end of the third year. Said balance of \$22,500.00 was further to be secured by chattel mortgage on the furniture and equipment and also by mortgage on the East Orange property owned by the appellants.

The agreement was closed on or about May 1, 1928 (see closing statement on p. 185), and the appellants executed and delivered to the respondents the bond, the mortgage covering both the hotel property and East Orange property and the chattel mortgage (Exhibits C. 2, 3 and 4, pp. 162-183).

On August 18, 1928, respondents filed their bill to foreclose the mortgages in question (p. 1) and also on August 18, 1928, appellants filed their bill to rescind and set aside the entire transaction on the ground of misrepresentation, etc. (p. 26).

Paragraphs 5 and 6 of appellants' bill set forth the representations and the falsity thereof relied on for the setting aside of the transaction, and said paragraphs read as follows:

"5. For the purpose of inducing the complainants to purchase said property said Max Gray and Blanche Gray, their servants and agents, particularly Arthur G. Hill, a real estate broker, with offices in the City of Newark, stated and represented to complainants that the operation of said premises as a hotel, did, in the past and for several years immediately before the sale, bring in at least the sum of Twenty-five Thousand (\$25,000.00) Dollars per season by way of gross receipts, that Max Gray received at least the sum of Six Thousand (\$6,000.00) Dollars annually, by way of rent for said premises; that Hill made about Ten Thousand (\$10,000.00) Dollars clear profit from the operation of said premises as a hotel some five years ago when he owned the property; that Hill and Gray promised to give the complainants a list of Hill's clien-

tele and Hill's receipts and disbursements while operating said hotel, which also would prove Hill's alleged profit of Ten Thousand (\$10,000.00) Dollars and that the operation of said premises as a hotel by complainant would bring in gross receipts of about Twenty-five Thousand (\$25,000.00) Dollars per season and that complainants could pay off the mortgages and own the hotel free and clear in about three years from the profits of the hotel.

6. The statements made by said Max Gray and Blanche Gray and their servants and agents, particularly Arthur G. Hill, were false and untrue in the following particulars:

(a) the gross receipts in the past never amounted to Twenty-five Thousand (\$25,000.00) Dollars per season, and as a matter of fact, amounted to much less per season;

(b) the gross receipts amount to much less than Twenty-five Thousand (\$25,000.00) Dollars per season;

(c) the gross receipts of complainants from May 1, 1928 to August 15, 1928 amounted to but the sum of Four Thousand One Hundred and Nineteen Dollars and Twenty-five Cents (\$4,119.25);

(d) complainants could never pay the mortgages on said hotel out of the receipts or profits;

(e) the gross receipts for the season of 1928 will amount to much less than Twenty-five Thousand (\$25,000.00) Dollars;

(f) said Gray never received the sum of Six Thousand (\$6,000.00) Dollars annually by way of rent for said hotel prem-

ises; said defendant Hill never made the sum of Ten Thousand (\$10,000.00) Dollars clear profit when he operated said hotel premises;

(g) said defendants Hill and Gray never intended that Hill give to complainants a list of Hill's clients and Hill's receipts and disbursements while operating the hotel premises."

Appellants filed their answer to the foreclosure bill (p. 9) and set up therein the same facts set up in their bill to rescind, etc.

At the same time that respondents' bill to foreclose was filed, respondents filed a petition for the appointment of a receiver for the collection of the rents of the hotel property (p. 16) and obtained an order to show cause thereon (p. 24) and also at the same time appellants obtained an order to show cause (p. 54) why they should not be permitted to operate the hotel premises without prejudice to their right to relief. On September 4, 1928, by way of hearing on said two orders to show cause, an order was made consolidating the said causes (p. 56), and amongst other things, ordering that appellants should remain in possession of the hotel premises without prejudice to their right to relief. The case was heard by the learned Vice-Chancellor below (p. 58) on October 22, 1928, after the hotel had closed for the summer season of 1928.

**Summary of Evidence and Arguments
as to Facts.**

Appellants' counsel will here attempt to summarize the testimony and also in most instances quote therefrom instead of summarizing same in order to give the true picture. It is respectfully submitted that a reading of the entire testimony will demonstrate the justice of the appellants' contentions and that the said testimony demonstrates appellants' right to equitable relief.

(A) TESTIMONY OF ELIZABETH
LAMMERTS:

(pp. 69-91)

Mrs. Lammerts testifies that she is the wife of Lambertus Lammerts, and that she lives at 60 Lenox avenue, East Orange, which is a one-family house, and that she has some roomers there, and that she is forty-three years of age, and that her husband is fifty years of age, and that up until May 1, 1928, she did nothing but attend to her duties as housewife, and that her husband repairs watches; that both she and her husband were born in Holland and are in this country about eleven years (pp. 69-71). She went to see Hill in response to an advertisement of the respondent, Hill, in the Newark Evening News on April 7, 1928, reading as follows:

"Wonderful opportunity; seashore hotel to lease; Point Pleasant, New Jersey; reasonable rent; inquire Hill, 25 Springfield avenue, Mitchell 5325."

Her testimony about her first conversation with Hill is as follows (from p. 72):

"Q Now, did you see Mr. Hill as a result of this advertisement? A Well, I

called him up before and asked him the price of the rent of that hotel and he could not tell me over the phone, so he asked me to come up to his house the next day and see him about it, so I went to his office instead and asked him about the hotel, the price.

Q Who was there? A Mr. Hill and I.

Q Just you two? A Just us two and he said, well, he don't know exactly the price. Well, I told him, I said, 'We haven't got this money. If you can figure it this way that, you know, we rent the hotel and pay you in the time we are working in it, I like to do it that way.' 'Well,' he said, 'haven't you got any money?' I said, 'No, we haven't any money.' He said, 'Have you any property?' I said, 'Well, we have a home where we live.' 'Why,' he said, 'you own that?' I said, 'Yes.' 'Well,' he said, 'you know, I tell you something.' He said, 'the hotel is a wonderful proposition and it does \$25,000.00 business a year,' he said, 'and I think you are just the right person to rent that hotel and you practically don't need any money,' he said, 'the hotel belongs to Mr. Gray, and that is a builder, and Mr. Gray is looking for apartment sites.' He said, 'Maybe we can exchange that way so you don't need any money and will clear up a lot out somewhere and if you come to get like that, I introduce you to Mr. Gray,' he said, 'you will make a lot of money.' So I said, 'Well, I don't know if we can do that. I have to see my husband first.' 'Why,' he said, 'when is your husband in?' So I said, 'Well, he is always in around eight o'clock at night.' And so he came to see us, I guess a couple of days after and have a talk with my husband and me."

He then gave her the prospectus (introduced in evidence, Exhibit D. 2, p. 184) which *glowingly* describes the hotel property; and shortly thereafter the parties went down to view the property at Point Pleasant. Her testimony from pages 75, 76 and 77 is as follows:

(p. 75)

“Q Well, what was said to you, if anything, by Messrs. Gray and Hill in connection with the rent? How much could be taken in and so forth? A There was to be taken in every year. There was a business of \$25,000.

Q Did Gray tell you that? A Mr. Gray and Mr. Hill.

Q And did they tell you anything about how much Hill made when he ran the hotel?

A Mr Hill—(interrupted).”

(p. 76)

“The Witness: Mr. Hill told me that when he rents a hotel he makes \$10,000 clear profit.

Q And did Mr. Gray tell you how much he rented the place for? A What?

Q Did Mr. Gray tell you how much he rented the place for, as a rule? A And he rented the place every year for sixty-five hundred dollars—every year.”

(p. 77)

“Q Now, did Mr. Gray or Mr. Hill tell you anything about help in connection with the past business done by them, bills, clientele and so on? A Yes; Mr. Hill told me he will show me all the papers, all the bills. How much business he did and what the property was making, and he would give me the register of the hotel, that they could write to all his clients who were there that year and it will help me along in the business. That is what he promised.”

They operated the hotel from June 15th to September 4th (p. 80); the receipts were about \$6,000.00. Her son Charlie kept the books (p. 81). They advertised the hotel extensively (p. 81) also (see Exhibit D. 4, p, 187) showing advertisements in various cities in New York, Pennsylvania, Maryland, New Jersey, etc. On p. 82 she testifies as follows:

“Q Did you try to get from Mr. Hill the information you said before he promised, which constitutes the clientele and the people he did business with? A No, sir; he never give me any papers.

Q Did you try to get that information from him? A I tried to get it every day and every day he put me off with something else. One day he was busy; another day he gave somebody all the leaves off his register and then he took, well, he put it off every day, so, at last, he give me a sheet of paper with all the names on it, I can get the groceries, meat, fish and so on, and that is all ever he showed to me and the reason was he said that if he gives it, if he hands out those papers, he is afraid he has to pay it over again, that they were getting lost. That is the answer what he give me.”

It is respectfully submitted that the testimony as a whole of Elizabeth Lammerts, indicates that she is a woman with very little, if any, experience in business dealings, knows nothing about values of property and real estate or of hotel properties and that she relied upon the false representations of respondents, and that she was induced by the false representations of respondents to make the purchase in question, and that the representations were false and untrue and known to respondents to be false and untrue.

