

I N D E X

	PAGE
Bill of Complaint	1
Answer	7
Replication	11
Designation	12
Order of Reference	13
Notice of Hearing	14
COMPLAINANT'S TESTIMONY:	
Max B. Willig—Direct	17
Cross	33
Samuel Willig—Direct	35
Cross	44
Exhibit C1, Check	48
Exhibit C2, Statement	49
Exhibit C3, Check	50
Exhibit C4, Check	51
Exhibit C5, Letter	52
Exhibit C6, Check	53
Exhibit C7, Check	54
Exhibit C8, Letter	55

	PAGE
Exhibit C9, Letter	56
Exhibit C10, Letter	57
Exhibit C11, Letter	57
Exhibit C12, Letter	58
Conclusions	59
Order Dismissing Complainant's Bill	61
Notice of Appeal	62
Petition of Appeal	63
Answer to Petition of Appeal	65
Notice of Argument	66

BILL OF COMPLAINT.

IN CHANCERY OF NEW JERSEY.

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

10

Complainant, Max B. Willig, a resident of the City of Philadelphia, County of Philadelphia and State of Pennsylvania, respectfully shows that:

1. On or about May 12, 1925, complainant and Benjamin Friedberg, of the City of Atlantic City, Atlantic County, New Jersey, entered into agreement whereby it was agreed that they would purchase certain land and premises hereinafter particularly described for the total purchase price of \$98,500.00, with the understanding that complainant should own and have title to a one-fourth undivided part of said land and premises and that said Benjamin Friedberg should own and have title to the remaining three-fourths undivided part thereof. 20

2. It was also agreed between complainant and said Friedberg that they should each provide the necessary moneys with which to purchase said land in amounts equal to their respective interests therein. 30

3. Said land and premises are described as follows:

All that lot, tract or parcel of land and premises situate, lying and being in the City of At-

Atlantic City, in the County of Atlantic and State of New Jersey, BEGINNING in the Westerly line of Maryland Avenue, 835 feet Southwardly from the Southerly line of Pacific Avenue; thence (1) Westwardly, parallel with Pacific Avenue, 165 feet; thence (2) Southwardly, parallel with Maryland Avenue, 119 feet; thence (3) Eastwardly, parallel with Pacific Avenue, 60 feet; thence (4) Northwardly, parallel with Maryland Avenue, 44 feet; thence (5) Eastwardly, parallel with Pacific Avenue, 105 feet; thence (6) Northwardly, in and along the Westerly line of Maryland Avenue, 75 feet to the place of beginning.

4. On said premises is erected a large hotel building covering a great portion thereof.

5. On May 12, 1925, Berthold Hevessy and Othillie, his wife, the then owners of said land and premises, conveyed same to said Benjamin Friedberg by deed of that date, and recorded in the Atlantic County Clerk's Office at Mays Landing, N. J., in Book 772 of Deeds, page 230.

6. Said conveyance was made as aforesaid, subject to the lien of three certain mortgages aggregating the principal sum of \$72,900.00. At the time of said conveyance the aggregate amount of said principal sum due on said mortgages was \$56,900, as follows: Amount due on first mortgage, \$25,000.00; amount due on second mortgage, \$12,000.00; amount due on third mortgage, \$19,900.00.

7. It was further the understanding by and between complainant and said Friedberg that all of

the charges against said premises, such as taxes, mortgage interest, sewer and water rent, fire insurance premiums, etc., should be borne by them in the proportion to their respective interest therein and that all the rents and other income from said premises should be divided between them in like manner.

8. At the time of the conveyance of said premises to said Friedberg he assumed, and ever since then 10 has continued to control and manage same, to collect all the rents and income therefrom, and was thereby charged with the duty of seeing that all charges against said property were paid.

9. Said third mortgage in the sum of \$19,900.00 has been fully paid and satisfied.

10. Since the conveyance of said premises to said Friedberg, payments have been made on account 20 of the principal sum due under said second mortgage so that there is now due and owing on account of the principal thereof the sum of \$4,000.00.

11. Said Benjamin Friedberg has been paid and has received all of the rents and other income from said premises from the date of said conveyance to him until now.

12. Complainant has heretofore demanded that 30 said Friedberg make conveyance to him of his one-fourth undivided interest in said premises, but said Friedberg has refused, failed and neglected so to do.

13. Complainant has heretofore demanded of said

Friedberg that he render to him a full and correct accounting of all the rents and other income received by him from said premises and of all disbursements made by him for and on account of the various charges against said premises. Said Friedberg has refused, failed and neglected to render such an accounting.

10 14. Complainant has in all respects kept and performed his agreement with said Friedberg, and in accordance with the terms thereof has advanced and paid the sum approximating \$22,000.00 on account of the purchase of said premises and for the payment of mortgage principal and other necessary expenses.

20 15. Complainant is informed from such source that he believes it to be true, and therefore alleges that the records indicate that a portion of said premises forty-four (44) feet by sixty (60) feet in dimension has been sold to one Charles H. Wiltsey, of Rochester, New York, by the City of Atlantic City, because of the failure to pay taxes assessed by said city against said premises for the year 1925.

30 16. Complainant is also informed from such source that he believes it to be true, and therefore alleges that the taxes assessed by said City of Atlantic City against said premises for the year 1928 in the sum of \$1,963.84 have not been paid, and for the failure to pay same said premises are liable to be sold.

17. Complainant is informed and believes, and therefore alleges that the rents and other income paid to and received by said Friedberg since the

date of said conveyance of said premises to him have been more than sufficient in amount to pay all the necessary charges and claims against said premises.

18. Complainant is informed and believes, and therefore alleges that said Friedberg, for a portion of the time since said conveyance of said premises to him, has had the use and possession of said premises and has conducted therein the business of hotel for the accommodation of guests without making any charge to himself as rent therefor or without giving any consideration to the right of complainant to be paid for the use of his portion of said premises. 10

19. Said Friedberg has also refused to give any consideration or heed to the rights of complainant in connection with the management of said premises, and particularly in connection with the rental thereof. 20

20. Said Benjamin Friedberg is a married man and his wife's name is Molly Friedberg. Any interest which said Molly Friedberg has in said premises by way of inchoate right of dower is subject to the interest and right of complainant in and to said undivided one-fourth portion thereof.

Complainant is without adequate remedy in the courts of law and therefore prays: 30

1. That Benjamin Friedberg and Molly Friedberg, his wife, who are the defendants to this suit, may answer this bill of complaint and each statement therein made.

2. That complainant may be decreed to have an undivided one-fourth interest in the lands and premises described herein and that said Benjamin Friedberg may be ordered and decreed to hold the same in trust for complainant.

3. That said Benjamin Friedberg and Molly Friedberg, his wife, the defendants herein, may be ordered and decreed to make good and sufficient
10 conveyance to complainant of an undivided one-fourth interest in said land and premises described herein.

4. That the said Benjamin Friedberg may be required to account for the rents, issues and profits and other income paid to and received by him from said premises and that he may be ordered and decreed to pay to complainant his rightful share of the moneys which may be owing by him on such
20 accounting.

5. That said Benjamin Friedberg and Molly Friedberg, his wife, may be enjoined and restrained from leasing, mortgaging or otherwise encumbering said land and premises to the detriment or hindrance of the complainant or complainant's interest therein.

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

WM. ELMER BROWN, JR.,
*Solicitor for and of Counsel
with Complainant.*

5. He admits the statements made and allegations contained in paragraph 5.

6. He admits paragraph 6.

7. He denies the agreement alleged and each and every statement made in paragraph 7.

10 8. He admits the statements and allegations contained in paragraph 8, excepting the allegation that he was charged with the duty of seeing that all charges against said property were paid, which allegation he denies. And he avers that he was charged with no duty in respect to said property other than that which devolved upon him as the owner thereof to pay and keep down the current charges and expenses of maintaining the same for its protection and his benefit.

20 9. He admits paragraph 9, and avers that the mortgage therein mentioned was paid and satisfied by him, defendant, with his money.

10. Paragraph 10 is admitted. Defendant made said payment therein alleged from his own funds.

11. Paragraph 11 is admitted.

30 12. Paragraph 12 is denied.

13. Paragraph 13 is denied. Defendant avers that complainant has not nor ever had any right to or interest in the premises described in the bill nor to the rents or income from said premises or in the disbursement thereof, and has no right to or interest in any accounting in respect thereof, nor has com-

plainant ever demanded or requested such accounting.

14. Paragraph 14 is denied. Defendant expressly denies the payment by complainant to defendant or on account of the purchase of said premises or for the payment of mortgage principal or any other charge or expense in connection with the purchase or ownership of said premises, of the sum of \$22,000.00 alleged in the complaint, or any other sum for any purpose whatsoever. 10

15. Defendant denies paragraph 15.

16. Defendant denies paragraph 16.

17. Defendant denies paragraph 17.

18. Defendant denies paragraph 18. He denies that the complainant had any right to or interest in the said premises and denies that he was entitled to be paid anything for the use of the said premises or any part thereof. 20

19. Defendant denies paragraph 19 and avers that complainant has no rights in connection with the management of the premises or the rental thereof and has never demanded or claimed to be entitled to such right of management so far as defendant 30

20. Defendant admits that he is married and that the name of his wife is as alleged in said paragraph.

21. For further answer in lieu of a plea to the whole bill, and in particular the first, second and

seventh paragraphs thereof, defendant says that the alleged agreement set forth in the said bill concerned lands or some interest therein that neither the said agreement nor any memorandum or note thereof was or is in writing, signed by defendant or by any other person thereunto by him lawfully authorized, that no such writing exists or ever existed, but the said agreement, if made, was wholly oral, wherefore defendant avers the same is within
10 the scope and operation of an Act of the Legislature of New Jersey, entitled "An Act for the Prevention of Fraud and Perjuries," and contrary to the provisions thereof, and especially to Sections 3 and 4 of said Act of the Legislature, and was and is, by force of the provisions aforesaid of said Act, void, of no effect and wholly unenforceable.

JOHN C. REED,
Solicitor of Defendant, Benjamin Friedberg.

20

30

DESIGNATION.

IN CHANCERY OF NEW JERSEY.
73-96.

10

Between	}	On Bill, etc. Designation.
MAX B. WILLIG,		
<i>Complainant,</i>		
and		
BENJAMIN FRIEDBERG, <i>et</i>	}	
<i>ux.,</i>		
<i>Defendants.</i>		

20

This matter being opened to the Court by Wm. Elmer Brown, Jr., solicitor of the complainant, and it appearing that John C. Reed, solicitor for the defendants, has consented hereto:

It is, on this 21st day of June, A. D. 1929, ordered that the third day of October, A. D. 1929, at the hour of ten o'clock, in the forenoon, at the Chancery Chambers, in the City of Atlantic City, be designated as the time and place for the hearing of the above-entitled cause.

30

R. H. INGERSOLL,
Vice-Chancellor.

ORDER OF REFERENCE.

(Filed May 22nd, 1929.)

IN CHANCERY OF NEW JERSEY.
73-96.

10

Between MAX B. WILLIG, <i>Complainant,</i> and BENJAMIN FRIEDBERG, <i>et</i> <i>ux.,</i> <i>Defendants.</i>	}	On Bill, etc. Order of Reference.
---	---	--------------------------------------

20

This matter being opened to the Court by Wm. Elmer Brown, Jr., solicitor of the complainant, and it appearing that John C. Reed, as solicitor for the defendants, has consented hereto:

It is, on this 22nd day of May, A. D. 1929, on motion of Wm. Elmer Brown, Jr., solicitor of the complainant, ordered that the above-entitled cause be referred to Hon. R. H. Ingersoll, one of the Vice-Chancellors of this court, to hear the same for the Chancellor and to report thereon to him and to advise what order or decree shall be made therein.

E. R. WALKER,
C.

Notice of Hearing 15

time and place designated by the order of the said
Vice-Chancellor, made on the day of
, 1929.

W^M. ELMER BROWN, JR.,
Solicitor of Complainant.

I hereby acknowledge service of the within notice
this 3rd day of July, 1929. 10

JOHN C. REED,
Solicitor of Defendants.

20

30

TESTIMONY.

IN CHANCERY OF NEW JERSEY.

10	Between	MAX B. WILLIG,	}	On Bill, &c. Final Hearing.
		<i>Complainant,</i>		
		and		
	BENJAMIN FRIEDBERG, <i>et</i> <i>ux.</i> ,	<i>Defendants.</i>		

20

Atlantic City, New Jersey.

October 9, 1929.

TESTIMONY.

30 Before HON. ROBERT H. INGERSOLL, Vice-Chancellor.

APPEARANCES:

For the complainant, W. ELMER BROWN, JR., Esq.

