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BILL OF COMPLAINT.

IN CHANCERY OF NEW JERSEY.

*To the Honorable Luther A. Campbell, Chancellor of
the State of New Jersey:*

Complainant, Herbert J. Koehler, residing in the City and County of Camden, State of New Jersey, 10 respectfully shows that:

1. He is an attorney-at-law and solicitor in Chancery of the State of New Jersey, maintaining offices for the practice of law at 528 Cooper Street, Camden, New Jersey.

2. Beginning in or about the month of January, 1930, and until in or about the month of December, 1934, and continuing throughout that period of time, he, in his several capacities as attorney-at-law and solicitor in Chancery, respectively, rendered divers professional services to the defendants, Gertrude R. Weiner (now Saltzman), hereinafter referred to as Saltzman; Camden Coal Company, a corporation, and Building and Development Realty Corporation, the two latter being corporations of the State of New Jersey. 20

3. A statement, subject to amendment thereto and enlargement thereon and not in limitation of the services so rendered, and the reasonable charges therefor, to which complainant is entitled from the respective defendants is hereunto annexed, hereby made part hereof and marked Exhibits "A," "B" and "C," respectively. 30

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4. Defendants Camden Coal Company and Building and Development Realty Corporation are the alter ego of the said Saltzman, she being the sole beneficial owner of the stock and in exclusive control and management of both corporations, and being the only person entitled to the profits or income from the operation of the business of said corporations.

10

5. The said Saltzman had, during the period mentioned in the preceding paragraph two, and still has no bank account or property of any kind or nature in her own name except some shares of stock in each of said defendant corporations; the other shares of stock issued and outstanding of said corporations the complainant is informed, verily believes and therefore charges is held by or stands in the name of a dummy or dummies for said Saltzman, and were so placed by said Saltzman for the express purpose of evading the enforcement by her creditors of payment of her outstanding and unpaid obligations; and further, complainant is informed, verily believes, and therefore charges that the said defendant, Saltzman, has transferred to her mother all of the stock in the Camden Coal Company standing in her name, and complainant first knew of this on May 5, 1938, by reason of being present at a Master's hearing, at which such testimony was given by the defendant, Saltzman, under oath.

20
30

6. Complainant is informed, verily believes and therefore charges that there are judgments against the said Saltzman in the State of New Jersey, so far as complainant has been able to ascertain from

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a diligent search and inquiry, totalling approximately \$145,000.00.

7. The said Saltzman has caused a mortgage covering the real estate owned by the defendant, Camden Coal Company, and a mortgage on the real estate of the Building and Development Realty Corporation to be paid and satisfied; but said defendant, instead of causing said mortgages to be properly cancelled of record, as of right and justice, should have been done, has caused the mortgagees therein named to execute assignments, purporting thereby to transfer title thereto, in the first instance, to one M. Z. Shupert, who has since died; and in the second instance, to one Wilhemina Oehme, who was and is, respectively, personal friends of the said Saltzman; and who, or their assignees, hold title to said mortgages in trust for the said Saltzman. The said Saltzman told complainant that this was done by her because, although she had caused some of her stocks, particularly that of the Camden Coal Company, to be placed in third persons' names, yet if any of her creditors discovered it, she still could save for herself the business of the Camden Coal Company and the real estate owned by the Building and Development Realty Corporation by causing the two mortgages to be foreclosed and then purchasing, in the name of a straw person, at the Sheriff's sale, the real estate owned by either or both of said corporations, and the real estate owned by the Camden Coal Company is where the coal yard and place of business of said corporation is situated.

8. The said Saltzman presently draws a salary of \$300 per month from said defendant, Camden

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Coal Company; and complainant is informed, verily believes and therefore charges that no other salaries are paid to any other supposed officers of said company and that the said Saltzman, during the period covered by Exhibits "A," "B" and "C," used the funds of both corporate defendants for any purpose the said Saltzman saw fit, and has always
10 treated and used both of said corporations and their funds for her own personal needs, and has always, during said period, treated, used, spoken of and referred to the same as her own exclusive property and possessions, treating and using said corporations as shields to protect her from the claims of her unpaid creditors and to embarrass, hinder and delay them in obtaining payment of debts justly due and owing to them.

20 9. Complainant is informed, verily believes and therefore charges that upon the facts hereinbefore stated the pretended corporate entities and the use made thereof by the said Saltzman constitute and constitutes one component scheme whereby to work a fraud upon her creditors and the public at large, and is in violation of the public policy of the State of New Jersey and the principles and purposes of the General Corporation Act of the State of New Jersey.

30 10. That Saltzman and complainant had mutual financial transactions and confidential relations between them which extended over a considerable period of time before and after the times involved in the now two pending actions at law, hereinafter referred to in paragraphs eleven and twelve hereof,

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namely January, 1932 to September, 1934; and said Saltzman, upon request of complainant, drew and delivered to him from time to time during such period checks drawn upon the funds of Camden Coal Company and Building and Development Realty Corporation for divers sums of money for the sole and exclusive use of complainant, upon the express understanding and agreement that at some future time, which was never discussed nor fixed, a balance would be struck and an accounting had between said Saltzman and complainant, on the one hand for money paid to complainant by the said Saltzman and on the other hand for professional services rendered by complainant to the said Saltzman and ostensibly to the two corporate defendants herein named, as well as moneys loaned or advanced by complainant to the said Saltzman and/or said corporate defendants, which accounting never has been requested or had. Said checks drawn upon the funds of the two corporate defendants were all signed for said respective corporations by the said Saltzman, and were delivered to complainant by the said Saltzman and no one else.

11. On or about January 3, 1938, complainant is informed, verily believes and therefore charges that the said Saltzman caused to be instituted in the Circuit Court of Camden County, New Jersey, two actions at law against complainant. In one action the plaintiff on the record is Camden Coal Company and in the second action the plaintiff is Building and Development Realty Corporation. Service of process was made upon complainant on or about January 4, 1938. Complainant, in due time, filed

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an answer and counter-claim in each of said actions, and the same were, by the pretended plaintiffs therein, duly noticed for trial at the April, 1938, term of said court, and presently will be reached for trial. True and correct copies of the summons and complaint and answer and counter-claim in the action in which Camden Coal Company is the pretended plaintiff are hereunto annexed, hereby made part 10 hereof and marked Exhibits "D" and "E," respectively, and copies of like pleadings in the action in which Building and Development Realty Corporation is the pretended plaintiff are hereunto annexed, hereby made part hereof and marked Exhibits "F" and "G," respectively.

12. In each of said actions the pretended plaintiffs seek to recover from complainant (the defendant therein) divers sums of money said to have 20 been delivered to him over a period of time covering from January, 1932 to September, 1934, charging complainant with having failed to apply the same for purposes for which the same were entrusted to him, and with having wilfully, fraudulently and maliciously, with intent to defraud the pretended plaintiffs, converted said moneys to his own use.

13. Complainant says that the moneys involved 30 in each of said actions at law were drawn by the said Saltzman from the funds of the two corporate defendants herein, and that none of the said moneys was applied specifically by complainant on account of services rendered for the said Saltzman personally or for the pretended accounts of the corporate defendants for the reason that complainant,

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due to the facts hereinbefore stated, always considered that his services were rendered generally for all three defendants, because it was only the said Saltzman who ever had any professional contact with the complainant, whether the matters involved were those which were strictly hers personally or ostensibly those involving the corporate defendants. The total amount involved in the two actions at law which the complainant admits having received is the sum of \$7,539.19, and the total amount which is due him for fees and charges for professional services rendered is \$9,030.00, leaving a balance due to the complainant, represented by the difference between the two sums, of \$1,490.81. One item of \$1,000.00 which is involved in the action at law against this complainant in which the Camden Coal Company is plaintiff and another item of \$725.00 which is involved in the action at law against this complainant in which the Building and Development Realty Corporation is plaintiff, were never received and retained by complainant, but the said sums, together with an additional amount, which all together made a total of approximately \$1,900.00, were returned to the defendant, Saltzman, on the same day as that on which they were delivered to complainant. Complainant is informed, verily believes and therefore charges that the said actions at law were instituted by the said Saltzman in the names of these two corporations as plaintiffs, because this complainant will be unable at law, upon the facts hereinbefore set forth, to present in said actions his bona fide defenses thereto on the true merits of the matters respectively involved therein.

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14. Complainant is informed, verily believes and therefore charges, that at the time his answers were filed in the said pending two actions at law, defendant Saltzman was the holder, in her own name, of certain shares of stock in each of the corporate defendants and, in truth and fact, owned all the other shares which were issued in the names
10 of dummies for her, but, since the joinder is issue in said actions at law and after the cases were noticed for trial and not until recently, to wit, May 5, 1938, did he learn that such is not the case because on that day said Saltzman testified, at a Master's hearing, that she had transferred all of her stock in each of the corporate defendants as collateral security and that she held no stock in either of the said corporations. Complainant charges that said transfers were not bona fide and that the
20 transferees hold the said stock in trust for said defendant; said transfers operate to render further inadequate, the complainant's remedy at law.

Complainant is without adequate remedy in the Courts of law, and therefore respectfully prays:

I.

30 That the State's writ of injunction may issue out of and under the seal of this Honorable Court, to be directed to the said defendants, Gertrude R. Saltzman, Camden Coal Company and Building and Development Realty Corporation, restraining them and each of them forever from further prosecution of the two pending actions in the Circuit Court of Camden County, wherein Camden Coal Company

and Building and Development Realty Corporation, respectively, are plaintiffs and complainant is defendant; and that an order be entered in this cause requiring said defendants to show cause before this Court, at a time and place therein to be fixed, why such writ of injunction should not issue.

II.

10

That this Court assume jurisdiction of the entire controversies between the parties hereto; and that it be ordered and decreed that they respectively account each to the other.

III.

That a writ of subpoena may issue out of and under the seal of this Court requiring the said defendants to answer this complaint and each allegation herein made. 20

IV.

That complainant may have such other and further relief in the premises as may be agreeable to equity and good conscience; and your complainant will ever pray, &c.

RIGGINS & DAVIS, 30
Solicitors for and of Counsel with Complainant.

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State of New Jersey, }
County of Camden, } ss.

HERBERT J. KOEHLER, of full age, being duly sworn according to law, on his oath deposes and says:

10 1. That I am the complainant in the foregoing bill of complaint, and am a member of the Bar of this State, being an attorney-at-law and solicitor in Chancery, with offices for the practice of law at 528 Cooper Street, Camden, New Jersey.

20 2. Beginning in the month of January, 1930, and continuing up to and about the month of December, 1934, I, as attorney-at-law and solicitor in Chancery, rendered professional services to the defendant, Gertrude R. Weiner (now Saltzman), whom I hereinafter will refer to as Saltzman, Camden Coal Company, a corporation, and Building and Development Realty Corporation.

30 3. I have annexed to my bill of complaint a statement showing the services rendered and the reasonable charges therefor, to which, in my mind, I am entitled from the said defendants. This statement is in three parts and marked Exhibits "A," "B" and "C," respectively.

4. I kept no record of all the services so rendered, and I know that there are services for which I am entitled to be compensated which do not appear on the said exhibits; but I am not, at this time, able to detail the same.

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5. The corporate defendants were incorporated before I was retained to render professional services to any one of the three defendants; but I know that the said two corporate defendants are, in effect, the defendant, Saltzman, because regardless of in whose name the stock in either of said corporations may be, the sole beneficial and true ownership of all of the stock of both corporations is vested, in equity and in fact, in the defendant, Saltzman; and that she has exclusive control and management of both corporations, and is the only person entitled to the profits and income from the operation of the business thereof, at least this was the situation as of the time that I ceased to represent the said Saltzman. 10

6. During the time that I represented the said Saltzman she had no bank account and still has no bank account or property of any kind or nature in her own name (this latter statement as to the present situation I know to be a fact because she so testified under oath at a Master's hearing on May 5, 1938), except some shares of stock in each of said defendant corporations. The other shares of stock which are outstanding, or were at the time that I last represented her, are or were held by and stand or stood in the name of a dummy or dummies for the said Saltzman for the purpose of evading payment of her creditors or her outstanding and unpaid obligations. 20 30

7. The stock which the defendant, Saltzman, last had in her name of the Camden Coal Company was transferred by her to her mother; and the first that

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I knew of this was on May 5, 1938, at the aforesaid Master's hearing, at which I was present.

8. I have made a diligent search of the records of the courts of Camden County, as well as the Supreme Court of this State, and so far as I have been able to ascertain therefrom, the said Saltzman has
10 unpaid judgments outstanding against her in an amount totalling approximately \$145,000.00.

9. During the time that I was acting as attorney for the said Saltzman a second purchase money mortgage covering the real estate owned by the defendant, Camden Coal Company, and a second mortgage on the real estate of the Building and Development Realty Corporation were paid off and satisfied by the said Saltzman.

20

10. The said Saltzman, instead of causing these mortgages to be cancelled of record, caused the mortgagees therein named to execute assignments purporting to transfer title, in the Camden Coal Company instance, to one M. Z. Shupert, who has since died, and in the second instance to one Wilhemina Oehme, each of whom was and is, respectively, personal friends of the said Saltzman, and I know that they or their assignees hold title to the
30 said mortgages in trust for the said Saltzman, because she told me that she did this to protect the properties from her judgment creditors, because, although she had caused almost all of the stock in the two defendant corporations to be placed in third persons' names, yet if any of her creditors dis-

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covered or obtained liens thereon in order to execute on the same, the mortgages would still remain unsatisfied of record and she could still save for herself the business of the Camden Coal Company and the real estate owned by the Building and Development Realty Corporation, by causing the mortgages to be foreclosed, and then, in the name of a straw person, purchase the same at the Sheriff's sale. 10

11. The real estate owned by the Camden Coal Company is where the coal yard and place of business of the corporation is situated.

12. During the time that I represented the said Saltzman, none of the supposed officers of the companies were paid any salary, but the said Saltzman drew from the funds of the Camden Coal Company such funds from time to time, in various amounts, of which she then had need; and during the said period she used the funds of both corporate defendants for any purpose that she saw fit; and always treated and used both of said corporations, as well as their funds, for her own personal needs; and always, in our business relations, during said period, treated, used, spoke of and referred to the same as her exclusive property and possessions, and never consulted with or referred to any person concerning the operation of the business of either corporation or the use of their funds. 20 30

13. That the said Saltzman and I had many mutual financial transactions and confidential relations between us which extended over a considerable period

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of time, before and after the times involved in the now two pending actions at law, hereinafter referred to, namely, January, 1932 to September, 1934; and she, at my request, drew and delivered to me, at various times during such period, checks drawn upon the funds of the two corporate defendants for divers sums of money for my sole and exclusive use.

10

14. I never gave her or the two corporate defendants any receipt, note or evidence of obligation for these moneys, and none was ever asked for, because the said Saltzman and I had agreed that I was to render such professional services as would be necessary from time to time, and at some indefinite time in the future, which time was never discussed or fixed, a balance was to be struck and an accounting had between the said Saltzman and me, on the one hand for moneys paid to me and on 20 the other hand for professional services rendered by me to the said Saltzman, and ostensibly to the corporate defendants, in addition to moneys loaned or advanced by me to the said Saltzman and the corporate defendants, which accounting never has been requested or had.

15. The checks which were drawn upon the funds of the two corporate defendants were all signed for 30 them by the said Saltzman and were delivered to me by her and by no one else at any time.

16. On January 4, 1938, there was served on me summons and complaint in two actions at law in the Camden County Circuit Court, in one the plaintiff

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being Camden Coal Company and in the other the plaintiff being Building and Development Realty Corporation, the summons in each case being dated January 3, 1938.

17. My attorney filed for me an answer and counter-claim in each of said actions, and the same were noticed for trial by the record plaintiffs for the April, 1938, term of said court and are on the list of cases to be called Friday, the 3rd day of June, 1938, for the weekly calendar of cases to be tried in the week of Monday, June 6, 1938. 10

18. As will be seen by referring to Exhibits "D" and "F," I am charged with having wilfully, fraudulently and maliciously, with intent to defraud said plaintiffs, converted the moneys therein set forth to my own use during a period from January, 1932 to September, 1934. 20

19. The true facts are that none of the said moneys was ever paid to me upon any agreement, express or implied, that any portion thereof should be repaid by me until, when the time for an accounting was fixed or agreed upon by the said Saltzman and me, and the accounting was had, it might be found or determined that I had not been paid in full for all sums due me for professional services rendered by me to said Saltzman, if it then appeared that Saltzman was further indebted to me she was to pay such excess and likewise I was to pay her if I had been overpaid. 30

20. None of the moneys mentioned in the two said actions was delivered to me and retained by me

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for the purposes therein stated, but were so delivered and retained by me for my sole and exclusive use as my own funds; the item of \$1,000.00 which constitutes the first count of the Camden Coal Company case and the item of \$725.00 which constitutes the first count of the Building and Development Realty Corporation case were not retained by me
10 but were a portion of the sum of approximately \$1,900.00 handed to me by the said Saltzman for the purpose of making a tender to and at the Burlington County Trust Company, which tender was refused, and the said moneys were, the same day, returned to the said Saltzman, who had delivered to me the cash making up the said sum.