(B) TESTIMONY OF LAMBERTUS

LAMMERTS:

(pp. 91-101)

Mr. Lammerts testifies that he is the husband of Elizabeth Lammerts, he is fifty-two years of age and that he lives in East Orange with Mrs. Lammerts; he is a watchmaker, and was born in Holland, and is living in this country about eleven years. Parts of his further testimony on pp. 92-95, 97-98, 101 are as follows:

(p. 92)

“Q What did he say about this wonderful proposition? A Well, he said that the hotel in Point Pleasant has got a fine reputation, it was an up-to-date hotel, it was all equipped and ready to operate and that it did a twenty-five thousand dollar business a year.

Mr. McGlynn: It did what?

The Witness: That there was a twenty-five thousand dollar business in that hotel and it was equipped and ready to operate.

Q Did he say anything, how much money he made while operating the hotel? A Yes, he told me he never had run a hotel before and he even make ten thousand dollars there.

Q What hotel have you in mind, Mr. Lammerts? A The hotel in Point Pleasant.

Q And did Mr. Hill say who ran that hotel? A He have run it himself.

Q How much did he say he made out of it when he ran it? A He said he made ten thousand dollars clear.

Q Now, was anything said at that time about what they got by way of rent out of the hotel, that is, the rental? A Yes; they told Mr. Gray they received every year six thousand five hundred dollars rent out of this place.

Q You did not go down to Point Pleasant to look at the property, did you? A Yes, I went down there.

Q And the first time they went down? A No, in the later.

Q When did you go down? A I went down with my wife and my son and Mr. Hill and Gray.

Q When? A I don't know exactly when that was. It was some time around April, I think.

Q I mean, was it before the signing of the contract? A Yes, it was before the signing.

Q And what was said then before the signing, about how much the property would bring in, the receipts? A Twenty-five thousand dollars it will bring at least. He said

this hotel have always done twenty-five thousand dollars *business* if you are able to get this property clear in about three years' time.

Q Who said that? A That is what Mr. Hill.

Q And was Mr. Gray present? A Mr. Gray was there and he admitted that that was the truth.

Q And did Hill say anything about how much he made in running the hotel when Gray was there? A Yes, sir.

Q What did he say? A He told him he made ten thousand dollars there.

Q And did Gray say anything about how much he got by way of rent out of the place? A Yes. He always got six thousand five hundred dollars rent out of it.

Q Well, when did you agree to buy the property? A Well, we agreed in April to buy the property.

Q You entered into this contract on April 20th? A Yes, sir.

Q And it was closed on May 1st? A Yes, sir.

Q Now, did you ever ask, or—just a moment—did Hill make any other promises to you? A Yes, sir.

Q By way of helping you out? A He make promises about giving me all his bills and about the business he did in the hotel.

The Court: Well, did you believe he would furnish you these bills and figures about the hotel?

The Witness: Yes, I believed.

The Court: Well, then, why did you take the property until he did furnish them?

The Witness: Well, he—I don't—I really can't say, because I believe him, and I was always waiting for those papers and they never came. He put me off from one day to the other.

The Court: So, without waiting for the papers you signed the contract and took title?

The Witness: Yes, sir.

Q Did you ask Mr. Hill for these papers before the execution of the contract? A (Witness nods yes.)

Q Before you signed the contract? A Yes. He said he shall deliver to me and when we asked him to come across with those papers he said, 'Well, I am more or less afraid to give them.' "

(pp. 97-98)

"Q How long before you came to my office did you find out that Hill had not made ten thousand dollars a year? A Well, that was when we opened the place, the first two weeks we see already there was no business.

Q The first two weeks? A Yes, two weeks.

Q But you continued to try? A But we continued to try, because Mr. Hill, he says to me, 'June doesn't mean anything, but always the month of August, that makes everything right.'

Q That is what Hill told you? A Yes.

Q The month of August makes everything right? A 'The month of August makes everything right,' yes, and of course it was not true.

Q How much did you take in in the month of August, you don't know, do you? A I really don't know."

(p. 101) On cross examination.

"A I will tell you this way: I talked about to Mr. Hill, I told him, 'There is no business in this place.' He said, 'Never mind those two months. August is the month and August makes everything good,' and that is why I paid the payment to him.

Q That is why you made the payment on August 2nd? A Yes, sir."

It is respectfully submitted that his testimony indicates that he also was a man with no business experience, and knew nothing about the value of real estate or hotel property and relied upon and was induced by the false representations of the respondents to enter into the transaction in question, and further, to attempt to work the situation out; that the representations were false and untrue and known to respondents to be false and untrue.

(C) TESTIMONY OF CHARLES LAMMERTS:
(pp. 101-108)

Charles Lammerts testifies that he is twenty-three years of age and that (pp. 102-103) as follows:

“Q Well, did Mr. Hill say anything about the hotel at that time? A Mr. Hill told us that it was a wonderful opportunity for us people and it was a paying proposition, that the hotel had always taken in twenty-five thousand dollars gross and he thought, in his opinion, that my mother was a wonderful business woman and she was just the party to run a hotel like that.

Q Did he say anything more at that time? A Well, he told us that he was going to take us down to the hotel and show it to us.

Q And did you go down? A We went down.

Q With Mr. Gray? A With Mr. Gray.

Q And Mrs. Hill and your mother? A Mrs.—there was Mrs. Hill and my mother.

Q Well, what was said during that trip, during the conversation? A Why—

Q (Continuing) By Mr. Gray and Mr. Hill about the hotel? A Why, they were telling us all along what a wonderful proposition it was and that the hotel always did twenty-five thousand dollars business and that they figured that it was in first-class

condition and ready to operate and he said too that, 'You are an accountant and you are very good at figures, you can take care of the books, and,' he said, 'your sister can live in the hotel and your father, and,' he said, 'I, personally, I ran the hotel and I made ten thousand dollars clear,' he said, 'but I didn't have as much help, I mean, your whole family could work in the hotel and you have the advantage over us,' he said, 'you figure with a family all together, you can make more money than that, because you will save it on help.'

Q Did they say anything about how much the rent was for the place in the past? A Yes, he said he always received sixty-five hundred dollars rent from Mr. Underhill, and that Mr. Underhill—that is, he always received sixty-five hundred dollars rent from Mr. Underhill."

On p. 104 he testifies that the income for the summer season was \$6,677.39, and further on pp. 105-106 he testifies as follows:

"Q Well, were you present when a conversation was had between your father and Mr. Hill, some time in August, which your father testified to before? A Yes, sir, Mr. Hill and Gray; they come down and they demanded money, the interest.

The Court: Were you there?

The Witness: Yes, your Honor, I was there.

The Court: All right.

The Witness: They demanded the interest and—Yes, sir, they demanded the interest whereupon we stated that we did not take in the money which they told us the place would take in. We said, 'But we don't understand, Mr. Hill, how we are ever going to pay all our obligations when the hotel does so little business.' So my mother said—my mother and father told them that Mr. Hill had previously stated that the hotel would do \$25,000. business

and that at the beginning of August, about August 1st we had taken in approximately \$4,000 so Mr. Hill said, 'Well, Mr. and Mrs. Lammerts, don't be afraid,' he said, 'don't count on June and July,' he said, 'August is your big month,' he said 'August is considered the biggest month in the shore,' he said, 'that is the time when you make all the money,' he said. 'Most hotels along the shore here during June and July, they operate at a loss, but during August they make up for everything and they make up their profit.' "

(D) ALBERT E. HERBERT on pp. 108-110 testifies:

He is in the fish business in Point Pleasant which is his home town and that he has lived there for twenty-seven years, and that he supplied fish to the Hotel Carrolton in 1927 and 1928, and that he was at the Hotel Carrolton about twice a day during the summer season of 1928, and that the average number of guests at the Hotel Carrolton was about the same at said hotel for about the last four or five years every summer.

(E) GERALD H. UNDERHILL, (pp. 111-113) testifies that he ran the Hotel Carrolton in 1925-1926-1927 under lease from Mr. Gray, and that in 1925 the rent was \$5,000.00 and in 1926 it was \$6,500.00 and in 1927 it was \$4,000.00; that in 1925 his receipts were \$13,199.00 and in 1926 his receipts were \$8,955.00 and in 1927 his receipts were \$5,570.94.

(F) TESTIMONY OF RESPONDENT ARTHUR G. HILL on pp. 115-136:

He testifies that he ran the Hotel Carrolton in the summer of 1923; that he is in the real estate business and that he inserted the advertisement

that the property was for rent, and that he was acting as agent for Gray, the owner.

On pp. 118-119 he testifies on direct as follows:

“Q Did you ever, on any of these occasions, state that the operation of these premises as a hotel by the Lammerts would bring in gross receipts of about twenty-five thousand dollars per season and would pay off the mortgage and they could own the hotel free and clear in about three years from the profits? A *No; I never said it. It would be impossible on the figures. (Italics ours.)*

Q *I am not interested in arguing.* I want to know whether you did or did not make any such representation. A No; I never did. (Italics ours.)