For the defendants, JOHN C. REED, Esq.

Mr. Brown: It is admitted on the record that the taxes of 1928 were not paid at the time of the filing of the bill, and were not paid until August 31st, 1929.

Mr. Reed: Absolutely, and that there was a sale of a piece in the rear for unpaid taxes.

Mr. Brown: It is also admitted that the sale of the piece of property 44 by 60 feet as alleged in paragraph 15 of the bill, the allegations of paragraph 15 are admitted.

MAX B. WILLIG, SWORN.

Direct examination.

By Mr. Brown:

Q. Mr. Willig, where do you live? 20

A. Philadelphia.

Q. You are acquainted with Mr. Benjamin Friedberg, the defendant in this suit?

A. Yes, sir.

Q. And you are the complainant in this suit, are you not?

A. Yes, sir.

Q. Do you know the Imperial Hotel on South Maryland Avenue, Atlantic City? 30

A. Yes, sir.

Q. Did you and Mr. Friedberg ever have any business dealings involving that hotel?

A. Yes, sir.

Q. When was it that you had those dealings?

A. In 1925.

Q. What part of 1925?

A. May, something around May, or before May, April or May.

Q. Where was it that the negotiation or business dealing began?

A. In Philadelphia.

Q. In your office?

A. Yes, sir.

Q. Where is your office in Philadelphia?

10 A. At that time we were in the Lincoln Building.

Q. Who opened the negotiations?

A. Mr. Friedberg. Mr. Friedberg asked my advice, he says he is to buy the Imperial, Imperial Hotel, I should give him an advice what it is worth, and I was in Atlantic City at that time, and we went through, and I told him what I thought about it. He says to me, "Will you take a share in it?" I said, "Yes, I will take one-fourth," and I had a lot of dealing with Mr. Friedberg before, and I told
20 him I will take one-fourth.

Q. Subsequent to the occasion when you told Mr. Friedberg that you would take a one-fourth interest in the purchase of the Imperial Hotel, were you called upon by Mr. Friedberg to put up any money on account of the purchase?

A. After. That was in June.

Q. Yes, I mean after you had this talk?

A. Yes, sir, right here in Atlantic City.

30 Q. How much money did you put up at the time of that call?

A. \$5400, I believe.

Q. \$5400, about?

A. Yes, sir.

Q. I show you check drawn on the Northwestern National Bank, dated June 13th, 1925, to the order of Chelsea Title and Guarantee Company for \$5,448.

A. That is right.

Q. Does that represent the payment which you made on account of the purchase of the Imperial Hotel?

A. Yes, sir.

Q. To whom did you give this check?

A. To Mr. Friedberg right here in Atlantic City, he came to me in the evening, I was living here already at that time in the summer, and I came out here for the summer, he says he made settlement, and this is the share that I ought to give him, and he made out the check himself and I signed it for him. 10

Q. That check is in his handwriting?

A. Yes, sir.

Mr. Brown: I offer the check in evidence.

Mr. Reed: I object to the admission of that check in evidence on the ground that on its face it does not show any connection with this transaction. 20

The Court: I will admit it and entertain a motion later to strike it out of it is not connected.

Mr. Brown: I expect to connect it up, if your Honor please.

(Check admitted and marked Exhibit C1.) 30

Q. Subsequent to the delivery of that check to Mr. Friedberg, did you learn whether or not the settlement had been completed on the purchase of the Imperial Hotel?

A. Yes, Mr. Friedberg told me it was.

Q. Did you know in whom the title rested after the settlement had been made?

A. Mr. Friedberg.

Q. That was made known to you by whom?

A. By Mr. Friedberg.

Q. After delivery of that check were you called upon at any time by Mr. Friedberg to pay any additional moneys?

A. Yes, sir.

10 Q. Do you recall about when that was?

A. That was in July, I believe.

Q. What was the occasion for the call for additional moneys?

A. There was spent money on the equipment, furniture, and paying off the third mortgage that we owed on that hotel, I think it was around \$20,000 to Salus.

Q. How much money did you put up at that time as the result of that call?

20 A. At that time I was short of money and I got Mr. Friedberg a note.

Q. For how much?

A. \$14,000.

Q. At the time of giving Mr. Friedberg that note, did Mr. Friedberg give to you any memorandum of how the amount due was to be made up?

A. Yes, sir.

30 Q. I show you a memorandum and ask you whether or not that is the memorandum that he gave you at that time?

A. Yes, that is the one.

Q. Now, in whose handwriting is that memorandum?

A. Mr. Friedberg's.

Q. All of it?

A. All except this.

Q. At the bottom?

A. Yes, sir.

Q. Now, was it ——

A. Eleven thousand ——

Q. Was it from the figures as shown on this statement that you gave Mr. Friedberg the note of \$14,000?

A. That is correct.

Q. And where were you when Mr. Friedberg gave you that statement?

10

A. In Philadelphia.

Q. In your office?

A. In my office, yes, sir.

Q. Do you know whether anyone else was present at the time?

A. I believe my son was there.

Q. Your son, Mr. Samuel Willig?

A. Mr. Samuel Willig, yes, sir.

Mr. Brown: I offer the statement in evidence.

20

Mr. Reed: I object to this on the ground that it is not signed by Mr. Friedberg or in any way connected to the transaction alleged.

The Court: I will permit it.

(Memorandum received in evidence and marked Exhibit C2.)

30

Q. Now, after you delivered the note to Mr. Friedberg, do you know what he did with it?

A. No.

Q. Has the note since been paid?

A. Yes.

Q. I show you a check drawn on the Northwestern

National Bank, dated November 17th, 1925, and ask you whether or not that check represents the payment of that note?

A. Yes, sir, that is the check.

Q. Now, I notice, Mr. Willig, that this check is signed by Samuel Willig for Max B. Willig, and Willig and Kratzok.

A. We all sign checks.

10 Q. Will you explain, Mr. Willig, how it comes about that the check is signed in that manner?

A. The particular transactions —

Mr. Reed: I object to any explanation. The checks speaks for itself, and I don't think it is susceptible of any explanation under the doctrine of Nuremberg versus Young. It speaks for itself.

The Court: Yes, I will overrule the question.

20 Mr. Brown: I offer the check in evidence.

Mr. Reed: I object to the admission of the check in evidence. May I see it? I object to the introduction of this check. It is not self connected with the transaction set up in the bill or any other transaction with which we are involved.

The Court: I will permit it.

30 (Check admitted and marked Exhibit C3.)

Q. Now, Mr. Willig, prior to the payment of the note, did you ever make payment of interest to Mr. Friedberg on account of the note?

A. Yes, sir.

Q. I show you a check dated October the 2nd, 1925,

drawn on Northwestern National Bank, number 1314, for \$217, and ask you if that represents the payment of interest to Mr. Friedberg on account of that \$14,000 note?

A. Yes, that is the interest from the note.

(Check offered in evidence.)

Mr. Reed: I object to this on the ground it is not connected with this by the check itself and appears to be some one else's check. 10

The Court: I will permit it.

(Check admitted and marked Exhibit C4.)

Q. Now, then, did you ever receive or was there a demand or request ever made by Mr. Friedberg for the payment of any additional moneys on account of the hotel? 20

A. Yes, sir. Mr. Friedberg sent me a letter that I should deposit \$3,000 for him in the Southwalk National Bank as he is short in the account.

Q. I show you a letter dated June first, 1926, signed B. Friedberg, and ask you if that is the letter to which you refer?

A. Yes, sir.

(Letter offered in evidence.)

30

Mr. Reed: We object to the introduction of this letter as being addressed to some one else other than this complainant, and having no connection with this matter, and we have the letter which is the answer to that to produce, and we say that this letter

is not relevant in respect to this complaint, addressed to some one else.

Mr. Brown: If your Honor please, I propose to show that Mr. S. Friedberg is the son of Mr. Benjamin Friedberg, an attorney of the State of Pennsylvania, who acts also as the attorney for his father in all his business transactions and had so acted in this transaction as well as other transactions
10 that Mr. Willig had had with Mr. Friedberg.

Mr. Reed: No allegation in the bill of any agency at all. This is—I don't think this is relevant, your Honor please.

The Court: I will admit it subject to its being stricken if it is not connected.

20 (Letter admitted and marked Exhibit C5.)

Mr. Brown: Is it your contention your client never received any such letter?

Mr. Reed: Your Honor please, we have notice to produce a letter written by Max B. Willig, and our contention is that we never had any letter from Max B. Willig, and this letter here is from Samuel Willig, and I don't know—did you ever receive a letter of that kind?
30

Q. As the result of the receipt of that letter, Mr. Willig, did you pay or deposit to the credit of Mr. Friedberg \$3,000 that he asked for?

A. Yes.

Mr. Reed: I object to that, your Honor please.

The letter is addressed to another person, and the question is leading. Of course, I think it is discretionary whether this counsel be permitted to ask leading questions, but it certainly seems to me a very loose method of proof involving a substantial interest in land to ask this man whether a letter addressed to another person he did a certain thing. I don't think he did it.

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

Q. After the receipt of this letter, Mr. Willig, what did you do, if anything?

A. I gave \$2500 to Mr. Friedberg, I deposited in the bank \$2,000, I believe for Mr. Friedberg, and the balance I paid for him that I had had the excuse we had to pay interest for the money.

Q. I show you check drawn on the Northwestern National Bank, dated June 1st, 1926, number 1629, 20 and ask you if that represents the money deposited to Mr. Friedberg's account?

A. Yes, sir, \$2,050 in one check.

Q. I show you another check of the same date, drawn to the order of B. Friedberg, number 1628, and ask you what that represents?

A. \$450, that is a mistake.

Mr. Reed: I object to those checks, as they appear to be signed by some other person, other than 30 this complainant.

The Court: I will admit them on the same condition.

Mr. Reed: They are not relevant or competent in this issue made by the pleadings.

The Court: They all appear to be drawn upon an account of Max B. Willig and others, even if signed by somebody else, that is in writing.

Mr. Reed: The point is, if your Honor please, I think that is true, I observe that, but the point is that this man had nothing to do with this transaction, that is the whole point.

10 (Checks admitted and marked Exhibits C6 and C7.)

Q. I show you a letter dated April 17th, 1928, signed B. Friedberg, and ask you if you received such a letter?

A. Yes, sir.

Q. In whose handwriting is that letter?

A. Mr. Friedberg, I believe.

20 (Letter offered in evidence.)

Mr. Reed: I object to the introduction of this letter on the ground that it was not addressed to this complainant, there is no envelope, and it has no bearing on this case made by the bill.

The Court: Admitted.

(Letter admitted and marked Exhibit C8.)

30

Q. I show you another letter dated April 15, 1928, signed B. F., and ask you whether or not you received such a letter?

A. I did.

Q. In whose handwriting is that letter?

A. I believe it is Mr. Friedberg's. It looks all alike.

(Letter offered in evidence.)

Mr. Reed: I would like to ask this witness one question.

By Mr. Reed:

Q. Wasn't this letter sent to your son?

A. No, sir, sent to my office. My son is with me in the office. 10

Q. Wasn't this letter addressed to Samuel Willig?

A. No, sir.

Q. Where is the envelope?

A. That I haven't got it. We don't save our envelopes.

Mr. Reed: I object to the introduction of this letter in evidence, on the ground that it has no connection with this suit as made by the bill. 20

The Court: I will permit it.

(Letter admitted and marked Exhibit C9.)

By Mr. Brown:

Q. Mr. Willig, I show you a letter, dated Philadelphia, Pa., May 16, 1928, addressed to Mr. B. Friedberg, 240 South Connecticut Avenue, Atlantic City, N. J., bearing the name Max B. Willig. 30

A. Yes, sir.

Q. And ask you whether or not you sent that letter to Mr. Friedberg?

A. Yes, sir.

Q. How did it get back into your hands?

A. Mailed it back to me.

Q. When it came back to you did it have the writing on it below your name?

A. Yes, sir.

Q. In whose handwriting is that?

A. Mr. Friedberg's.

Mr. Brown: I offer in evidence the letter and reply.

10 By Mr. Reed:

Q. Did you sign this, Mr. Willig?

A. No, sir.

Mr. Reed: I object to the introduction of that letter as being incompetent and irrelevant, and has no evidential value on the case made by the bill.

20 The Court: Admitted.

(Letter admitted and marked Exhibit C10.)

Mr. Brown: Mr. Reed, will you produce, please, all of the letters which you received either from Max B. Willig or from Willig & Kratzok, or from Samuel Willig in reference to this matter?

30 Mr. Reed: I am producing a letter dated June 1st, 1928, signed Samuel Willig, and one dated May 26, 1928, signed by Max B. Willig, and one dated April 16, 1928, signed Samuel Willig.