21. So much of the moneys involved in each of said actions at law which were retained by me were
20 drawn by said Saltzman from the funds of the corporate defendants herein, and were delivered by the said Saltzman to me and were applied generally on account of professional services rendered by me to all three defendants, at the instance and request of the defendant Saltzman.

22. The total amount due to me as shown on Exhibits "A," "B" and "C" is \$9,030.00, and I admit receiving and retaining \$7,539.19 of the sums mentioned in the actions at law, Exhibits "D" and "F,"
30 leaving a balance due to me of \$1,490.81 from all of the defendants, or such one or more of them as this Court may ultimately determine to be my debtor.

23. Until the severance of my relations with the defendants in December, 1934, and at that time I

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knew, because the defendant, Saltzman, herself had told me, that she owned in fact and in equity all of the stock in both corporate defendants, and that the stock which was not issued in her name was issued in the name of dummies for her. When my attorney filed my answers in the two actions at law now pending, I knew of no facts which changed the stock situation as it existed in December, 1934; however, recently, namely on May 5, 1938, I learned that the defendant, Saltzman, now claims to own no stock at all in either defendant corporations because she, at a Master's hearing, at which I was present, testified in my hearing that she had transferred to her mother, a resident of Trenton, New Jersey, all stock in her name in Camden Coal Company as collateral security, but that she could not remember when this was done, but it might have been as far back as 1927 or as recently as 1931 or 1932; and as to the transfer of the stock in her name in the Building and Development Realty Corporation, she could not remember when this took place; thereafter, acting upon the advice of my counsel, I caused this suit to be instituted.

HERBERT J. KOEHLER.

Sworn and subscribed before me this 20th day of May, 1938.

WILLIAM C. GOTSHALK, 30
Master in Chancery of N. J.

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State of New Jersey, }
 County of Gloucester, } ss.

B. HARRISON BRACE, of full age, being duly sworn according to law, upon his oath deposes and says:

I am the owner of a certain mortgage in the sum
 10 of \$10,000 made and executed by the Camden Coal
 Company to me on or about August 26, 1922, cover-
 ing a property situate on Kaighn Avenue near
 Seventh Street, in the City of Camden, in the County
 of Camden and State of New Jersey, which said
 property is occupied by the Camden Coal Company
 as its place of business. Interest in full has been
 paid on the principal amount due me on said mort-
 gage by the Camden Coal Company from the time
 the mortgage was placed up to the last interest
 20 period.

B. HARRISON BRACE.

Sworn and subscribed to before me this 19th day
 of May, 1938.

BELLA R. WINIGRAD,
*An Attorney-at-Law of New
 Jersey.*

30

State of New Jersey, }
 County of Burlington, } ss.

HUGH E. DUNN, of full age, being duly sworn ac-
 cording to law, on his oath deposes and says:

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I am a note teller in the Burlington County Trust Company, at Moorestown, New Jersey. I am familiar with the mortgage made by William H. Morgan to William H. Matlack, Jr., which was assigned to the Burlington County Trust Company. The amount for which this mortgage was originally made was \$18,750.00. On January 29, 1932, by payment made through Judge Lippincott's office, this mortgage was reduced to \$16,000.00. 10

On or about August 30, 1932, a payment of interest was received by the trust company in the amount of \$480.00, which represents six months' interest due on \$16,000.00 at 6%.

Thereafter on May 16, 1933, a payment of \$400.00 was made, which represents six months' interest on \$16,000.00 due on the said mortgage at 5%.

HUGH E. DUNN.

Sworn and subscribed to before me this 19th day of May, 1938. 20

(Seal)

WALTER W. GARDINER, JR.,
Notary Public of N. J.

State of New Jersey, }
County of Burlington, } ss.

WILLARD F. LIPPINCOTT, of full age, being duly sworn according to law, upon his oath deposes and says: 30

I am a counsellor-at-law of the State of New Jersey. My office is at Moorestown, Burlington County, New Jersey. In 1931 and 1932, I was as-

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sociated with William D. Lippincott, who at that time was and still is the solicitor for the Burlington County Trust Company of Moorestown, New Jersey.

On July 13, 1931, a bill was filed in the Court of Chancery by William D. Lippincott for the foreclosure of a certain mortgage which was held by the said Burlington County Trust Company, upon lands
10 situate in Chester Township, Burlington County, New Jersey, belonging to the Building and Development Realty Corporation, which mortgage was made by one William H. Morgan, widower, to William H. Matlack, Jr., to secure the sum of \$18,750.00, dated February 2, 1925, and recorded in the office of the Clerk of Burlington County in Book 183 of Mortgages, page 84, and which mortgage was assigned by the said William H. Matlack, Jr., to said Burlington County Trust Company.

20 By way of settlement of said foreclosure, an agreement was negotiated between Burlington County Trust Company and Building and Development Realty Corporation, dated December 28, 1931, and recorded in the Burlington County Clerk's office in Book 787 of Deeds, page 377. According to the terms of this agreement, Building and Development Realty Corporation agreed to pay to Burlington County Trust Company the sum of \$2,750.00 on account of the principal of said mortgage, for which
30 the said Burlington County Trust Company agreed to execute certain releases and also to extend the time for the payment of the balance of said mortgage, \$16,000.00, to August 2, 1934. Pursuant to said agreement, the Building and Development Realty Corporation paid the sum of \$2,750.00 to

Burlington County Trust Company by a check which passed through the attorney's account of William D. Lippincott on January 28, 1932, and from which William D. Lippincott deducted the sum of \$100.00 as an attorney fee for services, and the balance of \$2,650.00 was remitted by him to Burlington County Trust Company.

I had charge of this transaction, although the details of the same were worked out under my supervision. 10

I have no knowledge of any request made in the year 1932, for a further reduction of the principal of said mortgage after the payment of \$2,750.00 was made on January 28, 1932, and when the payment of \$2,750.00 was made there were no further payments due on said mortgage until the next semi-annual interest payment became due.

WILLARD F. LIPPINCOTT.

20

Sworn and subscribed to before me this 19th day of May, 1938.

(Seal)

HUGH E. DUNN,
Notary Public of N. J.

EXHIBIT "A."

Gertrude R. Weiner, to H. J. Koehler, Dr.
to services rendered as follows:
January, 1930, to December 7, 1934;

30

Foreclosure suit, Wurst vs Weiner,	\$100.00
Palmer vs Weiner, replevin,	100.00
Trial in re Delsea-Morton Haight,	

Bill of Complaint—Exhibit B, Statement

	before David Magill, J. P.,	50.00
	Negotiations with Undertaker in connection with bill for burial of J. Weiner,	50.00
	Negotiations with State Highway Department in re property on White Horse Pike at Watsonstown, N. J., and attendance at hearing,	150.00
10	Trial before Vice-Chancellor Ingersoll,	250.00
	Superintending delivery of coal and care of breakdown of coal truck at request of G. R. Weiner,	100.00
	Preparing incorporation papers, G. R. Weiner, Inc.,	150.00
20	Use of automobile for transportation purposes, services, advice and consultations for Camden Coal Company and G. R. Weiner, practically daily during said period,	2500.00
	Total,	<u>\$3450.00</u>

EXHIBIT "B."

30	Camden Coal Company, to Herbert J. Koehler, Dr. December 21, 1932, Stevens Coal Company vs Camden Coal Company, trial in Camden City District Court; notice of appeal to New Jersey Supreme Court; negotiations and adjustment	\$75.00
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Bill of Complaint—Exhibit C, Statement

Wacks vs Camden Coal Company, suit in New Jersey Supreme Court; services; preparing answer; trial in Hudson County, November 22, 1933,	250.00
Correspondence, New Jersey Manufacturers' Casualty Company vs Camden Coal Company in re insurance	25.00
Services, correspondence, interviews, advice, consultations in connection with 103 claims of Camden Coal Company versus various defendants, preparing various suit papers, filing suits &c.,	10 515.00
Total,	<hr/> \$865.00

EXHIBIT "C."

20

Building and Development Realty Corporation to
Herbert J. Koehler, Dr.

April 22, 1931,

Negotiations with Bennet H. R. Gilbert respecting purchase of parcels of land and premises situate in Chester Township, Burlington County, New Jersey, for \$7400.00, under agreement dated September 26th, 1930; correspondence and interviews with Gilbert, Howard Miller, Gilbert and O'Callahan; demand upon Gilbert for possession; service of demand, &c.,	30 \$50.00
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May 18, 1931,

Preparing answering affidavits to order to show cause in restraint proceedings in

- re Bennett H. R. Gilbert vs Building & Development Realty Corporation; argument on order to show cause, resulting in dismissal of order; preparing answers to complainant's bill and amended bill in said case; preparation of brief for submission to Vice-Chancellor; argument thereon, resulting in dismissal of bill, 250.00
 10 June 23, 1931,
- Preparing and filing bill in Chancery for specific performance in re Building & Development Realty Corporation vs Bennett H. R. Gilbert; negotiation for settlement with Gilbert; preparing deed in proposed settlement; preparing and filing suit in ejectment in re Building & Development Realty Corporation vs Gilbert in the Burlington County Circuit Court; obtaining final decree on restraint sought in bill; preparation for trial of case; entering order for permanent injunction against defendant; brief for complainant on law; entering final decree against defendant in favor of complainant; preparing memorandum on law with respect to rescission of contract and obtaining order awarding damages to complainant in the sum of \$500.00 as rent; 750.00
 20
 30 service of summons in ejectment suit; entering final decree in Chancery matter, July 27, 1931,

Negotiations on behalf of Building and Development Realty Corporation with Burlington County Trust Company, William D. Lippincott and William Matlack for ex-

Bill of Complaint—Exhibit C, Statement

tension of term of first mortgage on property situate in Chester Township, Burlington County, New Jersey, belonging to the corporation, and for reduction of the principal amount thereof; conferences and correspondence with William D. Lippincott, Benjamin Natal and Williard Lippincott, and with officials and officers of the Burlington County Trust Company; preparing draft of agreement; innumerable conferences with attorneys for trust company, negotiations with Trust company and Matlack, resulting in final agreement being prepared and executed between William Matlack, Burlington County Trust Company and corporation, whereby the term of the first mortgage was extended and principal reduced, \$1500.00 20
September 14, 1931,

Negotiations with State Highway Department, State of New Jersey, on behalf of Building & Development Realty Corporation, respecting extension of highway through property of corporation and widening of road; negotiations with adjusters for the department; trip to Trenton, N. J.; correspondence and consultation with client; appearance before State Highway Commission at Trenton, N. J., resulting in increased award for lands taken by State 750.00 30

Settlement of tax and tax liens of approximately \$7,000 upon a 50% basis with the Township of Chester upon property owned by Building & Development Realty

- Corporation; negotiations with tax collector; attendance at meetings of the Township Committee; conferences with West Jersey Title and Guaranty Company as to legality of settlement; examination of law; preparation of brief for title Company; attendance at public meeting of Committee;
- 10 conferences with various members of Township Committee; correspondence 1000.00
November 10, 1931,
- Preparing agreement after negotiations with DeMosi Wrecking Co., Inc., for Building & Development Realty Corporation for the demolition and reconstruction of gasoline station on property of corporation; defending corporation in controversy with DeMosi Wrecking Company, Inc., 50.00
- 20 December 28, 1931,
- In re William H. Morgan et al vs Building & Development Realty Corporation; conferences and negotiations with Joseph H. Carr, representing the Committee of Trustees of William H. Morgan; preparation of agreement between Morgan Corporation, Building & Development Realty Corporation, Burlington County Trust Company and William Matlack, respecting
- 30 second mortgage on property of Corporation; preparing affidavits; obtaining discharge of bill and lis pendens, 200.00
November 21, 1932,
- Preparing various leases and agreements with Richard G. Bowman, C. J. Layer, Inc., Lancaster and others, in connection with

Bill of Complaint—Exhibit C, Statement

service station operated by Building & Development Realty Corporation; correspondence and consultation with M. W. Sporkin, representing American Oil Company with reference to said station, extending from 9/1/33 to 8/6/34; preparing notice to American Oil Company for payment of rental; conferences and interviews with various tenants, July 25, 1933,	\$100.00	10
Preparing papers for suit in re Building & Development Realty Company vs Richard G. Bowman before A. M. Addison, J. P., for possession of the property of Building & Development Realty Corporation, August 16, 1933,	15.00	
Preparing and filing suit in re Building & Development Realty Corporation vs C. J. Layer, Inc., before George Fox, J. P. attending trial September 9, 1933,	25.00	20
Preparing and filing suit in re Building & Development Realty Corporation vs C. J. Layer, Inc., before F. N. Richardson, J. P.; attending trial; preparing brief,	25.00	
	\$4715.00	
Total		30

*Bill of Complaint—Exhibit D, Summons
and Complaint*

EXHIBIT "D"

THE STATE OF NEW JERSEY, to: Herbert J.
Koehler:

10 You are hereby commanded to answer
 the annexed complaint of Camden Coal
 (seal) Company, a corporation, in an action at
 law in the Camden County Circuit Court.
 AND TAKE NOTICE, that unless you
 file your answer to the said complaint with the Clerk
 of the said Camden County Circuit Court, at Cam-
 den, New Jersey, within twenty days after service
 upon you of this writ and the annexed complaint,
20 may be entered against you.

WITNESS, Honorable V. Claude Palmer, Judge
of said Camden County Circuit Court, at Camden,
New Jersey, this 3rd day of January, A. D. 1938.

Leslie H. Ewing
Clerk.

George H. Jacobs
Attorney.

*Bill of Complaint—Exhibit D, Summons
and Complaint*

CAMDEN COUNTY CIRCUIT COURT.

<p>CAMDEN COAL COMPANY, <i>Plaintiff,</i></p> <p style="text-align: center;">vs.</p> <p>HERBERT J. KOEHLER, <i>Defendant.</i></p>	}	<p>Action at Law. 10 Complaint.</p>
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Plaintiff, a corporation existing under and by virtue of the laws of the State of New Jersey, says that:

FIRST COUNT

20

1. At the times hereinafter complained of, the defendant Herbert J. Koehler was an attorney-at-law of the State of New Jersey.

2. At the times hereinafter complained of, the said Herbert J. Koehler was the attorney of the plaintiff.

3. On January 4, 1932, plaintiff being the lawful owner of the sum of \$1,000.00 in cash delivered to the said Herbert J. Koehler, its attorney, said sum of money, with the expressed instruction to pay the same to B. Harrison Brace, who held a mortgage upon real property owned by the plaintiff, and

30

*Bill of Complaint—Exhibit D, Summons
and Complaint*

which money was to be applied on account of the principal due and owing on said mortgage.

4. The said Herbert J. Koehler, attorney for plaintiff, wilfully, fraudulently and maliciously, with intent to defraud the plaintiff, converted said
10 money to his own use and failed to pay the said money or any part thereof pursuant to the instructions of plaintiff.

5. After the discovery of the said fraudulent conversion, plaintiff demanded of the defendant the return of said moneys and the defendant refused to return the same to the plaintiff.

6. The value of the said property so converted
20 by the defendant to his own use was the sum of \$1,000.00.

Plaintiff demands of the defendant as damages on this count the sum of \$1,000.00, with lawful interest thereon from January 4, 1932.

SECOND COUNT

1. Plaintiff repeats paragraphs 1 and 2 of the
30 first count.

2. On January 18, 1932, plaintiff, having funds on deposit in the First Camden National Bank & Trust Co., Camden, N. J., and being the owner thereof, delivered to the defendant, its attorney, its check in the sum of \$1,450.00, drawn upon said First

*Bill of Complaint—Exhibit D, Summons
and Complaint*

Camden National Bank & Trust Co. to the order of H. J. Koehler, Attorney, with the expressed instruction to pay the same or the proceeds thereof to B. Harrison Brace, who held a mortgage upon real property owned by the plaintiff, and which was to be applied on account of the principal due and owing on said mortgage. 10

3. The said Herbert J. Koehler, attorney for plaintiff, wilfully, fraudulently and maliciously, with intent to defraud the plaintiff, cashed the said check and converted the said check and proceeds thereof to his own use and failed to pay the said check or proceeds thereof or any part thereof pursuant to the instructions of plaintiff.

4. After the discovery of the said fraudulent conversion, plaintiff demanded of the defendant the sum of money represented by said check and the defendant refused to return said sum of money to the plaintiff. 20

5. The value of the said property so converted by the defendant to his own use was the sum of \$1,450.00.

Plaintiff demands of the defendant as damages 30
on this count the sum of \$1,450.00, with lawful interest thereon from January 18, 1932.