Q Did you ever hear Gray when he was with you in their presence say anything to you about the question of how much rent he got or what his leases were on the hotel? A *Yes, he spoke about—the thing that Gray always impressed on them was: ‘I am not selling you a business; I am selling you the property and the ground,’ ‘and that is what I told them. And he said, ‘Mr. Underhill paid me there, one year, I believe it was either six thousand or sixty-five hundred and the other year five thousand,’ and just talking about that, but he impressed them so forcibly, did it several times, tried to—he said, ‘I am not selling the business, understand, Mrs. Lammerts, I am only selling you the property and the ground.’ And she said, ‘Why, I am a hotel woman; I know about that.’ (Italics ours.)*

“Q Were you at the closing of title? A Yes, I was at the closing of title.”

On pp. 120-122 he testifies as follows:

“Q You went back again after July fourth, later in the season? A I did, in the second Sunday after that we were back again over the week-end.

Q And did you find things the same as they had been before, or what? A No; we

arrived there on Saturday night and Charlie said, 'Now, we are kind of tied up a little but,' he said, 'We have more guests than we expected and you will have to wait a while.' I said, 'All right.'

Q Charlie Lammerts, you mean, the son?

A Yes, Charlie Lammerts, the son. That was about twenty minutes after six. He said, 'If you wait a little while it will be better, so I waited until twenty-five after seven and I said, 'Is it all right?' And he said, 'Yes.' We went in there. I said to him in the meantime, 'How about the chef? Have you got the same chef?' I had gone and asked Jean to stay. I said, 'Jean, why don't you stay?' She said, 'I would like to, but I have had trouble with the head waiter.'

Q Never mind about that. What did you find about the character of the rooms and so forth on the second occasion? A The rooms were always dirty, full of cobwebs, so I told—Mr. Lammerts told me, 'Mr. Hill, I would like you to mention if there is anything right or wrong with the hotel,' so I did mention it and Mrs. Lammerts took exception to it and I spoke about the chef, 'Have you got the same chef?' She said, 'No, we changed the chef and got a better one than the one we had.' I said, 'That is good.' So we went into the meals and certainly the—they had just pork chops for dinner and we got those and they were black and my little daughter couldn't eat either of hers, so I had to give her one of mine and the others were very black and there were other people in there and they were dissatisfied, so I kind of laughed about it.

Q Did you stay there? A We stayed there the next day and the meals were very bad; in fact, the next day some of the guests said, 'Your service is so bad and the meals so rotten, we are going to get out of here.'

Q What did you do; did you stay there?
 A I stayed there until noontime and I said, 'I guess we will beat it.' We stayed Saturday night, Sunday and Sunday noon.

Q And then you left? A And then we came away, although we had intended to stay that night."

On page 124 he testifies as follows:

"Q What was the first you heard about misrepresentation with regard to anything?
 A Why, when this foreclosure was filed and you told me that (they) claimed that."

And later on page 124:

"Q And did you actually meet for that purpose? A We went there and we waited from about ten o'clock in the morning to about three o'clock in the afternoon, when Mr. O'Hagen of Cook & Stout's received a telephone message from Okin & Marder in Newark saying that the Lammerts would not be down, that *they were going* to file a bill to try and rescind the contract." (Italics ours.)

On page 125 on cross examination he testifies as follows:

"Q Didn't you say a moment ago that the first time you learned of it was when Mr. McGlynn told you about it? A Yes, sir; that is when I learned it.

Q Didn't you say that a moment ago? A I did.

Q Didn't that happen after this telephone conversation that you talk about from my office down to O'Hagen's office? A I did."

On page 126 he testifies as follows:

"Q How much did you take in? A I never knew exactly what I did take in.

Q That is enough. Did you make any money that summer? A We made some money, yes.

Q How much money did you make? A Didn't—never knew exactly, because I had some money I put in from rent and had put

in my bank and drew in and out and never kept an exact bookkeeping statement on it.

Q How do you know whether you made money or not? A Because I knew approximately that I had—I was making money from the rent. You see, I ran out because I being in the real estate business, being a real estate operator, buying and selling property, I had taken this hotel in on a deal and my plan was to just run it, to keep it running as a hotel and not rent it to the same—(interrupted).

Q So you could sell it to somebody? A So I could sell it to somebody.

Q You had title in 1923? A Had title in 1923.

Q And you sold it to whom? A I sold it to Max Gray.

Q And was it an out and out sale or was it a trade? A No; it was an exchange made of an apartment house from out in Montclair, a large property, and I traded this in.

Q You told Gray you would get rid of it for him, didn't you? A No, I didn't tell him I would get rid of it for him.

Q What? A Told him—no, I didn't tell him I would get rid of it. I told him he might be able to sell it or he could—(interrupted).

Q That maybe you could get rid of it? A That maybe I can sell it, because I was in the business."

On pages 127-131 he testifies as follows:

"Q You made money that year, didn't you, all around in your business? A Yes, I made money.

Q And you paid an income tax that year? A Yes.

Q Where did you get your information for it? A Well, I figured out at that time as close as I could. I kept a general record, but I did not keep a real double entry book-keeping account.

Q Well, where is your general record? Have you got it here with you? A No; I haven't got anything here.

Q Have you got it anywheres? A I don't know whether I can—I don't believe I saved that any more, because it has now been six summers ago.

Q Ancient history, isn't it? A It certainly is.

Q Now, you testified on direct that you never made any statement or representation that they were buying a business, all you told them was they were buying a piece of ground and this building on it; isn't that so? A And the furniture.

Q You impressed that on them— A Ground, building and furniture.

Q You impressed that on them time and— A Yes, I told—

Q —time again, and Gray told them that, too, isn't that so? A Yes.

Q How, then, did you come to insert an ad like this, 'Wonderful opportunity; seashore hotel to lease, Point Pleasant, New Jersey, reasonable rent. Inquire Hill, 20 Clinton street, Mitchell 5325'? A Well, Gray had been talking about renting the hotel and he said to me, rent it or sell it, but the time was getting a little bit late for selling, he thought, and he said, 'Well, Hill, if you can rent it, rent it.' So that was the idea that—to either sell or rent; he would rather sell, but there didn't seem to be any prospects.

Q Much rather sell, wouldn't he? A Eh?

Q Much rather sell, wouldn't he? A I guess he would, I don't know.

Q A person leasing would not be interested in the ground and building simply as a building, they would be interested in the proposition as a business, wouldn't they? A If they wanted to buy—

Q Answer my question. A Leasing, no, not so much.

Q If a person wanted a lease, he would be interested in it not as a piece of ground with a house on it, he would be interested

in it as a business proposition, would he?

A Yes.

Q Isn't that so? A That is so.

Q If what you said before in direct examination is true, how come that you get up so wonderful a prospectus reading, 'Capacity 200 guests'? A Well, that shows the size of your building there; it says, '61 sleeping rooms, 14 baths.'

Q That is all it does show, the size of the building? A Well, it shows the capacity.

Q Yes. A What they are buying; they want to know how big the hotel is; that is the general description.

Q Did you make any representation there to Mr. and Mrs. Lammerts at any time as to how much they could take in per annum? A No, no.

Q Just answer my question.

The Court: He said 'No.'

The Witness: I said, 'No.'

Mr. Marder: And then he goes on to talk.

The Court: Well, he oughtn't to.

Q Not one word was said by you as to how much was taken in per annum, was there? A Not about what they would take in. We may have said something about maybe if the rooms were rented, or something like that, how much do you think—she may have asked a question like that, but I did not attempt to go into that at all.

Q What did you tell him?

Mr. McGlynn: Let him answer the question.

The Witness: I always told Mrs. Lammerts, 'We are not going into that. If you decide—'

Q You are evading now. A I am trying to tell you.

Q You said that once before. What did you tell her? If the rooms were rented—finish that. A She asked me that question

and I told her we can't go into that so much, 'If you are now planning to buy; I am selling you the building and the furniture and the ground.'

Q Isn't it a fact that when Mrs. Lammerets first came to you she wanted to lease it and you first inquired as to whether she had any property, and then when you ascertained she had this East Orange property you said, 'No, it is not for lease, it is for sale?' A No.

Q Isn't that so? A No, that isn't so.

Q Isn't it a fact you figured out that twenty-five thousand per annum for her by saying that he had two hundred rooms, or, rather, capacity for two hundred guests and for the season— How does that go again? One hundred guests a week—you can do it better than I can—a hundred guests a week at twenty-five dollars apiece for ten weeks, that makes twenty-five thousand dollars, doesn't it? A No. I never said that because I wouldn't talk about twenty-five dollars a week because I always got more than that.

Q You got more than that? A I got more than twenty-five dollars a week per guest.

Q How much did you get? A There were only three single rooms there. We got thirty dollars a week.

Q Per guest? A Per guest per week. And the rest we rented double. The top floor, that is what we went into. She asked me what we had gotten. We got fifty-five to sixty dollars on the third sleeping floor for two people with meals; the second sleeping floor with running water we got sixty-five and seventy dollars a week; the first sleeping floor with running water in the room we got sixty-five and seventy dollars for; and those with private baths we got eighty to ninety dollars a week for two and when we would have four we would rent two rooms and bath for around one hundred

fifty to one hundred sixty dollars. That was what I told her.