Mr. Brown: I offer in evidence the letter of April 16, 1928, addressed to Mr. B. Friedberg, signed Samuel Willig.

Mr. Reed: We object to that on the ground that it has no material evidential force with relation to the case made by the bill and answer.

(Letter admitted and marked Exhibit C11.)

Mr. Brown: I offer in evidence letter addressed by defendant, dated May 16, 1928, addressed to Benjamin Friedberg, signed Max B. Willig.

10

By Mr. Reed:

Q. Mr. Willig, is that your signature?

A. Yes, sir, that is my signature.

Mr. Reed: I object on the ground it is a self-serving declaration, and that it has no material weight or evidential force in the case made by the bill.

20

The Court: Admitted.

(Letter admitted and marked Exhibit C12.)

By Mr. Brown:

Q. Mr. Willig, will you look at that letter and tell me whether or not you ever received a reply to it from Mr. Friedberg?

30

Mr. Reed: I object to that on the ground that it has no material weight as to the case made by this bill and answer, if your Honor pleases.

The Court: Permit the question. You may answer it.

A. Yes, this is the letter, but I didn't receive no reply from Mr. Friedberg on that except that he seen him in Atlantic City and he promised, he says the first chance he will get he will give me the statement, that was personally he told me.

Q. Mr. Willig, did you ever see Mr. Friedberg at any time subsequent to the purchase of this property when you discussed the matter of the investment?

A. Yes, sir.

10 Q. On how many occasions?

A. Very often.

Q. During any time since the purchase of the property in May of 1925, did you live in the hotel?

A. Yes, sir.

Q. When was that?

A. In 1926.

Q. During what portion of the year?

A. From June, July and August.

20 Q. Who conducted the hotel at that time?

A. Mr. Friedberg.

Q. Who has conducted the hotel during the period from the time of its purchase in May, 1925, until now?

A. The first year, was conducted by a party, Mr. Klein, which Mr. Friedberg had there, in which Mr. Klein, yes, or Wise—that was the first year—second year Mr. Friedberg conducted it himself, he ran the hotel.

30 Q. That was in nineteen ——

A. 1926, 1927 and 1928, was rented to a lady, Mrs. Klein.

Q. By whom was it conducted this year, 1929?

A. I don't know. I had a tenant for it, which I sent two tenants to Mr. Friedberg, but I think he didn't accept them.

Q. Did you communicate with Mr. Friedberg directly with reference to those tenants?

A. Yes, sir.

Q. Now ——

A. I sent him a letter to it, too.

Q. You wrote him a letter about that?

A. Yes, sir.

Q. Has the hotel been opened all year around or merely during the summer season?

A. During the summer season. 10

Mr. Reed: I object to this method of proof. It has no legal significance, this oral testimony in relation to a substantial interest in real estate, and certainly can have no binding effect on this case.

The Court: I have admitted practically all the testimony subject to being connected.

Q. Now, Mr. Willig, who is Mr. Samuel Willig? 20

A. My son.

Q. What is Mr. Samuel Willig's business?

A. An attorney.

Q. Where?

A. Philadelphia.

Q. Where is his office?

A. North American Building.

Q. Where was his office in 1925?

A. Lincoln Building.

Q. When did he move to the North American Building? 30

A. Then he moved in the Franklin Trust Building.

Q. When was that?

A. Right after the Lincoln, I don't remember exactly.

Q. Does he have offices alone?

A. With his partner, Mr. Kratzok, my son-in-law.

Q. Where is your office with respect to the office of your son and Mr. Kratzok?

A. With my children.

Q. The firm of Willig and Kratzok is made up of whom?

A. Willig and Kratzok is my son and son-in-law, and Max B. Willig is myself.

10 Q. Now, I notice the checks which are here in evidence are signed for Max B. Willig and Willig and Kratzok.

A. Yes.

Q. Are the accounts kept that way?

A. Yes, sir, all the time.

Q. Who represents you in legal matters in Philadelphia?

A. My son.

Q. Mr. Samuel Willig?

A. Yes, sir.

20 Q. Did Mr. Samuel Willig represent you in any way in connection with the investment in this Imperial Hotel?

A. Yes, in money and writing letters for me.

Q. Do you know whether or not he had any contact with Mr. Friedberg with reference to the hotel and its operation or purchase?

A. No, sir.

Q. You don't know whether he had or not?

A. He had no contact in purchase.

30 Q. Did he come in contact with Mr. Friedberg with reference to the management of the hotel after its purchase?

A. Yes, sir.

Cross-examination.

By Mr. Reed:

Q. These letters which you have produced without the envelopes, were they not all addressed and delivered to your son?

A. No, sir, all addressed to my office.

Q. Sir?

A. They were addressed to my office. 10

Q. Isn't that the office of your son and Mr. Kratzok?

A. Yes, sir.

Q. And weren't these letters addressed to Mr. Samuel Willig?

A. Max B. Willig.

Q. Max B. Willig?

A. Yes, sir.

Q. How is it the replies were signed Samuel Willig? 20

A. My son always replies for me because he can write and I can't.

Q. Can't you write?

A. No, sir.

Q. Didn't you sign this letter that is here?

A. Yes, sir, that is my name.

Q. Then you can write, is that right?

A. Yes, but he could sign my name, and I can read, too, but I can't write, that is, in English.

Q. Did you dictate this letter marked C12? 30

A. Yes, sir.

Q. You dictated and signed it?

A. Yes, sir.

Q. Now, in relation to this check, why was this check of \$5400 drawn to the Chelsea Title Company?

A. That I don't know, Mr. Friedberg came in to

me right here in Atlantic City in the Boardwalk, and says, "Give me \$5,448, which this is your share," and he made out the check and I signed it for him, and I thought that this was the company that the title was there taken.

Q. You know very well that this title was not taken at that company, don't you?

A. I don't know nothing at all.

Q. Don't you know it was not taken there?

10 A. I do not.

Q. Don't you know how it was not taken there?

A. Now I do, yes, sir.

Q. Don't you know that this refers to a mortgage transaction between, what is the name of that party—Mrs. Zack, in which you held a six-thousand-dollar mortgage?

A. I held a mortgage, not on that.

Q. Didn't you hold a \$6000 mortgage?

A. Yes.

20 Q. Name of Zack?

A. Right.

Q. Is that Mr. Friedberg's mortgage?

A. Yes, sir. Mr. Friedberg came up to me and asked me —

The Court: There is no question at all.

Q. Isn't this the check that has to do with that?

A. No, sir, that is the check in settlement.

30 Q. Wasn't that the transfer of funds that had been given to you for that Zack transaction?

A. No, sir.

SAMUEL WILLIG, SWORN.

Direct examination.

By Mr. Brown:

Q. Mr. Willig, where do you live?

A. Philadelphia.

Q. Are you an attorney at law in Pennsylvania? 10

A. Yes.

Q. Practicing?

A. Yes.

Q. Where?

A. Philadelphia.

Q. What relation are you to Mr. Max B. Willig,
the complainant in this suit?

A. A son.

Q. Did you have anything to do with the purchase
of the Imperial Hotel or the investment by your
father of any interest therein? 20

Mr. Reed: I object on the ground that the ques-
tion is leading and, of course, can't bind us unless
what he did was in writing, if your Honor pleases.

Mr. Brown: I assume he could answer that yes
or no.

The Court: I will permit it.

30

(Question repeated.)

A. Not at the time of the purchase.

Q. Answer that yes or no, please, Mr. Willig,
whether or not you had any.

A. Interest at the time of the purchase?

(Question repeated.)

The Court: The question is objected to. I will sustain the objection.

Q. Did you have anything to do with the purchase of the hotel by Mr. Friedberg?

A. No.

Q. Or in Mr. Friedberg's name?

10

A. No, I did not.

Q. Did you have anything to do at any time with the investment by your father of any interest in that Imperial Hotel?

Mr. Reed: I object.

The Court: Sustain the objection.

Q. Do you know where the Imperial Hotel is?

20

A. South Maryland Avenue.

Q. Atlantic City?

A. Atlantic City, New Jersey.

Q. I show you Exhibit C2, and ask you whether or not you have seen that before?

A. Yes, sir.

Q. When and where?

30

A. Well, I first saw this when Mr. Friedberg came to our office for the purpose of settling the balance of the money due by my father for his one-fourth interest in the Imperial Hotel and —

Mr. Reed: I object to this.

The Court: Sustain the objection.

Mr. Reed: I ask that that answer be stricken, if your Honor please. It is not responsive.

The Court: Let it be stricken.

Q. When was it, Mr. Willig, that you saw that paper I handed to you and where was it?

A. July, 1925, I think—'25, the settlement.

Q. Where was it?

A. In my office in Philadelphia.

Q. Who was present when that was exhibited to you so that you saw it?

A. Mr. Friedberg, my father and myself. 10

Q. Who produced that paper writing?

A. Mr. Friedberg, and it is in his handwriting.

Q. All of it?

A. All with the exception of a small note that I have at the bottom there, explaining what one of the items is on the note.

Q. Now, then, will you read into the record what portion of that paper you wrote?

Mr. Reed: I object to that. 20

The Court: Sustain the objection.

Q. In whose handwriting is the notation, "Less 5400?"

A. Mr. Friedberg's.

Q. In whose handwriting are the figures "5448?"

A. Mine.

Q. In whose handwriting is the notation, "We gave Friedberg note for \$14,000?" 30

A. Mine.

Q. Will you explain when you made those notations in your handwriting?

A. Right at the same time when Mr. Friedberg gave me the memorandum, he brought that with him, and I made the notation immediately afterward.

Q. Where was Mr. Friedberg at the time?

A. In my office.

Q. What were the circumstances of your making those notations?

Mr. Reed: I object. I don't think it is relevant. I don't think it is competent, and they are all self-serving statements that are denounced by our Evidence Act and also the Statute of Frauds.

10

The Court: I will permit it.

(Question repeated.)

A. Mr. Friedberg came in for the balance of the money and the money was not available at the time —

20 Mr. Reed: I object to that and ask that it be stricken.

The Court: Sustain the objection. Let it be stricken.

Q. Will you tell me, Mr. Willig, how it came about that you made those notations on that paper?

A. It was a matter of arithmetic, Mr. Brown, the figure 5448, the amount of that check which Mr. Friedberg has brought, check 5400 had to be subtracted from the figure that he had on for the purpose of determining the amount of note to be given.

30

Q. Do you know whether or not Mr. Friedberg knew you made those notations?

A. Of course, he was there.

Q. Was there anything said to him about the notation that you was making of the 5448?

A. Not a thing stated, was done for the purpose of making the amount of the note, 5448, yes, sir, arithmetic, and the note was given to him for \$14,000.

Mr. Reed: I ask that all this be stricken on the ground it is not relevant or competent in this lawsuit, if your Honor please. There is the paper that speaks for itself, and those notations on there, I don't think this paper is competent. It is not signed by us and it is not in any way connected with this lawsuit, and after it is in evidence now, in violation of, as I understand the rule, he is explaining it. 10

The Court: I will not strike.

Q. Mr. Willig, I notice a memorandum on this paper "mortgage interest," \$20,222.03, do you know what mortgage that referred to?

A. That was a mortgage on the Imperial Hotel which Mr. Friedberg had paid off between the time of the settlement and the time of this little account, and it was, therefore, added to the total investment to determine how much my father still owed him, and that is how those figures were arrived at, he added the \$20,222.03 to take one-fourth of that, this is in his handwriting. I am reading from the statement, one-fourth, \$5,055.01, one-fourth investment, \$11,466, making a total of \$16,455.67, and then added another item there of three thousand, which he claimed due him in another transaction between my father and him, making a total of \$19,455.00, subtracted from that 5448, the amount of the first check, leaving a balance of \$14,000, which is the note given to him at that time. 30

Q. The \$3,000 item, do I understand, refers to another transaction?

A. Another account.

Q. Between your father and Mr. Friedberg?

A. Yes.

Q. Where was that property?

A. Property in Philadelphia, Columbia Avenue, he has here, "less about \$3,000 balance from Columbia," Columbia Avenue properties.

Q. There have been introduced in evidence some letters, Exhibit C5, addressed to Mr. S. Willig, was
10 that letter received by you?

A. This letter was addressed to my office and received by me, yes.

Q. Do you know how it come about that that letter was addressed to you?

Mr. Reed: I object.

The Court: I will admit the question, if he knows.

20 A. Well, I can't, of course, go into Mr. Friedberg's mind why it was addressed to me. Mr. Friedberg has been associated with us —

Mr. Reed: I object.

The Court: The question is answered.