*Bill of Complaint—Exhibit D, Summons
and Complaint*

THIRD COUNT

1. Plaintiff repeats paragraphs 1 and 2 of the first count.

2. On January 18, 1932, plaintiff, having funds
10 on deposit in the First Camden National Bank &
Trust Co., Camden, N. J., and being the owner
thereof, delivered to the defendant, its attorney, its
check in the sum of \$1,375.00, drawn upon said First
Camden National Bank & Trust Co. to the order of
H. J. Koehler, Attorney, with the expressed in-
struction to pay the same or the proceeds thereof
to B. Harrison Brace, who held a mortgage upon
real property owned by the plaintiff, and which was
20 owing on said mortgage.

3. The said Herbert J. Koehler, attorney for
plaintiff, wilfully, fraudulently and maliciously,
with intent to defraud the plaintiff, cashed the said
check and converted the said check and proceeds
thereof to his own use and failed to pay the said
check or proceeds thereof or any part thereof pur-
suant to the instructions of plaintiff.

30 4. After the discovery of the said fraudulent con-
version, plaintiff demanded of the defendant the
sum of money represented by said check and the
defendant refused to return said sum of money to
the plaintiff.

5. The value of the said property so converted

*Bill of Complaint—Exhibit D, Summons
and Complaint*

by the defendant to his own use was the sum of \$1,375.00.

Plaintiff demands of the defendant as damages on this count the sum of \$1,375.00, with lawful interest thereon from January 18, 1932.

10

FOURTH COUNT

1. Plaintiff repeats paragraphs 1 and 2 of the first count.

2. On March 3, 1932, plaintiff, having funds on deposit in the First Camden National Bank & Trust Co., Camden, N. J., and being the owner thereof, delivered to the defendant, its attorney, its check in the sum of \$625.00, drawn upon said First Camden National Bank & Trust Co. to the order of Herbert J. Koehler, with the expressed instruction to pay the same or the proceeds thereof to B. Harrison Brace, who held a mortgage upon real property owned by the plaintiff, and which was to be applied on account of the principal due and owing on said mortgage. 20

3. The said Herbert J. Koehler, attorney for plaintiff, wilfully, fraudulently and maliciously, with intent to defraud the plaintiff, cashed the said check and converted the said check and proceeds thereof to his own use and failed to pay the said check or proceeds thereof or any part thereof pursuant to the instructions of plaintiff. 30

*Bill of Complaint—Exhibit D, Summons
and Complaint*

4. After the discovery of the said fraudulent conversion, plaintiff demanded of the defendant the sum of money represented by said check and the defendant refused to return said sum of money to the plaintiff.

10 5. The value of the said property so converted by the defendant to his own use was the sum of \$625.00.

Plaintiff demands of the defendant as damages on this count the sum of \$625.00, with lawful interest thereon from March 3, 1932.

FIFTH COUNT

1. Plaintiff repeats paragraphs 1 and 2 of the
20 first count.

2. On April 29, 1933, plaintiff, having funds on deposit in the First Camden National Bank & Trust Co., Camden, N. J., and being the owner thereof, delivered to the defendant, its attorney, its check in the sum of \$100.00, drawn upon said First Camden National Bank & Trust Co. to the order of cash, with the expressed instruction to pay the same or the proceeds thereof to West Jersey & Seashore
30 Railroad Co. on account of the purchase price of property purchased by the plaintiff from said West Jersey & Seashore Railroad Co.

3. The said Herbert J. Koehler, attorney for plaintiff, wilfully, fraudulently and maliciously, with intent to defraud the plaintiff, cashed the said

*Bill of Complaint—Exhibit D, Summons
and Complaint*

check and converted the said check and proceeds thereof to his own use and failed to pay the said check or proceeds thereof or any part thereof pursuant to the instructions of plaintiff.

4. After the discovery of the said fraudulent conversion, plaintiff demanded of the defendant the sum of money represented by said check and the defendant refused to return said sum of money to the plaintiff. 10

5. The value of the said property so converted by the defendant to his own use was the sum of \$100.00.

Plaintiff demands of the defendant as damages on this count the sum of \$100.00, with lawful interest thereon from April 29, 1933. 20

SIXTH COUNT

1. Plaintiff repeats paragraphs 1 and 2 of the first count.

2. On April 29, 1933, plaintiff, having funds on deposit in the First Camden National Bank & Trust Co., Camden, N. J., and being the owner thereof, delivered to the defendant, its attorney, its check in the sum of \$150.00, drawn upon said First Camden National Bank & Trust Co. to the order of G. R. Weiner, which check was endorsed by the said G. R. Weiner and delivered to the defendant with the expressed instruction to pay the same or the proceeds thereof to West Jersey & Seashore Railroad 30

*Bill of Complaint—Exhibit D, Summons
and Complaint*

Co. on account of the purchase price of property purchased by the plaintiff from said West Jersey & Seashore Railroad Co.

3. The said Herbert J. Koehler, attorney for plaintiff, wilfully, fraudulently and maliciously, with intent to defraud the plaintiff, cashed the said check and converted the said check and proceeds thereof to his own use and failed to pay the said check or proceeds thereof or any part thereof pursuant to the instructions of plaintiff.

4. After the discovery of the said fraudulent conversion, plaintiff demanded of the defendant the sum of money represented by said check and the defendant refused to return said sum of money to the plaintiff.

5. The value of the said property so converted by the defendant to his own use was the sum of \$150.00.

Plaintiff demands of the defendant as damages on this count the sum of \$150.00, with lawful interest thereon from April 29, 1933.

30

SEVENTH COUNT

1. Plaintiff repeats paragraphs 1 and 2 of the first count.

2. In the month of September, 1932, plaintiff, then being the owner of a claim against one, J. Hollen-

*Bill of Complaint—Exhibit D, Summons
and Complaint*

baugh, in the sum of \$9.50, delivered to defendant for collection said claim.

3. In the month of January, 1933, plaintiff, then being the owner of a claim against one, Oscar Middleton, in the sum of \$133.69, delivered to defendant for collection said claim. 10

4. In the month of October, 1933, plaintiff, then being the owner of a claim against one, Charles Urban, in the sum of \$25.00, delivered to defendant for collection said claim.

5. In the month of September, 1934, plaintiff, then being the owner of a claim against one, Elizabeth Nelson, in the sum of \$71.00, delivered to defendant for collection said claim. 20

6. The defendant collected said claims, and wilfully, fraudulently and maliciously converted the said moneys so collected to his own use and failed to pay the said moneys or any part thereof to the plaintiff.

7. Plaintiff demanded of the defendant the said moneys so collected and the defendant refused to pay to the plaintiff the said sum of money so collected or any part thereof. 30

8. The value of the said property so converted by the defendant to his own use was the sum of \$239.19.

33

*Bill of Complaint—Exhibit D, Summons
and Complaint*

Plaintiff demands of the defendant as damages
on this count the sum of \$239.19, with interest
thereon from the dates the money was paid to the
defendant.

George H. Jacobs
Attorney of Plaintiff

10

ENDORSED:

CAMDEN COUNTY CIRCUIT COURT

Camden Coal Company,
Plaintiff,

vs.

Herbert J. Koehler,
Defendant.

20

Action at Law

SUMMONS AND COMPLAINT

George H. Jacobs, Esq.,
Attorney of Plaintiff,
311 No. Fifth Street,
Camden, New Jersey.

Served Jan. 4, 1938.

30

*Bill of Complaint—Exhibit E, Answer
and Counter-Claim*

EXHIBIT "E".

CAMDEN COUNTY CIRCUIT COURT.

<p>CAMDEN COAL COMPANY, <i>Plaintiff,</i> vs. HERBERT J. KOEHLER, <i>Defendant.</i></p>	}	<p>Action-at-Law Answer and Counter- Claim</p>	10
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The defendant, Herbert J. Koehler, of the City and County of Camden and State of New Jersey, 20
answering the complaint in the above matter says:

First Count

1. The allegations of paragraph one are admitted.
2. The allegations of paragraph two are admitted.
3. The allegations of paragraph three are denied.

The defendant believes that the plaintiff or Gertrude R. Weiner delivered to the defendant a sum 30
in cash including the sum of \$1,000.00 in the latter part of 1931 for the purpose of making a tender to the Burlington County Trust Company which tender was made and the amount so delivered to this defendant was returned to the plaintiff or Gertrude

*Bill of Complaint—Exhibit E, Answer
and Counter-Claim*

R. Weiner. The said Gertrude R. Weiner being the agent and owner of the plaintiff corporation.

4. The allegations of paragraph four are denied.
5. The allegation of paragraph five is denied.
- 10 6. The allegation of paragraph six is denied.

Second Count

1. The same answers made to paragraphs one and two of the first count are made to paragraphs one and two of the second count.

2. The allegations of paragraph two are denied.
20 This defendant admits the payment to him of \$1450.00 on or about the date mentioned but that said payment was made for services rendered and in partial liquidation of indebtedness to this defendant.

Third Count

1. The same answers made to paragraphs one and two of the first count are made to paragraphs one and two of the third count.
30

2. The allegations of paragraph two are denied.
This defendant admits the payment to him of \$1375.00 on or about the date mentioned but that said payment was made for services rendered and

*Bill of Complaint—Exhibit E, Answer
and Counter-Claim*

41

in partial liquidation of indebtedness to this defendant.

3. The allegations of paragraph three are denied.

4. The allegation of paragraph four is denied.

5. The allegation of paragraph five is denied.

10

Fourth Count

1. The same answers made to paragraphs one and two of the first count are made to paragraphs one and two of the fourth count.

2. The allegations of paragraph two are denied. This defendant admits the payment to him of \$625.00 on or about the date mentioned but that said payment was made for services rendered and in partial liquidation of indebtedness to this defendant.

20

3. The allegations of paragraph three are denied.

4. The allegation of paragraph four is denied.

5. The allegation of paragraph five is denied.

30

Fifth Count

1. The same answers made to paragraphs one and two of the first count are made to paragraphs one and two of the fifth count.

*Bill of Complaint—Exhibit E, Answer
and Counter-Claim*

2. The allegations of paragraph two are denied.
This defendant admits the payment to him of \$100.00 on or about the date mentioned but that said payment was made for services rendered and in partial liquidation of indebtedness to this defendant.

10

3. The allegations of paragraph three are denied.

4. The allegation of paragraph four is denied.

5. The allegation of paragraph five is denied.

Sixth Count

1. The same answers made to paragraphs one
20 and two of the first count are made to paragraphs one and two of the sixth count.

2. The allegations of paragraph two are denied.
This defendant admits the payment to him of \$150.00 on or about the date mentioned but that said payment was made for services rendered and in partial liquidation of indebtedness to this defendant.

30 3. The allegations of paragraph three are denied.

4. The allegation of paragraph four is denied.

5. The allegation of paragraph five is denied.

*Bill of Complaint—Exhibit E, Answer
and Counter-Claim*

Seventh Count

1. The same answers made to paragraphs one and two of the first count are made to paragraphs one and two of the seventh count.

2. The allegation of paragraph two is admitted. 10

3. The allegation of paragraph three is admitted.

4. The allegation of paragraph four is admitted.

5. The allegation of paragraph five is admitted.

6. The allegation of paragraph six is denied.

This defendant admits the payment to him of the moneys referred to in paragraphs two, three, four and five hereof on or about the date mentioned but says that said moneys were retained by him with the consent of the plaintiff on account of services rendered and in partial liquidation of its indebtedness to this defendant. 20

7. The allegation of paragraph seven is denied.

8. The allegation of paragraph eight is denied.

30

First Defense

As to the sum of \$1,000.00 referred to in the first count, the plaintiff's cause of action, if any, is barred by the Statute of Limitations as said money

was advanced more than six years prior to the beginning of this action.

Second Defense

As to all the sums paid to the defendant as set
10 forth in the second, third, fourth, fifth, sixth and
seventh counts, the same have been repaid and satisfied by services rendered to the plaintiff and to Gertrude R. Weiner at the plaintiff's request in accordance with itemized statements thereof hereto annexed.

Third Defense

Gertrude R. Weiner is the owner of the plaintiff
20 corporation and the sole manager thereof and the moneys paid by the check of plaintiff corporation to this defendant were paid to defendant for services rendered to Gertrude R. Weiner and in partial liquidation of her indebtedness to this defendant as per itemized statement hereto annexed.

The defendant by way of COUNTER-CLAIM against the plaintiff says that the plaintiff is indebted to this defendant upon a cause of action as follows:

30

1. Defendant is an attorney-at-law of New Jersey.
2. Professional services rendered by the defendant to the plaintiff at its request from 1930 to 1934,

*Bill of Complaint—Exhibit E, Answer
and Counter-Claim*

inclusive, as per itemized statements thereof hereto annexed.

3. The fair and reasonable value of said services rendered to plaintiff and more particularly set forth and itemized in the statement hereto annexed is the sum of \$865.00. 10

4. That Gertrude R. Weiner is the owner and sold manager of the plaintiff corporation and used checks of the plaintiff corporation in payment of services rendered to her and, for and on behalf of the corporation, requested defendant to render services to her in accordance with an itemized statement hereto annexed, of the value of \$3,450.00.

5. The fair and reasonable value of the services rendered to Gertrude R. Weiner, at the request of the plaintiff, is the sum of \$3,450.00. 20

6. The plaintiff is indebted to this defendant in the sum of \$4,515.00, with lawful interest thereon from December 7th, 1934.

Judgment will be claimed for the sum of \$4,515.00 with lawful interest thereon from December 7th, 1934 less the sum of \$3,939.19 paid on account thereof. 30

JOSEPH BECK TYLER
Attorney for Defendant.

*Bill of Complaint—Exhibit E, Answer
and Counter-Claim*

Camden Coal Company, To Herbert J. Koehler, Dr. December 21, 1932,		
10	Stevens Coal Company vs. Camden Coal Company, trial in Camden City District Court; notice of appeal to New Jersey Supreme Court; negotiations and adjustment,	\$75.00
	Wacks vs. Camden Coal Company, suit in New Jersey Supreme Court; services; preparing answer; trial in Hudson County, November 22, 1933,	250.00
	Correspondence, New Jersey Manufacturers' Casualty Company vs. Camden Coal Company, in re insurance,	25.00
20	Services, correspondence, interviews, advice, consultations in connection with 103 claims of Camden Coal Company versus various defendants, preparing various suit papers, filing suits &c.,	515.00
	Total,	\$865.00

Gertrude R. Weiner, To H. J. Koehler, Dr.		
30	To services rendered as follows: January, 1930, to December 7, 1934:	
	Foreclosure suit, Wurst vs. Weiner,	\$ 100.00
	Palmer vs. Weiner, replevin,	100.00
	Trial in re Delsea-Morton Haight, before David Magill, J. P.,	50.00

*Bill of Complaint—Exhibit E, Answer
and Counter-Claim*

Negotiations with Undertaker in connection with bill for burial of J. Weiner,	50.00	
Negotiations with State Highway Department in re property on White Horse Pike at Watson town, N. J., and attendance at hearing,	150.00	10
Trial before Vice-Chancellor Ingersoll,	250.00	
Superintending delivery of coal and care of breakdown of coal truck at request of G. R. Weiner,	100.00	
Preparing incorporation papers, G. R. Weiner, Inc.,	150.00	
Use of automobile for transportation purposes, services, advice and consultations for Camden Coal Company and G. R. Weiner, practically daily during said period,	2500.00	20
Total,	<u>\$3450.00</u>	

ENDORSED:

CAMDEN COUNTY CIRCUIT COURT

Camden Coal Company, 30
Plaintiff,

vs.

Herbert J. Koehler,
Defendant.

Action at Law

*Bill of Complaint—Exhibit F, Summons
and Complaint*

ANSWER and COUNTER-CLAIM

Joseph Beck Tyler, Atty.'

413 Cooper St., Camden, N. J.

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EXHIBIT "F".

THE STATE OF NEW JERSEY, to: Herbert J.
Koehler:

20 (seal) You are hereby commanded to answer
the annexed complaint of Building &
Development Realty Corporation in an
action at law in the Camden County
Circuit Court. AND TAKE NOTICE,
that unless you file your answer to the said com-
plaint with the Clerk of the said Camden County
Circuit Court, at Camden, New Jersey, within
twenty days after service upon you of this writ and
the annexed complaint, the plaintiff may proceed
in the suit, and judgment may be entered against
you.

30 WITNESS, Honorable V. Claude Palmer, Judge
of said Camden County Circuit Court, at Camden,
New Jersey, this 3rd day of January, A. D. 1938.

Leslie H. Ewing,
Clerk.

George H. Jacobs
Attorney.

*Bill of Complaint—Exhibit F, Summons
and Complaint*

CAMDEN COUNTY CIRCUIT COURT.

<p>BUILDING & DEVELOPMENT REALTY CORPORATION, <i>Plaintiff,</i></p> <p>vs.</p> <p>HERBERT J. KOEHLER, <i>Defendant.</i></p>	}	<p>Action at Law. Complaint.</p>	10
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Plaintiff, a corporation existing under and by virtue of the laws of the State of New Jersey, says that: 20

First Count.