Q You told her all that? A I told her that.

Q But you did not tell how much you made per annum? A No.

Q Did you tell her how many guests you had on an average per week? A You couldn't average. I didn't tell—(interrupted).

Q What did you tell them? A No, I didn't tell them on the average.

Q Didn't you tell her she would easily have one hundred guests on the average per week? A No.

Q Well, you have written right across the top of this glowing prospectus, 'Two hundred guests.' A Yes."

On pp. 132-133 he testifies as follows:

"Q How much money did she tell you they had when you were talking about money? A You are trying—you want me to tell you just how the conversation come and what she said?

Q No, I want— A She told me, 'Mr. Hill,' she said, 'never mind about the money, just get that hotel for me just as cheap as you can; I have money and my son has money.'

Q How much did she tell you—(interrupted). A She told me—she didn't tell me exactly, but she said, 'Never mind about the money, we have money and we can put a big mortgage on our house and get money, and Charlie has two or three thousand that he will put in,' that is what she said.

Q When you finally came to close, Mr. Gray and you were satisfied with taking a deposit of five hundred dollars? A Yes.

Q Take the balance by way of a second mortgage? A No. I will tell you—

Q Or third mortgage? A Well, she came down, she wanted to—she was talking about trading her house; that had come in some way about trading the house.

Q Didn't you suggest a little bit of trading? A Yes, I might have started that about trading, but Gray didn't want to trade. He said, 'No, I will take—' because in real estate we try money first and he said he didn't want to trade, but he might take that in as collateral. I put it up to Mrs. Lammerets and she said, well, that she thought it would interest her doing it that way.

Q You know what the taxes are on that property, don't you? A Approximately. They were about a thousand dollars a year.

Q And the insurance comes to about how much? A Well, I don't know the exact amount of insurance on the mortgage ahead of ours, but I had Mr. O'Hagen—(interrupted).

Q It comes to about three hundred some odd dollars? A Three hundred and thirty was the fifteen thousand covering our mortgage, see, fifteen thousand.

Q Insurance down there is pretty expensive, isn't it? A It is, it comes to more than three hundred.

Q How about the other— A It was on the mortgage head of ours, so they raised it, made it about a thousand dollars.

Q Thousand dollars per annum? A If it was paid, yes.

Q Now, according to your contract she was supposed to pay the first year fifteen hundred, that is correct, isn't it? A She was to pay five hundred the first of July.

Q And then five hundred? A And then five hundred every three months the first year.

Q That is two thousand dollars during the first year? A Yes.

Q Interest in the meantime on the fifty-five thousand dollars amounts to thirty-three hundred per annum, doesn't it? A Yes; although she didn't have fifty-five thousand interest, because there had been some disbursements taken off.

Q I know, but it would come to thirty-three hundred per annum? A Somewhere around there.

Q So these items totalled the \$7,300 so that the first year—(interrupted)

The Court: Now, isn't that a matter of argument?

Mr. Marder: I am going to ask him how he came to sell the property to these people and take so little money back without representing to him that he took in twenty-five thousand dollars.

The Court: No. I won't allow that."

On pp. 134-136 he testifies as follows:

"Q You had been trying to sell it ever since you traded it to Gray, hadn't you? A I had four or five deals on, he wouldn't take it. I could have sold several times, but he wouldn't take the deal.

Q You have been trying to sell it and your answer is Yes? A My answer is Yes, yes.

Q How long have you been in the real estate business, Mr. Hill? A I have had an office of my own since—let's see, five years this October. Before that I was operating, buying and selling before we had to have any license at all, buying and selling for myself, besides being connected with the Pillsbury Flour Company.

Q Then you have been in real estate transactions for how long a time? A Probably eighteen or nineteen years.

Q You have had quite some experience in real estate transactions, haven't you? A Well, yes.

Q Well, now, you had most of your negotiations with Mrs. Lammerts, didn't you? A Well, Charlie was there—no. The whole family seemed to get into it. They were all there usually, if they were not there just then, they came in later, like if we were at the house and Mr. and Mrs. Lammerts were there and Charlie came in—(interrupted).

Q Did they look like experienced real estate people to you? A Why, I didn't go into that about whether they were experienced real estate people. She said she had owned other property and she knew about running a hotel.

Q Is that what she said, she knew about running a hotel? A Yes, she knew about running a hotel.

Q Did she ever tell you she ran a hotel? A No; she told me she ran a boarding house.

Q A what? A A boarding house.

Q Where did she say she had been running a boarding house? A She said she ran a boarding house at 16 Lenox avenue, and they were also going to get a hotel in Florida—told me that.

Q Do you know this house, 16 Lenox avenue? A I do.

Q How large a house is it? A It is about ten rooms. She wanted a mortgage on it; I got her a mortgage on it.

Q How many bedrooms? A I never have been upstairs, but in making that application for it—I got her a mortgage from the Prospect and Watsessing Building and Loan. I remember there was—I believe there was eleven or twelve rooms altogether that she stated."

It is respectfully submitted that Hill's testimony on both direct and cross examination stamps him as a glib and evasive witness; he would not directly answer questions on cross examination; he would go trailing off into other matters; he tried again and again, in a small and mean way, to color the situation; that his story of his and Gray's alleged insistence upon impressing the Lammerts that they were selling land, building, and furniture and not a business, is absolutely unworthy of belief and stamps his entire story of no representation as a fabrication. He is a man of experience in real estate

matters of this kind and of other kinds. He is an agent, and unquestionably glowingly painted the money-making possibilities of the hotel to the appellants, who were induced by these false representations, made in the presence of Gray and with Gray's acquiescence, to enter into the transaction in question.

It will be noted that he nowhere denies that he, in Gray's presence, told appellants, when they were discouraged, to wait and that the month of August would make up for everything. His testimony clearly indicates that he was a very facile and loose talker and that he could easily impress and sway people of the type of the appellants, and of all this Gray took advantage.

(G) TESTIMONY OF SARAH HILL, wife of respondent, Arthur G. Hill (pp. 136-137).

Mrs. Hill first denies that anything was said about how much Hill got from his roomers, and but that nevertheless Hill told the Lammerts what his rates were.

It is submitted that her testimony is not worthy of any credence.

(H) TESTIMONY OF BLANCHE GRAY, wife of respondent Max Gray (pp. 137-139).

Mrs. Gray went along to show the hotel to appellants and was careful enough to take inventory of the contents; that she heard nothing about representations whatsoever. She did not even hear anything about the rates.

It is submitted that her testimony is not worthy of credence.

(I) TESTIMONY OF MAX GRAY, pp. 139-144:

Gray denies any representations whatsoever. His cross examination on p. 143 is partly as follows:

“Q Did you give them any particular argument why they did not pay more? A I didn't give any argument, I didn't care whether they took the hotel in it or not, because I didn't sell them no business, I sold them property.”

It is submitted that this answer of Gray is absolutely improbable and stamps his entire testimony as unworthy of belief. He intimates thereby and probably intended to say that he was selling so much land and building only. It is potent that a building, especially built for hotel purposes, has value only if the building can be used for hotel purposes and its value, either for sale or rent, is based on the amount of the hotel business that can reasonably be expected to be done therein, and if a person testify that in selling a hotel he merely sells so much building, he immediately stamps himself as unworthy of belief. Even the unsuspecting Lammerts thought they sufficiently protected themselves by inquiring as to the rentals paid, the business done, and by getting promises, etc. Surely, a man of Gray's experience in the business world would realize the truth of the above.

He testifies on p. 142 that the Lammerts never even asked him what rents he took in in the past; Gray testifies to the contrary (p. 119, ll. 1-15); which again stamps Gray as unworthy of belief.

Gray was present at almost all of the conferences and he was content to rely upon the glib Hill to put the deal over so that he could take from the Lammerts whatever cash they had;

and so that upon the consequent foreclosure (which he anticipated when the contract was closed) he and Hill could take from them all of their property consisting of their equity in their East Orange home and thus strip them of everything.

(J) WILLIAM J. O'HAGEN (pp. 144-147) testifies that he was the attorney in whose office the contract in question was drawn and on pp. 146-147 he testifies as follows:

“Q Who did most of the talking? Did Lammerts say much? Who first outlined the terms of this agreement? A Mr. Hill, as I recall it.

Q Mr. Hill? A Yes.

Q And did Gray have anything to say? A Well, yes, I guess he did. They all talked.

Q Well, I know, but— A Lots of it.

Q Who seemed to know more about what was to go into the agreement than anybody else?

Mr. McGlynn: Object.

The Court: I will sustain the objection.

Q You say Hill first outlined the agreement to you? A That is my recollection, yes.

Q And then Gray had something to say? A I think the way of it was that he told me what it was, and then to fix the things in my mind I asked them questions as to what they were going to do.

Q Who did you ask the questions of, all of them? A I would ask the one party first and see if the other party agreed to it.”