Q. Whose is your father's legal representative?

A. I am attorney at law and in fact.

30 Mr. Reed: I object. Just a minute, if your Honor please. The offer here is to vary these letters by this oral statement of this lawyer, and it can't be done.

The Court: I don't understand that is the purpose at all.

Mr. Reed: What is the purpose? It certainly, that is the only purpose that this man can be used for, and I would like to know what the purpose of the question is. Isn't that it, Mr. Brown?

Mr. Brown: It is to show, if your Honor please, that Mr. Samuel Willig as attorney for his father transacted the business which transpired between Mr. Friedberg and Mr. Willig in reference to the Imperial Hotel and that he transacted that business as attorney for his father, he being an attorney at law. 10

Mr. Reed: There is no statement in any of these letters that he is acting for his father.

Mr. Brown: I don't understand, if your Honor please, we have to put in the bill the matter of proof.

Mr. Reed: I don't think you do, but you certainly can't now alter the fact of these letters by oral statement of this lawyer, that is the point, he is now, there is no reference to his acting for anybody else in these letters except himself. Now, orally he wants to show what he wrote them, although he didn't say so when he was writing, for his father, and I say that he can't do that. 20

The Court: I will permit it. 30

(Question repeated.)

Q. As your father's legal representative, had you any correspondence with Mr. Friedberg in reference to this matter?

Mr. Reed: I object to that on the ground that the question is improper. I think he can answer what he did and how he was acting without leading him.

The Court: Very leading question. Sustain the objection.

10 Q. Did you represent your father in any way at any time in connection with this transaction of his investment in the Imperial Hotel?

A. I represented him at all times except in the original purchase and the settlement. I don't believe I was around at that time or I probably would have represented him then, too.

Q. In so representing him, what did you do?

20 A. I made the correspondence, I corresponded with Mr. Friedberg, I answered his letters in which he requested additional contribution to the account when the account was short, I did everything that I could do short of, I mean wherever Mr. Friedberg would make any request or wherever I had any request to make of him, I, in fact, acted as if my father were, I mean in his place as his attorney in fact, and did everything, because I have absolute authority to do everything for my father and he is bound by anything that I do.

30 Q. I show you Exhibit C11 and I ask you if that is one of the letters that you wrote to Mr. Friedberg representing your father?

A. Yes.

Mr. Reed: I object to the question on the ground that the answer is an attempt to vary that written instrument.

The Court: Latter part stricken and question admitted.

Q. Is that one of the letters you wrote to Mr. Friedberg?

A. Yes, sir.

Q. In whose behalf did you write that letter?

Mr. Reed: I object to that, because the letter speaks for itself. 10

The Court: Permit the question.

A. I wrote that on behalf of my father, in behalf of myself, and everything. I would like to make that little statement here, not directly in answer to the question, to clarify —

Mr. Reed: I object. 20

The Court: Sustain the objection.

Q. No. Did you have any personal contact with Mr. Friedberg or any conversation with him with reference to the matter of the Imperial Hotel?

A. Many times.

Q. Where did these conversations take place?

A. Both in Atlantic City and in Philadelphia, frequent occasions to converse about it, because there were questions of repairs that came up very frequently, questions of buying additional equipment for the property, that is, questions of making additional investment into the account, contribution to the account, question of the payment of mortgages and so on, and the sales, several prospects of sales, 30

also the renting of the hotel during the ownership of it.

Q. Was your father present at any of these conversations?

A. Many times was present, very frequently I had conversations in his presence.

Q. Did Mr. Friedberg render any accounting of his handling of the hotel to your father or to you for him prior to the filing of this bill?

10 A. I am not sure exactly whether it was prior to the filing, he had rendered no accounting prior to the time my father began to request him, when he was about to leave for Europe last year, in about April 16th.

Q. April 16th?

A. I mean in April, 1928, prior to that time there had been no accounting, up until June, 1928, there was no accounting that I know of.

20 Cross-examination.

By Mr. Reed:

Q. You know when this settlement was made for this property by Mr. Friedberg, don't you?

A. No, I don't, Mr. Reed. I wasn't around at the time of the settlement. I first learned of it some time after the settlement.

30 Q. In these letters that you wrote, signed Samuel Willig, you never said anything about that you were writing them for your father, did you?

A. I think some letters were written by me and some by my father.

Q. Did you?

A. No, that wasn't necessary, Mr. Friedberg knew perfectly well the status of this whole thing. Mr.

Friedberg has been associated with us about twenty years, Mr. Reed, and you know that, too, as a matter of fact, you know our joint transactions very intimately.

Q. Well, I am trying to get you to tell the Court about that. I am not saying I know anything.

A. I would like to assist the Court in any way I can. If there were not so many objections perhaps I could get a little more of the atmosphere of this thing into it. 10

Q. You never, in any of these letters, said that you were speaking for your father, did you?

A. I don't believe so.

Q. Did you?

A. I don't know, unless I would read them, but I don't believe I did. There wouldn't have been any sense in it, Mr. Reed.

Q. Just a minute. I don't want to argue with you, Mr. Willig. Just read the letters I refer to and answer my questions. 20

The Court: Why should we take the time of that? He either did or did not.

A. I don't recall. I believe I didn't. I wouldn't

The Court: There is no question now. I have sustained the objection to the question.

30

COMPLAINANT RESTS.

Mr. Reed: If your Honor please, I want to move to dismiss the bill on the ground that there is no

instrument here signed by this defendant that would take this case out of the Statute of Frauds.

The Court: I will hear you.

Mr. Reed: I refer particularly to the third section of the Statute of Frauds and also to the —

10 The Court: Of course, Mr. Reed, you have closed your case.

Mr. Reed: Yes, sir. —to the fifth section of the Statute of Frauds, all of which say that there must be some writing signed by the defendant or the party charged or his duly authorized agent, and the proof here is by both of the Willigs that there was no written paper and Mr. Samuel Willig didn't have anything to do with the alleged purchase, and these checks are all signed by Samuel Willig, and is
20 absolutely no proof here that Max B. Willig, this complainant, ever did anything, and even if he did, under the case of Meyer versus Collisson, 66 Equity, that wouldn't take this case out of the Statute of Frauds.

Mr. Brown: If your Honor pleases, it seems to me there is ample here to establish the complainant's case. In the first place, we have the check of \$5448 that is alleged went on account of the original purchase. If that check stood alone perhaps it might be said there is nothing to tie it up, but where
30 we come along with a memorandum in the handwriting of Mr. Friedberg himself, wherein he acknowledges the credit of the \$5400, as he calls it, in his handwriting, so it does, it seems to me give semblance of the fact and proof to this whole transac-

tion. Then subsequently on the presentation of this accounting, we produce or we give to him the \$14,000 note. That is not denied, stands uncontradicted, in payment of an additional interest in the Imperial Hotel in the beginning, and we presented in July of 1925, we produce the check by which that note was paid, and also a check for the interest on that note in the interim. Those checks all bear the endorsement of Friedberg, both of them show that was deposited to the credit of Friedberg, and he received the benefit of that money, and then on a subsequent occasion in answer to a letter which we wrote for deposit of \$3,000, it is disclosed that there were two additional checks, both of which went to the credit of Mr. Friedberg, \$2500, so that the checks themselves show clearly the investment of cash received by Friedberg for which he has benefited to the extent of about \$21,948, I think, is the exact amount. Now, Mr. Friedberg had parted with his money to that extent to the benefit of the defendant Mr. Friedberg. In addition to that there are a number of letters here in evidence, all of which are in acknowledgment of the interest of Willig in this Imperial Hotel, and promise an accounting upon certain conditions and requesting certain things in connection with the Imperial Hotel, and those letters, at least two of them, are admittedly, two or three of them are admittedly signed by Friedberg. Now, it would seem to me that under all the circumstances of this case, that the Statute of Frauds is not to be strictly adhered to in its terms. As I understand, if the defendant Friedberg induced the complainant to enter into this transaction with him and to give up his money to the defendant Friedberg, and it is proven in this case that he did, and that there is no writing or no evidence which would

10

20

30

support the claim that that money was given to him in purchase of an interest in the hotel, in this instance that we have satisfied the Statute of Frauds.

Now, there is certainly writing here, there is a parting with money and in every respect it seems to me we are entitled to the relief asked for in the bill.

DECISION REVERSED.

10

EXHIBIT C1.

10/9/29L.

Phila Pa June 13 1925 No.
Northwestern Nat. Bank.

20 Pay to the
order of Chelsea Title & Guaranty Co. \$5448.00
Fifty four hundred forty Eight Dollars
Max B. Willig & Willig & Kratzok.
Max B. Willig
(Perforated)
Paid 6-16-25

30

[ENDORSED]

For deposit in the
Chelsea National Bank
To the credit of
Chelsea Title and Guaranty Co.
Received payment
Prior Endorsements Guaranteed

EXHIBIT C3.

10/9/29L.

No. 1389 Philadelphia, Pa., 11/17 1925

NORTHWESTERN NATIONAL BANK 3-36

Pay to the

order of Philadelphia National Bank

10 Fourteen thousand and 00/100 Dollars

Max B. Willig and Willig & Kratzok

\$14,000 00/100 payment note of B Friedberg

Samuel Willig

Max B. Willig

and

Willig & Kratzok

407 Lincoln Bldg.

(Perforated)

Paid 11-18-25 3-36

20

[ENDORSED]

The Philadelphia National Bank

Nov 18 1925

Note Teller

30

Payment Received

3-1

Nov 18 1925

3-1

The Philad'a Nat'l Bank,
O. Howard Wolfe, Cashier.

P. B. Davidson,

A. C.

EXHIBIT C4.
10/9/29L.

No. 1314 Philadelphia, Pa., 10/2 1925.
NORTHWESTERN NATIONAL BANK 3-36
Pay to the
order of B. Friedberg
Two hundred and seventeen and 00/100 Dollars 10
Max B. Willig and Willig & Kratzok
\$217.00 interest on note Samuel Willig
Max B. Willig
and
Willig & Kratzok
407 Lincoln Bldg.
(Perforated)
Paid 10-21-25 3-36

20

[ENDORSED]

B. Friedberg
Pay to the Order of
Any Bank or Trust Co.
Prior endorsements guaranteed
Oct 20 1925
The Atlantic Safe Deposit & Trust Co.
Atlantic City, N. J.
Jos. B. Smith, Treasurer 30
55-140
Received Payment
Through
Oct 21 25
The Clearing House
The Philadelphia National Bank

EXHIBIT C5.

10/9/29L.

Atlantic City, N. J. 6/1-26

Mr. S. Willig

My dear Mr. Willig

10 Will you be kind enough and deposit for me 3000.00 the Southwark bank upon receipt of this letter as I am overdrawn and in need of funds for the imperial. please do so with out fail you may give a check to Kolber out of the 3000.00 to cover interest for my share for interest on Chester and oblige

B. Friedberg

regards to everybody

(On back of letter.)

20

June 2, 1926

Mr. B. Friedberg

240 S. Connecticut Ave.

Atlantic City, N. J.

Dear Friedberg:

30 I made a deposit in the Southwark to you account for \$2050.00 and paid your one-fourth share of the mortgage interest on north side of Welsh St. Chester, \$450.00, as you requested. I was unable to raise any more money. Kindly credit our account in the Imperial with this \$2500.00.

Please send us check for \$74.95, your share of the 1925 school tax on the south side of ninth St. Chester, and also send us check for \$3.00 to Louis Padolnick, the cost of satisfying the mortgage on 1943 Westmoreland St. Phila. Pa.

Very truly yours,

EXHIBIT C6.

10/9/29L.

1629
No. 1934 Philadelphia, Pa., 6/1 1926
NORTHWESTERN NATIONAL BANK 3-36
Pay to the
order of B. Friedberg 10
Two thousand and fifty and 00/100 Dollars
\$2050 00/100 a/c Imperial Hotel a/c
Max B. Willig and Willig & Kratzok
Samuel Willig
Max B. Willig
and
Willig & Kratzok
407 Lincoln Bldg.
(Perforated)
Paid 6-3-26 3-36 20

[ENDORSED]

For deposit only to a/c of
B. Friedberg
Received Payment Through 30
Southwark National Bank
Jun 3 1926
Philadelphia
The Clearing House

EXHIBIT C7.

10/9/29L.