1. At the times hereinafter complained of, the defendant Herbert J. Koehler was an attorney-at-law of the State of New Jersey.

2. At the times hereinafter complained of, the said Herbert J. Koehler was the attorney of the plaintiff. 30

3. On January 4, 1932, plaintiff being the lawful owner of the sum of \$725.00 in cash delivered to the said Herbert J. Koehler, its attorney, said sum of money, with the expressed instruction to pay the

*Bill of Complaint—Exhibit F, Summons
and Complaint*

same to William D. Lippincott, attorney for the Burlington County Trust Company, which held a mortgage upon real property owned by the plaintiff, and which money was to be applied on account of the principal due and owing on said mortgage.

10 4. The said Herbert J. Koehler, attorney for plaintiff, wilfully, fraudulently and maliciously, with intent to defraud the plaintiff, converted said money to his own use and failed to pay the said money or any part thereof pursuant to the instructions of plaintiff.

5. After the discovery of the said fraudulent conversion, plaintiff demanded of the defendant the return of said moneys and the defendant refused to
20 return the same to the plaintiff.

6. The value of the said property so converted by the defendant to his own use was the sum of \$725.00.

Plaintiff demands of the defendant as damages on this count the sum of \$725.00, with lawful interest thereon from January 4, 1932.

30

Second Count

1. Plaintiff repeats paragraphs 1 and 2 of the first count.

2. On January 9, 1932, plaintiff, having funds on deposit in the Camden Safe Deposit & Trust Co.

*Bill of Complaint—Exhibit F, Summons
and Complaint*

and being the owner thereof, delivered to the defendant, its attorney, its check in the sum of \$500.00, drawn upon said Camden Safe Deposit & Trust Co. to the order of H. J. Koehler, with the expressed instruction to pay the same or the proceeds thereof to William D. Lippincott, attorney for the Burlington County Trust Company, which held a mortgage upon real property owned by the plaintiff, and which was to be applied on account of the principal due and owing on said mortgage. 10

3. The said Herbert J. Koehler, attorney for plaintiff, wilfully, fraudulently and maliciously, with intent to defraud the plaintiff, cashed the said check and converted the said check and proceeds thereof to his own use and failed to pay the said check or proceeds thereof or any part thereof pursuant to the instructions of plaintiff. 20

4. After the discovery of the said fraudulent conversion, plaintiff demanded of the defendant the sum of money represented by said check and the defendant refused to return said sum of money to the plaintiff.

5. The value of the said property so converted by the defendant to his own use was the sum of \$500.00. 30

Plaintiff demands of the defendant as damages on this count the sum of \$500.00, with lawful interest thereon from January 9, 1932.

*Bill of Complaint—Exhibit F, Summons
and Complaint*

Third Count

1. Plaintiff repeats paragraphs 1 and 2 of the first count.

10 2. On March 3, 1932, plaintiff, having funds on deposit in the Camden Safe Deposit & Trust Co. and being the owner thereof, delivered to the defendant, its attorney, its check in the sum of \$3,100.00, drawn upon said Camden Safe Deposit & Trust Co. to the order of H. J. Koehler, Attorney, with the expressed instruction to pay the same to William D. Lippincott, attorney for the Burlington County Trust Company, which held a mortgage upon real property owned by the plaintiff, and which check was to be applied on account of the principal due and
20 owing on said mortgage.

30 3. The said Herbert J. Koehler, attorney for plaintiff, wilfully, fraudulently and maliciously, with intent to defraud the plaintiff, converted the said check to his own use and failed to pay said check or any part thereof pursuant to the instructions of plaintiff. The said Herbert J. Koehler endorsed said check in the manner in which it was drawn and caused same to be deposited to the credit of the Estate of J. W. Dunphy, deceased, of which said estate defendant was then proctor, and to which estate plaintiff was in no wise indebted. The moneys represented by said check were deducted from plaintiff's account by the Camden Safe Deposit & Trust Co. and credited to the estate of the said J. W. Dunphy.

*Bill of Complaint—Exhibit F, Summons
and Complaint*

4. After the discovery of the said fraudulent conversion, plaintiff demanded of the defendant the sum of money represented by said check and the defendant refused to return said sum of money to the plaintiff.

5. The value of the said property so converted by the defendant to his own use was the sum of \$3,100.00.

Plaintiff demands of the defendant as damages on this count the sum of \$3,100.00, with lawful interest thereon from March 3, 1932.

George H. Jacobs
Attorney of Plaintiff.

ENDORSED: 20

CAMDEN COUNTY CIRCUIT COURT.

Building & Development Realty
Corporation,
Plaintiff,

vs.

Herbert J. Koehler,
Defendant.

Action at Law . 30

SUMMONS AND COMPLAINT

George H. Jacobs, Esq.,
Attorney of Plaintiff,
311 No. Fifth Street,
Camden, New Jersey.

Served Jan. 4, 1938.

*Bill of Complaint—Exhibit G, Answer,
and Counter-Claim*

I hereby depute and appoint John
Campbell to execute the within writ.
Witness my hand and seal this 3 day
of Jan. A. D. 1938.

Joseph H. Van Meter

seal

10

Sheriff Camden County
J. M. Ackley
Under Sheriff

EXHIBIT "G".

20

CAMDEN COUNTY CIRCUIT COURT

BUILDING AND DEVELOP-
MENT REALTY CORPORA-
TION,

Plaintiff,

vs.

30 HERBERT J. KOEHLER,
Defendant.

} Action at Law
} Answer and Counter-
} Claim

The defendant, Herbert J. Koehler, of the City
and County of Camden and State of New Jersey,
answering the complaint in the above matter says:

*Bill of Complaint—Exhibit G, Answer
and Counter-Claim*

First Count

1. The allegations of paragraph one are admitted.
2. The allegations of paragraph two are admitted.
3. The allegations of paragraph three are denied. 10

The defendant believes that the plaintiff or Gertrude R. Weiner delivered to the defendant a sum in cash including the sum of \$725.00 in the latter part of 1931 for the purpose of making a tender to the Burlington County Trust Company which tender was made and the amount so delivered to this defendant was returned to the plaintiff or Gertrude R. Weiner. The said Gertrude R. Weiner being the agent and owner of the plaintiff corporation.

4. The allegations of paragraph four are denied. 20
5. The allegation of paragraph five is denied.
6. The allegation of paragraph six is denied.

Second Count

1. The same answers made to paragraphs one and two of the first count are made to paragraphs 30 one and two of the second count.

2. The allegations of paragraph two are denied.
This defendant admits the payment to him of \$500.00 on or about the date mentioned but that said

*Bill of Complaint—Exhibit G, Answer
and Counter-Claim*

payment was made for services rendered and in partial liquidation of indebtedness to this defendant.

3. The allegation of paragraph three is denied.
4. The allegation of paragraph four is denied.
- 10 5. The allegation of paragraph five is denied.

Third Count

1. The same answers made to paragraphs one and two of the first counts are made to paragraphs one and two of the third count.
2. The allegations of paragraph two are denied.
- 20 This defendant admits the payment to him of \$3100.00 on or about the date mentioned but that said payment was made for services rendered and in partial liquidation of indebtedness to this defendant.
3. The allegations of paragraph three are denied.
4. The allegation of paragraph four is denied.
- 30 5. The allegation of paragraph five is denied.

First Defense

As to the sum of \$725.00 referred to in the first count, the plaintiff's cause of action, if any, is barred by the Statute of Limitations as said money was

*Bill of Complaint—Exhibit G, Answer
and Counter-Claim*

advanced more than six years prior to the beginning of this action.

Second Defense

As to all the sums alleged to have been paid to the defendant in the first, second and third counts, 10 the same have been paid and satisfied by services rendered to the plaintiff at its request in accordance with an itemized statement thereof hereto annexed.

The defendant by way of COUNTER-CLAIM against the plaintiff says that the plaintiff is indebted to this defendant upon a cause of action as follows:

1. Defendant is an attorney-at-law of New Jersey.
2. Professional services rendered by the defendant to the plaintiff at its request from 1930 to 1933, inclusive, as per itemized statement thereof hereto annexed. 20
3. The fair and reasonable value of said services, more particularly set forth and itemized in the statement hereto annexed, is the sum of \$4715.00.
4. The plaintiff is indebted to this defendant in 30 the sum of \$4715.00 with lawful interest thereon from the date of the charges shown in the itemized statement hereto annexed.

Judgment will be claimed for the sum of \$4715.00 with lawful interest thereon from the date of said

*Bill of Complaint—Exhibit G, Answer
and Counter-Claim*

charges less the sum of \$3600.00 paid on account thereof.

JOSEPH BECK TYLER
Attorney for Defendant.

10 Building & Development Realty Corporation,
To Herbert J. Koehler, Dr.

April 22, 1931,

Negotiations with Bennett H. R. Gilbert respecting purchase of parcel of land and premises situate in Chester Township, Burlington County, New Jersey, for \$7400.00, under agreement dated September 26, 1930; correspondence and interviews with Gilbert, Howard Miller, Gilbert and O'Callahan; demand upon Gilbert for possession; service of demand, &c.,

\$50.00

20 May 18, 1931,

Preparing answering affidavits to order to show cause in restraint proceedings in re Bennett H. R. Gilbert vs. Building & Development Realty Corporation; argument on order to show cause, resulting in dismissal of order; preparing answers to complainant's bill and amended bill in said case; preparation of brief for submission to Vice-Chancellor; argument thereon, resulting in dismissal of bill,

250.00

30 June 23, 1931,

Preparing and filing bill in Chancery for specific performance in re Building & De-

*Bill of Complaint—Exhibit G, Answer
and Counter-Claim*

velopment Realty Corporation vs. Bennett H. R. Gilbert; negotiation for settlement with Gilbert; preparing deed in proposed settlement; preparing and filing suit in ejectment in re Building & Development Realty Corporation vs. Gilbert in the Burlington County Circuit Court; obtaining final decree on restraint sought in bill; preparation for trial of case; entering order for permanent injunction against defendant; brief for complainant on law; entering final decree against defendant in favor of complainant; preparing memorandum on law with respect to rescission of contract and obtaining order awarding damages to complainant in the sum of \$500.00 as rent; service of summons in ejectment suit; entering final decree in Chancery matter, 750.00
July 27, 1931, 20

Negotiations on behalf of Building & Development Realty Corporation with Burlington County Trust Company, William D. Lippincott and William Matlack for extension of term of first mortgage on property situate in Chester Township, Burlington County, New Jersey, belonging to the corporation, and for reduction of the principal amount thereof; conferences and correspondence with William D. Lippincott, Benjamin Natal and Willard Lippincott, and with officials and officers of the Burling- 30

*Bill of Complaint—Exhibit G, Answer
and Counter-Claim*

- ton County Trust Company; preparing draft of agreement; innumerable conferences with attorneys for trust company; negotiations with trust company and Matlack, resulting in final agreement being prepared and executed between William Matlack, Burlington County Trust Company and corporation, whereby the term of the first mortgage was extended and principal reduced, \$1500.00
September 14, 1931,
- 20 Negotiations with State Highway Department, State of New Jersey, on behalf of Building & Development Realty Corporation, respecting extension of highway through property of corporation and widening of road; negotiations with adjustors for the department; trip to Trenton, N. J.; correspondence and consultation with client; appearance before State Highway Commission at Trenton, N. J., resulting in increased award for lands taken by state, 750.00
- 30 Settlement of tax and tax liens of approximately \$7,000 upon a 50% basis with the Township of Chester upon property owned by Building & Development Realty Corporation; negotiations with tax collector; attendance at meetings of the Township Committee; conferences with West Jersey Title and Guaranty Company as to legality of settlement; examination of law; preparation of brief for title company; at-

*Bill of Complaint—Exhibit G, Answer
and Counter-Claim*

tendance at public meeting of Committee; conferences with various members of the Township Committee; correspondence, November 10, 1931,	1000.00
Preparing agreement after negotiations with DeMosi Wrecking Co., Inc., for Building & Development Realty Corporation for the demolition and reconstruction of gasoline station on property of corporation; defending corporation in controversy with DeMosi Wrecking Company, Inc., December 28, 1931,	10 50.00
In re William H. Morgan et al. vs. Building & Development Realty Corporation; conferences and negotiations with Joseph H. Carr, representing the Committee of Trustees of William H. Morgan; preparation of agreement between Morgan Corporation, Building & Development Realty Corporation, Burlington County Trust Company and William Matlack, respecting second mortgage on property of Corporation; preparing affidavits; obtaining discharge of bill and lis pendens, November 21, 1932,	20 \$200.00
Preparing various leases and agreements with Richard G. Bowman, C. J. Layer, Inc., Lancaster and others, in connection with service station operated by Building & Development Realty Corporation; correspondence and consultation with M. W. Sporkin, representing American Oil Com-	30

*Bill of Complaint—Exhibit G, Answer
and Counter-Claim*

	pany with reference to said station, extending from 9/1/33 to 8/6/34; preparing notice to American Oil Company for payment of rental; conferences and interviews with various tenants, July 25, 1933,	100.00
10	Preparing papers for suit in re Building & Development Realty Company vs. Richard G. Bowman before A. M. Addison, J. P., for possession of the property of Building & Development Realty Corporation, August 16, 1933,	15.00
	Preparing and filing suit in re Building & Development Realty Corporation vs. C. J. Layer, Inc., before George Fox, J. P.; attending trial, September 9, 1933,	25.00
20	Preparing and filing suit in re Building & Development Realty Corporation vs. C. J. Layer, Inc., before F. N. Richardson, J. P.; attending trial; preparing brief,	25.00
	Total,	\$4715.00

ENDORSED:

30 CAMDEN COUNTY CIRCUIT COURT

Building & Development Realty Corporation,
Plaintiff,

-vs-

Herbert J. Koehler,

Defendant.

Action-at-Law

Order to Show Cause

ANSWER and COUNTER-CLAIM
 Joseph Beck Tyler, Att'y.
 413 Cooper St., Camden, N. J.

[ENDORSED]

I hereby depute and appoint Howard
 Dahl to execute the within writ. Wit- 10
 ness my hand and seal this 24 day of
 May A. D. 1938.

Joseph H. Van Meter
 Sheriff Camden County
 J. M. Ackley
 Under Sheriff

ORDER TO SHOW CAUSE.

IN CHANCERY OF NEW JERSEY. 20

Between	}	On Bill, &c., Order to Show Cause.	30
HERBERT J. KOEHLER,			
<i>Complainant,</i>			
and			
GERTRUDE R. SALTZMAN,	}		
<i>et al.,</i>			
<i>Defendants.</i>			

Upon reading the bill of complaint in this cause
 and the affidavits thereunto annexed, and on motion

Order to Show Cause

of Riggins & Davis, Esquires, Solicitors for and of Counsel with complainant, it is, on this 20th day of May, 1938,

Ordered that the defendants Gertrude R. Saltzman, Camden Coal Company and Building and Development Realty Corporation show cause before the Chancellor, at the Chancery Chambers in the
10 Court House Annex, in the City and County of Camden, State of New Jersey, on the 31st day of May instant, at nine o'clock in the forenoon, Eastern Standard Time, or as soon thereafter as counsel can be heard, why an injunction should not issue according to the prayer of said bill, restraining them from further prosecuting the two pending actions in the Circuit Court of Camden County, where-
in Camden Coal Company and Building and Development Realty Corporation, respectively are
20 plaintiffs and complainant is defendant; and for such other and further relief as may be just; and it is

Further Ordered that a true but uncertified copy of said bill and affidavits thereto annexed, and of this Order be served on said defendants personally, respectively, within five days from the date of this Order.

LUTHER A. CAMPBELL,
C.

30 Respectfully advised,
F. B. DAVIS,
V. C.

Order of Continuance

[ENDORSED]

I hereby depute and appoint Howard Dahl to execute the within writ. Witness my hand and seal this 24 day of May A. D. 1938.

Joseph H. Van Meter (Seal)
 Sheriff Camden County
 J. M. Ackley
 Under Sheriff

10

ORDER OF CONTINUANCE.

IN CHANCERY OF NEW JERSEY.

Between

HERBERT J. KOEHLER,
Complainant,

and

GERTRUDE R. SALTZMAN,
et al.,

Defendants.

On Bill &c.
 Order of Continuance.

20

This matter, being opened to the court by Riggins & Davis, solicitors for the complainant, in the presence of George H. Jacobs, Esq., solicitor for the defendant, and application being made herefor, it is, on this 3rd day of June, 1938, on motion of said Riggins & Davis, and upon reading the consent hereunder written by said George H. Jacobs, solicitor as aforesaid, 30

Ordered that the order to show cause heretofore allowed in the above entitled cause be and the same

Notice of Motion to Strike Bill

is hereby continued until Monday, the sixth day of June next, at nine o'clock in the forenoon (Eastern Standard Time) or as soon thereafter as counsel can be heard thereon, before the Chancellor in the Chancery Chambers, in the Court House Annex, in the City and County of Camden, State of New Jersey.