It is submitted that this accurately gives the picture of the making of the contract. Hill was there doing all the talking, making all the suggestions with the consent and acquiescence of Gray; Mr. O'Hagen, from time to time would

turn to the appellants and ask them if such and such were with their consent and either they would mutely nod their heads or, almost equally mutely, say "yes." The very contract itself shows the impossible burden of the transaction, so far as the appellants were concerned and they unquestionably would not have entered into it had not the alleged misrepresentations been made. The deposit was only \$500 and clearly, unless they expected to be able to pay the principal, interest and carrying charges out of the income, and clearly, unless they had been told that they could pay the principal and carrying charges out of the income they would not have entered into it.

(K) ALBERT HERBERT (pp. 147-150) again testifies that in the latter part of September he called at Gray's office and said that he had a customer for the place; that Gray said he owned the hotel, and Gray said the place did about \$25,000 worth of business during a season, clearly indicating that Mr. Gray was not slow in making representations himself.

LAW.

The opinion by Mr. Justice Black for this court in *In re New Jersey Refrigerating Co.*, 5 N. J. Adv. R. 127, reads partly as follows (on p. 129):

"The cases cited in support of the decree in the court below are clearly distinguished from the facts of the case here under investigation. A court of equity will rescind a transaction entered into upon the faith of a material representation, false in fact, if the person to whom it was made relied upon it and in consequence suffered injury. *Eibel v. Von Fell*, 55 N. J. Eq. 670. In equity the complainant may succeed, al-

though the misrepresentation was innocent. *Ibid.*; approved by this court in *Blau v. Public Service, &c., Railway Co.*, 90 N. J. Eq. 280.

We think the rule to be applied to the facts of this case is that stated in the text of *Corp. Jur.* which is supported by authority. 6 *Corp. Jur.* 828, par. 21."

In *Zuckerman v. Geller* (opinion by Vice-Chancellor Backes), 6 N. J. Adv. R. 1218, the headnote reads as follows:

"A contract is fraudulently procured when induced by a promise to do a thing in the future when there is an existing intention not to do it. The false promise is a misrepresentation of an existing fact and is actionable."

The learned Vice-Chancellor below dismissed the bill on the theory (p. 151) that the appellants should have waited for Hill to turn over to them his books showing that the hotel took in about \$25,000.00 a year before they closed the deal, and that a promise to do something in the future was not fraud.

It is respectfully submitted that as to this proposition the learned Vice-Chancellor missed the point entirely, which is that the clever and artful Hill, in addition to making various representations, made various kinds of promises from time to time which he and Gray never intended Hill to keep and that these promises were made for the purpose of inducing the appellants to enter into and close the contract in question.

Witness also, in connection with this particular aspect of the case, Hill's artfully telling the appellants, when they became discouraged, to wait for the month of August, that the income for the month of August would cure everything.

Further examination and cross examination should have been allowed.

In *Babirecki v. Virgil*, 97 Equity 315, the opinion by Mr. Justice Katzenbach for this court reads partly as follows (on pp. 320 and 321):

“There is also another ground upon which we think the decree below should be reversed. It has been stated that the complainants endeavored by cross examination of the defendants to show the facts and circumstances surrounding the drafting and execution of the agreement of August 25th, 1917, and that upon objections made the questions asked for this purpose were overruled. The attitude of the court is best evidenced by a reference to a few of the questions asked and the rulings made. Mamie Virgil, the grantee, was asked upon cross examination, ‘Why wasn’t the consideration, the true consideration, then mentioned in the deed?’ This question was objected to and the objection sustained. The same witness was asked, ‘Why was there only a one dollar revenue stamp attached to the deed instead of the legal fee of \$2.50?’ This question the court would not permit to be answered, as also the question, ‘Now, when was this agreement drawn?’ When the same witness, Mamie Virgil, was asked, ‘And did you use the same pen?’ the court said, ‘I don’t want to hear any more about how this agreement was executed, and I won’t permit any further questions along that line.’ The court had previously said, ‘The agreement shows when it was drawn.’ The same and similar questions were asked Frances Virgil and were overruled. In his opinion the vice-chancellor said, ‘The crux of the case is the alleged agreement between Mamie and Frances.’ This was true. The agreement was one which upon its face bore evidence which justified a suspicion as to its authenticity as to date at least. The facts and

circumstances surrounding its drafting and execution were legitimate subjects of inquiry." * * *

"It may be that the vice-chancellor had, prior to the attempted cross examination, become satisfied that the complainants' suit was without merit, and that nothing which could be brought out upon cross examination would alter the view which he entertained. This, however, furnished no basis for a refusal to allow the questions asked to be answered. The court of chancery was not the final tribunal to pass upon the complainants' case. The complainants had the right to a review of their case by this court. Testimony which might not have influenced the vice-chancellor in his conclusions might in this court be differently viewed."

It is submitted that Mrs. Lammerts' testimony as to any conversation had with Gray right after the suits were instituted, to show admissions by Gray was admissible. On page 84 this testimony was not allowed by the court below.

On cross examination of Hill (pp. 133-134) after appellants' counsel showed through Hill that the carrying charges and principal payments per annum amounted to about \$7,300.00 the first year, the following took place:

"The Court: Now, isn't that a matter of argument?"

Mr. Marder: I am going to ask him how he came to sell the property to these people and take so little money back without representing to him that he took in twenty-five thousand dollars.

The Court: No. I won't allow that."

It is submitted that this line of cross examination was clearly admissible.

On page 125 in an effort to show that Hill had to represent a hotel income of about \$25,000.00

a season in view of the carrying charges, etc., the following question was asked Hill on cross examination and not permitted by the court below:

“Q Now, when you ran this hotel, how much did you have to take in in dollars, or rather, how much out of a dollar that you took in was your percentage of profit?”

It is submitted that this was a proper question on cross examination and that the court below should have permitted it.

In conclusion it is respectfully submitted that the misrepresentations alleged were clearly proved, that they were material, that they induced the appellants to enter into the transaction, that the appellants relied upon them in entering into the transaction and that the entire transaction should be set aside and the respondents be decreed to account to appellants and pay to appellants such moneys as may be due and proper on such an accounting.

Respectfully submitted,

MARDER AND OKIN,
Solicitors of Appellants.

AARON MARDER,
Of Counsel with Appellants.

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78 FEB. T. 1929

Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

New Jersey Court of Errors and Appeals

Between

MAX GRAY and BLANCHE GRAY,
his wife, and ARTHUR G.
HILL and SARAH HILL, his
wife,

Complainants-Appellants,

and

LAMBERTUS LAMMERTS and
ELIZABETH LAMMERTS, his
wife,

Defendants-Respondents.

On Bill, etc.

*On Appeal
from the
Court of
Chancery.*

Between

LAMBERTUS LAMMERTS and
ELIZABETH LAMMERTS, his
wife,

Complainants-Respondents,

and

MAX GRAY and BLANCHE GRAY,
his wife, and ARTHUR G.
HILL and SARAH HILL, his
wife,

Defendants-Appellants.

BRIEF ON BEHALF OF RESPONDENTS.

Statement of Facts.

The facts are substantially as set forth in the statement of facts in the brief filed on behalf of appellants, and need not be again set forth here at length.

I. The record shows that the alleged false misrepresentations were not proved at the trial.

This is a very simple case. It is one concerning purely a question of fact. Did the Hills and Grays make certain false and fraudulent misrepresentations, and did the Lammerts rely on them? The Court held that the fraud was not proved after listening to all the parties and their witnesses. The decree of the Court on this question of fact should not be disturbed without very good cause, since the Court had under observation the demeanor of the witnesses and their attitude on the stand in determining the weight to be accorded the testimony given at the trial.

The major part of the appellant's brief is devoted to repeating sections of testimony which are completely set forth in the state of case. It is obvious that only those portions which bear most favorably on the appellant's case have been there copied and emphasized.

Of course, the case cannot be disposed of by simply taking every statement made by Mr. and Mrs. Lammerts and their son Charles as gospel truth, and by passing over the testimony of Arthur G. Hill, Sarah Hill, Blanche Gray and Max Gray as "not worthy of any credence." The allegations of fraud and misrepresentation set forth in their bill for rescission have been religiously repeated by the Lammerts family. But it should be noted that every one of these allegations was denied by the respondents.

On page 117 of the state of case, Mr. Hill's testimony reads in part as follows, at line 20:

"Q Now, on any of these occasions, Mr. Hill, did you represent that Mr. and Mrs. Gray or that you and your wife in the operation of these premises as a hotel had, in the

past, for several years immediately before 1928, stated that these premises brought in at least twenty-five thousand dollars per year? A No; never stated that.

Q Did you on any one of these occasions at any time before or after the contract, state that Max Gray received at least six thousand dollars annually by way of rent? A No; I never knew what rent he did receive.

Q Did you state on any one of these occasions or any other time, either before or after the contract, that you personally made about ten thousand dollars clear profit from the operation of said premises as a hotel some five years ago when you owned the property? A No, I did not.

Q Did you agree to give the Lammerts a list of your clientele and a list—and a copy of the receipts and disbursements while operating the hotel? A They spoke about the guests and I said the register was down at the hotel; they could see the register down there, if they could get it from Mr. Underhill or if it was down there; I didn't have it in my office or anything. I showed them a bill-file full of bills. I said, 'You can look those over. I don't want my bills to go out of the office.'