1628
 No. 1922 Philadelphia, Pa., 6/1 1926
 NORTHWESTERN NATIONAL BANK 3-36
 Pay to the
 10 order of B. Friedberg
 Four hundred and fifty and 00/100 Dollars
 \$450.00 a/c Imperial Hotel a/c
 Max B. Willig and Willig & Kratzok
 Samuel Willig
 Max B. Willig
 and
 Willig & Kratzok
 407 Lincoln Bldg.
 (Perforated)
 6-4-26 3-36

20

[ENDORSED]

Pay to the Real Estate T. I. & T. Co.
 for 1/4 mtge int on N. S. 9th St.
 W of Welsh St Chester Pa.
 B. Friedberg
 30 Pay to the order of
 Any Bank or Trust Co.
 Jun 3 1926
 The Real Estate Title Insurance
 and Trust Company of Philadelphia
 3-47 Trust Funds 3-47
 Daniel Houseman,
 Treasurer

Received Payment
through the
Jun 4 1926
Clearing House
Corn Exchange Nat'l Bank, Phila.

EXHIBIT C8.
10/9/29L.

10

April 17-28

My dear Mr. Willig

In reply to yours of the 16th inst will say that I am not questioning receiving the 2500= on June-1926. I am only advising you that I credited 2000= on account of the Imperial hotel and 500= for the apts was due me from you. At the time you were to give me a additional check for the apt. as you were short and since I did not get and therefore made the credits accordingly which of cours make no difference in figure. So therefore you can fix your records accordingly. 20

You failed to mail me a duplicate of the Imperial statement please do so. As I want to have this straghtened out.

Regarding the Roy our understanding was that we were to have it fixed up the next day and was in Phila on tuesday April 10th for that purpose and you were out the whole afternoon I come down the following day for that purpose have seen you late the evening for a few minutes and you took up the subject about Chester and and didnt get the time to take it up. 30

I do not see why you want it delayed now until the new report comes out. I do not see what the

report has any thing to do with our understanding as this is not in accordance with our arrangements.

Hoping you will do as agreed and comply with my requests

Sincerely yours
B. Friedberg

10

EXHIBIT C9.
10/9/29L.

April 15—28

My Dear Mr. Willig

Have you located the statement from the Imperial hotel if not will you please do so and send me a copy of same. Make it as soon as possible as I want to straghten the above out.

20

You have in your book a charge for 2500= given on acount of the Imperial my credit is only for 2000= as I have applied 500.00 was due me from you for rent on a apts. for 1925.

30

Regarding the Roy B. & L. Ass. the figures are as follows. the 8 annual report. Value of shares 136.96 withdrawal 11484. we paid a aditional 12.00 per share for the 9th year and there should be a profit about 14.00 a share which would make 162.96 per share the value the withdrawal would be about 136.00 now what would you say would be a reasonable value with reference to our conversation

Sincerely yours

B F

P. S. Will you please mail me a check for my share in the oil also for the advertising sighns in Chester

EXHIBIT C10.

10/9/29L.

Philadelphia, Pa.

May 16, 1928.

Mr. B. Friedberg
240 S. Connecticut Ave.
Atlantic City, N. J.

10

Dear Sir:

I was expecting to get the statement of the Imperial Hotel, as you had promised, but as yet I have not received it.

I would appreciate it very much if you would send it to me before I sail for Europe.

With kindest regards, I am

Very truly yours,

Max B. Willig

In reply to the above will say as soon as your Son 20
Sam will mail a duplicate of the last statement and
the ammount paid on acount will gladly do so.

EXHIBIT C11.

10/9/29L.

Pennypacker 6383

Race 6391

SAMUEL WILLIG

19th Floor—North American Bldg.

Broad and Sansom Streets

30

Philadelphia

April 16, 1928

Mr. B. Friedberg
240 S. Connecticut Ave.
Atlantic City, N. J.

Dear Sir:

Replying to yours of the 15th inst in re Imperial

Hotel, the \$2500.00 paid you on June 1, 1926 was in the form of two checks, one for \$2050.00 which you deposited in your account and one for \$450.00 which you endorsed to the Real Estate Title Insurance & Trust Co. for your one-fourth mortgage interest on the lot on the north side of Ninth Street, Chester, and neither of these had any thing to do with the rent of the apartments for 1925.

10 Regarding the Roy matter, I will take this up with you after the new report comes out showing the present value.

I will straighten the oil matter and the Chester sign matter as soon as I receive the next oil check.

Very truly yours,
Samuel Willig

SW:FB

20

EXHIBIT C12.

10/9/29L.

Phila. Pa. May 26, 1928

Mr. Benjamin Friedberg
240 S. Connecticut Ave.
Atlantic City, N. J.

Dear Sir:

30 During the past few years, I have made several requests for you to furnish me with a statement of the income received and the disbursements made by you in connection with the Imperial Hotel, Maryland Ave. Atlantic City, N. J.

Although you have made numerous promises to do so, you have up to the present time failed to furnish me with such an account.

As I am sailing for Europe on June 1, 1928, I

must therefore insist upon your furnishing me on or before Thursday, May 31, 1928 with said information and also with a description of the property, so that I may prepare and have you sign a deed for my one-fourth interest in said premises.

Should you, however, fail to comply with my request, I have instructed my attorneys to bring such proceedings as may be necessary for the purpose of compelling you to furnish the desired information and executing the aforementioned deed. 10

Very truly yours,
Max B. Willig

CONCLUSIONS.

IN CHANCERY OF NEW JERSEY.

Between MAX B. WILLIG, <i>Complainant,</i> and BENJAMIN FRIEDBERG, <i>et</i> <i>ux.,</i> <i>Defendants.</i>	}	On Bill, &c. On Final Hearing. Conclusions.	20
---	---	---	----

These conclusions are not to be published in the official or unofficial reports. 30

MR. W. ELMER BROWN, JR., for the complainant.
MR. JOHN C. REED, for the defendants.

INGERSOLL, V. C.:

The complainant contends that in May, 1925, he and the defendant, Benjamin Friedberg, entered into an agreement to purchase the Imperial Hotel, in Atlantic City, in the proportion of $\frac{1}{4}$ to the complainant and $\frac{3}{4}$ to the said defendant; that in accordance with said agreement the property was purchased and title taken in the name of the defendant; subject, however, to the operation of certain mortgages, the amount of principal due thereon aggregating \$56,900; that Friedberg has at all times controlled said premises, collected all rents and income; that he has advanced the sum of \$22,000 on account of the purchase of said premises, and payment on account of mortgage principal and other expenses; that taxes remain unpaid and a portion of the premises have been sold for non-payment of taxes.

10 He prays for an accounting and conveyance of a $\frac{1}{4}$ interest therein.

20 The defendant denies the alleged agreement or that the complainant has paid any sum on account of the purchase of said premises and further alleges that the said alleged agreement, if made, was wholly oral and therefore within the provisions of the statute of frauds.

Upon the closing of the complainant's case, the defendant moved to dismiss the bill, because of the provisions of the statute of frauds.

This motion must prevail.

30 This case is within the statute of frauds, unless the complainant can by his proof bring it without that statute.

Payment of a part of the purchase money is not an act of part performance, to take this oral contract out of the statute. *Cooper v. Colson*, 66 N. J. Eq. 328; *Boulanger v. Churchill*, 86 N. J. Eq. 96.

The bill will be dismissed.
Determined: December 10th, 1929.

ORDER DISMISSING COMPLAINANT'S BILL.

IN CHANCERY OF NEW JERSEY.
D-73-96.

10

Between	}	On Bill, etc. Order Dismissing Complainant's Bill.
MAX B. WILLIG,		
<i>Complainant,</i>		
and		
BENJAMIN FRIEDBERG and	}	20
MOLLY FRIEDBERG, his		
wife,		
<i>Defendants.</i>		

This matter being opened to the court by John C. Reed, solicitor of the defendants, in the presence of William Elmer Brown, solicitor of the complainant; and the Court having heard the facts, and motion being made to dismiss the bill filed in the above-stated cause.

It is, on this 11th day of December, A. D. 1929, ordered, adjudged and decreed that the bill of complaint in this cause be, and the same is hereby dismissed with costs. 30

E. R. WALKER,
C.

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

NOTICE OF APPEAL.
IN CHANCERY OF NEW JERSEY.

10	Between MAX B. WILLIG, <i>Complainant,</i> and BENJAMIN FRIEDBERG and MOLLY FRIEDBERG, his wife, <i>Defendants.</i>	}	On Bill, etc. Notice of Appeal.
----	--	---	------------------------------------

20 The complainant, Max B. Willig, hereby appeals from the final decree made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, on the advice of Honorable Robert H. Ingersoll, one of the Vice-Chancellors, bearing date December 11, 1929, in the above-entitled cause, and from the whole and every part thereof, to the Court of Errors and Appeals in the last resort in all causes.

Dated, January 7, 1930.

30 WM. ELMER BROWN, JR.,
*Solicitor for and of Counsel
with Complainant.*

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

WM. ELMER BROWN, JR.,
Of Counsel with Complainant.

[ENDORSED]

Service of the within notice of appeal
is hereby acknowledged this Jan. 9th,
1930.

John C. Reed,
Solicitor for Defendants.

10

PETITION OF APPEAL.

NEW JERSEY COURT OF ERRORS
AND APPEALS.

Between

MAX B. WILLIG,
Complainant-Appellant,
and

BENJAMIN FRIEDBERG and
MOLLY FRIEDBERG, his
wife,

Defendants-Respondents.

On Appeal from
Chancery.
Petition of Appeal.

20

To the Honorable, the Court of Errors and Appeals 30
in the Last Resort in all Causes:

The petition of Max B. Willig, the appellant in
the above-entitled cause, respectfully shows that:

1. Petitioner finds himself aggrieved by a final de-

10 decree made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, on the advice of Honorable Robert H. Ingersoll, one of the Vice-Chancellors, bearing date December 11th, 1929, in a certain cause in said Court of Chancery wherein the said Max B. Willig was complainant and the said Benjamin Friedberg and Molly Friedberg, his wife, were defendants, in this respect, to wit, that the said decree orders that complainant's bill be and the same was thereby dismissed.

2. And petitioner appeals from the decree of the Chancellor which decrees as aforesaid, upon the ground that the same is erroneous in that:

(a) It denies to the complainant the relief prayed for in the bill when it should have granted the complainant the relief prayed for;

20 (b) It is contrary to the clear weight of the legal evidence;

(c) It is apparently based upon the finding by the Court that this case was within the limitations of the Statute of Frauds and that there was no proof to bring it without that statute; and therefore, petitioner humbly appeals from every part of said decree of the said Chancellor upon the ground that the same is erroneous.

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

WM. ELMER BROWN, JR.,
*Solicitor for and of Counsel
with Appellant.*

[ENDORSED]

Service of a copy of the within petition of appeal is hereby acknowledged this January 9th, 1930.

John C. Reed,
Solicitor for Defendants-
Respondents.

10

ANSWER.

NEW JERSEY COURT OF ERRORS
AND APPEALS.

Between

MAX B. WILLIG,
Complainant-Appellant,
and

BENJAMIN FRIEDBERG and
MOLLY FRIEDBERG, his
wife,

Defendants-Respondents.

On Appeal from
Chancery.
Answer.

20

The answer of the above-named respondents to the petition of appeal of the above-named appellant:

These respondents, not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto, nevertheless, say and admit, that a decree was on the 11th

30

day of December, 1929, made and entered in the Court of Chancery, in this cause for the purpose mentioned in the said petition, as is therein stated; but as to the substance and form thereof, these respondents pray to refer thereto when the same shall be produced, and these respondents are advised and believe that the said decree is agreeable to equity, and they pray that the same may be affirmed, with costs to be adjudged to these respondents.

10

JOHN C. REED,
*Solicitor for and of Counsel
with Respondents.*

NOTICE OF ARGUMENT.

20

NEW JERSEY COURT OF ERRORS
AND APPEALS.

30

<p>MAX B. WILLIG, <i>Complainant-Appellant,</i></p> <p style="text-align: center;">v.</p> <p>BENJAMIN FRIEDBERG, <i>et</i> <i>al.,</i></p> <p><i>Defendants-Respondents.</i></p>	}	<p>On Appeal from Chancery. Notice of Argument.</p>
--	---	---

Take notice of hearing of argument in the above-stated cause, before the above named court, to be holden at the State House, in Trenton, New Jersey, on the twentieth day of May, 1930, at ten o'clock in

the forenoon of said day, or as soon thereafter as the same can be heard by said Court.

Dated February 10, 1930.

Your ob't servant,

WM. ELMER BROWN, JR.,

*Solicitor of Complainant-
Appellant.*

To John C. Reed, Esq.,
Solicitor of Defendants-
Respondents.