10

LUTHER A. CAMPBELL,
C.
(Copy)

Respectfully advised:

F. B. DAVIS,
V. C.

(Copy)

I consent to the entry of the foregoing Order.

GEORGE H. JACOBS, (Copy)
Solicitor for Defendants.

20

NOTICE OF MOTION TO STRIKE BILL.

IN CHANCERY OF NEW JERSEY.

121/699

Between

HERBERT J. KOEHLER,
Complainant,

and

30 GERTRUDE R. SALTZMAN,
et als.,

Defendants.

} On Bill, Etc.
} Notice of Motion to
} Strike Bill.

*To the complainant, Herbert J. Koehler, and Messrs.
Riggins & Davis, solicitors for complainant:*

Notice of Motion to Strike Bill

Take Notice, that on Monday, the sixth day of June, 1938, at the hour of nine o'clock in the forenoon, Eastern Standard Time, or as soon thereafter as counsel can be heard, at the Chancery Chambers, in the City of Camden, I shall apply to the Chancellor for an order striking out the bill of complaint filed by you in the above entitled cause, for the following reasons: 10

1. That the said bill of complaint discloses no cause of action as to this defendant.

2. For lack of jurisdiction.

Respectfully,
 GEORGE H. JACOBS,
Solicitor for Building and Development Realty Corporation.

20

[ENDORSED]

Service of the within notice is hereby acknowledged, this 1st day of June, A. D. 1938.

Riggins and Davis,
 Solicitors for complainant,
 Herbert J. Koehler.

30

NOTICE OF MOTION TO STRIKE BILL.

IN CHANCERY OF NEW JERSEY.

121/699.

10

Between

HERBERT J. KOEHLER,
Complainant,
 and
 GERTRUDE R. SALTZMAN,
et als.,
Defendants.

On Bill, Etc.
 Notice of Motion to
 Strike Bill.

20

*To the complainant, Herbert J. Koehler, and Messrs.
 Riggins & Davis, Solicitors for complainant:*

Take Notice, that on Monday, the sixth day of
 June, 1938, at the hour of nine o'clock in the fore-
 noon, Eastern Standard Time, or as soon thereafter
 as counsel can be heard, at the Chancery Chambers,
 in the City of Camden, I shall apply to the Chan-
 cellor for an order striking out the bill of complaint
 filed by you in the above entitled cause, for the fol-
 lowing reasons:

1. That the said bill of complaint discloses no cause of action as to this defendant.

30

Notice of Motion to Strike Bill

2. For lack of jurisdiction.
3. That there is a suitable and adequate remedy in law available to the complainant as against this defendant.

Respectfully,
 GEORGE H. JACOBS,
*Solicitor for Gertrude R. 10
 Saltzman.*

[ENDORSED]

Service of the within notice is hereby acknowledged this 1st day of June, A. D. 1938.

Riggins and Davis,
 Solicitors for complainant,
 Herbert J. Koehler. 20

NOTICE OF MOTION TO STRIKE BILL.

IN CHANCERY OF NEW JERSEY.
 121/699

Between	}	On Bill, Etc. Notice of Motion to 30 Strike Bill.
HERBERT J. KOEHLER, <i>Complainant,</i>		
and		
GERTRUDE R. SALTZMAN, <i>et als.,</i> <i>Defendants.</i>		

*To the complainant, Herbert J. Koehler, and Messrs.
 Riggins & Davis, Solicitors for complainant:*

Notice of Motion to Strike Bill

Take Notice, that on Monday, the sixth day of June, 1938, at the hour of nine o'clock in the forenoon, Eastern Standard Time, or as soon thereafter as counsel can be heard, at the Chancery Chambers, in the City of Camden, I shall apply to the Chancellor for an order striking out the bill of complaint filed by you in the above entitled cause, for the following reasons:

1. That the said bill of complaint discloses no cause of action as to this defendant.

2. For lack of jurisdiction.

Respectfully,

GEORGE H. JACOBS,

*Solicitor for Camden Coal
Company.*

20

[ENDORSED]

Service of the within notice is hereby acknowledged this 1st day of June, A. D. 1938.

Riggins and Davis,
Solicitors for complainant,
Herbert J. Koehler.

30

*Exhibit D-1, Certificate of Incorporation
of Building and Development
Realty Corp.*

EXHIBIT D-1.

CERTIFICATE OF INCORPORATION
of
BUILDING & DEVELOPMENT REALTY CORP. 10

This is to certify that we, G. R. Weiner, and Anna Weiner, of the City and County of Camden, State of New Jersey, and A. E. Harrington, of the Borough of Wenonah, County of Gloucester, State of New Jersey, do hereby associate ourselves into a corporation under and by virtue of the provisions of an act of the Legislature of the State of New Jersey entitled "An act concerning corporations (Revision of 1896)" and the several supplements thereto and acts amendatory thereof, and do severally agree to take the number of shares of capital stock set opposite our respective names. 20

(1) The name of the corporation is Building & Development Realty Corp.

(2) The location of the principal office is at 438 Broadway, in the City and County of Camden. The name of the agent therein and in charge thereof, upon whom process against this corporation may be served is G. R. Weiner. 30

(3) The objects for which this corporation is formed are:

*Exhibit D-1, Certificate of Incorporation
of Building and Development
Realty Corp.*

To buy, sell, exchange, rent, mortgage and otherwise acquire, dispose of and deal in real property, both improved and unimproved, and to build, construct, alter, remove or tear down houses or other buildings, and to do any and all things looking toward the improvement or enhancing in value of property acquired, and to generally manage, develop and improve real property.

To do a general agency and brokerage business in real estate, and to act as agent, factor or broker for any persons, associations or corporations in acquiring, disposing of or dealing in real property, and in connection with the acquiring and disposing of real property, whether such property be the property of this company or the property of some other person, association or corporation, to acquire by purchase or otherwise, to hold, pledge in any manner or dispose of and generally to deal in any form of personal property which may properly or conveniently be connected with the business of this company.

To acquire by purchase, subscription or in any other manner, and to hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of any bonds or other securities or evidences of indebtedness or any shares of capital stock created or issued by any other corporation or corporations, association or associations of the state of New Jersey, or in any other state, territory or country, and while the owner thereof, to exercise all the rights, powers and privileges of ownership, including the right to vote

*Exhibit D-1, Certificate of Incorporation
of Building and Development
Realty Corp.*

upon the shares of the capital stock of any other corporation or corporations, association or associations; and to do any and all acts or things designed to aid in any manner any corporation or association whose stock, bonds or other securities or evidences of indebtedness, are so held by this company; and to do any and all acts or things designed to protect, preserve, improve or enhance the value of any such capital stock, bonds or other securities, or evidences of indebtedness of other corporations or associations held by this company. 10

The corporation shall also have power to conduct its business in all its branches, have one or more offices, and unlimitedly to hold, purchase, mortgage and convey real and personal property in any state, territory or colony of the United States, and in any foreign country or place. 20

The foregoing clauses shall be interpreted and construed both as objects and powers, and it is the intention that the powers specified are not to be limited or restricted by the terms of any clause or paragraph herein contained, unless such restriction or limitation is expressed in terms, and it is hereby provided that the objects and powers herein specified are to be regarded as independent objects and powers, and are not to be held to limit or restrict in any manner the powers of the corporation. 30

(4) The total authorized capital stock of this corporation is 1250 shares without nominal or par value, and the corporation shall be and is authorized

*Exhibit D-1, Certificate of Incorporation
of Building and Development
Realty Corp.*

to issue 1250 shares of capital stock, all of which shall be issued without nominal or par value.

All or any part of the capital stock may be issued by the corporation from time to time, and for such consideration as may be determined upon and fixed
10 by the board of directors, as provided by law.

(5) The names and postoffice address of the incorporators and the number of shares subscribed for by each, the aggregate of which (10 shares) is the amount of capital stock with which this company will commence business, are as follows:

<i>Name</i>	<i>Postoffice address</i>	<i>No. of shares</i>
G. R. Weiner	Camden, N. J.	8
Anna Weiner	Camden, N. J.	1
20 A. E. Harrington	Wenonah, N. J.	1

(6) The period of existence of this corporation is unlimited.

In witness whereof we have hereunto set our hands and seals the nineteenth day of September, A. D. 1927.

G. R. WEINER (SEAL)

ANNA WEINER (SEAL)

A. E. HARRINGTON (SEAL)

30

Signed, sealed and delivered
in the presence of
JOS. C. HAINES

*Exhibit D-1, Certificate of Incorporation
of Building and Development
Realty Corp.*

STATE OF NEW JERSEY }
CAMDEN COUNTY } SS.

BE IT REMEMBERED that on this nineteenth day of September, A. D. nineteen hundred and twenty-seven, before me, a Master in Chancery of 10 New Jersey, personally appeared G. R. Weiner, Anna Weiner and A. E. Harrington, who I am satisfied are the persons named in and who executed the foregoing certificate, and I having first made known to them the contents thereof, they did each acknowledge that they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed.

JOS. C. HAINES,
M. C. C. of N. J. 20

ENDORSED:

“Received 9/28/27 and recorded in the clerk’s office of the County of Camden, in book 59 of Corporations page 593.

Charles F. Wise
Clerk.”

30

“FILED AND RECORDED

Sep 30 1927

Joseph F. S. Fitzpatrick
Secretary of State.”

*Exhibit D-2, Certificate of Incorporation
of the Camden Coal Company*

STATE OF NEW JERSEY

DEPARTMENT OF STATE.

I, JOSEPH F. S. FITZPATRICK, Secretary of
State of the State of New Jersey, DO HEREBY
10 CERTIFY that the foregoing is a true copy of the
Certificate of Incorporation of Building & Develop-
ment Realty Corp., and the endorsements thereon,
as the same is taken from and compared with the
original filed in my office on the Thirtieth day of
September, A. D. 1927, and now remaining on file
and of record therein.

IN TESTIMONY WHEREOF, I have
hereunto set my hand and affixed my Of-
20 ficial Seal at Trenton, this Thirtieth day
(SEAL) of September, A. D. 1927.

Joseph A. Fitzpatrick
Secretary of State.

EXHIBIT D-2.

M-6294

30 CERTIFICATE OF INCORPORATION
of the
CAMDEN COAL COMPANY.

WE, THE UNDERSIGNED, for the purpose of
forming a corporation in pursuance of an act of

*Exhibit D-2, Certificate of Incorporation
of the Camden Coal Company*

the Legislature of the State of New Jersey, entitled "An Act Concerning Corporations," (Revision of 1896) and the various acts amendatory thereof and supplemental thereto, do make, record and file this certificate.

FIRST. The name of the Corporation is 10
THE CAMDEN COAL COMPANY

SECOND: The location of its principal office in the State of New Jersey is #438 Broadway, Camden, New Jersey and the name of the agent therein and in charge thereof and upon whom process against the corporation may be served is G. R. Weiner.

THIRD. The objects for which and for each of 20
which the corporation is formed are:

To mine and sell coal and other minerals and manufacture and sell coke and its by-products.

To buy and sell or manufacture ice; to carry on the business of collecting, cutting, purchasing, storing, preserving upon land or water, selling and manufacturing ice, together with the transaction of all legitimate business incident thereto or in anywise connected therewith.

To acquire, own lease, occupy, use or develop 30
any lands containing coal or iron or other ores or minerals, and any wood lands or other lands for any purpose of the company.

To mine or otherwise to extract or remove coal, ores or other minerals and timber from any lands owned, acquired, lease or occupied by the company.

*Exhibit D-2, Certificate of Incorporation
of the Camden Coal Company*

To manufacture iron, steel, gas, lumber and other materials, and all or any articles consisting or partly consisting of iron, steel, coal or other materials, and any and all products thereof.

To buy, sell, or otherwise to deal or traffic in coal, coke, ores, wood, lumber and other materials, and any of the products thereof, and any articles consisting or partly consisting thereof.

To acquire, hold, improve, lease and sell timber, farming, grazing, mineral and other lands and the products thereof; to build, construct, maintain and operate plants and works for the development of such lands, and for the handling, preparing and rendering commercially available of the various products thereof.

To manufacture lumber, iron, steel, manganese, coke, copper, and other materials; and all or any articles consisting, or partly consisting, of wood, iron, steel, copper or other materials, and all or any products thereof.

To acquire, own, lease, sell, use or develop any lands containing coal or iron, manganese, stone or other minerals, or oil, and any wood lands, or other lands for any purpose of the company.

To mine or otherwise to extract or remove coal, ores, stone and other minerals and timber from any lands owned, acquired, leased or occupied by the company, or from any other lands.

To buy or sell, or otherwise to deal or to traffic in wood, lumber, iron, steel, manganese, copper, stone, ores, coal, coke and other materials, and any of the products thereof, and any articles consisting or partly consisting thereof.

*Exhibit D-2, Certificate of Incorporation
of the Camden Coal Company*

IN FURTHERANCE, and not in limitation, of the general powers conferred by the laws of the State of New Jersey, and of the objects and purposes as herein above stated, it is hereby expressly provided that the Company shall have also, subject to the limitations imposed by the laws of the State of New Jersey, the following powers, that is 10
to say:

(a) To do any or all things herein set forth as objects, purposes, powers or otherwise, to the same extent and as fully as natural persons might or could do, as principals, agents, contractors or otherwise.

(b) To conduct its business in all its branches and to have one or more offices, and to hold, purchase, mortgage and convey real and personal property, both within the State of New 20
Jersey, and in all other States, Territories, Possessions and Dependencies of the United States, the District of Columbia and in all foreign countries.

(c) To manufacture, purchase or otherwise acquire, hold, own, sell, assign and transfer, invest, trade, deal in and deal with goods, wares and merchandise and property of every class and description.

(d) To purchase or otherwise acquire, to 30
hold, own, maintain, work, mine and develop, and to sell, convey, mortgage, lease or otherwise dispose of, without limit as to amount, within or without the State of New Jersey, and in any part of the world, real estate and real property, and any interest and rights therein.

*Exhibit D-2, Certificate of Incorporation
of the Camden Coal Company*

(e) To acquire the goodwill, business, rights and property of all kinds, and to assume or undertake the whole or any part of liabilities of any person, firm, association or corporation, and to pay for the same in cash, stock of this corporation, bonds or otherwise.

10

(f) To apply for, obtain, register, purchase, lease, or otherwise acquire, and to hold, own, use, operate, introduce and sell, assign, or otherwise dispose of, any and all trademarks, trade names and distinctive marks, and all inventions, improvements and processes used in connection with or secured under Letters Patent of the United States or elsewhere, or otherwise, and to use, exercise, develop, grant licenses in respect of, or otherwise turn to account any such trademarks, patents, licenses, concessions, processes and the like, or any such property, rights and information so acquired, and with a view to the working and development of the same, to carry on any business, whether mining, manufacturing or otherwise, which the corporation may think calculated directly or indirectly to effectuate these objects.

20

(g) To purchase, lease, exchange, hire or otherwise acquire, any and all rights, privileges, permits or franchises suitable or convenient for any of the purposes of its business, to erect and construct, make and improve, or aid or subscribe towards the construction, making and improvement of mills, factories, storehouses, buildings, roads, docks, piers, wharves,

30

*Exhibit D-2, Certificate of Incorporation
of the Camden Coal Company*

houses for employees and others, and works of all kinds; and in conjunction with and in furtherance of the general business and purposes of the corporation, as above described, to construct, purchase, lease, own, operate or sell a railroad or railroads, or both, in any State or country other than the State of New Jersey, subject to the laws of such other State or country. 10

(h) To make and enter into contracts for any lawful purpose with any individual, firm, association, corporation, private, public, or municipal, body politic, and with the government of the United States, or of any State, Territory, District, Possession or Dependency thereof, or of any foreign country.

(i) To do all and everything necessary, suitable or proper for the accomplishment of any of the purposes or the attainment of any one or more of the objects herein enumerated, or which shall at any time appear conducive or expedient for the protection of the business, property or rights of the corporation and in general to carry on any business, whether manufacturing, mining or otherwise. 20

It is the intention that the objects, purposes and powers specified and clauses contained in this third paragraph shall, except where otherwise expressed in said paragraph, be nowise limited or restricted by reference to or inference from the terms of any other clause of this or any other paragraph in 30

*Exhibit D-2, Certificate of Incorporation
of the Camden Coal Company*

this certificate, but that the objects, purposes and powers specified in each of the clauses of this paragraph shall be regarded as independent objects, purposes and powers.

10 FOURTH. The amount of the total authorized Capital Stock of the corporation is One hundred thousand dollars, divided into one thousand shares of the par value of one hundred dollars each. The amount of Capital Stock with which the Company will begin business is one thousand dollars.