Q What was that for? A Just simply to show where I brought stuff from and the sum, and Mrs. Lammerts said then, 'Well, we don't need that now; we don't need to look that over, but we would like to have a list of who you deal with,' and I gave them that.

Q Butchers and bakers? A Butchers and bakers and several people. In fact, I had the stenographer make up a list and gave it to them and they said it was all they wanted, although I had a bill-file and they said they just wanted to get the names of where to deal.

Q Did you ever, on any of these occasions, state that the operation of these premises as a hotel by the Lammerts would bring

in gross receipts of about twenty-five thousand dollars per season and would pay off the mortgage and they could own the hotel free and clear in about three years from the profits? A No; I never said it, it would be impossible on the figures."

Sarah Hill, the wife of Arthur G. Hill, gave the following testimony (State of Case, p. 136, l. 24):

"Q You are the wife of Mr. Hill who was just on the stand? A (Witness nods yes.)

Q You were present at some conferences when the Lammerts, your husband and the Grays either went down to Point Pleasant or met for that purpose somewhere? A (No answer.)

Q On any of those occasions did you hear either your husband or Mr. and Mrs. Gray make any representations to the Lammerts with regard to the amount of money taken in at this hotel, the amount of profit that could be made? A No.

Q Or the amount of the rent? A No.

Cross examination by Mr. Marder.

Q You were paying very careful attention, were you, madam? A I was only there once.

Q When was this? A The first meeting.

Q What was the first meeting? A The first time I met Mrs. Lammerts in Mr. Hill's office, the first visit they had at the hotel.

Q You know you were down at Point Pleasant with them? A Yes.

Q And you are quite sure nothing was discussed— A No; we never told them—

Q —about how much rent it was to take in? A No; I don't know.

Q And do you know whether anything was stated about how much money your husband took in? A No, we never told him.

Q Or how much he got from the roomers? A No.

Q How much he got on the second and third floor? A He told them the rates.

Q You told them the rates? A Yes.

Q You didn't tell them what the gross was? A No.

Q But the rates you did tell them? A We told them the rates."

Blanche Gray, at page 138, line 17, said:

"Q Now, on any of these occasions did you hear either your husband or Mr. Hill represent or state to these people that this Hotel Carrolton property had taken in \$25,000 a year from the operations? A No.

Q Before the— A No.

Q Or that Mr. Hill had made \$10,000 a year in it? A No, no.

Q Or that your husband or you had received at least six thousand or sixty-five hundred dollars a year rent? A I didn't hear those things."

Max Gay, on page 140, line 8, testified as follows:

"Q Did you ever hear—did you make any representation to them with regard to the fact that Mr. Hill had made ten thousand a year net? A Never did.

Q Did you hear Hill say that? A No.

Q Did you or Mr. Hill ever make any representations with regard to the fact that twenty-five thousand dollars a year had been taken in from the operation of the hotel? A Never, I never knew that at all."

and upon cross examination, at page 143, line 35, said:

"Q Did you give them any particular argument why they did not pay more? A I didn't give any argument, I didn't care whether they took the hotel in it or not, because I didn't sell them no business, I sold them property.

Q Didn't you tell them they could take in twenty-five thousand dollars a year and

could afford to make these payments? A How could I tell? I never run the hotel.

Q All right. You never told them that?

A No, sir.

Q You never told them anything as to how much money that place took in, did you?

A No, sir; I didn't know what."

In view of these flat denials of the misrepresentations charged by the appellants, the question of whether or not they were made at all is one of fact. The case presented by the Lammerts was noticeably weak, and was rightly decided against them by the Court. All the witnesses to alleged false and fraudulent statements were interested parties. Their answers were often halting and evasive.

One of the inconsistencies in the case of Lammerts is regarding the allegation that Hill promised to give them the books of his business the time he ran the hotel. In the sworn affidavits of Lambertus Lammerts and Elizabeth Lammerts annexed to their bill of complaint (State of Case, p. 44, ll. 4 to 7; p. 47, ll. 33 to 37), certain sentences read as follows:

"Hill and Gray also promised to give us a list of his clientele and receipts and disbursements when he ran the place."

"Gray and Hill also promised to give me a list of Hill's clientele, receipts and disbursements while Hill ran the hotel, which would help us and also show his profit."

On page 77 the testimony of Mrs. Lammerts, lines 12 to 26, reads as follows:

"Q Now, did Mr. Gray or Mr. Hill tell you anything about help in connection with the past? A Yes; Mr. Hill told me he will show me all the papers, all the bills. How much business he did and what the property was making, and he would give me the register of the hotel, that they could write to all his clients who were there that year and

it will help me along in the business. That is what he promised.

Q And was Gray there when he promised it? A No, he told it to me and my son and my husband.

Q I say, was Gray present when that was promised? A No."

Thus it seems uncertain just how the particular alleged misrepresentation was made.

The testimony of Albert E. Herbert (pp. 108 to 110, 147 to 150) is also very interesting. He seems to have been a very helpful witness for the appellants inasmuch as he testified both in the capacity of a Point Pleasant fish merchant and real estate broker. He was in the wholesale and retail fish business in Point Pleasant, where he lived for twenty-seven years. He knew all about how much fish was being used at the Hotel Carrolton and the number of its guests for the past five years, having visited the place two or three times a day. And yet he telephones and visits Max Gray in Newark to talk about a sale of the Carrolton Hotel. Why did Herbert come to Gray, when Mr. and Mrs. Lammerts and not Gray owned the place, and when Herbert intimately knew the Lammerts family (having been dealing with them all summer) and did not know Gray personally? Why did he not bring his proposition of sale to Lambertus Lammerts instead of to Gray? The reason is obvious. The entire transaction was imaginary. On page 144 in the cross examination of Max Gray, at line 5, the true story appeared:

"Q Now, you know Mr. Herbert, don't you?

Mr. Marder: Stand up, Mr. Herbert.

The Witness: No, sir.

Q Didn't you have a conversation with him recently? A I never had.

Q Wherein he told you that he had a customer for the hotel and you said to him, 'Go to it. This is a good place; this takes in twenty-five thousand dollars a year.' A I never met the gentleman at all.

Q Did you have that conversation with him? A No, sir."

Another sample of the type of case presented at the trial by the appellants is given by a portion of the testimony of Charles Lammerts. Charles testified that the income from the hotel was \$6,677.39 and that disbursements were \$6,429.59. Upon further examination the following was brought out (p. 105, ll. 1 to 19):

"Mr. McGlynn: I am interested to know whether that five hundred dollars original payment was included in that disbursement.

The Witness: It was disbursement.

Q Is included in the original disbursement? A Certainly it is included.

Q Then the five hundred and additional two hundred and fifty— A Yes.

Q —is part of the \$6,426.59? A Yes, everything I paid for the hotel I have marked down on those papers.

Q Did you pay \$180 to a second mortgage? A Yes, I did.

Q And that is also included? A That is also included."

This is one of the methods that the Lammerts family sought to use in order to build up a case.

Another interesting feature of the trial is that Mrs. Lammerts, one of the principals in the transactions, seems not to have known that one of the allegedly false misrepresentations was in fact false. Her testimony (at p. 85, l. 31) is in part as follows:

"Q When did you first discover that Mr. Gray did not receive sixty-five hundred dol-

lars a year rent for his hotel before that? A
When is it I discover that?

Q Yes. A Why, I didn't discover that.

Q Oh, that is part of your charge here.
You say that is one of the reasons why you
want this transaction set aside, because Mr.
Gray represented to you—(interrupted).

Mr. Marder: We are going to prove
that by another witness."

The Court below was convinced and the record shows that the appellants were not poor, ignorant people with no business experience. The entire transaction of purchase of the hotel amounted in effect to a lease of the \$55,000 hotel for an entire summer for merely \$500 cash, with the giving of a second mortgage on an East Orange house as security. Gray had previously rented the hotel for five and six thousand dollars and under no circumstances for less than \$4,000, yet the entire equity of the Lammerts in the East Orange property amounted to only several thousand dollars. Mr. and Mrs. Lammerts were certainly shrewd to figure out and carry out a proposition like the one they attempted. If they had had a successful summer, they might have been able to buy the \$55,000 property with an initial investment of only \$500. But it seems that they did not know how to run the hotel and were therefore unable to swing the deal.

II. The appellants elected to adhere to the contract of purchase after discovery of the alleged fraud.

It is well settled in New Jersey that a defrauded party to a contract has but one election to rescind, which he must exercise with reasonable promptitude after the discovery of the fraud. When the party once elects he must abide by his decision and it is made irrevocable.