10

[ENDORSED]

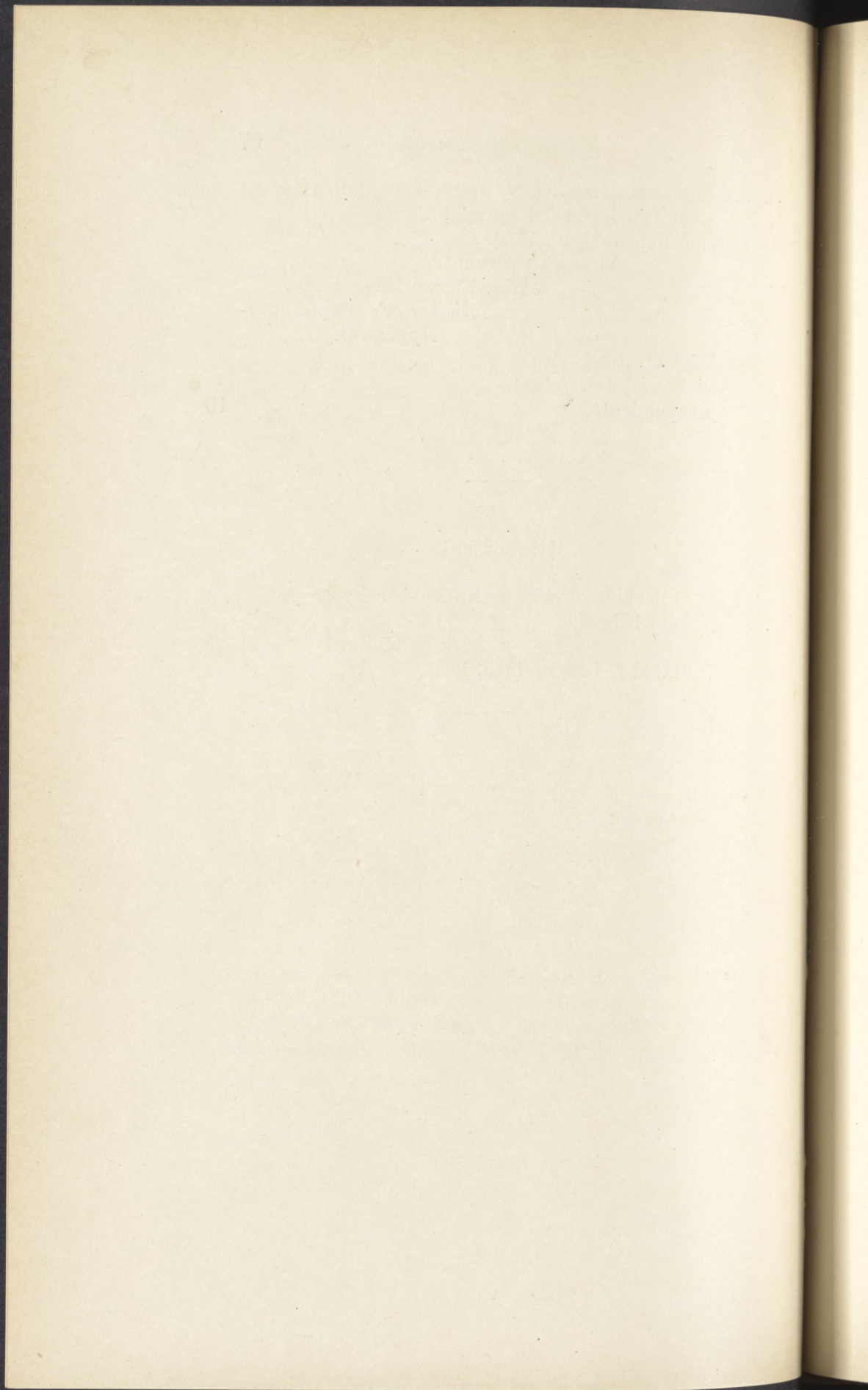
Service of within Notice hereby acknowledged.

John C. Reed

20

Dated February 11th, 1930.

30



NEW JERSEY COURT OF ERRORS
AND APPEALS.

Between

MAX B. WILLIG,
Complainant-Appellant,
and

BENJAMIN FRIEDBERG, *et al.*,
Defendants-Respondents.

ON APPEAL FROM CHANCERY.

APPELLANT'S BRIEF.

STATEMENT OF FACTS.

This is an appeal from order of Court of Chancery dismissing complainant's bill of complaint.

Appellant filed a bill asking that he be decreed to have an undivided one-fourth interest in the lands and premises described therein and that respondent, Benjamin Friedberg, be ordered and decreed to hold same in trust for him; that respondents be ordered to convey same to appellant; and that said respondent, Benjamin Friedberg, be re-

quired to account to appellant for the rents, issues and profits thereof.

The proofs disclosed that sometime in May, 1925, appellant and respondent, Benjamin Friedberg, agreed that they would purchase the Imperial Hotel at Atlantic City. Appellant agreed to take a one-fourth interest (S. of C., p. 18, lines 12 to 20). In June of 1925, respondent, Benjamin Friedberg, called upon appellant to pay \$5448.00 as his one-fourth portion of the purchase price (S. of C., p. 18, line 21, to p. 19, line 4). The payment was made by check of appellant payable to order of Title Co. (See Exhibit C1, S. of C., p. 48). Settlement was duly made and the property was conveyed by deed to respondent, Benjamin Friedberg, all of which is admitted in the pleadings filed.

Subsequently, about July, 1925, Friedberg asked appellant to advance additional money on account of his one-fourth interest to pay off a third mortgage covering the property. Friedberg submitted a statement (Exhibit C2, S. of C., p. 49), showing amount required of appellant, to wit, \$14007.67, for that purpose. Said statement shows the mortgage with interest to be \$20222.03, and shows appellants one-fourth portion thereof to be \$5055.01. Said memorandum also figures appellant's one-fourth of total investment to be \$11400.66. It is important to note that said writing also gives appellant credit for payment of \$5448.00, theretofore made. Said memorandum was in Friedberg's handwriting (S. of C., p. 20, line 32).

Based on that statement, appellant gave Friedberg his note for \$14000, which was discounted at Philadelphia National Bank, and subsequently paid by appellant by his check paid to the bank on Nov. 17, 1925 (S. of C., p. 20, line 20, to p. 22, line 4.

Also see Exhibit C3, S. of C., p. 50). Appellant also paid the discount interest on said note (S. of C., p. 22, line 32, to p. 23, line 5. Also see Exhibit C4, S. of C., p. 51). It is important to note that this latter check is made payable to "B. Friedberg," the respondent herein, and bears his endorsement.

On June 1, 1926, Friedberg wrote appellant for \$3000.00 additional money "for the Imperial" (Exhibit C5, S. of C., p. 52). While said letter was addressed to "Mr. S. Willig," it was shown that the addressee, an attorney of Philadelphia, was appellant's son, having offices with appellant and represented appellant in various phases of his transactions with Friedberg (S. of C., p. 31, line 20, to p. 32, line 33. Also p. 42, lines 10 to 28). In reply to said letter, appellant gave Friedberg \$2500.00, of which the sum of \$2050.00 was deposited to Friedberg's account in the bank and \$450.00 was paid for Friedberg's benefit on one of his personal obligations (S. of C., p. 25, lines 13 to 27. Also see Exhibit C5, bottom p. 52, and Exhibits C6 and C7, pages 53 and 54).

On April 17, 1928, Friedberg admitted receiving \$2500.00 in June, 1926, and advised that he had "credited \$2000 on account of the Imperial Hotel" (See Exhibit C8, S. of C., p. 55). In this same letter Friedberg asks appellant to send him "duplicate of the Imperial statement," referring to statement, Exhibit C2.

Again on April 15, 1928, respondent, Friedberg, acknowledges the Imperial Hotel deal by letter (Exhibit C9, S. of C., p. 56). In that he said, "Have you located the statement from the Imperial Hotel, if not will you please do so and send me copy of same." And again in that same letter he refers to the item of \$2500.00 as follows: "You have in your

book a charge of 2500—given on account of the Imperial, my credit is only for 2000—as I have applied 500.00 was due me from you for rent on a apts. for 1925.”

On May 16, 1928, respondent wrote Friedberg asking for statement of Imperial Hotel account (see Exhibit C10, S. of C., p. 57), to which Friedberg replied as follows: “In reply to the above will say as soon as your son, Sam, will mail a duplicate of the last statement and the amount paid on account will gladly do so.”

Continuously, since the time of the conveyance of this property to Friedberg, he has been in possession of it and has either conducted the hotel business or leased the property to some one else from whom he has collected and retained the rents (S. of C., p. 30, lines 12 to 35).

After complainant's proof was in, the hearing of the case was closed without any testimony from the defendants or any one in their behalf. A motion was then made to dismiss the bill on the ground that there was no writing between the parties such as required by the Statute of Frauds. In deciding the motion, the Court below said:

“This motion must prevail.

This case is within the statute of frauds, unless the complainant can by his proof bring it without that statute.

Payment of a part of the purchase money is not an act of part performance, to take this oral contract out of the statute. *Cooper v. Colson*, 66 N. J. Eq. 328; *Boulanger v. Churchill*, 86 N. J. Eq. 96.

The bill will be dismissed.”

ARGUMENT.

I.

AS BETWEEN APPELLANT AND RESPON-
DENT THERE WAS A RESULTING
TRUST.

It is a settled principle of law that where one buys property with another's money and takes title in his own name, a trust in favor of the one furnishing the consideration results.

In 39 Cyc, at page 104, it is said:

“A resulting trust never arises out of the contract or agreement between the parties but arises by implication of law under acts and conduct apart from any contract, the law implying a trust where the acts of the party to be charged as trustee have been such as are in honesty and fair dealing consistent only with a purpose to hold the property in trust * * * A resulting trust may arise: (1) Where an estate is purchased in the name of one person, but the money or consideration is paid by another * * *”

And again on page 105, of the same volume, we read:

“The doctrine of resulting trusts is founded upon the presumed intention of the parties; and as a general rule, such a trust arises where, and only where, such may be reasonably presumed to be the intention of the parties, as determined from the facts and circumstances existing at the time of the transaction out of which it is

sought to be established; and there may be a resulting trust as to a part of a property or a part of the interest therein * * * Such a trust does not depend upon the general state of accounts between the parties, and it is not necessary that there be anything savoring of fraud, or misrepresentation, or mistake in the transaction; but it is sufficient if the transaction would otherwise work an injustice against the supposed *cestui que* trust, as where property is acquired and held in the name of one party which in equity belongs to another * * * If the circumstances give rise to a resulting trust, it is not affected by an express parol agreement between the parties to the same effect."

Also in the same volume at page 113, it is said:

"Where two or more persons enter into an agreement, based on an adequate and substantial consideration, to purchase property and have the title taken in the name of one of them for the benefit of all, or where the purchase is to be made in their joint names, or for their joint benefit, and one of them purchases the property in his own name, a resulting trust arises in favor of the others to the extent of their interests under the agreement. But the mere fact that two parties verbally agree to such a purchase for their joint benefit, and one of them takes title in himself alone, does not raise a resulting trust in the other's favor if none of his means have been used in making the purchase, and he has no contract rights in the property, and the one taking title occupies no fiduciary relation to him, unless such other changes his position or takes some action that

he would not have taken except on reliance on the agreement."

Again on page 118, the same principle is expressed as follows:

"It is a well-settled rule of equity, in the absence of statutory provisions otherwise, that where property is paid for with the money or assets of one person, and title thereto is taken in the name of another person, in the absence of circumstances showing a different intention or understanding a resulting trust in the property arises in favor of the person whose money or assets are so used, or persons claiming under him, the controlling question being the ownership of the purchase money, and this is true, although there is no actual intention on the part of the party purchasing and taking the conveyance to hold the equitable title for the party whose funds are used in the purchase."

With respect to part payment of the purchase price it is said on page 131 that,

"A resulting trust will not arise in favor of a person in a whole property purchased unless the entire purchase-money has been furnished by or for him; but as a general rule where a conveyance is made in the name of one person and a part of the consideration is paid by another, a trust results in the latter's favor *pro tanto*, particularly where there is an agreement or undertaking that he shall have a corresponding interest in the property."

Concerning joint purchasers, it is said on page 133:

“Where the consideration proceeds from two or more persons jointly, and a conveyance of the legal estate is taken in the name of one of them only * * * a resulting trust, as a general rule, will arise in favor of the parties not named in the conveyance, in proportion to the amount of the consideration they have respectively contributed.”

The foregoing principles of law, as expressed in and quoted from *Cyc*, has long been the law of this State.

Speaking for the Court of Chancery in the case of *Shay v. Shay*, 2 N. J. Misc. Rep. 726, Fielder, V. C., said:

“Where two persons advance the purchase price of real estate and the title is taken in the name of one, a resulting trust will arise to the extent of the part of the purchase price advanced by the other, if it is established that the money advanced by the other was for a specific part or interest in the real estate.”