20 FIFTH. The names and Post Office addresses of the incorporators and the number of shares subscribed for by each (the aggregate of which, to wit, one thousand dollars, is the amount of Capital Stock with which the Company shall begin business) are as follows:

Name	Post Office Address	No. of Shares
Morris R. Silverman	905 West End Ave New York City	5
G. R. Weiner	Camden, N. J.	4
William S. Lasdon	New York City.	1

30 SIXTH. The duration of the Company shall be unlimited.

SEVENTH. The following provisions for the regulation of the business and the conduct of the affairs of the Company are hereby made:

The corporation may use and apply its surplus earnings, or accumulated profits author-

*Exhibit D-2, Certificate of Incorporation
of the Camden Coal Company*

ized by law to be reserved, to the purchase or acquisition of property, and to the purchase or acquisition of its own Capital Stock from time to time, to such extent and in such manner and upon such terms as its Board of Directors shall determine; and neither the property nor the Capital Stock so purchased and acquired, nor any of its Capital Stock taken in payment or satisfaction of any debt due to the corporation, shall be regarded as profits for the purposes of declaration or payment of dividends, unless otherwise determined by a majority of the Board of Directors, or a majority of the Stockholders. 10

The corporation, in its by-laws, may prescribe the number necessary to constitute a quorum of the Board of Directors, which number may be less than a majority of the whole number and may by its by-laws provide the date or dates for the payment of dividends. 20

The Board of Directors shall have power without the assent or vote of the stockholders to make, alter, amend or rescind the by-laws of the corporation, to fix the amount to be reserved as working capital, to authorize and to cause to be executed mortgages and liens upon the real and personal property of the corporation; and from time to time to sell, assign, transfer or otherwise dispose of any or all of the property of the corporation, but no such sale of all the property shall be made except pursuant to the vote of at least two-thirds of the Board of Directors. 30

*Exhibit D-2, Certificate of Incorporation
of the Camden Coal Company*

10 The Board of Directors from time to time shall determine whether and to what extent, and at what times and places, and under what conditions and regulations, the accounts and books of the corporation, or any of them, shall be open to the inspection of the stockholders; and no stockholder shall have any right of inspecting any account or book or document of the corporation, except as conferred by statute or authorized by the Board of Directors, or by a resolution, of the stockholders.

20 The Board of Directors shall have power to hold its meetings, to have one or more offices, and to keep the books of the corporation (except the stock and transfer books outside of the State of New Jersey) at such places as may be from time to time designated by them.

AND we do hereby associate ourselves into a corporation and further respectively agree to all the provisions of the foregoing certificate, and to take and pay for the number of shares of stock hereinbefore set forth and accordingly, have hereunto set our hands and seals, this 25th day of August, 1922.

Morris R. Silverman

G. R. Weiner

William S. Lasdon

30

In the presence of
Hattie Satinsky

*Exhibit D-2, Certificate of Incorporation
of the Camden Coal Company*

STATE OF NEW JERSEY }
COUNTY OF CAMDEN } SS.:

BE IT REMEMBERED that on this 25th day of August in the year one thousand nine hundred & twenty-two before me a Notary Public of New Jersey personally appeared Morris R. Silverman, G. R. Weiner and William S. Lasdon Who I am satisfied are the persons mentioned in and who executed the foregoing certificate and I having first made known to them and each of them the contents thereof they did severally acknowledge that they signed, sealed and delivered the same as their voluntary act and deed.

Hattie Satinsky

(Seal)

Notary Public of N. J. 20

Received in the Clerk's Office of the County of Camden on the 25th day of August A. D. 1922, and recorded in Books 51 of Corporations Page 213 &c.

Wm. D. Brown

Clerk."

ENDORSED:

"FILED AND RECORDED AUG 26, 1922

THOMAS F. MARTIN

SECRETARY OF STATE."

30

*Exhibit D-2, Certificate of Incorporation
of the Camden Coal Company*

STATE OF NEW JERSEY
DEPARTMENT OF STATE.

(Emblem)

10 I, the Secretary of State of the State of New Jersey, DO HEREBY CERTIFY that the foregoing is a true copy of the Certificate of Incorporation of THE CAMDEN COAL COMPANY, and the endorsements thereon, as the same is taken from and compared with the original filed in my office on the Twenty-sixth day of August A. D. 1922, and now remaining on file and of record therein.

20 (Seal) IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal at Trenton, this Twenty-sixth day of May A. D. 1938.

(Signed) THOMAS A. MATHIS,
Secretary of State.

(On back:)

30 CERTIFIED COPY
OF
CERTIFICATE
OF
INCORPORATION
OF
THE CAMDEN COAL COMPANY.

.....
.....
.....

Memorandum

MEMORANDUM.

IN CHANCERY OF NEW JERSEY.

121/699

10

Between		On Bill, etc.
HERBERT J. KOEHLER,	}	On Motion to Strike
<i>Complainant,</i>		Bill and on Order
and		to Show Cause
GERTRUDE R. SALTZMAN,		for Preliminary
<i>et als.,</i>	}	Injunction.
<i>Defendants.</i>		Memorandum.

20

RIGGINS & DAVIS, Esqs., for whom appeared FRANK
W. DAVIS, Esq., for complainant.

GEORGE H. JACOBS, Esq., for whom appeared
WILLIAM J. SHEPP, Esq., for defendants.

DAVIS, V. C.:

The motion to strike the bill in this cause made
on behalf of all the defendants therein will stand 30
over until the final hearing under Rule 69, and such
bill shall be answered by the defendants.

The bill seeks to restrain two pending actions-
at-law in the Camden County Circuit Court, in one
of which the defendant, Camden Coal Company, is

Order

plaintiff, and in the other the defendant, Building and Development Realty Company, is plaintiff, and in both of which the complainant herein is defendant.

This matter was heard at the time of the return of the order to show cause. The prosecution of these actions should be restrained pending the final
10 hearing of this cause. An order may be presented.

Determined: June 14th, 1938.

(Not for publication in any report.)

 ORDER.

IN CHANCERY OF NEW JERSEY.

121/699

20

Between

HERBERT J. KOEHLER,
Complainant,

and

GERTRUDE R. SALTZMAN,
et als.,

Defendants.

} On Bill, &c.
Order.

30 This matter coming on to be heard before this Court on Monday, June 6th, 1938, in the presence of Frank W. Davis, Esq., appearing for Riggins & Davis, Esqs., solicitors for and of counsel with complainant, and William J. Shepp, Esq., appearing for George H. Jacobs, Esq., solicitor for and of counsel with the defendants, and the Court hav-

Order

ing heard the arguments of respective counsel on the motion of the defendant to strike the bill in this cause, and the application of the complainant for an order restraining the pending actions at law set forth in complainant's bill of complaint, and the Court having duly considered the same and being of the opinion that the motion of the defendants should be denied and the motion of the complainant granted; and it being made to appear to the Court that Herbert J. Koehler, the complainant herein, has paid to the defendants, Camden Coal Company and Building and Development Realty Company, the costs incurred by them respectively at the April Term of the Camden County Circuit Court in two actions at law now pending in said court in which the said corporations respectively are plaintiffs and the complainant herein is defendant; and it further appearing that due and legal service of notice of the application for this order has been acknowledged by George H. Jacobs, Esq., solicitor for and of counsel with the defendants, it is, therefore, on this 27th day of June, 1938, on motion of Riggins & Davis, Esqs.,

Ordered that the defendants' motion to strike the bill in this cause stand over until final hearing under Rule 69 of this court.

And be it further Ordered that the said defendants, Gertrude R. Saltzman, Camden Coal Company and Building and Development Realty Company, and each and every of them, under penalty that may fall thereon, do absolutely desist and refrain from all further proceedings at law against the complainant, Herbert J. Koehler, in two cer-

Notice of Appeal

tain actions at law, commenced by Camden Coal Company and Building and Development Realty Company, respectively, in the Camden County Circuit Court and which are now pending in said Court, until the final hearing of this cause, or the further order of this Court.

And it is further Ordered that a true and correct, but uncertified, copy of this order be served on the said defendants respectively, within ten days from the date of this order.

LUTHER A. CAMPBELL,
C.
(Copy)

Respectfully advised,
F. B. DAVIS,
V. C.
(Copy)

20

 NOTICE OF APPEAL.

IN CHANCERY OF NEW JERSEY.

 121/699

Between	HERBERT J. KOEHLER,	}	On Bill, etc. Notice of Appeal.
	<i>Complainant,</i>		
	and		
30	GERTRUDE R. SALTZMAN, <i>et als.,</i>		
	<i>Defendants.</i>		

The defendants, Gertrude R. Saltzman, Camden Coal Company and Building and Development

Notice of Appeal

Realty Company, hereby appeal from the interlocutory order made by Chancellor Luther A. Campbell on the advice of Vice-Chancellor Francis B. Davis in the above-entitled cause, on June 27, 1938, and from the whole and every part thereof, to the Court of Errors and Appeals in the last resort in all causes.

Dated: July 7, 1938.

10

GEORGE H. JACOBS,
*Solicitor for and of Counsel
with Defendants, Gertrude R. Saltzman, Camden Coal Company and Building and Development Realty Company.*

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

20

GEORGE H. JACOBS,
Of Counsel with Defendants, Gertrude R. Saltzman, Camden Coal Company and Building and Development Realty Company.

30

[ENDORSED]

Service of the within notice of appeal is hereby acknowledged this 7th day of July, A. D. 1938.

Riggins & Davis.

PETITION OF APPEAL.

NEW JERSEY COURT OF ERRORS
AND APPEALS.

10

Between

HERBERT J. KOEHLER,
*Complainant-
Respondent,*

and

GERTRUDE R. SALTZMAN,
*et als.,**Defendants-
Appellants.*} On Appeal from the
Court of Chancery.
Petition of Appeal.

20

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

The petition of Gertrude R. Saltzman, Camden Coal Company and Building and Development Realty Company, the appellants in the above-en-
30 titled cause, respectfully shows that:

1. Petitioners find themselves aggrieved by an interlocutory order made in the Court of Chancery, by his Honor, Luther A. Campbell, Chancellor of the State of New Jersey, on the advice of Vice-

Petition of Appeal

Chancellor Francis B. Davis, bearing date June 27, 1938, in a certain cause in said Court of Chancery, wherein the said Herbert J. Koehler was complainant, and the said Gertrude R. Saltzman, Camden Coal Company and Building and Development Realty Company were defendants, in this respect, to wit:

That the said interlocutory order ordered that the defendants' motions to strike the bill in said cause stand over until final hearing under Rule 69 of said Court of Chancery; 10

That the said interlocutory order ordered that the said defendants, Gertrude R. Saltzman, Camden Coal Company and Building and Development Realty Company, and each and every of them, under penalty that may fall thereon, do absolutely desist and refrain from all further proceedings at law against the complainant, Herbert J. Koehler, in two certain actions at law, commenced by Camden Coal Company and Building and Development Realty Company, respectively, then pending in the Camden County Circuit Court, until the final hearing of said cause in the Court of Chancery, or the further order of said Court of Chancery. 20

2. And petitioners appeal from the interlocutory order of the Chancellor upon the ground that the same is erroneous in that: 30

(a) The Court below erred in ordering defendants' motion to strike the bill of complaint, to stand over until final hearing.

Petition of Appeal

(b) The Court below erred in not striking the bill of complaint.

(c) The Court below abused its discretion by not striking the bill of complaint.

(d) The Court below erred in restraining the
10 defendant, Camden Coal Company, from further proceeding against complainant, Herbert J. Koehler, in its action at law then pending in the Camden County Circuit Court.

(e) The Court below erred in restraining the defendant, Building and Development Realty Company, from further proceeding against complainant, Herbert J. Koehler, in its action at law then pending in the Camden County Circuit Court.

20

(f) The Court below erred in restraining the defendants from proceeding against complainant in their actions at law because the bill of complaint discloses no cause of action, and because the Court below lacked jurisdiction.

Petitioners therefore pray that the said interlocutory order of the said Chancellor may be reversed, set aside and for nothing holden, and that petitioners may have such further relief in the premises
30 as to this Court shall deem proper.

GEORGE H. JACOBS,

Solicitor for and of Counsel with Defendants-Appellants.

Petition of Appeal

95

[ENDORSED]

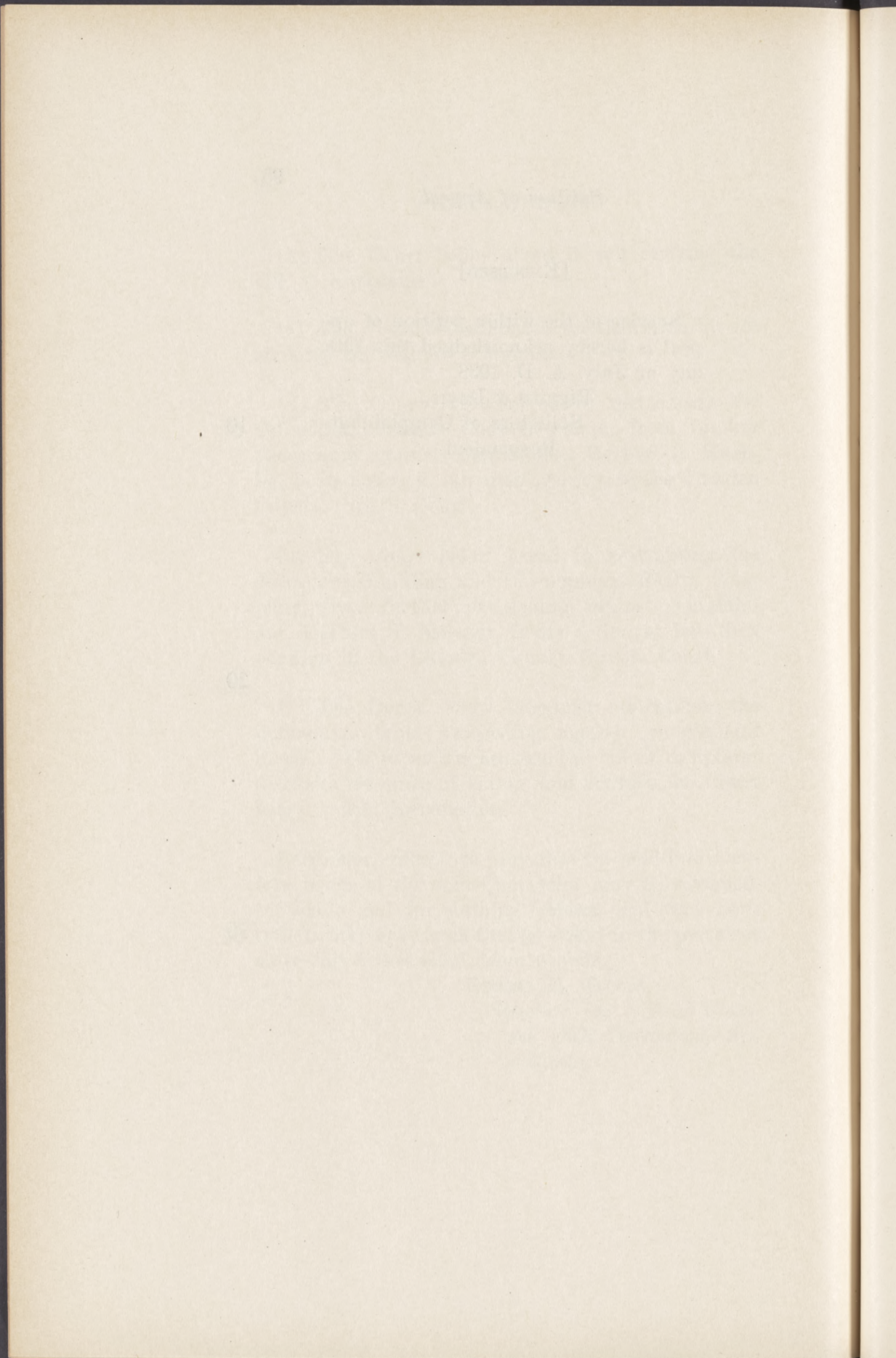
Service of the within petition of appeal is hereby acknowledged this 29th day of July, A. D. 1938.