The leading case on the subject is *Dennis v. Jones*, decided in the Court of Errors and Appeals in 1888 and reported in 44 N. J. Eq. 513, 14 Atl. 913. Its facts are very analogous to those in the instant case. There the appellants purchased a skating rink for \$10,000, paying \$5,000 in cash and giving a chattel mortgage to secure the balance. A bill to foreclose the mortgage was filed when it became due and the appellants set up by answer and cross-bill that they were defrauded by the respondent at the sale of the rink by his misrepresentation of profits that he had received from it and the character of its patrons. Although the appellants immediately discovered that the character of the patronage of the rink, and its income and profits, were not as represented, they nevertheless made payments on account of the mortgage and repeatedly promised to pay him the full amount secured by the mortgage. The Chancellor indeed said at page 515, "So great, indeed, is the disparity between the appellant's receipts and the profits which they allege the respondent claimed to have received, that it was plainly impossible for his representations to have been true." The decree establishing the mortgage and dismissing the cross-bill was unanimously affirmed.

At page 516, the opinion of Chancellor McGill reads as follows:

"It is unnecessary for us to determine whether the proofs establish the fraud, for it is apparent that, if there was in fact the fraud complained of, it, in substance, became manifest to the appellants months before the foreclosure suit was commenced. When it was discovered, it was the appellants' duty, with all reasonable diligence, to disaffirm the contract. They could not derive all possible benefit from the transaction, and then be relieved from their obligation by a

rescission, or refusal to perform, on their part. It would be most inequitable to permit them to hold the rink and its business, in apparent acquiescence in the fraud, until the collapse of the business was assured, and then rescind the contract.

It is the rule that the defrauded party to a contract has but one election to rescind, that he must exercise that election with reasonable promptitude after discovery of the fraud, and that when he once elects he must abide by his decision. *Bigelow on the Law of Fraud* 436. Delay in rescission of the contract is evidence of a waiver of the fraud, and an election to treat the contract as valid, *Williamson v. N. J. Southern R. R. Co.*, 2 *Stew. Eq.* 311, 319; *Brown v. Mutual Benefit Life Insurance Co.*, 5 *Sten. Eq.* 809; *Oskey v. Cooke*, 14 *Stew. Eq.* 350; *Bigelow on Law of Fraud* 438; 2 *Pomeroy's Jur.* 9817; *Baird v. New York*, 96 *N. Y.* 567; *Fairlow v. Ellis*, 15 *Gray* 229. So, payments of purchase money, after knowledge of the fraud, are evidence to the same effect. *Cunckolls v. Lea*, 10 *Humph.* 577, and so is the continued dealing with the property purchased and in reference to the fraudulent transaction, as if the contract were subsisting and binding. *Bassett v. Brown*, 105 *Mass.* 551, 1 *Story's Eq. Jus.* (13th ed.) 227; 2 *Kent's Com.* (11th ed.) 637; *Vivers v. Pike*, 8 *Cl. & Fin.* 562; *Schiffer v. Dietz*, 83 *N. Y.* 300."

This case and the rule of law thus laid down has been followed with approval in the following instances:

- Clampitt v. Doyle* (1908, *Err. & App.*), 73 *N. J. Eq.* 678, 70 *Atl.* 129;
- Faulkner v. Wassmer* (*Err. & App.* 1910), 77 *N. J. Eq.* 537, 77 *Atl.* 341;
- Arnold v. Hagerman* (*Err. & App.* 1888), 45 *N. J. Eq.* 186, 17 *Atl.* 93;
- Tierney v. Parker* (1899, *In Chancery*), 58 *N. J. Eq.* 117, 44 *Atl.* 151;

Reed v. Benzine-ated Soap Co. (Err. & App. 1912), 81 N. J. Eq. 182, 86 Atl. 263.

One of the most recent expressions of the rule is in *Robertson, et al. v. Criterion Construction Co.*, decided in Chancery in 1928 and reported in 6 Misc. 91, 140 Atl. 574. There Vice-Chancellor Backes in his opinion says:

“The law is well settled in this state that, to rescind a contract for fraud, the injured party must act promptly after discovering the fraud, and that, if he elects to affirm, he cannot have a second election to disaffirm, and that he will be held to affirm, unless he acts promptly to disaffirm.”

The state of case is full of statements which clearly show an election to adhere to the contract. In the first place there is the cross examination of Elizabeth Lammerts (p. 85, ll. 17 to 30):

“Q When did you discover that the hotel was not going to take in twenty-five thousand dollars a year? When did you first discover that? A When we did—(interrupted).

Mr. Marder: I object to that.

Mr. McGlynn: It is most important, may it please the Court.

The Court: I will allow it. I will allow it.

The Witness: Well, we discovered that about half—about the latter part of July.

Q About the latter part of July? A Yes.”

And again at page 86, line 10:

“Q You say in your papers that Mr. Max Gray received at least six thousand dollars by way of rent? A That is what he told us.

Q When did you discover he did not? A Well, that was the time out there.

Q When did you discover he did not receive six thousand dollars? A That was the time we were in the hotel.

Q When was the first time you discovered it? A Well, we hear that all over.

Q When, when? July— A Well.

Q June, May? A It may have been the month of July.

Q Eh? A Well, we hear that all over. We hear that not only once, but ten times.

Q I understand that. You have told me that three or four times. When was the first time you heard it? A I don't remember that exactly.

Q When was that—when you first heard it, did you make some examination to find out if it was true? A We heard it from beginning to the end.

Q I want to know what efforts you made to find out whether it was true or not. A What did you say?

Q What effort did you make to find out whether it was true that Mr. Gray did not receive six thousand dollars? A I can't remember exactly the day, but we heard that from the beginning to the end when we were running the hotel.

Q All right. When did you find out that Mr. Hill did not make ten thousand dollars a year clear profit from the operation of the hotel? A Well, all the people in town where we trade with and so on.

Q I didn't ask you how you found it out. I asked you when you found it out. A We found it out when we were running the hotel and we saw there was no business.

Q Did you find that out in the early part of the season or— A Well—

Q —the last part of the season? A Well, about July.

Q July. Now, when did you make a payment of one hundred and eighty dollars on the second mortgage? A I guess that was in the beginning of July yet, if I am not mistaken, or the second—about the ninth.

Q The early part of July? A Yes, the early part of July.

Q Did you make any payments on account of the mortgage held by Mrs. Gray? Did you pay any interest or principal on that? A No. We paid two hundred and fifty dollars on the second—on the first mortgage.

Q On the first mortgage? A On the interest—no, on Mr. Gray's payment two hundred and fifty dollars we pay.

Q You pay two hundred and fifty dollars' interest on Gray's mortgage? A Yes.

Q When did you pay that? A I guess in the latter part of July.

Q Are you sure it was not the first part of August? A No, I don't think so. It was in the end of July.

Q The last part of July? A Yes.

Q And you knew when you made this payment of two hundred and fifty dollars on account of the Gray mortgage all these facts about the hotel, that it was not going to take in twenty-five thousand dollars, and Gray had not received six thousand dollars a year rent, that Hill did not make ten thousand dollars clear profit. A What did you say first? I didn't hear you so well.

Q All right. You knew when you paid Mr. Gray two hundred and fifty dollars— A Yes.

Q —in the latter part of July, you knew at that time, first, that it would be impossible for you to take in twenty-five thousand dollars? A Yes."

And further, at page 90, lines 13 to 33:

The Court: When did he tell you that he was going to foreclose and put the papers on the table?

Q Two pieces of paper. A That was the latter part of September.

The Court: All right.

Q That was after the suit started? A Yes, that was after the suit started.

Q And all you asked him to do then was to release your East Orange property? A Well, I asked him that several times before.

Q And you would go raise a mortgage? A Yes.

Q And pay him two thousand dollars? A Yes.

Q You continued to run the hotel from August 18th up to September 4th? A Yes, sir."

Then there is the testimony of Lambertus Lammerts, at page 97, lines 33 to 40:

"Q How long before you came to my office did you find out that Hill had not made ten thousand dollars a year? A Well, that was when we opened the place, the first two weeks we see already there was no business.

Q The first two weeks? A Yes, two weeks."

and at page 99, lines 32 to 40:

"Q You know when the payment of two hundred and fifty dollars was made to your wife? A Yes.

Q On account of the Gray mortgage, don't you? A Yes, I know that.

Q When was that? A That was in the second of August.

Q The second day of August? A I guess it was."

Mr. Lammerts knew that his conduct as it stood did not entitle him to rescission. He therefore attempts to deny that he had knowledge of the falseness of the alleged misrepresentations on August 2nd, when one of the payments was made. And his story breaks down upon strict cross examination as at page 100, line 13, although he there attempts to patch it up by alleging further misrepresentations as to hotel business in August:

"Q You knew that Mr. Gray had never taken in—had never received six thousand

dollars a year rent, didn't you? A I don't get that.

Q Well, one of the charges you make, sir, as a reason for setting aside this transaction— A Yes, that is—

Q Are you going to let me finish or not? A Why, Mr.—

The Court: Wait a minute. Let counsel finish his question and then you answer it.

Q Continuing my question: One of the reasons that you allege as a reason for setting aside this transaction— A Yes.

Q —is that Gray represented to you that he always received six thousand dollars a year rent? A Yes.

Q You say that is false? A Yes, I doubt it; yes, sir.

Q Sir? A I doubt it; yes, sir.

Q You doubt it? A Yes.