In *Vigne v. Vigne*, 98 N. J. Eq. 274, 278, the Court said:

“It is a well settled principle of law that where one buys property with another's money and takes title in his own name, a trust in favor of the one furnishing the consideration results. *Cutler v. Tuttle*, 19 N. J. Eq. 558; *Read v. Huff*, 40 N. J. Eq. 229; *Mayer v. Kane*, 69 N. J. Eq. 733; *Yetman v. Hedgeman*, 82 N. J. Eq. 221.”

For additional cases, see the following:

Baker v. Baker, 75 N. J. Eq. 305;

Warren v. Tynan, 54 N. J. Eq. 402;

- N. Y. Third Nat'l Bank v. Cary*, 39 N. J. Eq. 25;
Johnson v. Dougherty, 18 N. J. Eq. 406;
Marshun v. Duer, 40 N. J. Eq. 333;
Bergstrasser v. Sayer, 42 N. J. Eq. 488;
Talman v. Cannon, 24 N. J. Eq. 127;
Krauth v. Thiele, 45 N. J. Eq. 407;
Prisco v. Prisco, 90 N. J. Eq. 289;
Seddon v. Pickard, 101 N. J. Eq. 243;
Lewis v. Hunt, 1 N. J. Misc. Rep. 214;
Stratton v. Dialogue, 16 N. J. Eq. 71;
Allenhurst-Park Est. v. Smith, 101 N. J. Eq. 611.

There are many other cases in this State all bearing on the same point, some of which will be hereafter cited in this brief.

It is submitted, that in view of all the facts of this case, Friedberg should have been decreed to hold a one-fourth interest in said property in trust for appellant.

II.

THE STATUTE OF FRAUDS IS NOT APPLICABLE TO THIS CASE.

Respondent insisted in the court below that Section 3 of said statute (2 Comp. Stat. 2611), precluded appellant from obtaining the relief prayed for. Said section reads as follows:

“That all declarations and creations of trust or confidence of or in any lands, tenements or hereditaments, shall be manifested and proved by some writing, signed by the party, who is or

shall be by law enabled to declare such trust, or by his or her will in writing, or else they shall be utterly void and of no effect, *provided always, that where any conveyance hath been, or shall be made of any lands, tenements, or hereditaments, by which a trust or confidence shall or may arise or result by implication or construction of law, or be transferred or extinguished by act or operation of law, such trust or confidence shall be of the like force and effect as the same would have been if this Act had not been made.*"

In 39 Cyc 108, it is said:

"As a general rule the Statute of Frauds or statute prohibiting parol trusts applies only to trusts expressly created or declared by the parties; and resulting trusts, since they arise by operation of law from the facts attending the creation of the legal estate, are not affected by such statutes, and are valid notwithstanding the acts or transactions out of which they arise in parol, and parol evidence is admissible to establish them; and under some statutes such trusts are expressly excepted from the operation of the statute."

Vice-Chancellor Emery, speaking for the Court in *Baker v. Baker*, 75 N. J. Eq. 305, said:

"On the proofs, I conclude—first, that the original purchase of the Springfield farm from Mr. Pitcher was made by the contributions of all of the children to the purchase-money, and that although the title was taken in the name of Benjamin Baker, one of the children, there was, as between Benjamin and his brothers and sis-

ters, a resulting trust, arising from their original contribution of the purchase money. Such resulting trust as between the grantee and third person, arises by implication and operation of law, and is expressly excepted from the operation of the statute requiring written evidence of a trust."

In the case of *Brannin v. Brannin*, 18 N. J. Eq. 212, it was held that the Statute of Frauds is not a good defense in the case of a resulting trust arising by implication of law, or of actual fraud.

In *Johnson v. Dougherty*, 18 N. J. Eq. 406, Chancellor Zabriskie, speaking for the Court of Chancery, said:

"It is a settled principle, that when one person purchases property for a stranger, and the purchase-money is paid by the stranger, or out of his funds, although the title is taken in the name of the person making the purchase, a trust results, and the land is held in trust for the party whose money paid for it. So, if a guardian or other trustee purchase with the money of his ward or other *cestui que* trust, a trust results by operation of law. This trust arises without any declaration in writing, for it is expressly excepted by the Statute of Frauds from the operation of that statute, and the facts necessary to constitute such trust can be proved by parol even if denied by the answer."

The case of *Johnson v. Dougherty*, *supra*, was cited with approval in the case of *Cutler v. Tuttle*, 19 N. J. Eq. 549, with the following additional statement:

"A similar rule prevails in cases where the

consideration proceeds from two or more persons jointly. A resulting trust will arise in proportion to the amount of the consideration which they may have respectively contributed. Hill on Trustees, 92."

In *Thomas v. Thomas*, 79 N. J. Eq. 464, opinion by Vice-Chancellor Leaming, it was said:

"The Statute of Frauds will not permit an express trust to be established by parol testimony, but by its very terms, it excepts resulting trusts. The language of the statute is, as I recall it, that there is excepted from its operation trusts which arise from implications or construction of law. That may not be the language of the statute, but it is substantially the language. Such trusts are not within the statute, and the courts have uniformly held that parol testimony is competent to aid in their ascertainment. Therefore, if this case were a case in which Mr. Thomas, Sr., had caused a deed to be made to a stranger, the consideration having been supplied by Mr. Thomas, the presumption of law would be that the person who supplied the money had supplied it for his own benefit, and not for the benefit of the stranger, that the title follows the consideration, and in such a case the law creates and determines the existence of a resulting trust. That is what the statute refers to as a trust which results from implication or construction of the law, and is, therefore, one of the trusts which is excepted by the terms of the statute. It follows in consequence that where money is supplied by one person for property, the title to which is taken in the name of another, the law permits the per-

son who supplies the money to testify that he supplied the money, and the trust results as a matter of law.”

In *Baldwin v. Camfield*, 8 N. J. Eq. 906, it was held:

“It has been doubted whether a resulting trust can be sustained where only a part of the consideration money was paid by the party claiming to be *cestui que* trust. But, admitting that it can, as seems to be the better opinion, the land in such a case would be charged *pro tanto*. *Wray v. Steele*, 2 Ves. & B. 388; *Bostford v. Burr*, 2 Johns. C. R. 410.”

The case last above mentioned was cited with approval in the case of *Sayre v. Lemberger*, 92 N. J. Eq. 658, and the Court further remarked that in *Down v. Down*, 80 N. J. Eq. 74, 75, Vice-Chancellor Leaming had collated the cases decided in this State dealing with the subject of resulting trusts, and a consultation of the case referred to establishes that the doctrine enunciated in *Baldwin v. Camfield*, *supra*, is firmly rooted in our jurisprudence.

For additional cases on this point see,

- Adams v. Carey*, 53 N. J. Eq. 334;
- Schultz v. Waldous*, 60 N. J. Eq. 71;
- Powell v. Yearance*, 73 N. J. Eq. 117;
- Warren v. Tynan*, 54 N. J. Eq. 402;
- Baldwin v. Johnson*, 1 N. J. Eq. 441, 452;
- Hutchinson v. Tindall*, 3 N. J. Eq. 357;
- Beck v. Beck*, 43 N. J. Eq. 39;
- Krauth v. Thiele*, 45 N. J. Eq. 407;
- Phillips v. Phillips*, 81 N. J. Eq. 461;
- Prisco v. Prisco*, 90 N. J. Eq. 289;
- Fagen v. Falvey*, 96 N. J. Eq. 462; affirmed,
98 N. J. Eq. 411.

III.

THE RELIEF PRAYED FOR IN COMPLAIN-
ANT'S BILL SHOULD HAVE BEEN
GRANTED.

Upon analyzing the proofs in this case we find that Friedberg and Willig agreed to purchase the Imperial Hotel, in Atlantic City, in the proportion of one-fourth to Willig and three-fourths to Friedberg. The property was purchased and title taken in the name of Friedberg. Willig paid the sum of \$5448.00 on account of his portion of the purchase which was used in making settlement. Subsequently additional moneys were paid by Willig, all on account of his one-fourth interest. We are not required to rely alone upon oral proof because the oral proof is substantiated by various documentary exhibits, such as checks, letters, etc. Some of these are in the handwriting of respondent and some signed by him. Not only are the exhibits silent proof of the payments of money made by Willig, but in some instances they are written acknowledgment by Friedberg of those payments and of Willig's interest in the property. Exhibit C2 (S. of C., p. 49); in the handwriting of and submitted to Willig by Friedberg, is particularly significant. In that memorandum Friedberg acknowledges Willig's one-fourth interest in the investment as well as the payment of \$5448, paid and used in settlement for the purchase.

The testimony offered by appellant at the hearing below stands uncontradicted. Respondent did not offer himself as a witness nor did he produce any evidence of any kind to refute appellant's proof.

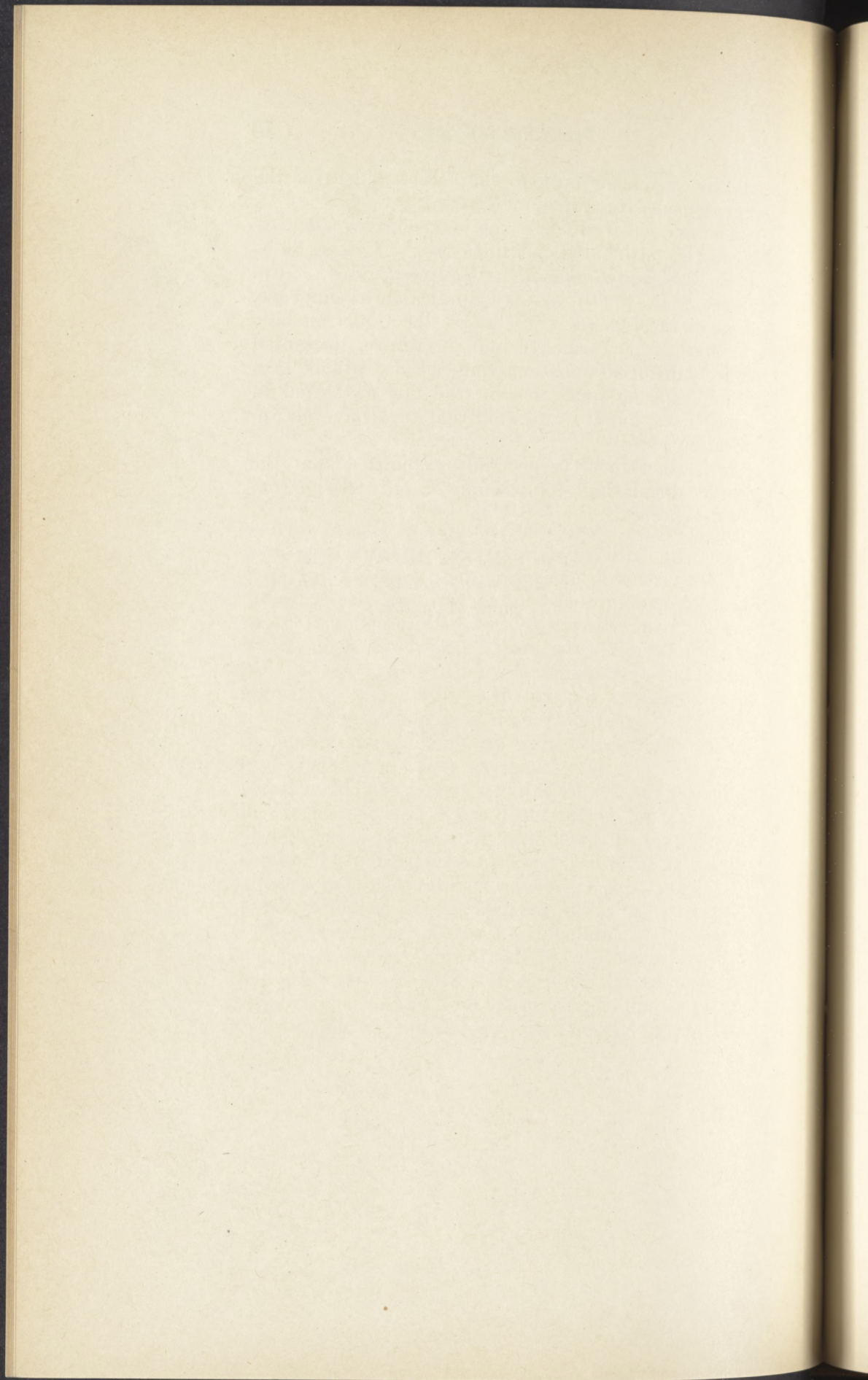
An application of the law, cited herein, to the facts

of this case leads only to the establishment of the righteousness of appellant's claim.