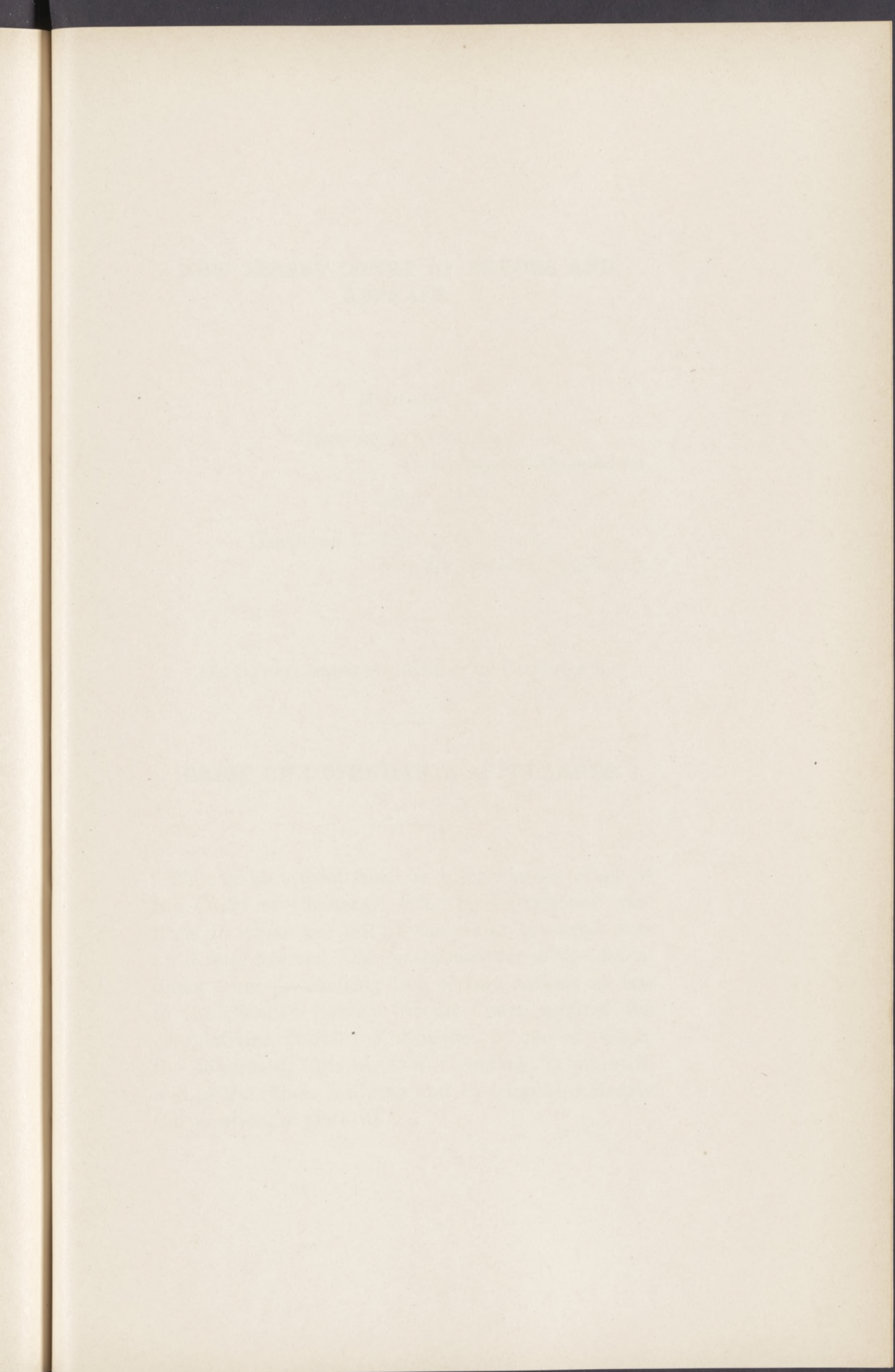
Riggins & Davis,
Solicitors of Complainant-
Respondent.

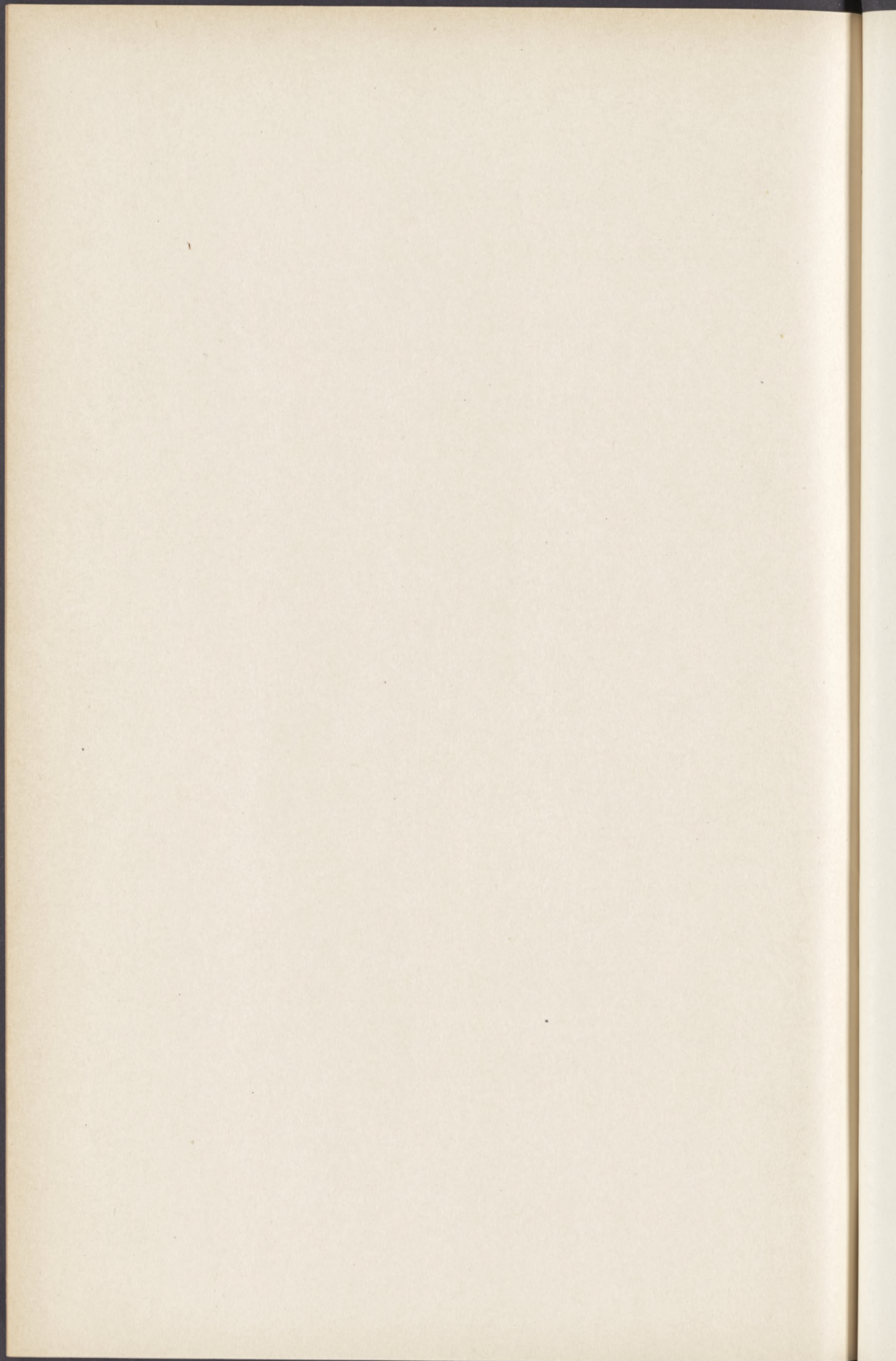
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NEW JERSEY COURT OF ERRORS AND
APPEALS.

Between

HERBERT J. KOEHLER,
Complainant-Respondent,

and

GERTRUDE R. SALTZMAN, *et als.*,
Defendants-Appellants.

ON APPEAL FROM THE COURT OF CHANCERY.

BRIEF OF DEFENDANTS-APPELLANTS.

This is an appeal from an interlocutory order of the Court of Chancery, ordering defendants' motions to strike the bill of complaint to stand over until final hearing, and restraining all of the defendants from prosecuting two certain actions at law in the Camden County Circuit Court, against the complainant, Herbert J. Koehler, in one of which, the defendant, Camden Coal Company, is plaintiff, and in the other, Building and Development Realty Corporation, is plaintiff.

STATEMENT OF FACTS.

The complainant is an attorney at law and solicitor in Chancery of this State.

On or about January 3, 1938, the defendant, Camden Coal Company, instituted an action at law in the Camden County Circuit Court against Herbert J. Koehler, the complainant herein, to recover sums of money delivered to the said Herbert J. Koehler, as attorney, for specific purposes; which moneys are alleged to have been converted by the said Herbert J. Koehler, to his own use (State of the Case, p. 29).

On the same date, the defendant, Building and Development Realty Corporation, as plaintiff, instituted an action at law in the Camden County Circuit Court, against the complainant Herbert J. Koehler, to recover certain moneys delivered to him for specific purposes, which moneys are alleged to have been converted by the said Herbert J. Koehler, to his own use (S. C., p. 49).

In the Camden Coal Company case the said Herbert J. Koehler filed an answer and counter-claim, to the said suit in the Camden County Circuit Court, in which he admitted the receipt of the said moneys, and by way of defense, alleged that the said moneys were received for services rendered and in partial liquidation of indebtedness due him. By counter-claim he sought to recover against the corporation for professional services rendered to the Camden Coal Company and to Gertrude R. Weiner (now Saltzman) (S. C., p. 39).

Brief of Defendants-Appellants

In the Building and Development Realty Corporation case, in the Camden County Circuit Court, a similar answer and counter-claim was filed by complainant, Herbert J. Koehler, wherein he admitted the receipt of the moneys and set up similar defenses and counter-claim (S. C., p. 54).

The actions in the Circuit Court were reached for trial at the April, 1938, Term (S. C., p. 5, line 36).

The defendant in said actions then filed his bill of complaint in the Court of Chancery, alleging that he is an attorney and solicitor in Chancery of this State (S. C., p. 1, par. 1); that he rendered professional services between January, 1930, and December, 1934, as an attorney at law and solicitor in Chancery, to the Camden Coal Company, Building and Development Realty Corporation, and Gertrude R. Weiner (now Saltzman) (S. C., p. 1, par. 2); that he was entitled to the reasonable charges for the services rendered. Complainant then alleges that the defendants, Camden Coal Company and Building and Development Realty Corporation, are the alter ego of the defendant, Saltzman, alleging that she is the sole owner of the stock and in exclusive control and management of both corporations (S. C., p. 2, par. 4). The bill then alleges that the defendant, Saltzman, is not the holder of said stock, but has transferred the same to others for the purpose of evading her creditors, and that the stock of the Camden Coal Company once owned by her was transferred to her mother (S. C., p. 2, par. 5). The bill then alleges that defendant, Saltzman, has creditors and that the corporate entities are used to work a fraud upon the creditors of the defendant,

Brief of Defendants-Appellants

Saltzman; and the complainant admits having received funds belonging to both corporate defendants.

The bill does not allege when either of the corporate defendants were incorporated, nor when any of the creditors of the defendant, Saltzman, recovered judgments, nor when they became creditors. The complainant, Herbert J. Koehler, does not hold a judgment against any of the defendants.

The prayer of the bill of complaint seeks an accounting from the defendants, and a restraint of the suits at law.

Upon the filing of the bill of complaint, an order to show cause, why the law suits pending in the Camden County Circuit Court should not be restrained was allowed, and after service of the order each of the defendants moved to dismiss the bill of complaint on the ground that the bill of complaint disclosed no cause of action against any of them, and because the Court of Chancery was without jurisdiction.

Upon the return of the order to show cause, the Court of Chancery made an order restraining the defendants from proceeding with the actions at law instituted by the defendants, Camden Coal Company and Building and Development Realty Corporation, and ordered that the motions to strike the bill of complaint stand over until final hearing, under Rule 69 of the Chancery Court.

GROUNDS OF APPEAL.

The grounds of appeal are as follows:

(a) The Court below erred in ordering defendants' motion to strike the bill of complaint, to stand over until final hearing.

(b) The Court below erred in not striking the bill of complaint.

(c) The Court below abused its discretion by not striking the bill of complaint.

(d) The Court below erred in restraining the defendant, Camden Coal Company, from further proceeding against complainant, Herbert J. Koehler, in its action at law then pending in the Camden County Circuit Court.

(e) The Court below erred in restraining the defendant, Building and Development Realty Corporation, from further proceeding against complainant, Herbert J. Koehler, in its action at law then pending in the Camden County Circuit Court.

(f) The Court below erred in restraining the defendants from proceeding against complainant in their actions at law because the bill of complaint discloses no cause of action, and because the Court below lacked jurisdiction.

Brief of Defendants-Appellants

The grounds of appeal may be condensed into the following points:

1. The Court should not have granted a restraint without passing upon defendants' motion to strike the bill of complaint.

2. The Court is without jurisdiction to entertain a bill for an accounting against the corporate defendants for alleged obligations of an officer of the corporation.

3. The Court is without jurisdiction to determine an action for debt.

ARGUMENT.**Point I.**

The Court should not have granted a restraint without passing upon defendants' motion to strike the bill of complaint.

Upon the return of the order to show cause why the corporate defendants should not be restrained from proceeding at law, motions were made by each of the defendants to strike the bill of complaint on the ground that it disclosed no cause of action against any of them, and because the Court was without jurisdiction.

Before the Court could make a restraining order in the cause it was necessary for the Court to

Brief of Defendants-Appellants

determine that the bill of complaint stated a good cause of action. The Court ordered that the motions made by the defendants to strike the bill, stand over until final hearing, under Rule 69 of the Chancery Court. This determination of the Court is tantamount to a finding that the Court is not willing to determine whether or not the bill of complaint states a good cause of action, until after final hearing. In this posture of the case the Court should not have granted a restraint against the defendants.

Point II.

The Court is without jurisdiction to entertain a bill for an accounting against the corporate defendants for alleged obligations of an officer of the corporation.

The prayer of the bill indicates that the only relief sought by the complainant is an accounting between the defendants and the complainant; the prayer for restraint is incidental to the accounting. There is nothing in the bill which would justify an accounting between any of the defendants and the complainant, more particularly between the corporate defendants and the complainant. The moneys sought to be recovered by each of the corporate defendants in their actions at law are admitted to have been received by the complainant. The complainant by his counter-claim against each of the corporate defendants seeks recovery for the value of his services as attorney and solicitor rendered

Brief of Defendants-Appellants

to each of the corporate defendants, and he seeks to recover against the corporate defendants for services rendered to Gertrude R. Weiner (now Saltzman). This does not involve any question of accounting between either of the corporate defendants and the complainant. Whether or not any money is due from any of the defendants to the complainant is a question of fact which can be determined only in the law court.

The complainant in his bill indicates that the alleged claims which he asserts against defendant, Saltzman, should be set off against moneys due by the complainant to each of the corporate defendants. This cannot be done, either at law or in equity, because a corporation and an individual owning all of the stock, are separate and distinct entities. In *White v. Evans*, 117 N. J. Eq. 1, 174 A. 731, our Court of Errors and Appeals said:

“The corporation is not an individual even if the individual owned all of the stock of the corporation. It is apparent that there are differences; otherwise there would be no point in having the title in a corporation. A judgment creditor of Evans could not levy on the land, but only on the stock owned by him. Evans could not convey the land; only the corporation could do so. If it be conceded that if Evans owned all the stock, he and the corporation were identical, what is to be said when he sells 2500 of the 5000 shares, or 500 of them, or 100, or 10 or 1 share to another party? At what point does the corporation cease to be Evans and become another person? The idea is in our view fundamentally unsound, * * * ”

Brief of Defendants-Appellants

In *Hackensack Trust Company v. City of Hackensack*, 116 N. J. L. 343, 184 A. 408, our Supreme Court said:

“An individual and a corporation whose stock is all owned by that individual are not the same even in equity; ownership by the corporation is not ownership by the individual, and when the title is transferred from the individual to the corporation, a fundamental change has occurred.”

In *Jennings v. Studebaker Sales Corporation of America*, 112 N. J. L. 399, 170 A. 626, our Court of Errors and Appeals said:

“This appellant knew that the obligation was that of Jones personally and that the amounts received were paid not by the debtor, but by a corporation which was a stranger to the transaction. As a matter of law, the defendant, in receiving from Mr. Jones, the president of the Jones Company, the funds of the company in payment of the personal debt of its president, receives it at his peril. *Prima facie* the act is unlawful unless authorized or ratified by the corporation.”

From these cases it is apparent that a corporation is a separate entity from the individuals who may own all of the stock of the corporation and that corporate funds cannot be used to pay personal obligations of stockholders or officers of the company.

As far as the corporate defendants are concerned; the only relief sought against them is that the alleged debts of the individual defendant to the complainant should be set off against moneys due by

Brief of Defendants-Appellants

the complainant to the corporate defendants. This is nothing more than asking that the alleged debts of an individual be paid by the corporations. This the Court cannot order.

The bill cannot be considered as a bill for accounting. In *Burdick v. Grimshaw*, 113 N. J. E. 591, 168 A. 186, Vice-Chancellor Lewis said:

“There still remains for consideration complainant’s asserted right to an accounting for the moneys which he claims to have earned and turned over to his mother and stepfather while he lived with them. At the outset it is to be noted that an accounting in equity cannot be demanded *as a matter of right or course*. As was said by Vice Chancellor Reed in *Bellingham v. Palmer*, 54 N. J. Eq. 136, 33 A. 199, 200, ‘the equitable jurisdiction to compel an account rests upon three grounds: First, the existence of a fiduciary or trust relation; second, the complicated character of the account; and third, the need of discovery.’ ”

The bill does not contain such allegations, and cannot be sustained as a bill for accounting.