Q When did you first have your doubts? A Well, after I operated the place for about two or three weeks.

Q Then, when you surely had the doubts before August 2nd before this payment was made—

The Court: That is a matter of mathematics.

Q I will tell you this way: I talked about to Mr. Hill, I told him, 'There is no business in this place.' He said, 'Never mind those two months. August is the month and August makes everything good,' and that is why I paid the payment to him."

The true situation with respect to the payments is stated by Gray at page 140, line 18 to page 141, line 40:

"Q Now, after they took title and they commenced to operate, when was the first you saw them after that? A I saw them to get—they shall pay off the second mortgage interest.

Q When was that about? A It was in July.

Q That you went down there? A I went down there.

Q And as a result of your call did they actually pay the interest on the second mortgage? A They paid it. They took an extension to the second mortgagee and promised to pay in fifteen days later.

Q Do you remember about when they paid it? A The end of July.

Q The end of July they paid the one hundred and sixty or one hundred and eighty dollars from the second mortgage? A One hundred eighty.

Q And what did you mean, see them about your payment that was due on July first? A I saw him about a week later after the first and I came over there and they told me they are going to pay me in about two weeks after, July fifteenth or sixteenth, something like that, they were going to pay me the payments. I been waiting for the payment and I called them up, I said, 'I didn't receive the check yet.' They said, 'Well, you know, the busy season is in August and we will pay you before August,' and that time they didn't pay, and then I went to Mr.—I had a letter from Mr. O'Hagen.

Q You had a letter? A From Mr. O'Hagen that Mr. Lammerts wants to meet me in Mr. O'Hagen's office.

Q O'Hagen is connected with the firm of Cook & Stout? A Yes, sir; I went down there and they started to tell me they can't meet those heavy payments on mortgages, so I told him, I said, 'All right. I am willing to reduce the mortgages and as far as the payment is concerned' that she held on to the hotel by his first mortgage, interest on the title company that she paid 'here is five hundred dollars which is due me on interest, the installments must be paid.'

Q In other words, they paid the first installment and interest on your mortgage

and paid the interest on the title company mortgage, you were willing to take it then and a different schedule of payments after that? A Right. If they promise they come over to Mr. O'Hagen's and he will go into where is the money on the fifteenth—on the first payment and second, and then he will go on to arrange it and since then they didn't come.

Q But they actually made you a payment on August 7th? A August 9th, \$250.

Q August 9th you got what? A August 9th in three checks."

This is corroborated by the testimony of William J. O'Hagen, a member of the bar of the State of New Jersey and a disinterested party. He states at page 145, line 22, the following:

"Q Now, after the examination, Mr. O'Hagen, did you at the request of the Lammerts endeavor to get Mr. Gray to attend a conference for some purpose? A Yes, Mrs. Lammerts and Mr. Lammerts, Sr., I think, came to—after a telephone conversation we made an appointment and they came to our office and as a result of that I made arrangements with Mr. Gray to meet them; we discussed payments on the mortgages, to recast the schedule of payments on the mortgage.

Q Was that letter written after conferences with the Lammerts, after this talk with the Lammerts? A Well, yes, yes.

Q Did they at that time tell you the reason they wanted to change was because of misrepresentations or because they could not meet them? A Well, they couldn't meet the payments, that was their purpose in wanting the change.

Q Did you collect two hundred and fifty or was two hundred and fifty dollars paid by you, interest to be applied on this purchase money mortgage? A I think they sent checks.

Q Was there another conference arranged for which they did not attend? A Yes; there was one after that.

Q There was an actual meeting, wasn't there, between the principals? A To discuss the rearrangement of the payments?

Q Yes. A Yes.

Q Then there was another one? A At that time arranged for.

Q And that they did not come back for? A Yes; neither Mr. nor Mrs. Lammerts returned.

Q And Gray was there? A Yes."

The above testimony conclusively demonstrates that the appellants did not disaffirm the contract but elected to adhere to their agreement. The Lammerts family cannot now rescind. The rule of law set forth in *Dennis v. Jones, supra*, is controlling, and the appellants are bound by their bargain.

III. No reliance on any alleged misrepresentations was proved.

The testimony of Lambertus Lammerts at page 94, line 26, is worth nothing as indicating how much reliance was placed on the alleged misrepresentations:

"Q Now, did you ever ask, or—just a moment—did Hill make any other promises to you? A Yes, sir.

Q By way of helping you out? A He make promises about giving me all his bills and about the business he did in the hotel.

The Court: Well, did you believe he would furnish you these bills and figures about the hotel?

The Witness: Yes, I believed.

The Court: Well, then, why did you take the property until he did furnish them?

The Witness: Well, he—I don't—I really can't say, because I believe him, and I was always waiting for those papers

and they never came. He put me off from one day to the other.

The Court: So, without waiting for the papers you signed the contract and took title?

The Witness: Yes, sir."

Mr. and Mrs. Lammerts made several visits to the hotel and inspected it thoroughly. In fact, they made a special trip down to it to inquire of the place from the neighbors. See testimony of Lammerts at page 98, line 24:

"Q Five years before. Did you and your wife go down to Point Pleasant independently of Hill and Gray before the signing of the contract? A No, we went together.

Q Didn't you go—(interrupted).

The Court: Did you go at any time without Mr. Hill or Mr. Gray?

The Witness: Yes, sir; I was down there at Point Pleasant before.

Q And didn't you tell Mr. Gray or Mr. Hill that you had been down and checked up on the hotel and talked to the neighbors about it, and so forth and so on, the tradespeople? A I don't remember that.

Q Well, that trip you made down there alone was before you signed the contract, wasn't it? A Yes, yes."

Mr. Hill testified that he had left the key with Mrs. Lammerts so that she and her family could examine the hotel, and testified further on page 119, line 25, as follows:

"Q About all these things, the rent and the receipts. A No; they didn't say anything; they didn't find any fault about that or anything. She said she had been down to the hotel; she and her husband went down and she went to get lunch at the Arnold—I think she said the Arnold.

Q What is that, a hotel? A I think it is a hotel or restaurant.

Q Where? A At Point Pleasant. The Arnold, I think it was, and she said, 'All among where we inquire among business people and neighbors and the Arnold, that hotel is all run down, it is very poor and there is no business, but,' she said, 'I have a friend there and this friend and I talked over it and we feel that we can build it up; we can build it up and do a good business there, because we like the hotel.' "

It is submitted that even though the appellants did not investigate and inspect the hotel thoroughly they had a reasonable opportunity to do so. They went twice to the property with the agent and owner and they went once by themselves. They need not have bought the property, and did not prove that any of the alleged false or fraudulent misrepresentations were the inducing cause of their undertaking the purchase.

IV. The fourth and fifth grounds of appeal in the appellants' petition of appeal are without merit.

In the appellants' petition of appeal, State of Case, page 202, lines 30 to 37, the fourth and fifth grounds read as follows:

"(d) At the final hearing in the court below, the Court should have allowed further cross examination of the said Arthur G. Hill and Max Gray; (e) at the final hearing in the court below, the Court should have allowed further examination of both of the petitioners."

The following statements appear in the record page 64, line 33:

"Mr. Marder: All right. No cross examination."

Page 66, lines 22 and 23:

“The Court: Any cross examination?

Mr. Marder: No.”

Page 136, line 14:

“Mr. Marder: That is all.”

Page 144, line 22:

“Mr. Marder: All right. That is all.”

Page 84, line 37:

“Mr. Marder: That is all.”

And on page 98, line 16, where the cross examination of the petitioner, Lambertus Lammerts was begun, there seems to have been no objection made or desire shown by Mr. Marder for further examination. In view of the above, it is submitted that the grounds of appeal contained in the petition above quoted are entirely unsupported and without merit.

As to the objections to testimony argued in appellants' brief there was no reference made in the petition of appeal. Statements made by an interested party after the suit was started are not admissible, so that the exclusion of the testimony at page 84 was proper. The questions asked and not allowed on page 125 and 133-134 of the State of Case were clearly irrelevant and immaterial and therefore the objections thereto were properly sustained.

Conclusion.

The respondents fail to see what application the cases cited in the appellants' brief have to the facts of this case. The Court did *not* dispose of the matter below on the ground “that a promise to do something in the future was not fraud,” and even if it had the Lammerts have by no means proved that Gray and Hill

even promised to do something in the future. The various representations and "various kinds of promises from time to time which he and Gray never intended Hill to keep" made by the allegedly "clever and artful" Hill are not substantiated by the record. Instead of Hill's artfully telling the appellants, when they became discouraged, to wait for the month of August, that the month of August would cure everything; it was the *appellants* who were telling it to Gray upon his demanding payment on his mortgage.

It is again urged that the case is a simple one and is purely a question of fact and was correctly decided by the Court. It is therefore respectfully submitted that the alleged misrepresentations were not proved, and that decree of the court below be in all things affirmed, this appeal be dismissed and that the respondent Gray be permitted to proceed with the foreclosure of his mortgage.

Respectfully submitted,

STEIN, McGLYNN & HANNOCH,
Solicitors of Respondents.

EDWARD R. McGLYNN,
Of Counsel with Respondents.