The two cases cited by the learned Vice-Chancellor in his conclusions, to wit, *Cooper v. Colson*, 66 N. J. Eq. 328, and *Boulanger v. Churchill*, 86 N. J. Eq. 96 (S. of C., p. 60), are not applicable to this case. Both of these cases were before the Court on bills for specific performance and, therefore, presented entirely different questions than the case at bar. Appellant has no quarrel with the law as stated in those cases, but it is insisted that they have no application here.

It is, therefore, respectfully submitted that the decree dismissing complainant's bill was erroneously entered.

WM. ELMER BROWN, JR.,
*Solicitor for and of Counsel
with Appellant.*



NEW JERSEY COURT OF ERRORS AND
APPEALS.

Between

MAX B. WILLIG,
Complainant-Appellant,

and

BENJAMIN FRIEDBERG and MOLLY FRIEDBERG, his wife,
Defendants-Respondents.

ON APPEAL FROM CHANCERY.

BRIEF FOR RESPONDENTS.

This is an appeal from a decree of the Chancellor made on the advice of Vice-Chancellor Ingersoll, denying relief to the complainant and dismissing the bill of complaint.

The bill is filed to establish and enforce an alleged trust in lands.

The pertinent allegations of the bill are these: On or about May 12, 1925, complainant and the defendant, Benjamin Friedberg, agreed to purchase the land described in the bill at the price of \$98,500.00; that complainant should own and have title to a one-fourth undivided part of said land and that

the defendant, Benjamin Friedberg, should own and have title to the remaining three-fourths undivided part thereof; that complainant and said Benjamin Friedberg should provide the money with which to purchase the land in amounts equal to their respective interests therein as aforesaid; that on or about May 12, 1925, by deed of that date one Berthold Hevessy and Othillie, his wife, then owners of the land, conveyed the same to the defendant, Benjamin Friedberg, which deed was duly recorded; that the parties further agreed to pay the taxes, mortgage interest, fire insurance premiums and the current charges of the property in proportion to their interests therein, and divide the income in the same proportion between them; that the defendant, Benjamin Friedberg, since the conveyance to him of the property has controlled and managed the same and received the rents and income thereof; that complainant has demanded of the defendant, Benjamin Friedberg, a conveyance to him of his one-fourth undivided interest, which was refused, and an accounting of the rents which was also refused. The bill further alleges that complainant has kept his agreement in accordance with its terms and has advanced and paid on account of the purchase of the land, and upon mortgage principal and other necessary expenses, the sum of approximately \$22,000.00, and prays relief: (1) that complainant be decreed to have an undivided one-fourth interest in the land and that the defendant, Benjamin Friedberg, be decreed to hold the same in trust for complainant; (2) that said defendant be ordered and decreed to make good and sufficient conveyance to complainant of said undivided one-fourth interest; (3) that the defendant, Benjamin Friedberg, account for the rents, issues, profits and income of the premises and pay to complainant his rightful share thereof.

The answer denies the payment by the complainant of any money on account of the purchase of the premises or in discharge of any mortgage or encumbrance thereon or any charge or expense in connection with the ownership of the property, or the payment of any other sum for any other purpose in connection with the ownership of the property, or the payment of any other sum for any other purpose in connection with the purchase or ownership thereof and avers that the land was purchased with the money of the defendant and no part thereof was paid or contributed by the complainant and denies that complainant has any interest therein whatever and expressly denies the agreement alleged in the bill. The answer sets up in bar of the relief sought, by way of plea, the Statute of Frauds, *Comp. Stat.* 2611, *Sect. 3*.

The cause was brought to a final hearing on October 9, 1929, before his Honor, Robert H. Ingersoll, Vice-Chancellor, who advised a decree dismissing the bill of complaint for the reasons set forth in the conclusions filed by him. From that decree so advised the complainant has appealed to this Court.

Bill of Complaint, State of Case, pp. 1-6.

Answer, State of Case, pp. 7-10.

Testimony, State of Case, pp. 16-45.

Exhibits, State of Case, pp. 48-59.

Conclusions, State of Case, pp. 60-61.

Decree of Dismissal, State of Case, p. 61.

ARGUMENT.

I.

The first point made by counsel for the appellant in the argument set forth in his brief is that "as between appellant and respondent there was a resulting trust." It seems quite clear that such contention is wholly without support, since it ignores the distinction between a trust arising by operation of law from contemporaneous circumstances and one arising out of the agreement of the parties.

The bill alleges that the complainant and defendant entered into an agreement:

"Whereby it was agreed that they would purchase certain land * * * for the total purchase price of \$98,500.00 with the understanding that complainant should own and have title to a one-fourth undivided part of said land * * * and that said Benjamin Friedberg should own and have title to the remaining three-fourths undivided part thereof."

See Bill of Complaint, Par. 1, Case, page 1.

See also Paragraphs 2 and 7, Case, pp. 1 and 2.

The proof is to the same effect. The appellant, in support of the bill, gave the following testimony of the agreement:

"He says to me, 'Will you take a share in it?' I said, 'Yes, I will take one-fourth,' and had a lot of dealing with Mr. Friedberg before, and I told him I will take one-fourth."

The allegations of the bill to which this testimony was directed appropriately averred an express parol trust within the operation of Section 3 of the Statute of Frauds and, not being "manifested and proved by some writing," is, therefore, in the words of the section referred to "utterly void and of no effect" and is wholly unenforceable.

Comp. Stat. p. 2611, Sect. 3;

Ostheimer v. Single, N. J. Eq. 73, p. 539.

This is the view of the transaction taken by the learned Vice-Chancellor who held in effect that the terms of agreement were not established by the proofs to be clear, definite and unequivocal, nor were the acts of part performance alleged sufficient to take the case as presented out of the Statute of Frauds, hence he held that the Statute was controlling and that the establishment of the trust (*i. e.*, specific performance of the oral agreement) could not be decreed.

II.

The proofs fail to establish a resulting trust in this case.

The first and most important question is whether the purchase by Friedberg, the defendant, was with the money of the complainant, wholly or in part.

"It is a settled principle," says Mr. Justice Depue in *Cutler v. Tuttle*, 19 N. J. Eq. p. 549, 'that where one person purchases property for a stranger, and the purchase money is paid by the stranger, or out of his funds, although the title is taken in the name of the person making the purchase, a trust results, and the land is

held in trust for the party whose money was paid. This trust arises without any declaration in writing, for it is expressly excepted, by the Statute of Frauds, from the operation of that statute, and the facts necessary to constitute such trust may be proved by parol evidence. ”

In *Krauth v. Thiele*, 45 N. J. Eq. p. 407, Chancellor McGill says:

“A resulting trust arises by operation of law from contemporaneous circumstances which give the legal and equitable titles different directions, and it must, therefore, arise at the instant the deed is taken and the legal title is vested in the grantee, and the situation of the transaction when the title passes is to be looked to, and not the situation preceding or following that time,” citing

Tunnard v. Littell, 23 N. J. Eq. p. 267;

Midmer v. Midmer, 26 N. J. Eq. page 302;

Read v. Huff, 40 N. J. Eq. p. 229.

In *Whitely v. Ogle*, 47 N. J. Eq. p. 67, Vice-Chancellor Van Fleet quoted the exposition of the principles governing a resulting trust as formulated by Chancellor McGill in *Krauth v. Thiele*, as “more concise and accurate” than any other which had come under his notice. He then says speaking of the two principles which in the case before him for decision were controlling:

“First—A resultant trust can only be created at the very time which the land which it affects is conveyed to the trustee. It cannot be raised from matters arising *ex post facto*.

Second—To justify the Court in establishing a resulting trust, the evidence in support

of it must be full, clear and satisfactory. In other words, the person claiming that a trust should be established in his favor, to succeed must prove, by convincing and satisfactory evidence, that his money paid for the land. The form in which this principle is expressed in *Midmer v. Midmer's Exers.*, 26 N. J. Eq., pages 299-304, is substantially correct. It was there said: 'The effort always is, in cases of this class, to overcome and destroy a regular, formal, written title by showing, by evidence less solemn and trustworthy than the written instrument, that, though the deed says the purchase money was paid by A., and the lands were conveyed to him for his own use and benefit, yet in truth he did not pay the purchase money, but it was paid by B., and the conveyance was not (therefore, as a matter of equity) made to A. for his own use and benefit, but to him in trust for B. To make such an effort successful, the land, for the safety of titles, requires that the proof shall be of the most convincing and satisfactory kind.' "

The same rules prevail where the consideration proceeds from two or more persons jointly, and a resulting trust will arise in proportion to the amount of the consideration which they have respectively contributed.

Cutler v. Tuttle, supra.

Tested by these principles let us examine the proofs for the purpose of determining whether it is thereby established that a resulting trust arose in favor of the complainant at the instant the deed was delivered to the defendant; in other words, whether the land was purchased with the money of the com-

plainant. That such is the fact was neither alleged in the bill nor proved on the hearing.

The bill alleges, in *par.* 5, *Case*, *p.* 2, that:

“On May 12, 1925, Berthold Hevessy and Otilie, his wife, the then owners of said land and premises, conveyed the same to said Benjamin Friedberg by deed of that date and recorded.”

Paragraph 1 of the bill alleges that the complainant and defendant agreed to purchase the land (subject to mortgage liens, aggregating \$56,900.00) at the total purchase price of \$98,500.00.

The testimony touching payment by the complainant of the purchase money shows clearly that his payment was subsequent to the delivery of the deed and it is not established by any proof that any money of complainant went into the purchase of the land. The pertinent testimony of the complainant and his examination respecting the purchase and payment appears on pp. 17 and 18, *State of the Case*.

“Q. Did you and Mr. Friedberg ever have any business dealings involving that hotel?

A. Yes, sir.

Q. When was it that you had these dealings?

A. In 1925.

Q. What part of 1925?

A. May, something around May, or before May, April or May.”

* * * * *

“Q. Who opened the negotiations?

A. Mr. Friedberg. Mr. Friedberg asked my advice, he says he is to buy the Imperial, Imperial Hotel, I should give him an advice what it is worth, and I was in Atlantic City at that time, and we went through, and I told him what I thought about it. He says to me, ‘Will you

take a share in it?' I said, 'Yes, I will take one-fourth.' "

* * * * *

"Q. Subsequent to the occasion when you told Mr. Friedberg that you would take a one-fourth interest in the purchase of the Imperial Hotel, were you called upon by Mr. Friedberg to put up any money on account of the purchase?

A. After. That was in June."

* * * * *

"Q. How much money did you put up at the time of that call?

A. \$5400.00 I believe."

The witness then identified a check dated June 13, 1925, on the Northwestern National Bank for \$5448 drawn to the order of, not the defendant Friedberg, nor to the grantors in the deed to Friedberg, but to "The Chelsea Title and Guaranty Company," which the endorsement shows was deposited to the credit of the payee and was paid on June 16, 1925. See *Exhibit C1, Case*, p. 48.

It is thus established that the money of the complainant could not have been used in the purchase and payment for the land, since the payment was not made until more than one month *subsequent* to the date and delivery of the deed, moreover, the payment of money, by check to the order of the title company could have no relation to a transaction closed a month before between the defendant and his grantors of land involving payment for the land conveyed, nor is the relation established or the transaction explained by any proof in the case.

It is manifest that a resulting trust will not arise from the circumstances proven. When a person purchases land with his own money, and takes title in

his own name, a trust cannot be raised in favor of another by reason of the existence of a parol agreement upon the part of the purchaser that he would make the purchase for the benefit of another, and permit the other to thereafter make payment. One who sets up a resulting trust in himself, the conveyance being to another, must show that the land was bought with his money, and not merely that the purchase was made for his benefit or on his account. A subsequent payment of the money will not by relation attach a resulting trust to the original purchase, for a resulting trust arises from the fact that the money of the real, and not the nominal, owner, formed the consideration of the purchase at the time and became converted into land.

Ostheimer v. Single, 73 N. J. Eq. 539;
Pomeroy's Eq. Juris Sec. 1037;
Howell v. Howell, 15 N. J. Eq. 75;
Cutler v. Tuttle, 19 N. J. Eq. 549, 562;
Tunnard v. Littell, 23 N. J. Eq. 264, 267;
Krauth v. Thiele, 45 N. J. Eq. 407, 409;
Whitely v. Ogle, 47 Eq. 67, 69.

In view of these well settled principles, it is manifest that no trust resulted in favor of the appellant, unless a portion of the money which was by the respondent paid for the land may be regarded as having been appellant's money. It is impossible under the facts to be so regarded. The money which was paid for the land at the time of the execution of the deed to the respondent was respondent's money.

It is respectfully submitted that the decree appealed from is right and should be affirmed.

JOHN C. REED,
*Solicitor for and of Counsel
with Defendants-Respondents.*