The bill of complaint alleges that the defendant, Saltzman, has numerous creditors and that the corporations are used to defraud these creditors. The only case in which such facts can be considered is in a proceeding to set aside transfers or conveyances in fraud of creditors. The bill is not a bill to set aside transfers or conveyances in fraud of creditors, because: (1) There is no prayer seeking that any transfer or conveyance be set aside; (2) the complainant is not a judgment creditor.

The certificate of incorporation of the defendant,

Brief of Defendants-Appellants

Camden Coal Company, received in evidence (Exhibit D-2, S. C., p. 85), shows that it was incorporated in August, 1922, and the certificate of incorporation of the defendant, Building and Development Realty Corporation, received in evidence (Exhibit D-1, S. C., p. 75), shows that it was incorporated in September, 1927, long before the complainant had any dealings with any of the defendants. The only time that a Court looks beyond the corporate set-up is when a corporation is formed and property is conveyed to the corporation by an insolvent debtor to defraud his creditors. *Trachman v. Trugman*, 117 N. J. E. 167; 175 A. 147.

Point III.

The Court is without jurisdiction to determine an action for debt.

There is no allegation that these corporations were formed to defraud complainant, or that any property was conveyed to either of them to defraud complainant. Complainant had dealings with each of the corporations and with the individual defendant. He is therefore estopped from now alleging that the corporate defendants are the alter ego of the individual defendant. Even if the bill were a suit to set aside fraudulent transfers or conveyances, the Court is without jurisdiction because the complainant has no judgment at law and because his alleged debt has not been ascertained, and the Court of Chancery has no jurisdiction to determine an action for debt.

Brief of Defendants-Appellants

In *Gross v. Pennsylvania Mortgage & Loan Co.*, 104 N. J. E. 439; 146 A. 328, our Court of Errors and Appeals said:

“The Court of Chancery is the only tribunal vested with power to set aside a conveyance made in fraud of creditors, *but it has no jurisdiction to determine actions for debt*, and for damages arising out of a breach of contract. Without a judgment at law or the establishment of a lien, equity has no jurisdiction to entertain the bill of a creditor, filed to set aside a fraudulent conveyance of the debtor’s land, *or to enable the creditor to reach the mere equitable estate of the debtor*. The establishment of the debt by the law court is a necessary foundation of the equitable jurisdiction.”

It is respectfully submitted that the Court was without jurisdiction and the bill of complaint should have been dismissed, and that the order of the Court of Chancery restraining the defendants from prosecuting their actions at law, should be reversed.

Respectfully submitted,

GEORGE H. JACOBS,

*Solicitor for and of Counsel with
Defendants, Camden Coal
Company, Building and Development Realty Corporation,
and Gertrude R. Saltzman.*

To be orally argued by

WILLIAM J. SHEPP,

Of Counsel.

**NEW JERSEY COURT OF ERRORS AND
APPEALS.**

Between

HERBERT J. KOEHLER,
Complainant-Respondent,

and

GERTRUDE R. SALTZMAN, *et als.,*
Defendants-Appellants.

ON APPEAL FROM THE COURT OF CHANCERY.

BRIEF OF COMPLAINANT-RESPONDENT.

STATEMENT OF FACTS.

The statement of facts contained in defendants-appellants' brief should be amplified to show that, during the period covered by complainant's bill, viz: January, 1930, to December, 1934, the defendant, Saltzman, had no bank account or property of any kind in her own name, except some shares in the corporate defendants; that the other shares of the corporations were placed by Saltzman in the names of

Brief of Complainant-Respondent

dummies for her, and that this was done for the express purpose of evading the enforcement by her creditors of payment of her unpaid obligations; that it was not until May 5, 1938, shortly before complainant's bill was filed, May 20, 1938 (S. C., p. 64, l. 2), that he knew or learned that the stock in the Camden Coal Company, which had been in defendant, Saltzman's name, had been transferred to her mother. (S. C., p. 2, ll. 11-30.)

In this State, defendant, Saltzman, has judgments against her totalling approximately \$145,000. (S. C., p. 2, l. 32—p. 3, l. 4); that she has caused mortgages on the real estate owned by the corporate defendants to be paid and satisfied, but instead of causing them to be properly cancelled of record, she has caused them to be assigned to her nominees or dummies, for the declared purpose of foreclosing the same and bidding the properties in at the sheriff's sales in the event any creditors proved troublesome to her in her manipulations of the corporations; the real estate owned by defendant, Camden Coal Company, is where the coal yard and place of business of said corporation is located. (S. C., p. 3, l. 6—l. 34.)

The bill charges that defendant, Saltzman, presently draws a salary of \$300 per month from the Camden Coal Company; that no other salaries are paid to any other supposed officers of said corporation; that said Saltzman, during the period covered by complainant's bill, used the funds of both corporate defendants for any purpose she saw fit, and always treated, used, spoke of and referred to said corporations as her own exclusive property; that she was and is using said corporations as shields to pro-

Brief of Complainant-Respondent

tect her from her creditors and to embarrass and delay them in obtaining payment of debts owing to them (S. C., p. 3, l. 36—p. 4, l. 18) ; that the corporate entities and the use made thereof is a scheme to work a fraud upon her creditors and the general public, in violation of the principles and purposes of the General Corporation Act of New Jersey. (S. C., p. 4, ll. 20-29.)

The period involved in the two actions at law which were restrained, covers from January, 1932, to September, 1934, and during that time, as well as before and after, the defendant, Saltzman, and complainant, had mutual financial and confidential relations ; during that time defendant, Saltzman, from time to time delivered to complainant, at his request, divers checks drawn upon the funds of both corporate defendants, which sums were for the sole and exclusive use of complainant, upon the express agreement that at some future time, which has never even as yet been fixed, a balance would be struck and an accounting had between the parties for the monies advanced and professional services rendered, which accounting has never been requested or had ; that all checks drawn on funds of the corporate defendants were all signed for the same by Saltzman and were delivered to complainant by Saltzman, and no one else. (S. C., p. 4, l. 31—p. 5, ll. 1-25.)

The bill further shows that none of the monies, which complainant admits having received and retained, and which, together with other sums, are involved in the two actions at law, were applied specifically by complainant on account of fees for legal services rendered for Saltzman personally, or the

Brief of Complainant-Respondent

pretended account of the corporate defendants for the reason that he considered all three defendants in fact to be one entity in the person of defendant, Saltzman (S. C., p. 6, l. 29—p. 7, ll. 1-28), and that the actions at law were instituted by Saltzman against complainant in the names of the corporations, because complainant would be unable at law, upon the facts set forth in his bill, to present his bona fide defenses on the true merits of the matters respectively involved therein. (P. 7, l. 28—l. 35.)

ARGUMENT.**Point I.**

Although the Court, in the exercise of its discretion, ordered defendants' motion to strike complainant's bill, to stand over until final hearing under Rule 69 of the Chancery Court, it did, in fact, pass upon said motion, but whether it did so or not the restraint was properly granted under all the facts and circumstances appearing in the bill, all of which facts, of course, must, for the purposes of the defendants' motion, be deemed to have been admitted.

The Court, by its order of June 27, 1938, specifically passed upon defendants' motion, and for the time being denied the same, although withholding final determination until final hearing under Rule 69; the order among other things containing the following recital, "and the Court having heard the arguments of respective counsel on the motion of defendants to strike the bill in this cause, and the application of the complainant for an order restrain-

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ing the pending actions at law set forth in complainant's bill of complaint, and the Court having duly considered the same and being of the opinion that the motion of the defendants should be denied, and the motion of the complainant granted, etc." (S. C., p. 89, ll. 1-11.)

The reasoning of appellants' counsel seems to be that in order to give the Court the power to restrain the actions at law, it must first have denied, definitely and finally, defendants' motion to strike. We think this is not sound and the conclusion argued for by defendants does not logically follow, because if the Court had not found sufficient equity in the bill it certainly would have been stricken, and it follows, so we submit that, if sufficient equity was shown to warrant the Court in retaining it, in the face of the direct attack upon it, then surely the complainant was entitled to the incidental relief which was sought by way of restraint.

Point II.

We think that the defendants have misconceived the main point in complainant's bill when they argue under this point, that the Court is without jurisdiction to entertain a bill for an accounting against corporate defendants for obligations of an officer of the corporation.

We submit that none of the cases on the so-called "corporate entity" theory, relied on by the appellants, namely: *White v. Evans*, 117 E. 1; *Hackensack Trust Company v. City of Hackensack*, 116 L. 343; *Jennings v. Studebaker Sales Corp.*, 112 L. 399, is

pertinent to the case made out by the bill of complaint before this Court in the case at bar, but, although, as we will hereafter attempt to demonstrate, it is unnecessary in our view to do so, each of these cases is distinguishable from this case on the facts.

In the White case, the real point was whether real estate titles could be interfered with in the manner sought by the defendant-respondent.

If this Court had decided that case otherwise than it did, it is conceivable that no person owning real estate in New Jersey, where a corporation was in the chain of title, could be sure that his title was good, and further than that, the White case decides the corporate entity feature only in so far as it has to do with "the purposes of an insurance policy providing that it shall be voided by change of interest or title." (117 E., p. 3.)

The Hackensack case turned on the construction to be placed by the Court on certain legislation having to do with taxation on bank stock, as well as legislative intention. The banks (prosecutors-in-certiorari) owned all the stock of subsidiary companies, which in turn owned by record title, the real estate whereon the respective banking businesses were carried on, and the banks sought to be allowed from the 1934 assessment on their capital stock a deduction of the assessed value of the said real estate.

The law at that time permitted a deduction of "the assessed value of the real estate of such bank." In 1935, the Act was amended so as to specifically provide for the deduction contended for by the banks.

To state these facts is to demonstrate that this Hackensack case has nothing whatsoever to do with

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the situation disclosed by the bill in the instant case. In that case the banks argued that the real estate was in fact owned by them since they owned all of the stock of their subsidiaries, and the Court, while recognizing that equity will reach through a corporate structure to prevent or undo a fraud (which is precisely what is sought by the complainant by his bill in this case), very succinctly disposed of that argument and cases which supported it by these words, "Proceedings to prevent an act of incorporation from accomplishing wrong against third persons are not precedents herein." (116 L., p. 343, at p. 345.)

In the Jennings case, the receiver of an insolvent corporation brought an action to recover from defendant monies of the corporation, which, while the corporation was solvent, had been paid to defendant by the president of the corporation (which later became insolvent), who, allegedly, owned all of the stock of the corporation (save qualifying shares held by others who were directors). The Jennings case is at law and there is no charge of fraud made as to the use to which the corporation was put, no showing of a course of dealing by the president over a term of years with the funds of the corporation as his sole and exclusive property, and when the transactions which were in question came before this Court for decision, the issue was between that corporation's receiver and the corporation to which the monies had been paid, as against which receiver, representing creditors and stockholders as well, estoppel could not be set up.

In the two actions at law which were restrained in the case at bar, the corporations sue, not to re-

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cover their monies on the ground that they had been wrongfully drawn and used by Saltzman, but recovery is sought on the allegation that their funds were delivered to complainant for specific purposes and were by him fraudulently converted to his own use. The complainant charges in his bill that from January, 1930, to December, 1934, he was rendering valuable legal services to the defendants, for all of which he is entitled to reasonable compensation; that Saltzman has, over a period of years, used these corporations for fraudulent purposes; that the corporations for years have held Saltzman out to the public as their agent with absolute and unlimited authority, and as having absolute and unquestioned ownership of, and sole and exclusive control over and management of them; that Saltzman owns all the stock of both corporations, although in the name of dummies; that the corporations, over a period of years, permitted Saltzman to use their funds as her own exclusive property for any purpose she desired, and, in so far as the record is concerned, there are no creditors of the corporate defendants other than complainant, and both of said defendants are solvent.

We respectfully submit, that the law affirmed in the Jennings case, having to do with the use of corporate funds, has no application whatsoever to the facts of the instant case as are found in complainant's bill.

Defendants argue that the bill of complaint in this case cannot be sustained as a bill for an accounting, citing *Burdick v. Grimshaw*, 113 E. page 591, in support thereof.

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We respectfully submit, that the complete answer to this point is, that complainant's bill is not one for an accounting, that object of the complainant's bill (as well as the restraint) is incidental to the whole purpose and general theory of the bill, which is to get behind the corporate fictions and open up all the transactions between the parties to this suit in the one and only court where that can be done, namely: in the Court of Chancery; furthermore, the bill of complaint clearly shows that it is not that which is known technically speaking, as one for an accounting, because it is charged in the bill, that the monies received by the complainant were paid to him upon the express agreement that at some time, later to be agreed upon, there was to be an accounting between the complainant and all the defendants on the one hand for monies received, and on the other hand for legal services rendered—that accounting has never been requested or had (S. C., p. 5, ll. 1-25).

This is not a suit in which the complainant claims equitable jurisdiction merely because of an asserted right to an accounting; the primary purpose of the bill is to sweep aside the cloak of these corporate fictions and in the light of the true situation as thus may be revealed, the agreement between the parties for accounting may then be enforced.

Whitfield v. Kern, 122 E. 332 at 345.

None of these defendants have ever sought an accounting with complainant, either with or without litigation, but by these two actions at law, presently restrained, these defendants have, in the

name of the two corporate defendants, planned an enforced, one-sided accounting.

In so far as the merits of the case are concerned, we deem it worthy of comment to note, that these actions at law were not only begun shortly before the statute of limitations had run, but, in the name of the two corporate defendants, upon grounds which, if they were true, would have surely moved a sincerely injured party, corporate or otherwise, to have caused the arrest or indictment of the complainant, not to speak of disbarment proceedings, and we think it is particularly significant to note that the defendant, Saltzman, is no party to either action and has instituted no action at law or suit in equity against this complainant.

In short, as we view it, the bill in this case is one which in the language of the Court in *Hackensack Trust Company v. City of Hackensack*, 116 L. 343, is a proceeding "to prevent an act of incorporation from accomplishing wrong against third persons."

Point III.

We confess that we cannot grasp counsel's argument under this point, nor the case cited in the support thereof in so far as it bears on the case at bar.

By what stretch of reasoning, logical or illogical, can the bill in this case be considered one to determine an action of debt? The facts charged in the complainant's bill have heretofore been sufficiently adverted to, we believe, and they, without further

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argument or discussion, definitely, we submit, answer, if any is needed, the defendants' argument under this point.

On this branch of the case the defendants also touch upon the question of estoppel. Just how this doctrine is applicable we fail to see. They argue "complainant had dealings with each of the corporations and with the individual defendant." That argument begs the question because the complainant says that the corporate entities are fictions, and that all three defendants are, in equity, the defendant, Saltzman.

We respectfully submit that the order of the Court of Chancery, denying defendants' motion to strike the complainant's bill and ordering it to stand over pending final hearing, and restraining the pending actions at law was within the proper exercise of the court's discretion and should be affirmed.

In so far as the court's action is attacked in subdivision (f) paragraph 2 of the petition of appeal (S. C., p. 94, ll. 21-35), which we respectfully suggest is the only arguable point the defendants have to rely upon, we feel that the questions therein raised as to the court's jurisdiction and the bill of complaint not disclosing a cause of action, have been fairly well discussed and satisfactorily answered, but we do in conclusion wish to call the fact to the attention of this court that the Court of Chancery is essentially the proper tribunal wherein differences between attorney and client may be investigated and adjusted, especially where the question of fees and charges are concerned.

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Grimm v. Franklin, 102 E. 199, at 204.

Hackensack v. Winne, 116 E. 87, at 92.

Dwyer v. Anderson, 113 E. 210, at 213.

Sun B. & L. v. Rashkes, 119 E. 443, at 449.

The complainant is not barred from equitable relief by reason of having filed answers in the pending actions at law.

Simon v. Townsend, 27 E. 302.

Where an accounting is so complex that justice cannot be done according to the strict rules of law, equity will intervene.

Ely v. Crane, 37 E. 157.

In the case at bar there is no particularly complex question of accounting per se, but the complexity is caused by the manipulation of corporate forms by defendant, Saltzman, to prevent a fair and honest accounting between the parties to this cause.

A corporate form will not be permitted to be used as a means of fraud, and where that is attempted the courts will look beyond the corporate form to the purpose of it, and its stockholders and officers.

Garford Trucking, Inc. v. Hoffman, 114 L. 522.

Trachman v. Trugman, 117 E. 167.

National Newark & Essex Banking Company of Newark, et al, v. Work, 109 E. 468.

We, therefore, in conclusion, respectfully submit, that the order of the Court of Chancery here ap-

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pealed should in all respects be affirmed and the appeal of the defendants be dismissed with complainant's costs to be taxed.

Respectfully submitted,

RIGGINS & DAVIS,
Solicitors for and of Counsel
with Herbert J. Koehler,
Complainant.

